



## Chapter 24

### *Legal Administration*

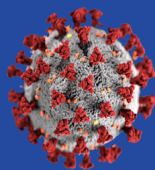
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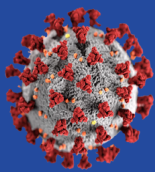
## Version History

Version #	Date	Notes
0.1	3/20/2023	First Draft submitted to CPR Team
0.2	4/11/2023	Final Draft revised per review by CPR Leadership
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## 24. Legal Administration

Public Health Emergency Preparedness and Response Capabilities: Community Preparedness; Community Recovery.

Related CDPH AAR Chapters: Vaccines; Testing; Medical Surge; Contact Tracing; Contracting and Procurement; Policy Development and Guidance.

In this chapter, some abbreviations may be used interchangeably with their respective full spellings for ease of reading.

### Chapter Summary

#### Overview

*This section provides a high-level overview of milestones and activities related to this chapter.*

The CDPH Office of Legal Services (OLS) plays a critical role in public health. OLS attorneys serve as in-house counsel to the more than 200 CDPH programs, providing services such as legal advice and litigation assistance. Many of these programs were on the front lines of the COVID-19 pandemic response and relied on OLS for advice on how to design and implement new programs and assume new responsibilities within CDPH's statutory authority.

Early in the pandemic, in February and March 2020, the Governor's Office (GO) and the California Health and Human Services Agency (CalHHS) enlisted OLS to identify the Governor's emergency powers to handle the repatriation and quarantine of American citizens returning to the U.S. on international flights and cruise ships. OLS researched applicable maritime and quarantine laws dating back more than 100 years to quickly determine the State's authority. In addition, OLS assisted the Governor's Office to develop and implement numerous emergency orders to align the State's response with applicable laws. Also, the OLS team drafted emergency proclamations, communicated via All Facility Letters (AFLs), to waive certain statutory requirements. These waivers granted health care facilities the flexibility to meet their COVID-19 patient care needs by using staffing and facility space in non-traditional ways.

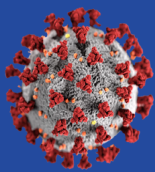
The State faced numerous legal challenges to its emergency orders. Many stakeholders questioned whether the Governor had the legal authority to mandate sheltering in place, testing, masking, and capacity restrictions on businesses. OLS assisted the State Attorney General in its litigation of these cases



by compiling background information for declarations and preparing briefs for the court. Furthermore, when the State decided to settle cases, OLS advised on the settlement amount and resolved the cases on behalf of the State, based on guidance from the Governor's Office.

Additionally, OLS supported the COVID-19 Task Forces in their work, which became a top priority. The OLS team fielded many questions from and provided legal support to the Task Forces. For instance, when the Testing Task Force established a dedicated testing lab, OLS attorneys assisted with the lab setup, provided legal advice on testing protocols, developed rules for managing the lab, and consulted on contracts. OLS provided this type and level of assistance to the other Task Forces as well. During the pandemic, CDPH experienced a 50% increase in the number of Public Records Act (PRA) requests for COVID-19-related records.

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## Main Strengths and Successes

*This section describes the Main Strengths and Successes, including findings and corrective actions, related to this chapter. Further elaboration and a more detailed discussion of these strengths and successes can be found in the Analysis of Activities section.*

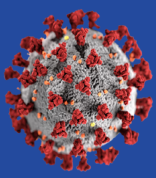
### 1. OLS effectively reorganized staff and redistributed assignments to address the increased legal workload in response to COVID-19.

The State's emergency response to COVID-19 generated new and different work for OLS, which presented organizational and operational challenges. In addition to their usual work of providing legal support to CDPH's various programs and centers, OLS attorneys and staff coordinated emergency contracts, responded to COVID-19-related PRA requests, supported the Governor's Office and the COVID-19 Task Forces with legal research, and assisted with COVID-19 litigation. As attorneys took on these new responsibilities, "it didn't take long to recognize that the standard structure of OLS was not going to be able to meet the challenge," according to one SME. Consequently, leadership reorganized teams and staff to work on COVID-19 assignments, including emergency contracting and legal support for various Task Forces. In addition, OLS leadership created the COVID-19 Project Response team, a new unit comprised of limited-term positions, to assume the pandemic-related PRA and litigation workload. Existing work was deprioritized to accommodate these new demands.

Finding/Corrective Action: CDPH successfully reorganized its legal staff and redistributed work to meet pandemic response needs, creating a model that can be used for future emergency events. (ID: Legal 1)

### 2. Attorneys were equipped to successfully provide legal advice based on preparedness planning and updated resource materials.

Prior to 2020, OLS updated its legal policies and planning materials to support an emergency response. Due to public health emergency preparedness funding, OLS had the resources to support this type of planning. The materials drew on artifacts from Cal OES, CDPH, and other



departments, identified pertinent laws, and specified public health officer powers. According to one SME, “this effort paid off because we had resource materials we could use to manage the response.”

