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Government code 6254.5

Yesterday, the California Supreme Court decided an important case concerning the California Public Records Act (CPRA, Government Code §§ 6250 et seq.). In its decision, the Court found that only the deliberate disclosure of public records — not unintentional disclosure — waives the privileges of the registers. (*Ardon v City of Los Angeles* (March 17, 2016, S223876).) In the past, two intermediate appellate courts had split on this important issue. In the *Ardon* case, the city of Los Angeles (City) tried to force a lawyer to return allegedly privileged documents after the city had inadvertently produced those documents to the lawyer in response to her request, according to CPRA. However, subject to limited exceptions, CPRA provides that the disclosure of any document by a public authority constitutes a waiver of any claim of privilege in respect of that document. (Government Code § 6254.5.) Therefore, both the trial court and the court of appeal ruled that the city's unintentional disclosure waived all privileges, such as attorney-client privilege, that apply to the documents. In a separate case, in which school district records were claimed to have been privileged, another appellate court came to the opposite conclusion. That court found that the school district did not renounce privilege by inadvertently disclosing records in response to a CPRA request. (See *Newark Unified School District v. Superior Court of Alameda County* (July 31, 2015, A142963).) In resolving this question, the Supreme Court concluded that cpra waiver provision only applies when a public authority makes a knowing and voluntary disclosure. This interpretation is also consistent with the exception rules of litigation, whether lawyer-client privileged and work product privileged documents. These litigation rules generally allow privilege holders to seek the return of privileged documents that are inadvertently disclosed during the discovery. Although the court's decision was favorable to public bodies, the court warned that bodies should not be tempted to recast, on their choice, any past revelations as unintentional so that a privilege can be reasserted accordingly. Courts that assess allegations of unintentional disclosure by a public authority are likely to ensure both the subjective intentions of the Agency and the objective circumstances surrounding the disclosure, such as the speed with which the agency sought the return of documents, and precautions taken to minimize the unintended release of documents. The *Ardon* and *Newark* cases underscore the care public agencies must use to respond to CPRA requests. Furthermore, in situations where a public authority inadvertently discloses privileged documents, staff should immediately consult the Agency's agents and act as quickly as possible to respond to such disclosure. From Ballotpedia 6254.6 -- of the California Public Records Act is one of 29 subsections of section 6254. The 6254 subsections of CPRA contain a variety of exceptions to the law. External Links Section 6250-6270 of the California Government Code §Log InSign UpSign Register CA Govt Code § 6254.5 (through 2013 Leg Sess) What is this? Notwithstanding any other provisions of the Act, whenever a state or local authority discloses a public register otherwise excluded from this Chapter, to any member of the public, such disclosure shall constitute a waiver of the exceptions set out in Sections 6254, 6254.7, or other similar provisions of law. For purposes in this section, the agency includes a member, agent, officer, or employee of the Agency acting within the scope of his or her membership, agency, office, or employment. However, this section shall not apply to information:(a) Made in accordance with the Information Practice Act (which begins with section 1798 of the Civil Code) or discovery procedure. (b) done through other legal proceedings or as required by law in any other way. (c) in the context of the disclosure of a Statute restricting the disclosure of the written documents given to certain purposes; (d) not required by law, and prohibited by formal action by an elected legislative body of the local agency which retains writings; (e) manufactured to any government agency that agrees to treat the disclosed material as confidential; Only persons authorised in writing by the person responsible for the body shall be allowed to obtain the information. All information obtained by the body shall be used only for purposes compatible with the legislation in force. (f) of records relating to a financial institution or a subsidiary thereof, if the information is made to the financial institution or affiliate by a government agency responsible for the regulation or supervision of the financial institution or affiliate; (g) of records relating to any person subject to the jurisdiction of the Department of Corporations, if the information is made to the person who is the subject of records for the purpose of correcting the actions of that person, or of a company, to an officer, director, or other key person of the company for the purpose of correcting actions, or to any other person to the extent necessary to obtain information from that person with a view to an investigation by the Department of Business. (h) made by the Commissioner for Financial Institutions under Sections 280, 282, 8009, or 18396 of the Finance Act; (i) of records relating to any person subject to the jurisdiction of the Managed Health Care Department, if the information is made to the person who is the subject of records for the purpose of correcting the actions of that person, or of an undertaking, to an officer, director, or other key personnel of the company for the purpose of: action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care. (Modified by Stats. 2008, Chapter 501, Sec. 23. Effective January 1, 2009.) Disclaimer: These codes may not be the latest version. California may have more up-to-date or accurate information. 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