

Attorney Billing Records Do Not Fall Under CPRA's Pending Litigation Exemption

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The California Court of Appeal recently held that a public entity may not withhold attorney billing records under the California Public Records Act ("CPRA") pending litigation exemption unless those records were specifically prepared for use in litigation. (*County of Los Angeles v. Superior Court (Anderson-Barker)* (2012) 211 Cal.App.4th 57.)

Background

Cynthia Anderson-Barker, an attorney who worked in the same office as the attorneys representing the plaintiffs in a long-running civil rights suit against the County of Los Angeles ("County"), filed a petition seeking disclosure of records related to the billing by and subsequent payment to the County's attorney in that action. The County objected that these records were attorney-client privileged communications, attorney work product, and exempt from disclosure under the CPRA's pending litigation exemption in Government Code section 6254, subdivision (b).

The trial court ruled that the documents in question were not attorney-client privileged, but did contain attorney work product. The court ruled that information should be redacted to show only non work product such as hours worked, by whom, and amounts charged. The trial court also ruled that the pending litigation exemption did not apply because although the documents were prepared in connection with the underlying civil rights case, but they were not prepared for use in that case.

Decision

The Court of Appeal affirmed the holding on the pending litigation exemption. It explained that because the CPRA furthers people's right of access, it must be construed broadly. The variety of exemptions to the public entity's disclosure obligations, including the pending litigation exemption, "are to be narrowly construed, and the government agency opposing disclosure bears the burden of proving that one or more apply in a particular case." (*County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819, 825.)

The Court here relied on past holdings on the pending litigation exemption to affirm that "[a] document is protected from disclosure under the pending litigation exemption only if the



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document was specifically prepared for use in litigation.” (*Axelrad*, 82 Cal.App.4th at 830.) In addition, the Court affirmed that the “dominant purpose” test should apply where a document may have been prepared for a dual purpose: “[a] document or report prepared for a dual purpose is privileged, or not privileged, depending on the ‘dominant purpose’ behind its preparation. (*Fairley v. Superior Court*(1998) 66 Cal.App.4th 1414, 1420.)

Having established these two principles, the Court determined that the attorney billing and payment records in question were not exempt because they were not prepared for use in litigation. The Court acknowledged that the records related to pending litigation and would not have existed but for the pending litigation. However, the “dominant purpose” for preparing the documents was not for use in litigation but part of normal record keeping and to facilitate regular payment of attorney fees.

Impact

Attorney billing and payment records are likely not subject to the pending litigation exemption and would therefore be disclosable under the CPRA unless another exemption applied. Portions of billing records that reveal the attorneys’ impressions, conclusions, opinions, or legal research or theories would generally not be subject to disclosure under the CPRA as work product. Although each situation is unique, disclosable information normally would include the identity of the individual performing the work, the number of hours worked, and the amount charged. Please do not hesitate to contact us if we may be of assistance.

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