

# CLIENT NEWS BRIEF

## Discovery of Public Records after Requester Filed Lawsuit Leads to Attorney Fee Award for Plaintiff

A California appeals court has found a city liable for attorney's fees after determining that a related lawsuit prompted the city to produce records during the litigation that the plaintiff had first sought through a California Public Records Act (CPRA) request.

In *Sukumar v. City of San Diego*, the Court of Appeal held that the City of San Diego, although acting in good faith and having ultimately disclosed all records responsive to a CPRA request, had to pay a plaintiff's attorney fees after being sued under the CPRA. A key factor in the court's decision was the city's repeated assurances to both the plaintiff and the trial judge that all responsive records were disclosed when in fact this was not the case.

### The CPRA and the Catalyst Theory

A public agency may be sued under the CPRA if a requesting party believes the agency's response to their request for records was inadequate. Plaintiffs in such cases are eligible for an award of attorney's fees if they win their case. They may also be eligible for fees in situations where they do not win but can prove there was a substantial causal relationship between the lawsuit and the public agency's production of additional records. This method of securing attorney fees is known as the "catalyst" theory. This rule applies to all local agencies that must produce records under the CPRA.

### Background

Plaintiff Ponani Sukumar made a CPRA request seeking 54 separate categories of records dating back to 1990 that related to neighbors' complaints regarding a list of code violations Sukumar allegedly committed and the city's investigation of those complaints. About a month after Sukumar made his request, the city provided access to some of the records and sent a letter stating that this was the city's "last response." Three weeks later, Sukumar filed a lawsuit alleging that the city was withholding responsive documents. The city continued to produce records after the suit was filed.

During the legal proceedings, the city's attorney claimed that all of the responsive documents had been produced. However, a key document was subsequently produced on the day that depositions of city employees were scheduled. During a deposition, a city employee indicated that additional records may not have been produced. Following the depositions, the city produced an additional 146 pages of emails and five photographs.

After the city produced these additional records, the trial court held that Sukumar's lawsuit was moot because the city had produced all of the responsive documents. The court also decided that the lawsuit was not the motivating factor for the city's production of the additional records, and as a result, Sukumar was not eligible for recovery of attorney's fees. Sukumar appealed the attorney fee decision.

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The appeals court reversed the trial court's decision, determining that substantial evidence existed to show that the lawsuit induced the city to locate and produce additional records, entitling the plaintiff to recover attorney's fees. The Court of Appeal was not persuaded by the city's argument that the lawsuit did not cause it to produce requested records because the city had already agreed to turn them over, holding that "but for" the court-ordered depositions, which were a direct product of the lawsuit, the city would not have continued to look for, or produce, the responsive records. The Court of Appeal acknowledged that there was no evidence of bad faith on the city's behalf, but held that bad faith is not the applicable test.

## Takeaways

The decision in this case highlights the importance of carrying out broad and comprehensive searches for records responsive to CPRA requests from the outset. Such searches may reduce the likelihood of overlooking responsive records. This will be especially challenging given the volume of electronic data under a public agency's control. Also, when a public agency knows that additional records may be discovered at a later date, it may be in the agency's best interest to immediately notify the requesting party when the records will be made available. By following these practices, public agencies can hopefully avoid the issues presented in this case and the accompanying risk of attorney's fees.

If you have any questions about the *Sukumar* decision or the California Public Records Act 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](#).