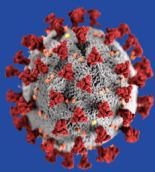
Finding/Corrective Action: CDPH should maintain and update COVID-19 legal resource materials in preparation for the next pandemic. (ID: Legal 2)

**3. As the State made more information publicly accessible, CDPH attorneys were able to process PRA requests more efficiently by referring to information available online.**

Early in the response, CDPH’s attorneys spent considerable time responding to PRA requests. Over time, however, the State began posting COVID-19 planning and response operation information online, which made it easier for the legal team to respond to PRA requests. For example, COVID-19 operations data eventually became available on the [State’s COVID-19 open data portal](#), public health orders and historical documents were posted on the [CDPH website](#), and [COVID-19 contracts](#) were posted online. As this information became publicly available, the processing of PRA requests became less burdensome, since many requesters could be directed to these websites, avoiding lengthy internal processes that were often necessary to locate records. CDPH’s legal team appreciated the public dissemination of information on these websites, and some recommended making more information publicly available and consolidating the data into one searchable repository. In the future, this could reduce the volume of PRA requests and allow attorneys to focus on other legal services.

Finding/Corrective Action: In the future, the State has the opportunity to anticipate and plan for the types of information it wants to make publicly available, and establish a central, searchable repository for the public to access. (ID: Legal 3)





## Main Challenges and Lessons Learned

*This section describes the Main Challenges and Lessons Learned, including findings and corrective actions, related to this chapter. Further elaboration and a more detailed discussion of these challenges and lessons learned can be found in the Analysis of Activities section.*

### **4. CDPH's legal team experienced staffing challenges as it attempted to fill vacant positions and absorb the workload of redirected staff.**

For the first year of the pandemic, OLS lacked sufficient staff resources, which caused the team to work long hours, nights, and weekends to keep up with the workload. OLS was impacted when the State redirected analysts to conduct contact tracing activities. The loss of these core personnel within the legal team meant that remaining managers and supervisors had to assume their workload. Additionally, while OLS created a new team and limited-term positions to manage the volumes of PRA requests, it took more than 6 months to secure funding for the new positions, and then took additional time to fill them. Consequently, this team was not fully staffed until mid-2021. During the same time period, several attorneys left CDPH for jobs at other state agencies and the private sector, attracted by better work/life balance options and/or higher pay.

Finding/Corrective Action: CDPH has the opportunity to anticipate and plan for pandemic-related staffing challenges for legal support, including identifying flexible solutions to obtain legal resources, such as redirecting attorneys from other state departments or planning for limited-term positions in advance. (ID: Legal 4)

### **5. It was challenging to systematically process and coordinate incoming requests for legal support from the multiple COVID-19 Task Forces.**

During the pandemic, OLS attorneys prioritized providing legal advice and assistance to the COVID-19 Task Forces. However, they lacked a systematic process to receive, triage, and track resolution of the incoming requests for legal services. Requests came in via many different streams, which created coordination challenges. Oftentimes,





CDPH staff who had been redirected to a Task Force would reach out to attorneys with whom they had existing relationships, even if they were not necessarily the most appropriate legal contact. Furthermore, attorneys often did not know which staff and contractors were working on which Task Forces, since task force organizational charts sometimes did not exist or were not updated frequently. This created problems when Task Force contractors asked for legal advice. State attorneys are prohibited from providing legal advice to contractors, but OLS attorneys had difficulty distinguishing contractors from State employees. Ultimately, the lack of a system to handle incoming legal requests created duplication of effort and confusion.

Finding/Corrective Action: CDPH should document the process to request and receive legal support during emergency situations and identify the appropriate legal contacts ahead of time. Part of this process could include waivers that allow OLS to confer with CDPH contractors when their services are to represent CDPH interests. (ID: Legal 5)

#### **6. The limitations of current OLS software prevent the attorneys from conducting their work efficiently.**

The two primary software applications that the OLS attorneys rely on do not adequately support their work. The first tool, ProLaw, which is designed for litigation casework, has limited capabilities for other legal activities, such as in-house counsel support. OLS attorneys report that they had to be creative in how to set up the tool for searches and “it did not serve the in-house counsel activities as well as it should have.” Shortly into the pandemic, as the workload increased, attorneys did not have the resources to input the information into the tool. Consequently, they were not able to systematically track all of the legal support they provided to the Governor’s Office, CalHHS, COVID-19 Task Forces, or to CDPH Programs, nor determine if they were duplicating previous work. The other tool, GovAQ, which is used to manage PRA requests, does not allow the attorneys to search for similar PRA requests or for similar records that have already been released. The team had to rely on memory to determine if a similar PRA had already been processed.



