

CALIFORNIA PRIVACY PROTECTION AGENCY

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**California Privacy Protection Agency Board Meeting****October 18, 2021****DRAFT MEETING MINUTES****Board Members Present:**

Jennifer M. Urban, Chairperson
Lydia de la Torre, Board Member
Vinhcent Le, Board Member
Angela Sierra, Board Member
J. Christopher Thompson, Board Member

Staff Present:

Ashkan Soltani, Executive Director, California Privacy Protection Agency
Thomas Bruder, Deputy Attorney General, Government Law Section, California Department of Justice
Debra Castanon, Interim Deputy Director of Administration, California Privacy Protection Agency
Trini Hurtado, Conference Services Coordinator, California Department of Justice
Susan Wayland, Executive Assistant, California Department of Justice
Rachel Frazier, Executive Secretary, California Department of Justice
Stacy Heinsen, Manager, Division of Operations, California Department of Justice

Agenda Item 1 Call to Order and Establishment of a Quorum

Chairperson Urban called the meeting of the California Privacy Protection Agency (Agency) board to order on October 18, 2021, at 9:00 A.M. Chairperson Urban made opening remarks and went over logistical announcements. She informed all attendees that the meeting would be held in accordance with the Bagley-Keene Open Meeting Act and that the meeting is being recorded. Rules and procedure for making public comment were reviewed. Chairperson Urban noted that these directions are slightly different from prior meetings as the Department of Justice is hosting this meeting on the BlueJeans platform. Chairperson Urban thanked the board members and staff.

Moderator Trini Hurtado called roll. All five board members present. Quorum established.

Agenda Item 2 Closed Session

Chairperson Urban explained that the board would enter closed session for discussion and possible action on the appointment of an Executive Director, Chief Deputy Director of Administration, and Chief Privacy Auditor, under authority of Government Code, Section 11126, subd. (a) (1). The board will return to public session after the closed session.

No Public Comment.

The board entered closed session at 9:09 A.M.

The board returned to public session at 11:20 A.M.

Chairperson Urban confirmed the presence of all board members present and reviewed logistical announcements made during the welcome.

Agenda Item 3 Introduction of Executive Director Ashkan Soltani
Jennifer M. Urban, Chairperson

Chairperson Urban introduced and formally welcomed Mr. Soltani, a well-known privacy expert who brings substantial experience from multiple perspectives to the California Consumer Privacy Agency as the former senior advisor to the Office of Science and Technology at the White House, and as the former Chief Technologist at the FCC. Mr. Soltani is also the co-founder of two companies and has civil society experience. He is one of the architects of the California Consumer Privacy Act (CCPA) and the California Privacy Rights Act (CPRA), giving him deep and broad knowledge of our implementing statute and its purpose. Mr. Soltani is a highly regarded technologist and holds a Master's Degree in Information Management and Systems from California Berkeley. He is a member of multiple prize-winning journalistic teams.

Chairperson Urban recorded the vote of the appointment, which was made at the last meeting on September 24, 2021. The board appointed Mr. Soltani with a vote of 3-2. Yes votes were Board Member Le, Board Member Sierra, and Chairperson Urban. No votes were Board Member Thompson and Board Member de la Torre.

Board Member Thompson welcomed Mr. Soltani as Executive Director and expressed he is impressed with their interactions so far and Mr. Soltani's expertise and finds his interpersonal demeanor effective. Board Member Thompson thanked Mr. Soltani for joining the organization and stated he is looking forward to working with him. Board Member Thompson noted that Mr. Soltani was one of a number of very talented candidates, including others Board Member Thompson also thought were good candidates. Board Member expressed gladness that Mr. Soltani is in place and welcomed him aboard.

Board Member Le echoed Chairperson Urban's comments. Board Member Le stated that he is thrilled with the appointment and that the board is lucky to have someone on the forefront of privacy and consumer protection as it undertakes a long overdue and monumental task of protecting consumer data.

Board Member Sierra formally welcomed Mr. Soltani, stated she was thrilled with the appointment, impressed with Mr. Soltani's wealth of expertise he is bringing to the Agency, and looks forward to his leadership.

Board Member de la Torre welcomed Mr. Soltani and mentioned she has known Mr. Soltani for a number of years, and collaborated with him during the process to get CCPA and CPRA enacted. As Mr. Thompson noted, there were also other very talented candidates. She is thrilled to have Mr. Soltani and believes the Agency will benefit from his expertise.

Mr. Soltani thanked the board for his selection.

No Public Comment.

Agenda Item 4

Chairperson's Update: Contracted Services, Administrative Update

Jennifer M. Urban, Chairperson

Chairperson Urban indicated that this is a brief update; she went into detail on September 7, 2021 on this topic. The big picture remains from September 7, 2021: there is a dual focus of building infrastructure while progressing on the first rulemaking package.

