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California Public Records Act Does Not Require The Disclosure Of Records Relating To Disciplining Of A Peace Officer

Issue

In *The Copley Press, Inc v. The Superior Court of San Diego County*, (— Cal.Rptr. 3d —, 2006 WL 2506369, Cal., Aug. 31, 2006) the California Supreme Court considered the extent to which the California Public Records Act (“CPRA”) required disclosure of records relating to a peace officer’s appeal of a disciplinary action, when the action was taken by a county civil service commission rather than by the employing agency itself.

Reversing a California Court of Appeal, the Supreme Court found that the law applies the same regardless of whether such appeals were handled by the actual employing agency or by a county commission created for such purposes, and that records relating to personnel matters were equally confidential in either case.

Facts

The Copley Press, Inc., (“Copley”) which publishes the San Diego Union-Tribune newspaper, requested under CPRA that the San Diego County Civil Service Commission (“Commission”) provide it with documents pertaining to a deputy sheriff’s appeal of a disciplinary action. The Commission denied the request.

After Copley sued unsuccessfully in Superior Court for access to the records, it again filed CPRA requests for access to all documents pertaining to the case. This time, the Commission provided limited documents that described some circumstances of the deputy’s case, but withheld other information, including the deputy’s name.

Unsatisfied with these results, Copley next appealed its earlier case to the Court of Appeal, asking for an order requiring the Commission to disclose the deputy’s name and all documents, evidence, and audiotapes from his appeal. The Court of Appeal granted part of the request, finding that only files maintained *by the employing agency* of the peace officer are exempt from public disclosure. Since the deputy was not employed by the Commission, its records of his appeal therefore could not be withheld, the Court of Appeal ruled. The San Diego Peace Officers Association and the San Diego County Sheriffs Association, interveners in the case, appealed to the California Supreme Court.

Decision

The Supreme Court analyzed the language of CPRA, which requires that public records be made available

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for public inspection, and the sections that provide specific exemptions to its disclosure requirements. CPRA lists various other statutes that state disclosure exemptions, including Penal Code Sections 832.7 and 832.8, which provide that peace officers' personnel records are "confidential and shall not be disclosed in any civil or criminal proceeding," and in particular, any records "maintained by his or her employing agency."

The Court first dismissed Copley's claim that the exemption only applied to criminal or civil proceedings. If that had been the Legislature's intent, the Court said, it would have been redundant to also include the word "confidential." The inclusion of that word, followed by the word "and," the Court said, made it clear that the privacy protection was meant to extend beyond civil and criminal proceedings only.

The Court then discarded Copley's distinction between the Commission, and the officer's employing agency, and its assertion that the documents

were not protected because the Commission did not employ the deputy. In fact, because the Commission is the department that San Diego County has designated to hear deputies' disciplinary appeals, it is functioning as part of the "employing agency," and the files it maintains pertaining to disciplinary appeals are therefore confidential, the Court ruled.

Finally, the Court concluded that Copley had no constitutional ground upon which to demand access to the records. The Court cited *Los Angeles Police Dept. v. United Reporting Publishing Corp.*, (1999) 528 U.S. 32, in which the United States Supreme Court rejected a challenge to a police department's withholding of arrest records, distinguishing between unconstitutional actions to stop people from conveying information they already have, and mere government denials of access to information in its possession, which the Constitution does not prohibit.

Accordingly, the Court of Appeal's judgment was reversed.

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