Finding/Corrective Action: CDPH should consider upgrading its legal technology solutions to better support the work of its attorneys. (ID: Chapter Name 6)

**7. Some emergency contracts were executed without the proper data sharing agreement that stipulated how the contractor would use and protect CDPH data.**

When CDPH enters into a contract (with vendors, researchers, and counties) that involves CDPH sharing data, the contract requires a data use agreement that stipulates how the data will be used and protected. However, during the pandemic response many emergency contracts were agreed to and signed outside of this normal contracting process. These emergency contracts were negotiated and executed quickly, with limited attention paid to the data use agreements, which are usually reviewed by the attorneys in the Privacy Office. Consequently, many contracts lacked the appropriate data use agreements. Eventually, through retrospective analysis, the Privacy Office identified contracts with missing data use agreements and began to correct them through amendments.

Finding/Corrective Action: CDPH has the opportunity to further document its emergency contracting process for future responses, including the requirements for data use agreements and for the review of data use provisions by the Privacy Office. (ID: Legal 7)



## Analysis of Activities

*This section elaborates and provides more detail on the findings, corrective actions, and lessons learned that are presented in the Main Strengths and Successes and the Main Challenges and Lessons Learned sections.*

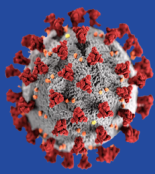
### Legal Staff Reorganized to Manage Increased Legal Workload and other Challenges

- OLS provides in-house legal analysis, advice, and representation for CDPH leadership and more than 200 public health programs. OLS is also responsible for the enforcement of privacy requirements and for compliance with regulations. Prior to the pandemic, the approximately 60 OLS attorneys were organized into four legal teams: 1) in-house legal counsel for public health programs; 2) in-house legal counsel for the Center for Health Care Quality (CHCQ); 3) litigation administration; and 4) regulations, privacy, and special projects.
- A few years prior to the pandemic, OLS had engaged a retired annuitant (a former chief counsel) to research and prepare a package of emergency response resources for the OLS legal team. The retired annuitant worked full-time for a full year to research and compile the materials. These extensive resources drew from Cal OES and other State departments to provide guidance on emergency preparedness, legal considerations, and public health officer powers. OLS attorneys relied on these materials extensively throughout their COVID-19 response work. Since these resources were so useful to the OLS team in its response, several team members suggested that CDPH continue the effort to maintain and update these resources in preparation for future pandemics.
- In 2020, as the pandemic began, the OLS team quickly became overwhelmed with COVID-19 response work. Since OLS advises on all legal aspects of public health, the team was soon reacting to “fire drills” as characterized by one SME. It quickly became clear that OLS was not appropriately organized and lacked the staff to meet the new workload demands. This was due to a variety of reasons, including the loss of administrative staff through mandatory redirections due to COVID-19.
- In May 2020, the State redirected Associate Governmental Program Analysts (AGPAs) to conduct contact tracing activities for the counties.



This negatively impacted OLS. These analysts were integral to OLS operations and knew the granular details of the work; once they were redirected, OLS managers and supervisors had to figure out and absorb this unfamiliar work. One area that was particularly impacted was Public Records Act (PRA) requests. The OLS PRA coordinators were redirected outside of the department, causing a portion of the PRA workload that ordinarily did not require legal training to fall to attorneys.

- When OLS lacked resources with specific skill sets, OLS leadership asked CalHHS to request assistance from CDPH's "sister agencies," such as the Department of Health Care Services (DHCS), the Emergency State Medical Authority (EMSA), and other departments within CalHHS. Since the request was not compulsory, no other departments volunteered legal resources. Meanwhile, one SME noted the CDPH legal team was "drowning in work," and "we lost some good attorneys because it was such a fire hose of tasks." SMEs reported they worked 60-hour weeks for over a year, and sometimes over 70 hours a week for extended periods of time. This included rotations on the weekends, because OLS did not have the ability to scale up staffing.
- Consequently, OLS reorganized the workload to accommodate the increase in COVID-19-related activities while deprioritizing its usual work. Since the focus of the department shifted its response to COVID-19, the attorneys refocused their activities commensurately. For instance, when legal challenges to emergency orders started to mount, attorneys were pulled from their regular assignments into COVID-19 litigation. To address the increase in COVID-19-related PRA requests, eventually all the 60 OLS attorneys were directed to do some portion of PRA processing. PRAs are discussed later in this chapter.
- In addition to reorganizing the workload, OLS leadership requested additional staff in Spring 2020. However, it took 6 months to obtain approvals for limited-term positions to staff the newly created COVID-19 Project Response team within OLS. Once the positions were posted they were difficult to fill due to their short-term duration. OLS was not able to fully staff the COVID-19 Project Response team (with 1 lead attorney, 5 attorneys and 1 AGPA) until mid-2021, at which point the team took over the PRA workload in its entirety and began to support litigation work. These limited term positions will end in June 2023, but most of the staff will



be absorbed into existing permanent positions. Then, the OLS team will be comprised of 91 positions of 67 attorneys and 25 administrative staff.

- Lastly, OLS attorneys and staff were not provided with the technology to work remotely, even though they began working remotely in March 2020 due to the Governor's Stay-at-Home Order. Consequently, most of the OLS team had to use their own personal equipment. Eventually, only managers received laptops, but those were not provided until mid-2022.

