

CLIENT NEWS BRIEF

Records Requesters May Recover Attorney Fees in Reverse-CPRA Actions

The stakes of asking a court to halt the disclosure of documents sought under a California Public Records Act (CPRA) request just got higher for private parties. California appellate courts have handed down a pair of decisions holding that private parties who sue to prevent the government agency from disclosing their personal information may be required to pay the requester's attorney fees if they lose.

Background

The CPRA requires public entities to disclose public records unless there is a specific legal exemption. Under the CPRA, if a public entity has refused to produce documents and the matter is litigated, the plaintiff may recover attorney fees against the public entity if the plaintiff prevails.

In 2012, a court recognized private parties' right to go to court to protect their records by filing a "reverse-CPRA" lawsuit. (*Marken v. Santa Monica-Malibu Unified School District* (2012) 202 Cal.App.4th 1250.) Until recently, private parties filing a reverse-CPRA suit were not required to pay the requester's attorney fees if the requester prevailed. That has changed. Now, private parties must proceed with caution when seeking to protect their personal records or risk being ordered to pay a records requester's attorney fees.

Pasadena Police Officers Association v City of Pasadena

In *Pasadena*, a newspaper sought to obtain records regarding a police shooting, including personnel records of the officers involved. The city refused to disclose the information, and the newspaper sued. The city was joined in the litigation by the police officers and their union, who filed a reverse-CPRA action to protect the officers' private information. The newspaper prevailed, and the trial court ordered the city to pay the newspaper's attorney fees pursuant to the CPRA. But the court denied the newspaper's request to award attorney fees against the union and the police officers.

The Court of Appeal reversed, granting attorney fees against the union and the individual police officers. The court held that the union and police officers were responsible for attorney fees under California Code of Civil Procedure section 1021.5, the Private Attorney General Act (PAGA). The statute allows a court to grant attorney fees when certain criteria are met.

National Conference of Black Mayors v. Chico Community Publishing

In *National Conference*, a newspaper requested records which included communications between Sacramento's mayor and a law firm representing his private organization. Unlike in the *Pasadena* case, the city was willing to release the records requested, but the mayor, in his private capacity, filed a reverse-CPRA action to prevent their disclosure. A court ordered the release of some of the records. However, the court denied the newspaper's request for attorney fees from the city and the mayor, which it made pursuant to the CPRA.

August 2018
Number 35



Manuel F. Martinez
Partner
Walnut Creek Office
mmartinez@lozanosmith.com



Jessica A. Mejorado
Associate
Fresno Office
jmejorado@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

August 2018
Number 35

The Court of Appeal affirmed the trial court's decision not to award fees, stating that while the CPRA allows for attorney fees against a governmental agency, it does not allow recovery of attorney fees against a private party who files a reverse-CPRA action. Since the city was willing to disclose the records, it was not subject to attorney fees. The court specifically noted that the newspaper failed to challenge the trial court's decision to deny fees under PAGA, adding that attorney fees would have been granted against the mayor under PAGA, consistent with the *Pasadena* ruling.

Takeaways

Pasadena and *National Conference* encourage private parties to think carefully before suing to prevent the release of their personal information pursuant to CPRA requests. Individuals who may otherwise have fought to keep their information private may now be inclined to allow release of their records to avoid the risk of being ordered to pay the requester's attorney fees.

If you have any questions about *Pasadena*, *National Conference*, or the CPRA or PAGA in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).