Regarding infrastructure, hiring an executive director was a significant development, and hiring remains a focus. Most of the hiring discussion will be held under Agenda Item #6, the Start-Up and Administration Subcommittee update. Regarding contracted services, it was reported on September 7, 2021 that the board has developed inter-agency agreements for HR, finance, and some other basic functions of the Agency. A couple of agreements are near completion, awaiting final paperwork although not waiting for the work to be begin. This includes computing services from DCA (Department of Consumer Affairs) and finance services (from Department of General Services). Chairperson Urban intends to turn these agreements over to the Executive Director once his delegation of authority is established.

On September 7, 2021 Chairperson Urban also reported that the Office of the Attorney General had previously provided some services under an inter-agency agreement, for example HR support. These initial services transferred and are now covered by the inter-agency agreement with the Department of General Services. In addition, Chairperson Urban reported the Office of the Attorney General was providing legal advice for some questions. Since the September 7, 2021 meeting, the arrangement has been extended and the Office of the Attorney General is now providing more extensive support. On September 17, 2021, Board Member de la Torre and Chairperson Urban met with a team from the Office of the Attorney General regarding rulemaking support. Chairperson Urban stated that was the last act of the Regulations Subcommittee before it dissolved. Chairperson Urban also met with a team at the Office of the Attorney General regarding administrative support. The Office of the Attorney General is providing two kinds of services. One is legal services; this includes general-counsel-type advice and legal advice regarding rulemaking. These are attorney/client services like OAG provides to other agencies. The Office of the Attorney General is also providing a number of administrative support services such as, Conference Services, who hosted this meeting, and Legal Support Services, which is providing services such as meeting minutes. Chairperson Urban thanked the team from the Office of the Attorney General. Chairperson Urban also thanked Board Member de la Torre for her work on the subcommittee before it dissolved and also thanked Board Member Sierra for her administrative work.

Chairperson Urban gave an update on rulemaking, as the Regulations Subcommittee, composed of the Chairperson and Board Member de la Torre, dissolved after requesting the board's approval for an invitation for public comments to go out. The Board approved this action on September 7, 2021, and the Invitation for Comments was released. It can be viewed on the website <https://www.cppa.ca.gov>, under the regulations tab. It identifies a number of topics of interest to the Agency. There is no limit to the topics in a response; the board welcomes input on any topic under the Agency's authority. Comments are due November 8, 2021.

The next Board Meeting will be on November 15, 2021.

No Board Member Comment.

No Public Comment.

Agenda Item 5**Approval of September 7-8, 2021 Meeting Minutes***Jennifer M. Urban, Chairperson*

Chairperson Urban had expected discussion and approval of the meeting minutes from September 7th and 8th, although due to limited staff they are not yet ready. However, the June 14th and September 7th and 8th recordings are now available on the Agency's website, and the September 24th meeting should be up soon.

Chairperson Urban thanked the Attorney General's Office for providing minute-taking services currently.

No Board Member Comment.

No Public Comment.

Agenda Item 6**Start-Up and Administration Subcommittee Update***Angel Sierra, Board Member; Jennifer M. Urban, Chairperson*

Chairperson Urban indicated there are slides available on the website. During the June 14th, September 7th and 8th meetings, the board formed advisory subcommittees. The Start-Up and Administration Subcommittee is made up of Board Member Sierra and Chairperson Urban. Board Member Sierra presented for the subcommittee.

During the September 7th meeting, the subcommittee provided detail about the steps the Agency is working on to hire various categories of positions, identified steps to rent office space, and worked on providing proposed policies and activities to date at that time.

Regarding staffing and personnel updates, an executive director has been hired. The next position to hire is Chief Deputy Director of Administration, the application deadline for that position was October 20th, 2021. Approvals have been obtained to establish and advertise the position of General Counsel, and the position was posted on October 15th. The application deadline for General Counsel is November 5, 2021.

Retired Annuitants can help on a temporary basis as the Agency is being established. An attorney retired annuitant named Brian Soublet has come on board in the classification of Attorney IV to assist as interim General Counsel while the application process for the position of General Counsel is being completed. Mr. Soublet was formally Chief Counsel for the California Department of Motor Vehicles and has a wealth of experience in legal operations and complex rulemaking.

The subcommittee is working to bring on a retired annuitant to assist on administrative issues, and is working to establish and fill civil service positions.

Board and Agency Policies and Practices: The Incompatible Activities Statement is currently in progress. The subcommittee is working with the Executive Director and counsel to identify and develop any additional needed policies.

Last topic of the subcommittee update concerned office space. Identified three potential facilities: two facilities have had walkthroughs. The Subcommittee is waiting on further information and will present to the board once the Executive Director has had a chance to review.

No Board Member Comment.

No Public Comment.

Chairperson Urban noted that the Regulations Subcommittee was dissolved and replaced with three separate subject-matter based subcommittees, which will be reporting next.

Agenda Item 7 Rulemaking Process Subcommittee Update

Lydia de la Torre, Board Member; J. Christopher Thompson, Board Member

a. Proposed Topics for Informational Hearings

Chairperson Urban turned things over to the Rulemaking Process Subcommittee (Process Subcommittee), composed of Board Members de la Torre and Thompson. Board Member Thompson reported on behalf of the subcommittee.

Board Member Thompson mentioned the Process Subcommittee has been meeting regularly and examining rulemaking process.

Board Member Thompson stated that the subcommittee has identified the SRIA (Standardized Regulatory Impact Assessment) as an important milestone. The subcommittee has identified a couple of challenges and will come to the board with recommendations on a solution at the next meeting. It is required under state procurement rules that it will be an open bidding process for a vendor that can prepare the SRIA. The Agency has to submit the SRIA to the Department of Finance and it can take finance up to sixty days to review and provide comment. SRIA is required when the economic impact of proposed rulemaking is estimated to be in excess of \$50 million dollars.

The subcommittee has been examining the content of informational hearings. They will work in conjunction with other subcommittees and hear their recommendations on the content of informational hearings. This will take substantial staff support and are important aspect of stakeholder a; the subcommittee anticipates having a recommendation of a number of informational hearings.

The subcommittee has been reviewing timing and milestones for the rulemaking process. The subcommittee is reviewing the emergency rulemaking process mentioned in the September 7, 2021 meeting and plan to report to the Agency board on that process.

There is a possibility of bringing on a retired annuitant with experience in the area to help expedite the production of the SRIA.

Board Member Thompson asked Board Member de la Torre for any comments or updates.

Board Member de la Torre noted that there are some logistical challenges of organizing multiple informational hearings and asked Mr. Soltani to help identify these challenges.

Chairperson Urban recognized Mr. Soltani to respond to Board Member de la Torre's question.

Mr. Soltani stated his goal is to provide some infrastructure to be able to have ongoing informational hearings and board meetings, priority to build resources, and staff availability to organize and orchestrate informational hearings. The Agency doesn't have that ability right now, but hope to in December or January.

Board Member Le inquired on when those informational hearings will be held in relation to the rest of the rulemaking process.

Board Member de la Torre stated the original idea was to have those hearings before the formal process starts; they are still working through the details of this. Due to logistical challenges, this could be subject to change.

Chairperson Urban stated in regard to timeline and milestones for rulemaking, in the September 7, 2021 meeting other options were discussed, including more informally missing the deadline and revising the enforcement timeline or requesting of the Legislature a change in time lines in the statute. Chairperson Urban asked if only an emergency rulemaking option is being considered or if other options are being considered and whether the board can expect a report comparing these options?

Board Member Thompson replied they have been working with legal support at the Department of Justice. They do not have final advice to provide a recommendation, but are looking at other options including legislative changes to deadlines and board can expect recommendations on those. Emergency rulemaking requires legislative action.

Board Member de La Torre added that options are not exclusively left to the Agency and some will require action by the legislative branch, and consult with other stakeholders.

Board Member Le asked to what extent they are working with the Executive Director. Are there other topics the subcommittee is exploring beyond the preliminary activities?

Board Member de La Torre replied they are working with the Executive Director. He was just on-boarded but is getting up to speed quickly.

Board Member Le stated to the extent possible, with two other subcommittees also working on regulations, it would help to be streamlined and consistent in process to help staff and hit the ground running.

No Public Comment.

Agenda Item 8

New CPRA Rules Subcommittee Update

Lydia de la Torre, Board Member; Vincent Le, Board Member

a. Proposed Topics for Informational Hearings

Chairperson Urban introduced and turned things over to New CPRA Rules Subcommittee, composed of Board Members de la Torre and Le. Board Member Le reported on behalf of the subcommittee.

Board Member Le presented for the subcommittee and referred to slides. The subcommittee is meeting weekly and working on related topics throughout the week. Its work focuses on auditing, risk assessments, and automated decision-making. The subject matter is quite new, so the subcommittee is doing a lot of learning.

The subcommittee is also working with a rulemaking specialist from the AG's office to better understand the process, documentation and other related requirements for the rulemaking.

The subcommittee has identified a need for more extensive comment regarding opting out of automated decisionmaking and disclosures about the logic of automated decisionmaking technology. As this is a nascent area and one with a broad scope of activity, the subcommittee considers it necessary to have an informational hearing addressing a number of topics. Topics include: definitions, harmonization with domestic and global frameworks, industry standards and other best practices to ensure accountability and transparency in automated decision-making.

Board Member de La Torre highlighted that the area assigned to the New CPRA Rules Subcommittee is complex, and California has the opportunity to lead. She noted that an informational hearing would be very helpful and encouraged comments on the topic from stakeholders.

