

Inadvertent Disclosure of Privileged Documents is Not a Waiver of the Public Records Act Exemptions

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A state or local agency does not waive attorney-client or work product privileges when it inadvertently discloses documents exempt under the Public Records Act (PRA). The California Supreme Court has recently affirmed that the City of Los Angeles did not waive the Public Records Act exemption for privileged documents it accidentally released in response to a PRA request filed by an attorney suing the City. Consequently, the Court held the City could seek the return of the privileged documents.

The Court compared inadvertent disclosure of privileged attorney-client and attorney work product documents released in response to a PRA request to an inadvertent disclosure of privileged documents in discovery proceedings during litigation. In litigation, when inadvertent disclosure of plainly privileged documents is believed to have been the result of human error, an attorney recipient of the documents must immediately notify the sender, and the contents of the documents should not be further examined pending resolution. The Court found no reason to deny that same remedy to a state or local agency responding to a PRA request.

Ardon v. City of Los Angeles, filed March 17, 2016.

If you have any questions, or would like more information on how this ruling may affect your agency, please contact Isaac Rosen or any member of the Public Law Department.