

**RELATED  
AREAS OF PRACTICE**

Public Agency

## Attorney Billing Invoices Subject To Disclosure In Certain Circumstances

The California Supreme Court recently imposed limits on when a government agency can claim a legal billing invoice is protected from disclosure under the California Public Records Act. The decision is available [here](#).

### Background

The American Civil Liberties Union ("ACLU") of Southern California submitted a Public Records Act ("PRA") request to the Los Angeles County Board of Supervisors and the Office of the Los Angeles County Counsel ("County") for legal invoices billed to the County for nine different lawsuits related to claims of excessive force used against jail inmates. The County provided the ACLU with copies of invoices for three lawsuits that were no longer active, but did not release invoices for the remaining six active lawsuits. Attorney-client privilege applied to those invoices, the County argued, because they included descriptions, timing, and amount of attorney work performed, which was a communication to the client and would disclose attorney strategy.

In response, the ACLU filed a lawsuit in Los Angeles County Superior Court asking that the court order the County to disclose the invoices for all nine lawsuits. The ACLU wanted to review the invoices because it believed the law firms involved were using stall tactics to draw out cases, even when there was a chance of settlement. The organization explained that the public interest outweighed privacy limitations because taxpayer dollars ultimately pay for litigation expenses.

The superior court granted the ACLU's request. The County appealed the decision to the Court of Appeal, which ruled in favor of the County and vacated the lower court's order. The California Supreme Court ("Supreme Court") granted review.

### Summary Of The Decision

The Supreme Court focused on whether invoices for legal work on pending litigation sent to the County by an outside law firm were protected by attorney-client privilege and exempt from release under the PRA.

In its decision, the Supreme Court analyzed both the PRA and the attorney-client privilege. The court held that the attorney-client privilege only applies to communications between attorney and client related to legal advice or representation. Normally, an invoice would not fall under this protection because it is not usually made to share legal advice. Instead, an invoice is used to bill the client and receive payment for legal services.

The Supreme Court concluded that invoices for legal services to public agencies are not categorically privileged. A public agency's legal invoice is only privileged if it shares legal advice or if there is a danger that the invoice will reveal information given for the purposes of legal advice or strategy, which includes for invoices for work in pending litigation.

### What This Means To You

A legal billing invoice and its contents during active litigation are still considered privileged because they are considered a communication regarding legal services. The Supreme Court recognized that bills showing an increase in legal spending while a case is active could reveal an attorney's upcoming strategy in a case. Additionally, billings that show the nature or amount of work done in a pending lawsuit are protected by attorney-client privilege. If a bill includes a total number of hours or money spent on a case during a quarter or year, that may also be protected.

In contrast, a legal invoice for a closed case finished "long ago" would not automatically be privileged. The Supreme Court explained that any total fee amount in a closed case would not reveal upcoming litigation tactics. Instead, a

[WWW.KMTG.COM](http://WWW.KMTG.COM)

Legal Alerts are published by Kronick Moskowitz Tiedemann & Girard as a timely reporting service to alert clients and other friends of recent changes in case law, opinions or codes. This alert does not represent the legal opinion of the firm or any member of the firm on the issues described, and the information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult.

**RELATED  
AREAS OF PRACTICE**

Public Agency

public agency needs to determine whether the invoice discloses legal advice. The Supreme Court did not illuminate the parameters of cases finished "long ago" so public agencies and their attorneys should be mindful of the level of detail included in invoices.

**Questions**

If you have any questions concerning this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

Mona G. Ebrahimi

mebrahimi@kmtg.com | 916.321.4597

**WWW.KMTG.COM**

Legal Alerts are published by Kronick Moskowitz Tiedemann & Girard as a timely reporting service to alert clients and other friends of recent changes in case law, opinions or codes. This alert does not represent the legal opinion of the firm or any member of the firm on the issues described, and the information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult.