

California Court of Appeal Rules That Inadvertent Disclosure of Confidential Records in Response to a Public Records Act Request Results in Privilege Waiver

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If a public agency accidentally releases confidential documents in response to a Public Records Act request, those documents become discloseable public records.

When public agencies respond to Public Records Act (PRA) requests, sometimes confidential records are accidentally released. If this happens in litigation, parties are sometimes able to "claw-back" the documents and compel their return. Last week the California Court of Appeal ruled that the PRA precludes a public agency from compelling the return of confidential records that are inadvertently disclosed to the public.

In *Ardon v. City of Los Angeles*, Los Angeles had been sued over its telephone user's tax, and the plaintiff's attorney made a PRA request for certain records related to the tax. The City Administrator's office inadvertently released attorney-client communications and attorney work product. Los Angeles sought to claw-back those confidential documents, but the court refused to compel return of the records. The court ruled that releasing records in response to a PRA request waives any privilege or exemption that previously attached to the records, even if the document production resulted from mistake, inadvertence, or excusable neglect.

The *Ardon* case is a reminder that public agencies should institute procedures to ensure that responses to PRA requests do not accidentally release confidential records that are exempt from disclosure under the PRA. Such procedures may include separate filing systems for privileged or exempt records, coordination with the agency's attorney before records are produced, and oversight of document productions by employees fully trained in PRA exemptions.

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

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