### **Legal Work Shifted to Support the Governor's Office and the COVID-19 Task Forces**

- Within OLS, the Public Health Programs (PHP) team serves as in-house counsel for more than 200 CDPH public health programs, except the Center for Health Care Quality which is supported by another OLS team. In addition to program support, the PHP team performs broader legal work for the Director's Office and the Public Health Officer to provide advice on the State's legal authority and enforcement powers. During the pandemic, the PHP team's legal work shifted to supporting the Governor's Office and the various Task Forces in the COVID-19 response. The COVID-19-related work took priority over much of the day-to-day operations of in-house counsel program support, which was either diverted or scaled down.
- For COVID-19-related public health issues, CalHHS and the Governor's Office relied on CDPH attorneys for legal research and assistance. For example, in early 2020, the PHP team provided legal assistance to the Governor's Office on the repatriation, testing, and quarantine of American citizens returning to the U.S. on international flights and cruise ships. PHP attorneys had to quickly research state laws applicable to quarantine. As one attorney noted, "this was an authority question that we had to address immediately," but "the laws that we had to lean on were more than 100 years old." For further information on the State's response, refer to the Repatriation, Quarantine, and Returning Traveler Monitoring Program in this AAR.
- The PHP attorneys also assisted leadership to define what emergency orders the Governor could issue and what the State Public Health Officer could enforce. The CDPH attorneys worked closely with the CalHHS General Counsel and the Governor's Office attorneys to align the state's





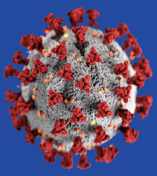
response with the law. This included analysis on levels of authority. For further discussion on emergency orders, refer to the Public Health Officer and Executive Orders chapter in this AAR.

- In addition to developing emergency orders, PHP attorneys assisted to implement the Governor's directions. For example, in March 2020, the Governor announced the expansion of the State's hospital system capacity. OLS diverted attorneys and staff from their regular work to coordinate and execute emergency contracts for facility space and medical providers to support this expansion. For further information on the State's response to health care capacity, refer to the Medical Surge chapter in this AAR.
- The COVID-19 Task Forces' activities comprised the majority of the PHP team's work and "took the first priority," according to one SME. For instance, the PHP attorneys provided substantial assistance to the COVID-19 Testing Task Force. When the State established a dedicated testing laboratory, PHP attorneys assisted with the setup, including contracting for equipment and trained personnel, arranging for couriers, and developing rules and protocols. The team provided legal advice on testing protocols, genome sequencing, and testing packets for schools. In addition, the team coordinated contracts and agreements with the counties for pop-up testing clinics. The PHP team provided this type and level of assistance to the other Task Forces as well.

### **Challenges Associated with Tracking and Managing Requests for Legal Support**

- As the COVID-19 Task Forces were established, Task Force leaders had many questions about the legal implications of the emergency response. In early 2020, the majority of questions related to isolation, quarantine, and social distancing. As the pandemic progressed, however, the legal team was "bombarded with questions" that all seemed to be unique, according to SMEs. To illustrate the scope and diversity of the Task Forces' requests for legal input, OLS lawyers provided legal advice ranging from testing protocols and rules to manage a new testing laboratory, to genome sequencing, border response, and reporting immunization data.
- OLS lacked a systematic way to handle the incoming requests for legal support. Prior to the pandemic, CDPH program staff followed a formal





process to obtain in-house counsel support from an attorney assigned to the particular program. During the pandemic, as CDPH program staff took on different roles within the Task Forces, the formal process was replaced by ad hoc fulfillment. In their new roles, the reassigned program staff would reach out directly to the attorney that they worked with previously.

- The legal team also had difficulty tracking the questions, issues, and decisions on their prior legal advice. One lawyer recalled that “there was no logical way to track requests” as the requests “were ongoing, all day long.” In addition to not tracking requests, the legal team also had little insight into where the requests were coming from. Initially, organizational charts were prepared for the COVID-19 Task Forces, but with frequent staffing reassignments and redirections, the organizational charts changed rapidly and were not necessarily kept up-to-date. Consequently, one SME recalled that “we didn’t know what the Task Forces were doing and we didn’t know who was working on them.” Ultimately, the team lacked “a clear understanding of who was asking the questions” or why, according to another.
- A similar situation occurred with contractors affiliated with the Task Forces who “would reach out to any legal person they could find to answer a question,” according to one SME. Often the attorney did not know that the person was a contractor rather than a State employee. This was problematic because attorneys are traditionally authorized to answer questions or provide legal advice to State employees. Since this protocol was not waived when contractors were acting on the State’s behalf, attorneys had to take the extra step to determine who was making the inquiry and confirm it was a State employee before they could provide legal advice.
- Prior to the pandemic, OLS attorneys documented their completed work in legal memos and tracked the information in software called ProLaw, which is also a database to search ongoing and completed legal work. As the number of questions started to increase, the attorneys no longer had the capacity to document their findings in legal memos. They still documented their legal advice, but through email exchanges. Ultimately, since OLS lacked the resources to update or maintain ProLaw, it was not used for COVID-19-related legal support, and there are no plans to retrospectively input the information into the tool.



