

CLIENT NEWS BRIEF

Attorney Invoices are Subject to Disclosure under the Public Records Act

The California Supreme Court has ruled that invoices from a public agency's legal counsel are subject to disclosure under the California Public Records Act (CPRA), with limited exceptions. Invoices for work in pending and active legal matters may generally be shielded from disclosure under the attorney-client privilege.

In *Los Angeles County Board of Supervisors v. Superior Court* (Dec. 29, 2016, No. S226645) ___ Cal.4th___ <<http://www.courts.ca.gov/opinions/documents/S226645A.PDF>>, the court considered to what extent invoices from a public entity's attorney are subject to disclosure under the CPRA.

The American Civil Liberties Union (ACLU) suspected attorneys for the Los Angeles County jail system of wasting public funds by engaging in "scorched earth" litigation tactics. The ACLU submitted a CPRA request to Los Angeles County (County) seeking invoices indicating amounts billed in connection with nine different lawsuits in order to determine whether the county engaged in wasteful legal strategies. The county agreed to produce invoices relating to three lawsuits that were no longer pending, with attorney-client privileged information redacted, but declined to produce invoices for the six remaining lawsuits that remained pending, claiming the attorney-client privilege protected them from disclosure.

The Court of Appeal ruled that the attorney-client privilege generally protects attorney invoices from disclosure if the invoices were maintained in a privileged manner.

In a close 4-3 ruling, a divided Supreme Court reversed the appellate court's decision, balancing competing rights and privileges in its majority opinion. While the CPRA provides the public with a broad right of access to records in the possession of state and local government agencies, it also contains a number of exceptions that protect certain categories of documents from disclosure, including documents protected by the attorney-client privilege.

In analyzing whether attorney invoices are categorically protected by the attorney-client privilege, the Supreme Court adhered to the principle that "the heartland of the privilege protects those communications that bear some relationship to the attorney's provision of legal consultation." The court explained that the attorney-client privilege does not extend to *all* communications between an attorney and client, but rather "to communications that bear some relationship to the provision of legal consultation." The court concluded that the primary purpose of invoices is for the attorney to receive payment, and not "for the purpose of legal consultation." In other words, invoices may not be withheld simply because

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they are sent from an attorney. Whether an invoice or specific information in the invoice can be withheld is a fact-specific inquiry into whether the invoice as a whole, or certain information contained in it, bears a relationship to the provision of legal consultation.

The court concluded that information in an invoice “to inform the client of the nature or amount of work occurring *in connection with a pending legal issue*” is protected by the attorney-client privilege. The amount of fees being expended on a pending and active legal matter is also privileged, because changes in spending could indirectly reveal legal strategy to a party that can use that information to the detriment of the government agency. However, fee information for concluded legal matters may not be subject to the privilege because, over time, the information “no longer provides any insight into litigation strategy or legal consultation.” While the fee information contained in such an invoice may not be protected by the attorney-client privilege, the court’s opinion appears to allow redaction of specific information in the invoice that may reveal information about legal consultation, though the court was not that express about this point.

The takeaways from this case can be summarized as follows:

- Legal invoices for concluded matters are disclosable, subject to any lawfully allowed redactions of information that reveals attorney-client confidences; and
- Legal invoices for pending or active matters can be withheld in their entirety.

Lozano Smith strives to provide invoices that have sufficient information for audit purposes and to keep clients informed. However, we are conscious of our clients’ obligations under the CPRA and endeavor to avoid including information in invoices that could reveal attorney-client privileged advice or strategy.

For more information on this case or the California Public Records Act in general, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).