Board Member Sierra asked if the subcommittee has considered bringing on experts for the informational hearings.

Board Member de la Torre replied this is one of the main reasons to have an informational hearing about this because it is not just about the subcommittee learning more but for the board to have an opportunity to hear from experts. She indicated they hope to lean on Mr. Soltani, who is knowledgeable about relevant experts.

Board Member Le commented they are thinking of potential experts to bring on and figuring out the best process for that.

Chairperson Urban thanked the subcommittee and stated her support for experts.

No Public Comment.

Chairperson Urban recessed the meeting for lunch until 1:15 pm.

At 1:15 pm the board came back into session.

Chairperson Urban thanked everyone and welcomed all back from lunch.

Agenda Item 9 Update of CCPA Rules Subcommittee Update
Angela Sierra, Board Member; Jennifer M. Urban, Chairperson
a. Proposed Topics for Informational Hearings

Chairperson Urban introduced the Update of CCPA Rules Subcommittee (Update Subcommittee) item. The Update Subcommittee's job is to consider potential updates to the existing roles promulgated by the Attorney General under the California Consumer Privacy Act of 2018 (CCPA). The subcommittee includes Board Member Sierra and Chairperson Urban.

Chairperson Urban presented on behalf of the subcommittee. She referred briefly to slides, which included a reproduction of the section of the slide deck that was presented from September 7th setting out topics assigned to the subcommittee.

The subcommittee is meeting weekly and working through topics throughout the week. It has two items for discussion today.

First, Board Member Sierra and Chairperson Urban have identified two topics for informational hearings for the Process Subcommittee to consider. The first topic is: generally, how the current rules' procedures for consumers to exercise their rights are operating. Are they working for consumers? Are they working for businesses? The subcommittee would like to get a sense of how things are operating. The second topic is a subset of the first: a discussion of what is known as the "global privacy control" or "opt-out preference signal."

Second, the subcommittee has noticed some additional topics that have not yet been assigned to it that may make sense for it to cover. First is the definition of "business purposes," which relates to other topics around contractors and sub-providers already assigned to the subcommittee. There is an existing regulation code on this (Code of Regulations, Title 11, Section 999.314(c)). Second, a couple of topics are interrelated with notices, opt-outs, sharing, and sales: these are "intentionally interacts," and "dark patterns." Third, record keeping requirements, which is in the current regulations (Code of Regulations, Title 11, Section 999.137). The subcommittee has also noticed some other potential topics not currently on the Process Subcommittee's list (e.g., the definition of "household"). The Update of CCPA Rules Subcommittee is hoping to understand how it and the Process Subcommittee should organize this work.

Chairperson Urban thanked everyone and asked if Board Member Sierra had anything to add.

Board Member Sierra did not have anything to add.

Board Member de la Torre asked for clarity from Chairperson Urban on how subcommittees collaborate, and if the gist is that the identified rulemaking topics are those that are not mandatory for rulemaking, but that the Update Subcommittee thinks would benefit from its consideration.

Chairperson Urban confirmed Board Member de la Torre's understanding. She stated that her understanding is that the Process Subcommittee is deciding whether topics are necessary and whether to assign them. The Update Subcommittee's suggestion is for it to consider the identified topics, which appear related to what it is doing. Or the Process Subcommittee could consider the topics and make a recommendation at the next meeting.

Board Member de la Torre offered background to the board. When she and Chairperson Urban initially separated the topics in the work as the Regulations Subcommittee, they set aside topics that they weren't sure were mandatory for rulemaking because they didn't think they should make the decision to assign those.

Board Member de la Torre commented that it seems logical that if the subcommittee has identified topics that will benefit from its consideration, then there could be a motion to assign them in this meeting. She is in favor of being expeditious and doesn't know that there is a need for the Process Subcommittee to separately consider the issue.

Chairperson Urban affirmed the suggested process. Each subcommittee could then come to the November 15th meeting with any additional topics to assign.

Chairperson Urban queried Mr. Bruder as to the suggested process. Mr. Bruder had no objections.

Board Member Thompson expressed Chairperson Urban's description was a helpful clarification as he was conceiving of the work of the Process Subcommittee differently. He is hearing that the Process

subcommittee would examine questions and make recommendation to other subcommittees for further actions or deferral. Is that correct? It is different from how he was thinking of it coming into the subcommittee.

Chairperson Urban indicated that Board Member Thompson's description comports with her understanding.

Board Member de la Torre indicated her understanding is that there are two different mandates: one is to help make sure the board follows the rulemaking process with support of the Executive Director. In regard to the specific items carved out for assignment, it was the Regulations Subcommittee's understanding they were not mandatory topics for rulemaking; the Regulations Subcommittee placed these topics with the Process Subcommittee because they felt it was not their place to assign them from the start. There is very broad authority for rulemaking by the Agency, which opens up the potential for the Process Subcommittee to suggest additional topics.

