

County of San Benito v. Superior Court of San Benito County (2023 DJDAR 10234)

The Civil Discovery Act is not a substitute for the Public Records Act, nor an expansion of the information the Public Records Act entitles the public to demand of a public agency. A public entity was not required to produce explanatory information in response to Public Records Act requests.

FACTS/PROCEDURE

In May 2021, Western Resources Legal Center (Western) requested records from San Benito County (County) “about or related to” the “Strada Verde Project” including: copies of all Public Records Act requests sent by anyone concerning the Project; writings received by the County or sent by the County concerning the Project; writings concerning four individuals; writings concerning local procedures related to the County’s consideration of general plan amendment applications; and writings related to the potential offsite consequences resulting from events at the Trical, Inc. facility located in San Benito County.

The Strada Verde Project was a proposed development that was subject of a pending land use application at the time of the public records request and the filing of the complaint in this case. The County responded to Western’s request stating that it had produced all records responsive to the request, and that it would provide additional records on a specified date the following month, but it did not do so.

In October 2021, Western requested documents “concerning or discussing” a presentation titled “San Benito Public Records Reveal Deception and Misconduct” and investigations into the deception and misconduct. The County responded by stating that it anticipated providing nonexempt responsive records on a rolling basis beginning on November 19, 2021. County also asked Western to agree to the search terms it proposed for identifying responsive documents, but Western refused. As a result, County informed Western that it was unable to continue its search of responsive documents because Western did not reasonably describe the records it requested.

Western filed a first amended complaint in November 2021, seeking (1) a writ of mandate compelling the County to produce the documents Western had requested in two prior public records requests; and (2) a declaration that the County’s policies, practices, and procedures in responding to public records requests are unlawful. Western claims that the County is withholding responsive documents and delaying and avoiding compliance with its Public Records Act responsibilities of providing public access to information regarding development projects.

Within a month after the complaint was filed, Western propounded interrogatories and requests for production of documents under the Civil Discovery Act. Western made requests for production of documents that included a request for “all documents responsive to the [public records] request.” Western’s special interrogatories included the following: “Explain in detail what action, if any, was taken to investigate the misconduct alleged in the Presentation” (Special Interrogatory 6); and “If no action was taken by the County to investigate the misconduct alleged in the Presentation, please explain why not” (Special Interrogatory 7).

A few months later, Western filed motions to compel further responses to its interrogatories and requests for production. The County opposed the motions, and in a written order, the trial court found that the requested discovery was calculated to lead to the discovery of admissible evidence. The trial court granted Western’s motions requiring the County to provide verified, amended responses, without objection to the Special

Interrogatories and the Request for Production, as well as to produce all non-exempt records responsive to the Request for Production.

The County timely petitioned the court of appeals for writ of mandate. The court of appeals stayed the trial court's discovery order and issued an order to show cause why the petition should not be granted.

HOLDING/DISCUSSION

The California Court of Appeal for the Sixth Appellate District issued a remittitur directing the trial court to set aside its order granting the motion to compel and to issue a new order. The main issue in this case is whether the “narrow scope” of the issues to be determined in enforcement proceedings under the Public Records Act allows Western’s motion to compel 1) production of the same public records ultimately at issue in its enforcement proceeding, and 2) supplemental interrogatory responses with a new explanation of the County’s investigation of or failure to investigate the subject of the requested public records.

The Public Records Act “establishes a basic rule requiring disclosure of public records upon request. [Citation.] In general, it creates a ‘presumptive right of access to any record created or maintained by a public agency that relates in any way to the business of the public agency.’” (*Cnty. of San Benito v. Superior Ct. of San Benito Cnty.* (Cal. Ct. App. Oct. 10, 2023) 314 Cal.Rptr.3d 269, 276 citing *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616.) A public record is a writing with content relating to the conduct of the public’s business, which is prepared by or owned, used, or retained by any state or local agency. (*Cnty. of San Benito v. Superior Ct. of San Benito Cnty.* (Cal. Ct. App. Oct. 10, 2023) 314 Cal.Rptr.3d 269, 276.) An exemption to disclosure applies where “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.” (*Id.*)

Under the Public Records Act, unless an exemption applies, a state or local agency, by a request that reasonably describes an identifiable record or records, must make the records promptly available to any person after payment of a specified fee is made. (*Id.*) The Public Records Act includes a private enforcement mechanism: any person may initiate a proceeding for injunctive or declaratory relief, or for a writ or mandate, in any court of competent jurisdiction, to enforce that person’s right to inspect or receive a copy of public records. (*Id.* at p. 277.) The Civil Discovery Act applies to a proceeding to enforce the Public Records Act, as a special proceeding of a civil nature. (*Id.*) However, the general scope of discovery in Public Records Act proceedings remains limited by its relevance to the narrow issue: whether a public agency has an obligation to disclose records that the petitioner has requested. (*Id.*)

Here, the court of appeals found that most of Western’s discovery requests were properly within the narrow scope presented in an enforcement proceeding under the Public Records Act, but two types of requests were improper: 1) the request for production of the documents demanded by the initial public records request; and 2) interrogatories requesting the County to provide information that is beyond the scope of discovery relevant to the merits of a Public Records Act enforcement proceeding as a way to obtain information that is not discoverable under the Act.

Western’s requests for production of documents that included a request for “all documents responsive to the [public records] request” was improper because it compelled compliance with the Public Records Act by reframing its public-records request as a discovery request within the Civil Discovery Act. The nonexempt

documents requested were also not reasonably calculated to lead to the discovery of evidence admissible in the Public Records Act enforcement proceeding.

In regards to Western's Special Interrogatories 6 and 7, the court stated that compelling the County to give a detailed explanation of its investigation of allegations of misconduct goes beyond the limitations of pretrial discovery. Information about an investigation may be relevant to determine the public entity's effort to collect responsive documents, such as the identity of the individuals participating in the investigation, the time period of the investigation, and the means by which the participants communicated with each other. However, creating a detailed narrative of the investigation or an explanation as to why no investigation was conducted, exceeded the limits of a public records request and was not within the trial court's discretion. Special Interrogatory 7 did not ask for the process by which the County reached a substantive decision, but the reasons for the County's substantive decision. The court found that the subject matter of Special Interrogatory 7 was irrelevant because it involved requests of an investigation that never occurred.

Thus, the court held that the Civil Discovery Act, as a way of deciding the merits of a special proceeding under the Public Records Act, is not a substitute for the Public Records Act, nor an expansion of information the Public Records Act permits the public to demand of a public agency.

The appeals court then directed the trial court to set aside its order granting Western's motion to compel, and to issue a new order that 1) compels the County to provide only the identity of the individuals involved in the investigation, the time period during which the investigation was completed, and the means by which the individuals communicated with each other as to Special Interrogatory 6; 2) denies Western's motion to compel as to Request for Production 1; and 3) denies Western's motion to compel as to Special Interrogatory 7.