

Public Records Act's Catchall Exemption Applies to COVID-19 Outbreak Location Information

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The Court of Appeal recently considered the exemption found in the California Public Records Act (Government Code § 6255 (a)) often referred to as the "catchall" or "public interest" exemption in *Voice of San Diego v. Superior Court of San Diego County* (County of San Diego) (2021) 66 Cal.App.5th 669 as modified (July 27, 2021) and determined that it was appropriately applied to certain COVID-19 outbreak location information withheld by the County of San Diego ("County"). This case provides important guidance on the application of the catchall exemption that is so often relied upon by public agencies when responding to public record requests.

On April 10, 2020, the Voice of San Diego, a news media organization, sent the County a public record request seeking copies of epidemiological reports sent to the State of California showing the results of the County's investigative contact tracing efforts from January 1, 2020 to April 10, 2020. The County denied the request under Government Code section 6255, which provides that a record is exempt from production under the Public Records Act if the public agency can demonstrate that, on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. The Voice of San Diego sued the County to obtain the requested records ("Petition"). The Petition was subsequently amended twice to add two other news media organizations, KPBS Public Broadcasting, and San Diego Union Tribune (collectively, "Petitioners") that had made similar public record requests to the County, both of which were also denied.

In an effort to comply with the Petitioners' public record requests, the County ultimately released a spreadsheet that the County's Public Health Officer maintained showing each outbreak of COVID-19 in the County. The spreadsheet included the applicable dates of the outbreak, the city where it occurred, the number of people involved, and whether the outbreak occurred in a community setting, a skilled nursing facility or a non-skilled congregate living facility. Although the County released the spreadsheet, it redacted columns labeled "Location," "Location Address," "Outbreak Number," "Internal Tracking Number" and "Licensed Beds." Although the specific location of the outbreak was redacted in the spreadsheet, for each outbreak in a community setting, the spreadsheet did show the type of location

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where the outbreak occurred, *i.e.*, a restaurant, a grocery store, a gym, a salon, etc. The County maintained that the redactions were justified under the catchall exemption in Government Code section 6255(a) but also under Government Code section 6254(k), which allows a public agency to withhold "[r]ecords the disclosure of which is exempted or prohibited pursuant to federal or state law" as certain information was required to be kept confidential pursuant to California Code of Regulations, title 17 section 2502(f).

The Petitioners and the County agreed to narrow the issues for trial and focused only on whether the "Location" and "Location Address" columns of the spreadsheet should be produced without redaction. The trial court denied the Petition under both grounds of exemption asserted by the County.

The Court of Appeal agreed with the trial court and found that the County met its burden of proof and that the uncontroverted declaration of the County's Health Officer showed that disclosure of the exact name and address of an outbreak location would have a chilling effect on the public's willingness to cooperate with contact tracing efforts. As the County explained, "[c]ontact tracing only works when those that are being interviewed are completely honest and forthcoming with relevant information. The Department of Public Health's investigators assure those they interview that the information they provide will be kept confidential." The County also maintained that during a deadly pandemic such as COVID-19, contact tracing is a major pillar in fighting the spread of disease.

The Court rejected the Petitioners' argument that the declaration of the County's Health Officer was opinion "solely supported by conjecture" and that there was no statistical data or scholarly work to show a linkage between outbreak disclosure and contact tracing. The Court also rejected the Petitioners' argument that the declaration was not credible because the County had publicly disclosed the locations of other disease outbreaks such as hepatitis A and tuberculosis and the specific number of COVID-19 cases connected with students at San Diego State University.

Instead the Court determined that the County's Health Officer was not unduly speculative or vague because the dangers to the public from the spread of disease during the COVID-19 pandemic are real and concrete. The Court also found that prior instances of disclosure were distinguishable from the COVID-19 contact tracing that was at issue in this case.

Having determined that the County had identified an important public health reason for the redaction of the "Location" and "Location Address" from the information in the spreadsheet the Court next considered the countervailing public interest in obtaining the

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information which would identify the location where an outbreak occurred an information that would show how the government is performing in combating the COVID-19 crises. While the Court conceded that the public does have a keen interest in finding out the exact location where outbreaks have occurred, that information would not have meaningful value in helping the public avoid infection with COVID-19 and that providing the locations would not improve the public's ability to assess the government's response to the pandemic. After weighing these two interests, the Court confirmed that the County of San Diego was justified in redacting information that identified confirmed COVID-19 outbreak locations and location addresses given that contact tracing is so vital in the fight against the spread of COVID-19 and that voluntary and candid public cooperation with contact tracing could only occur if the public was assured that information provided would be kept confidential.

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