

# CLIENT NEWS BRIEF

## Appellate Court Rules that a Report Prepared By a Third-Party, Non-Governmental Entity Is a Public Record

In *Pasadena Police Officers Association v. Superior Court (PPOA)*, (2015) 240 Cal. App. 4th 268, the California Court of Appeal held that an investigative report commissioned by the City of Pasadena but drafted by third party is a public record subject to disclosure under the California Public Records Act (CPRA). Additionally, the appellate court closely scrutinized redactions to the report, which were based on a recognized exemption to the CPRA, and held that the trial court had overreached.

The Legislature enacted the CPRA to promote transparency in government by determining that all records maintained by a public agency that pertain to the public's business are open to inspection. The CPRA contains a limited list of document categories which are exempt from disclosure. Courts broadly construe the CPRA in favor of transparency and interpret its exemptions narrowly. Given this principle, if a public record contains both disclosable and privileged information, courts will generally require disclosure of the public record after the privileged portions have been redacted.

At issue in *PPOA* is a CPRA exemption that prevents the disclosure of documents otherwise privileged by federal or state law. (Gov. Code § 6254(k).) Specifically, a series of California laws, known as the *Pitchess* statutes, protect certain police personnel records from disclosure.

In *PPOA*, the City of Pasadena commissioned an independent third party to conduct a review of the Pasadena Police Department in the wake of an officer involved shooting. The third party report examined and discussed two internal investigations conducted by the Pasadena Police Department, a criminal investigation and an internal affairs investigation that contained personnel information. After the City was asked to release the independent report through a CPRA request, the Pasadena Police Officers Association argued that the entire investigative report was exempt from disclosure because it constituted confidential police personnel information under the *Pitchess* statutes. The trial court ordered the report to be released, but redacted several portions that it believed were derived from confidential police personnel records.

The appellate court upheld the trial court's determination that the independent report was a public record subject to disclosure, reasoning that the CPRA's policy favoring transparency is heightened when the information sought involves the conduct of police officers. The appellate court clarified the principle that the *Pitchess* statutes protect disciplinary records and information derived from police personnel files from disclosure under the CPRA, even when that privileged information is contained in an otherwise public record. Given this finding, the appellate court closely scrutinized the portions of the report that the trial court had redacted and concluded that the trial court's redactions were overbroad because they included information that was not explicitly exempted from disclosure. The appellate court remanded the case to the trial court, with instructions that it limit its redactions to content that specifically related to protected police personnel files as described in the *Pitchess* statutes.

The court's holding puts public agencies on notice that even reports created for

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a public entity by a third party may be considered disclosable public records. Public agencies should not rely upon blanket arguments that a document is exempt from disclosure. Instead, public agencies may wish to look critically at the content within a document and determine whether any CRPA exemptions apply. As *PPOA* demonstrates, courts are apt to carefully review documents and favor disclosure wherever possible.

For further information about this case and the California Public Records Act's requirements and exemptions, 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](#).

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