

CLIENT NEWS BRIEF

Court Upholds Withholding of Public Employees' Names in the Latest California Public Records Act Case

Revealing the identities of public employees is not always required under the California Public Records Act (CPRA), according to a recent court decision. With this case, public entities now have greater clarity on how to balance an individual's right to privacy against the public's right to access documents under the CPRA. (Gov. Code, §§ 6250, *et seq.*)

In previous decisions, such as *Marken v. Santa Monica-Malibu Unified School District* (2012) 202 Cal.App.4th 1250 ([see 2012 Lozano Smith Client News Brief No. 7](#)), courts addressed factors relevant to deciding whether to disclose personnel records in instances of substantial, well-founded allegations of employee misconduct. In the new case, *Los Angeles Unified School District v. Superior Court (Los Angeles Times Communications)* (July 23, 2014, B251693) 2014 WL 3615855 (referred to as *LAUSD*), the court provides a convenient bookend to *Marken*. In *LAUSD*, the court addresses whether to disclose relatively innocent personnel information, such as employee names, in the absence of alleged misconduct. The *LAUSD* decision offers public entities greater clarity with regard to identifying, and weighing, the public's interest in the disclosure of public records.

In *LAUSD*, the Los Angeles Times (Times) sought records from the Los Angeles Unified School District (LA Unified) that LA Unified uses to measure statistically the effectiveness of teachers. Essentially, each teacher was given a score by LA Unified on how well their students performed academically versus a statistical model that predicted how each student would otherwise be expected to perform. If the statistics were disclosed along with the names of the corresponding teachers, this information could theoretically reveal where the most effective teachers are assigned, and identify the district's least effective teachers.

Although LA Unified provided the Times with these statistics, the names of the corresponding teachers were withheld. Unsatisfied with the district's response, the Times filed a writ to compel LA Unified to disclose the teachers' names. The court of appeal overturned the lower court's decision, and ruled against the Times, holding that the teachers' names were properly withheld under the "catchall exemption" of the CPRA (Gov. Code § 6255). Public entities relying on this catchall exemption must, on a case-by-case basis, balance the public's interest in not disclosing the information against the public's interest in the information's disclosure. If the balance is clearly in favor of non-disclosure, a public agency can deny that request.

In support of its decision to withhold the teachers' names under the catchall exemption, LA Unified relied on the statements of its Superintendent, who had nearly 30 years of experience as an educator, including several years of experience as a Superintendent of other districts. The Superintendent testified that, in his opinion, releasing the teachers' names would:

- (1) Spur unhealthy comparisons among teachers and breed discord in the workplace, leading to resentment, jealousy, bitterness and anger, and

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proving counterproductive and demoralizing to some teachers;

- (2) Discourage recruitment of quality candidates and/or cause existing teachers to leave the district;
- (3) Allow competing school districts to steal away the district's teachers with high statistical scores;
- (4) Disrupt a balanced assignment of the teaching staff—which is essential to the operations of the district—because parents would battle to ensure that their own children be assigned to the highest-performing teachers, and away from the lower-rated teachers;
- (5) Undermine the authority of teachers with low statistical scores because parents and students alike would lose confidence in them, undercutting their ability to receive and accept guidance and perform their jobs; and
- (6) Adversely affect the teacher disciplinary process because teachers subject to such proceedings could compare their statistical results with those of other teachers.

The Times argued that many of the Superintendent's concerns were speculative. However, the court held that the Superintendent qualified as an expert in his field, and that he reasonably predicted a number of outcomes that the public had an interest in avoiding. In this instance, the court emphasized that the newspaper failed to contradict the Superintendent's testimony. Additionally, the "public's interest" in disclosure in this case went primarily to the interest of particular parents in knowing how specific teachers perform, as opposed to a broader public interest. Thus the public's interest in withholding the teachers' names outweighed the public's interest in knowing them.

It is important to remember that the court reached its decision in *LAUSD* based on the specific set of facts before the court, and that any analysis under the CPRA's catchall exemption must be done on a case-by-case basis. One lesson of *LAUSD* is that a decision to withhold personnel-related information under the catchall exception of the CPRA should be based on specific, supported grounds. Additionally, the "public interest" in disclosure in this case went primarily to the interest of particular parents in knowing how specific teachers perform, as opposed to a broader public interest. We will continue to monitor this case and report on its progress should there be an appeal or modification.

If you have any questions regarding the *LAUSD* decision or CPRA requests in general, please contact 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](#).