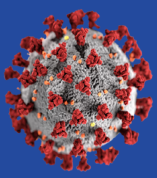
## Center for Health Care Quality Legal Team's Work Shifted to Infection Control and Prevention in Health Care Facilities and Litigation Support

- Within OLS, the Center for Health Care Quality (CHCQ) legal team serves as in-house counsel for the CHCQ Program and its 15 district offices. As the largest program within CDPH, CHCQ is responsible for licensing and regulating 30 types of health care facilities, which includes over 10,000 licensed entities. This legal team's activities focus licensing actions such as citations, penalties, and license revocations. If a facility appeals an action to the California Superior Court, the CHCQ legal team prepares briefs and serves as the subject matter experts to the State Attorney General during litigation.
- In early 2020, the CHCQ legal team's work shifted to addressing the legal perspectives associated with infection control and prevention in facilities. This shift reflected CHCQ's pandemic response work at the time, which focused on enhancing infection prevention practices in settings such as skilled nursing facilities, where many early COVID-19 outbreaks had occurred.
- The CHCQ legal team, in coordination with the CHCQ program, drafted emergency orders and emergency proclamations, memorialized in [All Facility Letters](#) (AFLs), to allow the State to waive certain statutory requirements for licensing, certification, training, and continuing education. This included temporarily waiving certification and credentialing requirements so that health care facilities could meet nurse-to-patient ratios in innovative ways. Some waivers suspended staffing ratios, and others allowed nursing assistants who were still in training to be hired as Certified Nursing Assistants (CNAs). With these waivers, one SME noted that the legal team “was doing a lot to try to help the medical facilities to help themselves.” For further discussion of waiving licensing requirements via AFLs, see the Medical Surge chapter in this AAR.
- For the CHCQ legal team, the COVID-19 response was “all hands on deck,” in the words of one SME. This required 24/7 on call scheduling and weekend work. The team lost several attorneys to other departments and the private sector. One SME remarked that the departing attorneys felt that “if they were going to work the intensity of the private sector, then they wanted private sector pay.”



## Navigating Legal Challenges to Emergency Orders

- In March 2020, the Governor issued the Statewide shelter-in-place order (also known as the stay-at-home order), followed by numerous other emergency orders that mandated certain actions, such as testing, masking, and restricting the capacity of businesses. Many of these mandates were controversial and prompted numerous court cases, which challenged the Governor's legal authority to take these steps. Over 90 lawsuits were filed in the first few months of the pandemic, a church filed the first COVID-19-related litigation to challenge the constitutionality of the Statewide stay-at-home order. This was followed by other lawsuits from gyms, restaurants, nail salons, and schools that wanted to reinstate in-person services.
- Since these cases challenged the Governor's emergency orders, the Governor's Office of Legal Affairs (OLA) directed the litigation strategy and the State Attorney General litigated the cases. However, due to their public health expertise, OLS attorneys were tapped to assist in the litigation by conducting legal research, compiling data and background information, and preparing briefs.
- These cases challenged the Governor's authority in the California constitution to issue emergency orders. The OLS team included attorneys with constitutional law experience and expertise with emergency orders, which enabled CDPH to effectively support the Attorney General's Office.
- There were "so many cases that had to be turned around in just a few hours or a couple of days," according to one SME. To manage the workload, the team split the work into categories (e.g., schools, religious groups, gyms/fitness centers) based on whether the same declarations (written statement submitted to the court) could be applied. A CDPH epidemiologist served as a subject matter expert to the legal team to compile COVID-19 cases, deaths, and other metrics to justify the emergency orders.
- As the science and knowledge expanded about COVID-19 transmission and recovery periods, the State revised or ended some of its emergency orders, which made the legal arguments "a moving target" since the legal strategy and declarations had to be periodically adjusted based on revised emergency orders. A complicating factor was if a local jurisdiction

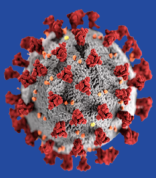


was a co-defendant in a lawsuit. One SME noted that OLS “tried not to conflict with the locals’ strategies” in court proceedings.

- By the end of 2020, the U.S. Supreme Court ruled against the State on a religious-based case and other courts sided with plaintiffs in selected circumstances. As a result, the State began settling a limited number of cases. In 2021, following the arrival of COVID-19 vaccines and the subsequent relaxation of the more stringent stay-at-home orders and masking guidance, the State began to dismiss cases it initiated in addition to settling cases made by plaintiffs in consultation with the Governor’s Office. CDPH OLS would also advise on the amount of the settlements, if needed.
- Since the Governor’s Office was not budgeted for settlements, OLS created a budget within CDPH and developed an estimate for each case. The funding for settling or losing a case came from the State’s general fund. As of January 2023, the COVID-19 cases settled to date amount to approximately \$5.5M, with 6 cases pending.

