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Public Law Update - SB 1034: California Public Records Act During States of Emergency

On July 18, 2024, Governor Gavin Newsom signed SB 1034 into law. SB 1034 was introduced in response to the COVID-19 pandemic as an effort to decrease the burden of the California Public Records Act (“PRA”) on public agencies during emergencies. The PRA requires public agencies to, within 10 days of a request for a copy of records, determine whether the request seeks copies of disclosable public records in possession of the agency and to promptly notify the person of the determination and the reasons therefor. While the PRA already had a provision allowing agencies to extend their initial response time by up to 14 days in “unusual circumstances,” the law’s definition of “unusual circumstances” did not include emergency conditions, such as the pandemic. Thus, prior to SB 1034, agencies had to continue devoting time and resources to public records requests during states of emergency, despite staffing shortages or closure of facilities containing records.

In response to these issues, SB 1034 amends Government Code section 7922.535 by expanding the definition of “unusual circumstances” warranting an extension of time for public agencies to provide an initial determination to include, “The need to search for, collect, and appropriately examine records during a state of emergency proclaimed by the Governor in the jurisdiction where the agency is located when the state of emergency currently affects, due to the state of emergency, the agency’s ability to timely respond to requests due to staffing shortages or closure of facilities where the requested records are located.”

Under SB 1034, “state of emergency” means a state of emergency proclaimed by the Governor pursuant to Government Code section 8625. This section empowers the Governor to declare a state of emergency during a number of emergency scenarios ranging from fires to riots when those incidents create disaster or extreme peril.

Notably, in recognition that accessing records about a state of emergency during a state of emergency is important and necessary for the public, the bill specifies that this provision does not apply to a request for records created during and related to the proclaimed state of emergency. This means that initial responses for requests for records which relate to the emergency at issue may not be extended

by up to 14 days under this new rule. However, there could be scenarios where other “unusual circumstances” under section 7922.535 apply to the request and could be invoked to extend the response date.

Public agencies should integrate SB 1034’s expansion of “unusual circumstances” into their policies and practices for responding to Public Records Act requests, while being aware of the limitations of invoking a 14-day extension for the initial determination, even during declared states of emergency.

Attorneys at Burke regularly advise clients on legal matters related to the Public Records Act.

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