Chairperson Urban summarized discussion for Board Member Sierra who experienced technical difficulties and asked for further comments.

Board Member de la Torre indicated her original suggestion was based on topics that would be considered expeditious—topics that need to be worked on now as opposed to waiting for next meeting. If there are topics that the Update Subcommittee is considering but the subcommittee doesn't need to address immediately, Board Member de la Torre would also support having the Process Subcommittee review and formally propose those to the board.

Chairperson Urban thanked Board Member de la Torre and asked Board Member Sierra for thoughts on Board Member de la Torre's comment.

Board Member Sierra agreed there are other topics that could be worked on over the next four weeks.

Chairperson Urban indicated the topic of business purposes is very connected to current work and should be worked on now for efficiency; other topics can be discussed at the next meeting.

Board Member Sierra agreed.

Board Member Thompson agreed with the course of action.

No Public Comment.

Chairperson Urban requested a **motion to transfer the business purposes topic, to the extent that it was contained within the Process Subcommittee, to the Update CCPA Rules Subcommittee for further work.**

Board Member Sierra moved.

Board Member Le seconded.

Roll call vote taken. **Motion approved 5-0.**

Agenda Item 10**Public Awareness and Guidance Subcommittee Update**

Vincent Le, Board Member; J. Christopher Thompson, Board Member

Chairperson Urban introduced the Public Awareness and Guidance Subcommittee report and turned to Public Awareness and Guidance Subcommittee members Le and Thompson for the update. Board Member Le provided the report on behalf of the subcommittee.

Board Member Le stated the subcommittee is working on recommendations for how to build public awareness. They hope to have updates for the next board meeting. The committee welcomes board comments on how better to do that as well as any other topics the subcommittee should explore.

Chairperson Urban requested comments from Board Members.

Chairperson Urban feels it is important when producing the Agency's rules and guidance to take into account the needs of all California communities. California is a very diverse state with communities that have many needs. She asked if the committee is thinking about outreach that would provide support for the rulemaking and other endeavors. She noted that she was asking because she was unsure if the Process Subcommittee or the Public Awareness and Guidance Subcommittee had claimed this issue.

Board Member Thompson commented on the outreach process and topics for informational hearings. There will be a range of activity that will have significant implications and impacts on consumers in the state, and ensuring the Agency is communicating effectively its activities is within the Public Awareness and Guidance Subcommittee's jurisdiction, while specific topics are within the Process Subcommittee.

Chairperson Urban affirmed that she was asking about tactics for outreach activities.

Board Member Le mentioned thinking how to do outreach in different languages and will make recommendations regarding that. Also, looking at opportunities to participate that make sense. A lot of the issues are technical; he was hoping for thoughts from the Board on how the process can be more accessible.

Chairperson Urban suggested working with the Executive Director to see if there are other agencies that have in-house or contractual expertise for outreach and messaging that reaches a wide range of communities, creates accessibility, and provides for the broadest range of input.

Board Member de la Torre suggested forums the Agency staff could participate in. Due to short staffing, the Agency does not have a public engagement function and must rely on support on how to communicate out to the community; she suggested possibly upgrading the Agency website to provide information on rights of Californians and engage with consumers and organizations subject to the law.

No Public Comment.

Agenda Item 11**Board and Agency Policies and Practices: Conflict of Interest Code**

Jennifer M. Urban, Chairperson

Chairperson Urban gave some background information on the Conflict of Interest Code. The law requires the Agency to have a Conflict of Interest Code.

Chairperson Urban referred the board to the Conflict of Interest Code provided in the meeting materials. She noted that the board considered the Conflict of Interest Code in the June 14, 2021 meeting. Mr. Philip Laird provided the background at that time. The Conflict of Interest Code cannot just be voted on and adopted by the board. It is adopted as a regulation, but via a specific procedure. The first step was for the Fair Political Practices Commission to review the Code, which it did before the board considered it on June 14, 2021. The second step was for the board to initially approve the code to go out for public comment, which it did on June 14, 2021. The third step was for the code to go out for public comment. This was done and public comment closed September 22, 2021. No public comments were received.

Chairperson Urban explained that the board is now at the final substantive step, in which the board considers and approves the code. If the board approves the code, Mr. Laird will complete the paperwork and submit the code to the Fair Political Practices Commission and the Office of Administrative Law to file with the Secretary of State.

Chairperson Urban reminded the board, this is an initial code that can be updated to include new positions. This would require the same process. An additional option is that, between updates to the code, the Executive Director can modify requirements for certain positions as needed. Chairperson Urban indicated the board is now at the stage to approve and send the code off to take effect.

No Board Member Comment.

No Public Comment.