### Public Records Act Workload Increased due to COVID-19-Related Requests

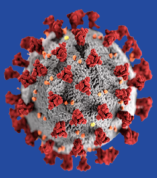
- The California Public Records Act (PRA) requires that government records be disclosed to the public, upon request, unless there are privacy and/or public safety exemptions. California Government Code §6252(e) defines “public records” as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Many of the PRA requests came from the media and also from law firms gathering information for the discovery phase of a lawsuit. According to one SME, some requests were broad, such as “all communications on school mitigation measures,” and others were specific, such as “why a particular school was closed.”
- The PRA exempts certain public records from disclosure, including attorney products, draft public records, licensee financial information, personnel information, and confidential records.
- CDPH uses a secure department-wide public records management system developed and maintained by GovQA. On the CDPH website portal, the public can access [GovQA](#) to make their request to review



public records or data. The State also allows requestors to submit written inquiries, but OLS staff will still log and track the requests in GovQA.

- By law, CDPH must respond to the inquiry within 10 calendars days to notify the requestor whether the records will be disclosed. After the initial response, there is no specific timeframe to provide the records because CDPH staff cannot predict how long it will take to review, inspect, and make potential redactions to the records., especially if the request is voluminous, requires research, or involves computer programming.
- Prior to COVID-19, CDPH received about 2,000 PRA requests each year. Each CDPH Center and Program had a PRA Coordinator who responded to the requests for their program. An OLS attorney would only become involved to justify exemptions or to determine what information to redact.
- Starting in 2020, the workload increased substantially with approximately 1,000 additional COVID-19-related PRAs submitted each year of the pandemic. Due to this large volume, CDPH set up a different procedure to process COVID-19-related PRA requests submitted by the public.
- According to these new procedures, OLS attorneys served as the coordinators on behalf of CDPH's Center and Program teams. They contacted the requestors (if necessary) to clarify the request. They also worked with CDPH program staff to identify relevant records and key search terms, which were provided to technology teams to conduct system searches. Once the documents were identified, attorneys summarized the request and associated records in a template that was then sent to CalHHS and the Governor's Office for review. Upon approval, the records were compiled, prepared, and then published on GovQA.
- Media COVID-19-related PRA requests followed the same process, but included additional stakeholders. The requests were logged into GovQA, processed by OLS attorneys, and then forwarded to the legal teams at CalHHS and the Governor's Office. Other stakeholders involved included the CDPH Office of Public Communications and CalHHS Communications teams.
- The media could also contact the OPC for information, known as a "media inquiry," outside of the PRA process. Sometimes, OPC would create a PRA for the media inquiry to obtain an OLS attorney's input on the request. One SME observed that "we saw a lot of duplicated





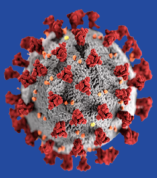
requests.” For example, a county may have submitted a PRA request while the local newspaper would submit a media inquiry for the same information through OPC. The SME noted that “it was important that we kept track of the questions and our response so that we would remain consistent”. For further information about media inquiries, refer to the Public Communications chapter in this AAR.

- Initially, COVID-19-related PRA requests “came in at a slow trickle but quickly became a fire hose and then a Mississippi River,” according to one SME. Over 60 attorneys across OLS shared the PRA workload. In mid-2021, CDPH created the COVID-19 Projects Response team, which took over the PRA workload. The team, comprised of a lead, 5 attorneys, and an analyst spent 80% of their time on COVID-19 PRAs. One SME noted that having an assigned team “helped them manage the PRAs more efficiently rather than having random attorneys assigned depending on who was available.”

### **Tedious Process to Research and Prepare PRA Records**

- Attorneys experienced many challenges in their work to research and respond to PRA requests. Requests were often vague, wide-ranging, and lacked specificity, which made it difficult to identify how to fulfill them. A typical request would be for all communications on a certain topic. Attorneys coordinated with the programs to conduct the initial search, which one SME described as “searching for a needle in a haystack.” Attorneys would spend considerable time reading through trails of emails that were not pertinent to the topic.
- Attorneys relied on program staff to help them search for records, but since many staff (including the designated program PRA coordinators) had been redirected to other response teams, it was difficult to locate individuals who could help. One SME noted that department “organization charts became very important and we relied on them being refreshed as quickly as possible” to identify the appropriate points of contact for PRA requests.
- In addition to these operational and logistical challenges, attorneys also contended with technological challenges. The primary tool, GovQA, has very limited search functionality and therefore attorneys are not able to search for historical records that have been disclosed. Instead, the team





had to rely on their institutional knowledge to remember, assign, and process requests.

