

Court of Appeal Allows Reverse California Public Records Act Lawsuit

For the first time, a California appellate court has allowed an interested party to take legal action to block the release of documents requested from a public agency under the California Public Records Act (CPRA) (Government Code section 6250 et seq.).

In *Marken v. Santa Monica-Malibu Unified School District*, (January 24, 2012, B231787) the Second District Court of Appeal held that a third party may file a “reverse-CPRA” lawsuit in order to prevent a public agency from disclosing documents in response to public records request.

In 2008, a sexual harassment complaint was lodged against Marken, a high school mathematics teacher. The school district investigated the complaint, concluded the teacher had violated the district’s policy prohibiting sexual harassment of students, and issued Marken a written reprimand. No further action was taken by the district and Marken returned to teaching.

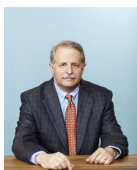
Two years later, a parent of another student at the district filed a request under the CPRA seeking the disclosure of records regarding the Marken sexual harassment complaint and investigation. The district invoked an extension for responding to the request, and informed Marken of the request as well as the district’s intent to release some of the requested records, including the investigation report and letter of reprimand.

Marken filed suit to stop the disclosure of records contained in his personnel file, alleging that disclosure of the records was not authorized under the CPRA, because the sexual harassment claim was neither substantial in nature nor well founded, and would violate his constitutional and statutory rights of privacy. The trial court denied Marken’s request for a preliminary injunction, which the Court of Appeal affirmed.

Notably, the court held that Marken was permitted to bring a “reverse-CPRA” action seeking to block the disclosure of his personnel records. The court explained that allowing such a suit was important as no other remedy exists for an interested party to obtain judicial review of a public agency’s decision to disclose records pursuant to a CPRA request. The court acknowledged that allowing such suits could delay an agency’s response to



by Julie A. Sherman & Michael N. Conneran



CPRA requests. However, delays that result from allowing reverse-CPRA actions are “outweighed by the statutory right of an interested party to ensure that public agencies do not disclose records whose confidentiality is mandated by law.”

The court went on, however, to hold that Marken’s records should be disclosed by the district. Although Marken argued that the sexual harassment claim was not substantial or well-founded, the court rejected his argument and found that disclosure was appropriate under existing case law that analyzed the personnel file exemption of the CPRA. The Court determined that although Marken had a significant privacy interest in the records, this interest was outweighed by the public interest in disclosure of the investigation report and letter of reprimand.

As a result of this holding, public agencies should be aware that interested parties now have a right to file reverse-CPRA suits to prevent agencies from disclosing records in response to a request for information. This holding is relevant not only in cases involving requests for information in an employee's personnel file; it is also relevant where parties request public solicitation documents, including documents submitted by private firms in response to Invitations for Bids and Requests for Proposals. In such instances, bidders or proposers may assert that the requested records should not be disclosed because they contain trade secret/proprietary information. Thus, although not required by law, public agencies may wish to consider notifying interested parties of such disclosures prior to releasing the requested records, particularly if confidential or proprietary information may be implicated.

If you have any questions regarding how this case impacts your agency, or have related questions regarding the CPRA, we would be pleased to assist you.

For more information, please contact:

Julie A. Sherman, Partner

415-995-5185

jsherman@hansonbridgett.com

Michael N. Conneran, Partner

415-995-5042

mconneran@hansonbridgett.com