

Large Number of Responsive Public Records Not Necessarily Burdensome

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A Public Records Act (“PRA”) request that required a public agency to review over 40,000 emails from specified email addresses was not overly burdensome because the emails requested were easy to locate and not claimed to be privileged.

In 2018, the County of El Dorado received a PRA request to provide electronic copies of any and all emails between any County employee or official and anyone with four different email domains. The County did not provide the emails citing the burden of reviewing the over 42,500 emails that met the request criteria to determine if each email was relevant or subject to an exemption from disclosure. The County did provide an index of the 42,500 emails including sender, recipient, subject line, and date sent.

The California Court of Appeal, in *Getz v. Superior Court of El Dorado County*, ruled that the records request was not overbroad or unduly burdensome on the County. First, the court held that because the County had already located and indexed the requested emails, the request was specific enough for the County to identify the requested documents and was not overbroad. Second, the court held that the County failed to meet its burden to prove with specificity that the email records were privileged or likely to contain private information and therefore exempt from disclosure. Because of this failure, the County could not show the request was overly burdensome because it did not prove with any likelihood that County officials would have to go through each email to check for privileged information.

The court also noted that it is the nature of modern email correspondence records requests to produce a high volume of electronic documents. In these situations, the court emphasized that a public agency must show that exempt or privileged information exists in the requested records in order to deny such a request because otherwise agencies would have an easy and unjustified “overly burdensome” response to refuse records requests.

Getz serves as a reminder to public agencies to be more proactive in identifying and separating privileged and non-privileged electronic communications so that when large volume public records requests are made they can more easily and justifiably filter out privileged or exempt information. Privileged communications should be labeled as such in the original communication.

If you have any questions about the decision or your agency’s procedures, please contact any RWG attorney.