- Once records had been identified, they needed to be prepared for public release. Every document was reviewed to determine if it met the exemption criteria and if it contained sensitive or personal information that needed to be redacted.
- In regard to personal health information, staff followed [HIPPA redaction guidance](#) and the CalHHS [Data De-Identification Guidelines](#). One SME explained that working with “personal health information was particularly tricky,” because disclosing data such as race or age for small jurisdictions (<200 people) could potentially identify those who had contracted COVID-19. Consequently, OLS staff closely reviewed and redacted identifiers (including age, gender, year of birth, and county of residence) that could potentially identify individuals.
- In order to redact and publish the records, the attorneys used Adobe software, which was slow and cumbersome. Since there were initially no assigned support staff, one SME reported that “we spent a lot of time and money having attorneys do the redactions.” Eventually, with the creation of the COVID-19 Projects Response team in mid-2021, support staff could help convert the records into PDFs.
- Over time, the State made some data publicly available on the [State's COVID-19 open data portal](#). In addition, public health orders and historical documents were archived on the [CDPH website](#). Having publicly available information made it easier to process PRA requests, since many requests could be referred to the data portal and the website. However, the COVID-19 Projects Response team felt that even more information could have been made available to the public. For instance, as records are approved for release through individual PRA requests, one SME suggested that “a good solution would be to post those records on a publicly searchable repository.” This would reduce future workload as the team could refer requests to the searchable repository for public information that has already been released.
- The State published the major [COVID-19 contracts](#) online; however, this could generate more PRA requests because the public then requested access to the associated invoices and supporting documentation.



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## Data Privacy Stipulations Required for Contracts & Data Use Agreements

- The OLS Privacy Office oversees and ensures the Department's implementation of and compliance with state and federal privacy laws, including the California Information Practices Act (IPA) and the federal Health Insurance Portability and Accountability Act (HIPAA). Responsibilities include assuring that the personal information individuals entrust to CDPH is adequately maintained and protected from disclosure and misuse. CDPH ensures the privacy and security of the data it shares with external entities through Data Use Agreements (DUAs).
- CDPH enters into DUAs with outside entities, such as LHJs, researchers, and vendors to protect the unauthorized use, access, or disclosure of personal data. If a CDPH program enters into any kind of a services contract where the vendor can "see or touches the data," according to a SME, then the contract must include a data use agreement. This agreement is typically a Business Associate Agreement (BAA) or an Information Privacy & Security Requirements (IPSR), if the program is covered by HIPAA.
- Historically, the Privacy Office processed approximately 25 DUAs per year. During the first few months of the response from March to July 2020 the number of data use agreements between CDPH and outside entities increased substantially. In 2020, for instance, there were over 100 completed DUAs.
- The State's emergency procurement process allowed the State Emergency Procurement Officer to negotiate contracts directly with individual vendors, without going through the competitive bidding process. In the normal competitive bidding process, the State would first issue a bid package with a statement of work and corresponding DUA, if applicable, to which bidders responded. An attorney would have reviewed the bid package before it was released to confirm the appropriate DUA was included. However, for the emergency process, there was no bid package. The contract was negotiated with the vendor first and then OLS attorneys participated in the preparation, review, and approval of the contract, including the privacy agreements.



- Consequently, some executed contracts between March and June 2020 either did not contain a DUA or had an incorrect privacy agreement attachment. To correct the situation, OLS amended these contracts with the appropriate data agreement exhibit.

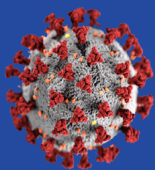
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## Information Technology

*This section describes information technology specific to this chapter.*

- As discussed earlier, OLS uses two software tools to manage its legal work. Both tools are limited in their search capabilities, which increases the amount of time attorneys spend looking for historical legal memos and other work products.
- The primary software tool is ProLaw, which is used to manage in-house counsel support and litigation activities. The tool is designed to house litigation casework and documentation, but OLS attorneys feel that it does not meet their needs because of its limited search functionalities. OLS has not been able to use ProLaw to systematically track the legal advice provided to the Governor's Office, CalHHS, COVID-19 Task Forces, or to CDPH Programs. Instead, during the pandemic response, attorneys documented their legal advice in emails. Further, due to these system limitations, OLS is unable to determine if attorneys are duplicating previous work.
- The other tool, GovAQ, is used to manage PRA requests. The tool does not allow the attorneys to search for similar PRA requests or for similar records that have already been released. Consequently, attorneys spend considerable time duplicating research from previously released records as well as potentially duplicating efforts to exempt or redact information.



## Communications

*This section describes communications specific to this chapter.*

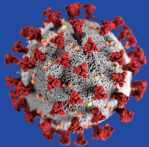
### External

- OLS attorneys regularly communicated and worked with the CalHHS Agency legal team and the Governor's Office's legal team on public health matters to develop emergency orders, determine legal authority for new initiatives, and create the legal strategy for litigation.
- Since the State Attorney General led the litigation of cases, the OLS attorneys provided their public health expertise and legal support to develop briefs and declarations, and regularly communicated on individual cases.
- For additional information see the discussion in the Analysis of Activities of this chapter for communications with the Governor's Office, CalHHS, State Attorney General, and other State departments.

### Internal

- CDPH leadership, the COVID-19 Task Forces, and CDPH Programs regularly sought out OLS attorneys for legal advice and support. Due to the tight timeframes to provide their support, the attorneys communicated their advice primarily through email, instead of the typical legal memo documentation.
- For additional information see the discussion in the Analysis of Activities of this chapter for internal communications with the COVID-19 Task Forces, CDPH leadership, CDPH Programs, and CDPH Office of Public Communications.