Chairperson Urban asked for a **motion to approve the Conflict of Interest Code in our materials for the meeting in order to send it on to the Fair Political Practices Commission and OAL to take effect.**

Board Member de la Torre moved.

Board Member Thompson seconded.

Roll Call Vote taken. **Motion Approved 5-0.**

Agenda Item 12 Delegation of Authority for Limited Administrative Functions

Jennifer M. Urban, Chairperson, Ashkan Soltani, Executive Director

Chairperson Urban began with a reminder that Section 1798.119.35 states the Agency board may delegate authority to the Chairperson or Executive Director to conduct day-to-day tasks, except resolution of enforcement actions and rulemaking authority. The board has previously delegated the day-to-day authority, with limits, to the Chairperson; the board now has an Executive Director to whom it can delegate authority. Chairperson Urban referred board members to the Delegation of Authority in the meeting materials. The delegation lasts for a year and allows the Executive Director to accomplish the day-to-day tasks and to run and build up the Agency. Chairperson Urban requested comments or questions from the board members.

Board Member de la Torre inquired if the plan is to formulate an item and vote on it today.

Chairperson Urban responded that her delegation has expired, so if the board intends to move forward, yes.

Board Member de la Torre noted that she generally agreed with the delegation as drafted but that in order for the board to properly exercise its authority and responsibility and oversight over the Agency it should be able to provide final approval for the executive leadership of the Agency beyond the Chief Privacy Auditor. She inquired if that is a possibility for the board to consider that change.

Chairperson Urban thanked Board Member de la Torre and indicated that she would return to the question after hearing further comments from the board.

Board Member Le inquired if the board would have to make a motion to consider any changes either way, as Chairperson Urban's delegation has expired.

Chairperson Urban replied that her delegation was from meeting to meeting and has expired, so the power is held collectively in the board. The board would need to keep meeting to decide things though she believes there are administrative and ministerial items. She asked Mr. Bruder to provide clarification.

Mr. Bruder stated the Executive Director powers are very limited without delegating general power to him. He cannot articulate the limits of that authority but it's unclear what ministerial day-to-day duties would be. He feels there would be an administrative burden in not proceeding with some sort of delegation.

Board Member Sierra stated that the delegation as proposed in the materials in her view strikes the right balance to provide the Executive Director with the authority he needs to build up the Agency, while the board does have the authority for final approval of the Chief Privacy Auditor. Board Member Sierra noted that the Agency is in a dynamic situation and it is the right balance to provide the Executive Director with the authority needed to function and build up the Agency. Her understanding is that this would be a customary balance of authority. She also mentioned that she feels it will work well for the Agency and the Executive Director is very communicative with the board.

Chairperson Urban thanked Board Member Sierra and noted that the board can delegate the authority and also rescind it any time. The delegation of authority states explicitly that it lasts a year, unless the board decides to revoke, rescind, or change it.

Board Member Thompson stated his opinion is that the Executive Director needs to be able to make decisions in order to run the Agency, and the board needs to strike a balance in its role to partner with the Executive Director to create the culture of this new Agency. For a handful of the most senior positions, Board Member Thompson thinks that includes concurrence with the hiring decisions so the board has a hand in selecting the most senior leaders of the Agency. Though it may take longer, it should not be an undue burden as the board meets on a regular basis. Board Member Thompson feels it is a hard balance to strike without an org chart, but he thinks of senior positions that play a strong role in the culture as General Counsel or the Head of Enforcement or a Chief Technologist if those positions exist in the future. It's appropriate for the board to have visibility and concurrence prior to their appointment.

Board Member Le agreed the board has a role in helping build the culture, but comes down on the side of communicating with the Executive Director without tying his hands. The statute spells out the two positions voters felt the board should consider. Limiting it to that and not involving the board in every decision is where he falls on the balance.

Chairperson Urban stated that her own view is that while she hears and supports that the board must be attentive to its responsibility in how it delegates authority; she also feels this delegation strikes the right balance. She has been immersed in the day-to-day and is less sanguine about a lack of efficiency. It is also difficult to formulate a generalized limitation because of the need for a bright line, which is difficult because some of the positions are not yet defined. She reminded the board that they could revoke this delegation at any time. Chairperson Urban proposed to move forward with this delegation and work with the Executive Director.

Board Member Thompson made a suggestion the board drives towards a consensus on this topic. In the interim the board could just add the General Counsel, which is currently posted, as a carve out and have a final yearlong delegation at the next meeting.

Chairperson Urban inquired as to the details of the carve out, and how far the authority would extend in the hiring process, as the position has been posted and applications will be considered. At what point in the process would the carve-out arise and the board need to collectively exercise its authority?

Board Member Thompson replied that he is open on that. He was conceiving of it as if the Executive Director had a final candidate, he would then ask the board to concur with the final candidate. It's not his opinion that the board should be interviewing and down-selecting; it should be concurrence with the selection made by the Executive Director.

