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PRA Fee Award Narrowed to Cover the Issue of Scope of Redactions

Part I: *Pasadena Police Officers Association v. City of Pasadena*



A California Court of Appeal upheld a decision to drastically reduce an attorney fee award request against the City of Pasadena to a newspaper in a Public Records Act litigation — a decision that should bring relief to public agencies.

Even though the newspaper was

unquestionably the prevailing party, the fact that it was not the sole PRA requestor and that the City narrowed what it withheld in response to the request worked in the City's favor.

In *Pasadena Police Officers Association v. City of Pasadena*, the Second District Court of Appeal, in its decision published Thursday, upheld a lower court's fee award to the *Los Angeles Times* — but reduced the newspaper's request from more than \$350,400 to about \$45,470.

The case stems from a 2012 incident in which two Pasadena Police Department officers fatally shot a fleeing suspect. Several investigations ensued, including one that the City initiated. The City had hired a consultant to conduct an independent review for the PPD's benefit and for the consultant to recommend institutional police reforms. This resulted in a 70-page report. It was requested first by the suspect's family and, later, by the *L.A. Times*. The City determined that it would release the Report, but would redact officers' confidential personnel information. In all, the City's proposed redactions comprised roughly 14 pages of the Report. The Pasadena Police Officers Association filed a reverse-PRA action to stop release of the Report on behalf of itself and the two officers involved in the shooting. The Los Angeles Superior Court ordered the Report's disclosure with the City's recommended redactions. The officers and PPOA appealed. The Appellate Court held that the City over-redacted the Report and sent the matter back to the Superior Court. The lower court then ordered disclosure of an additional five of the 14 previously-redacted pages and considered a motion for attorneys' fees by the *L.A. Times*.

People



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The *L.A. Times* argued that it was entitled to its legal fees during the writ proceedings (\$261,327) and for the post-remand issues (\$89,095), including the dispute over the redactions. The lower court found that the *L.A. Times* could recover fees against the City in the amount of \$45,472 “for the narrow matter of fees incurred during appellate mandamus review and subject trial court hearings regarding the additional unredactions.” The trial court further found that the City “had taken the correct position at trial” and used the appropriate legal standard for disclosure of the officers’ personnel information. The *L.A. Times* appealed again.

The Court of Appeal disagreed with the finding that the City had taken the correct position at trial because the redactions would have “subverted the public’s right to be kept fully informed of police activities.” However, the appellate court found that lower court did not abuse its discretion when it set the \$45,472 fee award against the City. The court found that “a substantial causal relationship between the lawsuit and the delivery of the information” was missing. (See *Sukumar v. City of San Diego*) In reaching its decision, the court found it compelling that the *L.A. Times* was neither the Report’s first nor the only requester, making it impossible for the court to find that the *L.A. Times*’ litigation caused the City to release the Report. As such, the court affirmed the reduced fee award for the narrow matter of the writ action and the hearings related to the redactions.

This is a positive opinion for public entities because, among other things, it narrowed the fee dispute to the scope of the City’s redactions. Meaning, the court did not require the City to pay for the *entirety* of the *L.A. Times*’ attorneys’ fees in the litigation, but largely limited the City’s liability to the parties’ dispute over the redactions. Further, the court’s use of the *Sukumar* standard was unexpected because it was first used against the City of San Diego to support a fee award. Here, the court used the same standard to narrow the scope of fees awarded to a requester. To have the newly established causation standard used in defense of a public entity is an unexpected — and welcomed — move by the court.

Watch for Part II, where we will review the Court of Appeal’s findings as it relates to the reverse-PRA action.

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