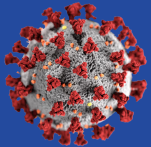
## Workplan

*This section is designed to be used as a workplan for future pandemics.*

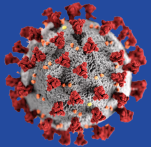
Definitions:

- **Phase:** The phase of the response in which the major tasks should be conducted (Planning; Initial start-up, Ongoing operations, or Close-out).
- **Major Tasks:** The tasks and activities that have to be conducted as part of the public health emergency response to a respiratory pandemic.
- **Success Criteria:** Criteria used to assess whether a task has been achieved successfully.
- **Considerations Based on COVID-19 Response:** Things to consider, including pitfalls, risks, and lessons learned, based on the COVID-19 response.
- **Finding ID:** The ID(s) from the related Finding/Corrective Action (where applicable).
- **Lead:** The lead person(s) responsible for task completion.

Phase	Major Tasks	Success Criteria	Considerations	Finding ID	Lead
Planning; Initial start-up; Ongoing operations	Anticipate and plan for staffing and workload challenges	<ul style="list-style-type: none"><li>• Continuity of coverage is ensured.</li><li>• Resources are available to staff new and expanded workstreams.</li><li>• OLS can expand and contract to</li></ul>	<ul style="list-style-type: none"><li>• Develop staffing plans for new workstreams or to address backlogs and protocols for redirected staff.</li><li>• Identify gaps in subject matter expertise and develop a staffing</li></ul>	<ul style="list-style-type: none"><li>• Legal 1, 2, 4</li></ul>	



Phase	Major Tasks	Success Criteria	Considerations	Finding ID	Lead
		meet shifting demands.	plan to address those gaps. <ul style="list-style-type: none"><li>• Assign a team to refresh legal tools and legal resource materials that can be used in the next pandemic.</li></ul>		
<b>Planning; Initial start-up; Ongoing operations</b>	Establish formal process to receive, triage, and manage requests for legal support	<ul style="list-style-type: none"><li>• Roles and responsibilities are clearly documented.</li><li>• CDPH programs consistently follow process to obtain in-house counsel support.</li><li>• OLS meets all requests for in-house legal support.</li></ul>	<ul style="list-style-type: none"><li>• Create a Responsibility Assignment Matrix or similar matrix.</li><li>• Compile attorney contact list of subject matter experts and those who are assigned to specific workstreams.</li><li>• Communicate process and contact list to all CDPH programs, CalHHS, the Governor's Office and other stakeholders that request legal support.</li></ul>	<ul style="list-style-type: none"><li>• Legal 4</li></ul>	

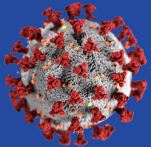


## CDPH COVID-19 After Action Report

### Chapter 24 – Legal Administration

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Phase	Major Tasks	Success Criteria	Considerations	Finding ID	Lead
<b>Planning; Initial start-up; Ongoing operations</b>	Maintain one repository for pandemic-related publicly accessible information	<ul style="list-style-type: none"><li>• Public can easily access information in lieu of a PRA request.</li><li>• Information is disseminated consistently and timely.</li></ul>	<ul style="list-style-type: none"><li>• Examine past COVID-19 PRAs to identify the types of information previously requested to inform what to make public in the central repository.</li><li>• Use industry best practices to keep publicly accessible information current.</li></ul>	<ul style="list-style-type: none"><li>• Legal 3</li></ul>	
<b>Planning; Initial start-up; Ongoing operations</b>	Identify and procure software tools to support legal work	<ul style="list-style-type: none"><li>• CDPH attorneys can track, search, and locate current and past work products.</li><li>• CDPH leadership has timely and accurate information on legal advice provided to CDPH internal clients and external stakeholders.</li></ul>	<ul style="list-style-type: none"><li>• Identify potential technology solutions to support the variety of legal functions.</li><li>• Evaluate, select, and implement the optimal solution(s).</li><li>• Migrate data from decommissioned tools.</li><li>• Train attorneys, staff, and other stakeholders to</li></ul>	<ul style="list-style-type: none"><li>• Legal 6</li></ul>	



# CDPH COVID-19 After Action Report

## Chapter 24 – Legal Administration

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Phase	Major Tasks	Success Criteria	Considerations	Finding ID	Lead
			use the new tool(s).		
<b>Planning; Initial start-up; Ongoing operations</b>	Document process for emergency contracts	<ul style="list-style-type: none"><li>• Contracts include all required agreements to protect CDPH data.</li><li>• Vendors commit to only use data as stipulated in the agreement.</li></ul>	<ul style="list-style-type: none"><li>• Address data use provisions during contract negotiations with vendors.</li><li>• Involve attorneys in reviewing contracts to ensure data use protections are incorporated, even during emergency contracting periods.</li></ul>	<ul style="list-style-type: none"><li>• Legal 7</li></ul>	