

CLIENT NEWS BRIEF

Court Rules That Public Agencies' Attorney Bills May Be Protected From Disclosure Under The Public Records Act

An appellate court, in *County of Los Angeles Bd. of Supervisors v. Superior Court* (2015) 2015 Cal.App. Lexis 308, recently addressed the question of whether billing invoices sent by an attorney to a public entity client must be disclosed pursuant to the California Public Records Act (CPRA), or whether they are protected by the attorney-client communication privilege. In a shift of the CPRA landscape, the court held that, because the CPRA exempts attorney-client privileged communications from its reach, invoices may constitute confidential communications that are exempt from disclosure if certain conditions are met.

Following several publicized investigations into allegations that the Los Angeles County Sheriff's Department used excessive force on inmates housed in the County jail system, the ACLU of Southern California submitted a CPRA request to the Los Angeles County Board of Supervisors and the Office of the Los Angeles County Counsel (collectively "the County"). The ACLU requested invoices specifying the amounts that the County had been billed by any law firm in connection with nine different lawsuits brought by inmates.

The County agreed to produce copies of the requested documents related to three lawsuits which were no longer pending, with attorney-client privileged and work product information redacted. The County declined to provide billing statements for the remaining six lawsuits, which were still pending. The ACLU sued, seeking to compel the County to disclose the requested records for all nine lawsuits. The trial court held that the County had failed to show that the billing records constituted attorney-client privileged communications exempt from disclosure and ordered that they be produced. This ruling appeared to be consistent with prior cases.

On review, the appellate court disagreed and reversed the trial court's order compelling the County to disclose the requested records. In doing so, the appellate court concluded that the billing invoices in question themselves constituted privileged attorney-client communications, and were therefore exempt from disclosure under the CPRA.

The court relied on Evidence Code section 952, which defines confidential communication as information transmitted between a client and his or her attorney in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client. The term confidential communication is broadly construed, and communications between an attorney and his or her client are presumed confidential, with the burden on the party seeking disclosure to show otherwise. The court confirmed that the attorney-client privilege attaches to a confidential communication regardless of whether it also contains unprivileged material. Because the attorney-client privilege attaches to the entire communication irrespective of its content, the court need not examine the content in order to rule on the claim of privilege. In its analysis, the court distinguished prior California cases that declined to hold that attorney invoices were attorney-client privileged communications, and rejected the application of out-of-state cases cited by the ACLU.

May 2015
Number 27



Harold M. Freiman
Partner and Technology & Innovation
Practice Group Co-Chair
Walnut Creek Office
hfreiman@lozanosmith.com



Roy C. Santos
Associate
Fresno Office
rsantos@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

May 2015
Number 27

Applying the above law to the facts of the case, the appellate court found that it was undisputed that the attorney invoices were a communication made in the course of an attorney-client relationship. Outside counsel was specifically retained to defend the County against the lawsuits in question. The court also noted that it was precisely because of this representation that the ACLU made their CPRA request. The appellate court further found that the County sufficiently established that the attorney invoices were confidential communications. The court relied in part on the declaration of an Assistant County Counsel. The declaration established that the County made every effort to confine distribution of the invoices to County Counsel's office alone and to authorized representatives of the client who are similarly required to keep the materials confidential.

The court therefore held that the County met its burden to establish the requested records were confidential communication within the meaning of Evidence Code section 952, and were treated by the County as such. As a result, the invoices were exempt from disclosure under the CPRA.

While in this case the appellate court exempted attorney billing invoices from disclosure pursuant to the attorney-client communication privilege, the court was also clear that the privilege can be waived based on how the records are maintained by the public agency. In addition, the attorney-client privilege does not protect the disclosure of attorney billing information contained within non-privileged sources. For example, the privilege is waived if a public entity employee transfers the information contained within the invoice into a letter or an excel spreadsheet. The letter or spreadsheet would be subject to being produced under the CPRA.

Until this case, the common wisdom and the holdings of prior cases has been that a public agency must provide invoices from its attorneys in response to a CPRA request. A public agency was generally understood to be permitted to redact only specific entries that contained attorney advice protected from disclosure by the attorney-client communication privilege. Under this new case, attorney billing records can be protected from disclosure under the CPRA if certain conditions are met. In order to assert a good faith claim of attorney-client privilege, a public entity must establish an attorney-client relationship for which legal advice has been sought. Also, the public entity and its outside counsel both have to maintain the billing records in a confidential manner. This requires both the entity and counsel to restrict billing information access to only those individuals necessary for processing and approving the invoices.

It is not yet known whether the ACLU will appeal this decision to the California Supreme Court. If it does, and review is granted, then public agencies will not be able to rely on the decision until the California Supreme Court decides the matter.

For further information about this case and the treatment of billing information under the CPRA, including how public agencies may now wish to process and store attorney invoices, please contact 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](#).