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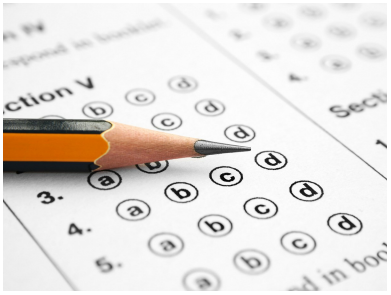
Public Agencies Do Not Have to Create Records for PRA Requesters

California Appellate Court Reinforces Principle



The State Bar of California does not have to create records to fulfill a request for bar applicant data under the Public Records Act, an appellate court decided. In Monday's decision in *Sander et al. v. State Bar of California*, the First District Court of Appeal affirmed the well-established principle that public agencies do not have to create records in response to PRA requests.

Sander is the most recent decision in a long series of cases in which petitioners California First Amendment Coalition, Joe Hicks and Richard Sander sought bar applicant demographic data. Sander is an economist and professor at the University of California at Los Angeles who studies the effects of admissions preferences in higher education.

In the original request, the petitioners sought the following bar applicant data:

- race or ethnicity,
- law school,
- transfer status,
- law school graduation year,
- undergraduate and law school GPAs,
- LSAT score and
- bar exam performance.

A July 2016 trial was held to determine whether the bar applicant data being sought could be released while maintaining the applicants' privacy interests. The trial court heard testimony from several experts, including the petitioners' expert, who argued that the data could be anonymized through a series of data manipulations. The trial court denied the petition concluding that the State Bar, in essence, would be creating new records if it manipulated applicant data in the way required to maintain privacy.

People

Christine N. Wood
DIRECTOR OF PRA SERVICES AND E-DISCOVERY COUNSEL
(213) 542-3861

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The Court of Appeal agreed, finding that it is a well-established principle that public agencies do not have to create records in response to PRA requests. The court acknowledged that the PRA requires agencies to gather and segregate disclosable electronic data. However, "segregating and extracting data is a far cry from requiring public agencies to undertake the extensive 'manipulation or restructuring of the substantive content of a record' such as Petitioners propose…." The court continued: "There is no doubt that a government agency is required to produce non-exempt responsive computer records…,[b]ut it cannot be required to create a new record by changing the substantive content of an existing record or replacing existing data with new data.

For public agencies, this is a reassuring opinion because it draws a more clear distinction between what the PRA requires (data compilation, extraction and programming) and the content restructuring that requesters often seek.

If you have any questions about this opinion or how it may impact your agency, please contact the author of this Legal Alert listed to the right in the firm's California Public Records Act practice, or your BB&K attorney.

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