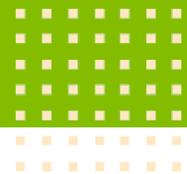




NewsFlash®

Reverse CPRA Liability for Attorney's Fees

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When disclosing personnel records under the California Public Records Act (“CPRA”), public agencies often seek a careful balance between disclosing what is required by law and protecting employee privacy rights. It is common for public agencies to redact and withhold records they reasonably believe violate employee privacy rights, which may lead to the requestor filing a lawsuit seeking to compel production and reimbursement for attorney’s fees. One factor that might go into an agency’s decision to redact and withhold records is that employees and unions may file “reverse-CPRA” actions to prevent public agencies from disclosing records. Until recently, no court had held that employees and unions who pursued this type of action could be liable for a requestor’s attorney fees.

This changed as a result of a recent case, *Pasadena Police Officers Association v. City of Pasadena* (Cal. Ct. App., Apr. 12, 2018), in which the California Court of Appeal held that employees and unions who file reverse-CPRA actions may be liable for the requestor’s attorney fees. In that case, the *Los Angeles Times* (“Times”) made a CPRA request for the City of Pasadena (“City”) to produce a copy of an investigative report regarding a 2012 officer-involved shooting. The City agreed to release the report with confidential police officer personnel records redacted. The Pasadena Police Officer Association (“Association”) then filed the reverse-CPRA lawsuit to prevent the City from releasing the entire report, and the Times filed a lawsuit to compel production without any redaction.

The trial court agreed with the City that the report was a public record and that portions regarding confidential personnel information could be redacted. The Times successfully argued, however, that the City over-redacted the report and, as a result, sought attorney’s fees against the City and Association for \$350,422. The trial court awarded only attorney’s fees for the Times’ efforts to enforce its request against the City—at approximately \$45,472—but not for its work to defend against the Association’s reverse-CPRA action, even though the trial



court acknowledged that the Times was principally opposed to the Association, and not the City, throughout the litigation.

The Court of Appeal affirmed the trial court's award of attorney's fees against the City, but reversed the trial court's conclusion that the Times could not obtain attorney's fees against the Association for having to defend against an unsuccessful reverse-CPRA action. The court reasoned that attorney's fees were appropriate in a reverse-PRA action such as this, which involved public officials and a public employee union pursuing litigation designed to expand the ability of a public agency and its employees to withhold information from the public. Therefore, the court concluded that it was the Association—and not the City—that was responsible for the portions of attorney's fees that the Times incurred due to the Association's unsuccessful efforts to block release of the report.

For public agencies, Pasadena Police Officers Association is another reminder to be cautious when redacting and/or withholding records. Public agencies can still be liable for a requestor's attorney's fees for overly-redacting and/or withholding records. But the biggest impact of this case is likely on public employees and unions which may seek to prevent an agency's disclosure of public records through a reverse-CPRA action. Now faced with the prospect of being potentially liable for attorney's fees, public employees and unions may be less willing to pursue reverse-CPRA actions. Public agencies should be mindful of this when making decisions to redact and/or withhold records going forward.

If you have questions regarding this decision or the CPRA and how it might affect your school district, please call one of our six offices.

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