Board Member de la Torre agreed with Board Member Thompson and expressed hope that the board would find a way to consent and approve this delegation unanimously today to show strong support to the Executive Director. She supports Board Member Thompson's suggestion to carve out not only the Chief Privacy Auditor but also the General Counsel position for now, giving the board time to draft a more precise list once it understands who are going to be the leaders of the Agency.

Chairperson Urban reiterated her concern about defining and process speed. She again pointed out that the delegation of authority lasts as long as the board wants until they decide to revoke it.

Board Member Le noted that he appreciated the attempt to obtain consensus and suggested that the board make this another agenda item for the next meeting after it has had time to think through potential carve-outs. He does not think his mind will change but would like to get a good handle on it.

Chairperson Urban responded that this would also give her time to formulate a variety of potentials to talk about.

Board Member Thompson stated he would have his view no matter who the executive director is. He wants to be clear that it is more a structural and process question to him, a board governance process and not specific to any individual.

Board Member de la Torre inquired if it is appropriate to draft a delegation without naming a name.

Chairperson Urban asked Mr. Bruder for a response.

Mr. Bruder confirmed yes, the board could make a delegation of authority by just naming a role; it does not need to be a person.

Chairperson Urban stated she has heard so far from some board members that the delegation is appropriate as drafted and should be approved, and from other board members that some provision should be made to carve out specific positions, as well as recognition that we have a limited number of specific positions at the moment. There were some ideas presented. One was to carve out the general counsel. One was to move ahead with this delegation and re-visit the topic as another agenda item at the next meeting, making clear the board can always reconsider the delegation. Finally there is the ministerial issue of whether Mr. Soltani's name would be removed from the delegation of authority.

No Public Comment.

Chairperson Urban proposed that the board have a motion to adopt the delegation of authority as drafted, with the removal of the Executive Director's name, and agreed that the board will reconsider it at a further meeting; the board could also consider carving out the general counsel position.

Chairperson Urban suggested the board start with the simpler version as it will be revisited it at the November 15, 2021 meeting.

Board Member Thompson asked to confirm that as the delegation is currently constructed it will not expire for 11 months yet will not have any modifications.

Chairperson Urban confirmed yes, it would give the board a chance to discuss it formally to determine if the board would make any changes or add any carve outs to it.

Board Member Thompson asked would it mechanically make any difference if the duration of the proposal lasted until the next meeting.

Chairperson Urban not that she does not see a major distinction if the board is going to talk about it anyway; she prefers to have a specific date.

Board Member Thompson comments that he is just looking for something he can feel good about voting for.

Chairperson Urban specifically mentioned that Board Member Thompson did bring in another option.

Board Member Le indicated his preference would be to not have it time limited and to discuss the delegation when the board has a better idea of what the modified carve outs could look like, with the fallback being the default of continuing the delegation.

Board Member Sierra stated that in looking at the Delegation of Authority, the phrase "unless otherwise amended or rescinded" by the board effectively would give the whole board another opportunity to look at this.

Chairperson Urban stated she would reformulate the motion, **to adopt the delegation of authority that we have before us, removing the Executive Director's name, and agreeing that we will revisit the delegation of authority in our next meeting for further discussion.**

Board Member Le moved.

Board Member Sierra seconded.

Roll Call Vote Taken. Yes votes were Board Member Le, Board Member Sierra, and Chairperson Urban. No votes were Board Member de la Torre and Board Member Thompson.

Motion approved 3-2, 3 in favor.

Chairperson Urban stated the motion carries. She will put this on the agenda for the next meeting. She has collected the general counsel carve out, time limitations and the general thinking about executive positions.

Board Member Thompson clarified beyond the short term he was not suggesting a time limitation as a longer term fix. He suggests removing it as an option.

Chairperson Urban confirmed and thanked all board members for their careful consideration of this item.

Agenda Item 13 Notice to the Attorney General to Assume Rulemaking Authority
Jennifer M. Urban, Chairperson

Chairperson Urban stated that the board initially discussed this topic at the June 14, 2021 board meeting. This relates to Section 1798.119.40 (b) of the Civil Code. This provides that the authority of rulemaking will transfer from the Attorney General to the California Privacy Protection Agency 6 months after the Agency has given notice to the Attorney General that we are prepared to begin rulemaking. You may recall that as originally drafted the CPRA had some conflicting provisions as to whether that authority would transfer on the later of July 1, 2021 or 6 months after the Agency gives notice or the earlier. The legislature passed, the governor signed and the secretary of state filed on October 5, AB 694, which amended the CPRA to remove that inconsistency. It is clear that authority transfers on or after the later of July 1, 2021 or within 6 months of the Agency providing the Attorney General this notice. We are past July 1 so in order for rulemaking to transfer to the Agency we need to give notice to the Attorney General, and 6 months later authority will transfer to the Agency.

