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Public Law Update - California Supreme Court Addresses Scope of Declaratory Relief Rights and Record Retention Under the California Public Records Act

On January 15, 2026, the California Supreme Court issued an opinion in *City of Gilroy vs. Superior Court of Santa Clara County* which made two important holdings clarifying the rights of the public and the responsibilities of public entities under the California Public Records Act (“CPRA”) which governs access to public records. First, the Court notably found that expansive declaratory relief for disputes surrounding the CPRA is available in certain circumstances.

Declaratory relief refers to a legal remedy in the form of a declaration from the court which defines the legal rights, duties, and obligations of parties in dispute. In *City of Gilroy*, the Supreme Court determined that such relief may be available to address past or ongoing actions of a public entity, even when the entity has already complied with the public records request at issue. Second, the Court addressed an argument that public entities must retain records deemed exempt from disclosure for three years from the date an exemption was invoked. The Court ultimately confirmed that the CPRA does not require public entities to retain documents that are deemed exempt.

Background of the Case

Starting in 2018, the Law Foundation of Silicon Valley (the “Law Foundation”) filed a series of public records requests with the City of Gilroy (“City”) after receiving complaints that personal property was destroyed by the Gilroy Police Department conducting encampment cleanups. In 2019, the Law Foundation filed a request focusing on bodycam footage. The City responded that GPD bodycam footage of homeless encampment sweeps were exempt from disclosure. The Law Foundation objected, notifying the City that it would be filing a writ petition to obtain release of the footage. The City then placed a voluntary litigation hold on the requested footage, and released certain bodycam videos that did not relate to citations or arrests while maintaining that the rest of the footage was exempt. The City also informed the Law Foundation that all footage taken before early 2018 had been destroyed pursuant to the City’s record retention policy.

Trial Court and Court of Appeal Proceedings

The Law Foundation filed a lawsuit alleging that the City violated the CPRA. The action alleged that the City “failed to search for responsive records, improperly withheld responsive records, and destroyed responsive records while public records requests were pending.” The Law Foundation sought a writ of mandate compelling the production of the requested footage and sought declaratory relief regarding the City’s obligations under the CPRA. The trial court granted partial declaratory relief, finding that the City violated the CPRA by conducting an inadequate search for records, that the City acted improperly by asserting a blanket exemption to bodycam footage without first watching the footage itself, and that the City’s response to a 2018 request was not timely as the response occurred 33 days after the request was received. However, as to the 2019 records request, the trial court found no violations and concluded that the CPRA does not impose a retention requirement on the City. Both parties appealed this ruling.

On appeal, the City argued that the trial court should not have granted declaratory relief since there was no order to produce records and no additional, non-exempt records existed to produce. The Court of Appeal agreed, finding that declaratory relief was not available as the issue was effectively moot. Specifically, the Court of Appeal found that the CPRA only provides remedy when the court is determining whether a particular record or class of records should be disclosed, and since the City had disclosed all nonexempt records, any claims regarding the City’s past conduct were moot.

The Court of Appeal also affirmed the lower court’s ruling that the CPRA has no records retention requirement. The Court of Appeal acknowledged the concerns around preservation of records while a request is pending; however, the Court found these concerns insufficient to overturn the interpretation that the CPRA does not contain a retention requirement. Once again, both findings were appealed and were heard before the California Supreme Court.

The Supreme Court Affirms Existence of Expansive Declaratory Relief in Certain Circumstances

The first question before the Supreme Court was whether the scope of declaratory relief available under the CPRA extends to an agency’s past actions. At the outset, the Supreme Court noted that the question was one of statutory interpretation of Government Code Section 7923.000 which expressly allows a person to institute proceedings for declaratory relief in order to enforce a person’s right to access public records. The Law Foundation reasoned that declaratory relief addressing past actions could deter future unlawful actions, therefore aligning with section 7923.000’s assertion that declarations are

appropriate to enforce a requester's right to inspect records. The Supreme Court agreed, holding that declaratory relief is authorized in at least some circumstances *even if* the agency has disclosed all nonexempt records. At minimum, the Court stated that declaratory relief is available when an agency is likely to repeat past conduct that allegedly violated the CPRA. Especially in circumstances where there is an ongoing dispute between parties about a particular practice or policy of an agency, the Court reasoned that a declaration of rights and responsibilities could avoid recurrence of unlawful conduct and better enable the public to challenge practices that frustrate their rights under the CPRA. Ultimately, the Court found that an expansive interpretation of declaratory relief rights was in line with the CPRA's stated goals of freedom of information and the right of access.

Under this interpretation, the Supreme Court found that the trial court's declarations (i.e., declaring that the City violated the CPRA by conducting inadequate search of records and by asserting a blanket exemption for bodycam footage) both addressed contested claims regarding the City's responsibilities under the CPRA and the Law Foundation's right to access of these records. Consequently, given the nature of the dispute, the Court found that such declaratory relief was necessary to guide the parties to a resolution, and that even though all non-exempt records had been produced, a declaration could help facilitate future inspection and receipt of records.

The Supreme Court Affirms the CPRA Does Not Impose Record Retention Requirements

The second question before the Supreme Court was whether public entities have an obligation to retain records for three years, commencing from the time the entity asserts an exemption to withhold records. The Court found no support for the existence of such a retention period in the statutory text, nor in case law.

The Court noted that the CPRA describes procedures and exemptions in incredible detail, making the omission of any retention periods in the Act appear intentional. The Court found that, in fact, the CPRA states that its contents do not prevent an entity's destruction of records pursuant to law. In light of the omission of a retention requirement and past precedent, the Court reaffirmed that the CPRA does not contain a preservation duty. The Court additionally stated that the three-year retention period would not be feasible, as this requirement could result in the indefinite retention of records if requesters make repeated requests for exempt records.

Finally, the Court found no support for a retention period in the Legislative history of the CPRA. On the contrary, the author of the legislation stated that the law did not contain a retention requirement and that the intention was that the CPRA should not affect provisions

of existing law regarding the destruction of public records. This intention is further supported by the existence of express retention requirements in other statutes. The Court ultimately refused to imply a preservation duty under the CPRA and held that no such duty exists for public agencies.

Implications for Public Entities and the CPRA

Overall, the Court's holdings in *City of Gilroy* brings clarification to the rights of the public and duties of public entities under the CPRA. Public entities should be aware that claims for declaratory relief may be available even if all nonexempt records have been produced to a requester and the action relates only to past actions. While the Supreme Court declined to fully explain which circumstances will warrant this expansive view of declaratory relief rights, the facts in *City of Gilroy* demonstrate the type of disputes which can create ongoing declaratory relief rights. In particular, agencies should be aware of any repeated disputes about a particular policy or practice that it uses when responding to public records requests, as these ongoing disputes can now create the foundation for a declaratory relief action.

As for retention of exempt records, *City of Gilroy* confirms that public entities are not required to retain exempt records for any length of time under the CPRA itself. Instead, public entities remain only subject to the retention schedules set by statute or by the entity itself.

Burke, Williams & Sorensen, LLP regularly advises clients on legal matters relating to the Public Records Act.

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