

## Guidance for Sharing Enforcement Information with Communities

Centering equity in our enforcement programs is a core value at CalEPA. CalEPA encourages open communication with residents to build trust and achieve outcomes that benefit residents.

Transparency is essential to enhance our enforcement work in overburdened communities. While some information must and should remain confidential, there is a great deal of information that can be shared. This guidance is intended to clarify the types of enforcement information that can be shared with communities.

### Okay to Share

- The compliance history for a facility
- Permits issued to a facility
- That an inspection occurred
- Emissions data
- A notice/summary of violation or cease and desist order that an agency has issued
- That settlement negotiations are occurring
- Documents that have been filed in court
- A final settlement agreement
- Investigation details for a closed enforcement matter (e.g., results from soil, water, air, or other samples; inspection results; investigative reports without CBI or personal identifying information; witness statements without personal identifying information), unless the need for confidentiality outweighs the interest in disclosure
- Information that is already publicly available

### Sometimes Okay to Share

- That an agency received a complaint about a specific facility
- That an agency is planning to inspect or investigate a facility, or how facilities are prioritized for inspection
- Investigation details for an open enforcement matter (e.g., results from soil, water, air, or other samples; inspection results; investigative reports without CBI or personal identifying information; witness statements without personal identifying information)
- Concerns about impacts to human health or the environment
- Settlement terms under discussion and information shared during settlement negotiations, with consent of opposing parties
- Reports received under a settlement or court order

### Never Okay to Share

- The identity of someone who submitted a complaint, absent complainant's consent
- Personal identifying information
- Trade secrets/confidential business information
- Settlement terms under discussion and information shared during settlement negotiations when opposing parties have not consented to disclosure
- Existence of a criminal investigation when subject might be unaware of the investigation
- Documents obtained through an investigative subpoena that are not used to support a violation in a public complaint

## “Sometimes Okay to Share” – Key Considerations

As a general matter, an agency has the legal *authority* to keep documents related to an on-going enforcement matter confidential, to avoid jeopardizing the matter. That does not mean an agency is *required* to keep those documents confidential. An agency could *choose* to share those documents with the public in the interest of transparency. Factors to weigh:

- **Could sharing undermine an investigation or enforcement action, for example by tipping off a facility in advance of an inspection?**
  - If you share information with a community, is it possible that it could also be received by the subject of a potential or ongoing enforcement effort? If so, could the subject's receipt of the information lead to destruction of evidence or otherwise undermine an inspection or investigation?
- **Could sharing waive a privilege or exemption, requiring future disclosure in litigation or in response to public record requests?**
  - Potentially relevant privileges, protections, and exemptions include, but are not limited to, attorney-client privilege, attorney work product, criminal enforcement records, official information privilege, deliberative process privilege, and correspondence with the Governor's Office.
  - Consult with your agency's counsel before sharing information if you think a privilege or exemption might apply. It can be okay to share information that is subject to a privilege or exemption but doing so requires a careful assessment of the risks of disclosure.
  - Sharing privileged or exempt information can also require coordination with other agencies if there is a confidentiality or common-interest agreement in place. If you are unsure if information is subject to an existing confidentiality agreement, check with your agency's counsel prior to sharing.
- **Could sharing create other complications for an ongoing enforcement matter?**
  - For example, could sharing information with the public undermine settlement efforts? Or could sharing draft or preliminary information make it difficult for the agency to change course if contrary information emerges later?
  - Could sharing information cause unintended consequences, such as causing a company's stock to drop or requiring a Securities and Exchange Commission filing, and in turn potentially exposing the agency to legal claims from the facility?

If you have questions about whether it's okay to share something, it's always a good idea to check with your agency's legal counsel before sharing. It's also important to keep in mind that this guidance is separate and apart from an agency's obligation to share information as required by law, such as under the Public Records Act or pursuant to a subpoena, court order, or other compulsory legal process.