Chairperson Urban proposed that the board approve notice to the Attorney General. Her understanding from counsel is that it would be appropriate for the Executive Director to send a letter to the Attorney General, should the board approve. If the Executive Director would manage to notify the Attorney General by tomorrow, the Agency would gain authority on April 19, 2021. Chairperson Urban strongly recommends the board approve the Executive Director's action.

Board Member de la Torre noted that she had expressed concerns that the Agency was not ready to send notice on June 14, 2021, and stated that the Chairperson's recommendation is appropriate at this time. She is ready to vote to approve sending the notice to the Attorney General at the time the Executive Director considers appropriate.

Board Member Sierra is of agreement as well and very much supports the board approving notice to the Attorney General.

Board Member Thompson requested clarification on the language of the action taken as to when the board is directing the Executive Director to send the notice—at the time the Executive Director deems appropriate or now.

Chairperson Urban noted that Board Member de la Torre suggested when the Executive Director deems appropriate. The board could also say to send the notice reasonably soon or as soon as possible; it could also give the Executive Director a sense the board wants it done as soon as possible.

Board Member de la Torre feels it should be left to the Executive Director, he has many things on his plate and she is confident he will handle it expeditiously.

No Public Comment.

Chairperson Urban asked for a **motion to approve giving notice to the Attorney General that the California Privacy Protection Agency is prepared to begin rulemaking pursuant to Section 1798.119.40 subsection b of the Civil Code.**

Board Member de la Torre moved.

Board Member Le seconded.

Roll Call Vote Taken. **Motion approved 5-0.**

Chairperson Urban stated the motion carries; she will inform the Executive Director of the vote and ask him to report in the next board meeting of the date the notice was sent.

Agenda Item 14 Public Comments on Items Not on the Agenda

Chairperson Urban invited public comments, including items not on the agenda. She explained that the only action the board can take is to listen to comments and consider whether it will discuss the topic at another board meeting. No other action can be taken on the item at this meeting. It is critical to follow these guidelines to ensure that the rules of the Bagley-Keene Open Meeting Act are followed and to avoid compromising either the commenter's goals or the board's mission.

No Public Comment.

Agenda Item 15 Future Agenda Items

Chairperson Urban introduced this agenda item, noting that provides the board with an opportunity to discuss future agenda items. She listed the following items:

- Reports from Subcommittees
- Delegation of Authority

Chairperson Urban inquired if any board members have any additional agenda items for the next meeting.

Board Member de la Torre made a suggestion as to the organization of the meetings. The suggestion was in response to a situation when there are multiple meetings potentially within a month to stagger agenda items and rotate them so there is a meeting more dedicated to rulemaking, then another

meeting that is more dedicated to internal affairs of the Agency, and then continue rotating. She understands that there will be days for the public hearings, etc.

Chairperson Urban noted that her understanding of the suggestion is that it relates to an organization of agenda items rather than any specific agenda item.

Board Member de la Torre confirmed the Chairperson's understanding.

Board Member Le added he would like more discussion around timelines for the rulemaking, and questioned who would do that.

Chairperson Urban stated that this topic was with the Process Subcommittee, and asked Board Member Thompson and Board Member de la Torre to confirm.

Board Member de la Torre confirmed that the Process Subcommittee is generally looking into the timelines. The challenge is that they don't have all the information regarding when other subcommittees will be ready. They will work closely with the Executive Director, and Board Member de la Torre thinks it will be appropriate for the Executive Director to provide a timeline at some point as he will have all the necessary information.

Board Member Le indicated it would be helpful to have general timelines and goals for when the rulemaking subcommittees need to complete tasks.

Board Member de la Torre noted that if the board is following the regular process rather than the emergency process, rules would have to be approved by the Office of Administrative Law within one year of the date the board provides notice that they are issuing rules. The maximum time under law is one year once the subcommittee reports and the board approves.

Chairperson Urban noted she has a request for report of and discussion of potential timelines. Proposes the Process Subcommittee has heard the request and that she will check with the Executive Director to work with the Process Subcommittee.

Chairperson Urban noted that she has some carryover items such as trainings and hasn't forgotten them.

Mr. Solatani inquired if the Chairperson's update at the November board meeting will be replaced by an executive director update. Chairperson Urban confirmed that is correct. Mr. Soltani hopes to provide high-level information as to proposed strategic vision, budget priorities, and organization chart at the next board meeting.

No Public Comment.

Agenda Item 16

Adjournment

Chairperson Urban thanked the board members and all of the staff involved in putting the meeting together. Lastly, she thanked the members of the public for their contributions and attention to the boards work and asked for a **motion to adjourn**.

Board Member Le moved.

Board Member Thompson seconded.

Roll Call Vote Taken. **Motion approved 5-0.**

Meeting Adjourned at 2:53 P.M.

DRAFT