

CLIENT NEWS BRIEF

UPDATE: California Supreme Court rules against Local Agencies- Local Agencies Cannot Recover Costs of Redacting Video Footage under the Public Records Act

The California Supreme Court has reversed the judgment of the First District Court of Appeal in *National Lawyer Guild v. City of Hayward* (2018) 27 Cal.App.5th 937, holding that the California Public Records Act (CPRA) does not allow local agencies to charge requesters for the cost of redacting digital video footage. The Appellate Court had previously held that the City of Hayward was entitled to reimbursement of costs associated with redactions of exempt body camera footage it was producing in response to a CPRA request. (See [2019 Client News Brief No. 8](#).)

Supreme Court's Interpretation of Cost Recovery under the CPRA

Generally, the CPRA provides that local agencies may recover their direct costs for duplicating records produced to a requester in response to a CPRA request. But courts have held that costs of redactions are considered ancillary and therefore not recoverable. (See *Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1336.) The CPRA gets more technical when it comes to the production of electronic records. The provision of the CPRA addressed by the Supreme Court in this case provides that requesting parties shall bear the cost of producing a copy of the record. Specifically, that cost may be recovered where "[t]he request would require data compilation, extraction, or programming to produce the record." (Gov. Code § 6253.9, subd. (b)(2).)

Under this provision, the Court of Appeal had allowed the City of Hayward to recover its costs for redactions due to the ambiguous meaning of the term "extraction." It determined that removing or redacting exempt data from video footage was "extraction" under the CPRA. The Appellate Court found that the legislature's addition of the above referenced subdivision (b)(2) was meant to address the greater costs of redacting electronic records than that of paper records.

However, the California Supreme Court disagreed. The Court found that "data extraction" under the CPRA had a more technical meaning, referring to the process of retrieving data from data stores when it is required or necessary to produce a record. The Supreme Court found that neither the plain reading of the statute against the rest of the CPRA nor its legislative history support the City's position that redaction costs may be recovered. The Court held the Legislature's intentional use of the term "extraction" instead of "deletion" means that redactions do not constitute "data extractions" under the CPRA, and therefore requesting parties cannot be charged for those costs.

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Takeaways

Prior to this ruling, many local agencies shifted the cost burden of making redactions to audio and video footage to the requesting party. Following the Supreme Court finding that there is no real distinction between paper redactions and audio-visual redactions, local agencies and tax-payers are going to be fully responsible for the time, effort, and costs relating to producing non-exempt records to the public. It is likely that with redaction costs out of the equation, local agencies will soon experience a tremendous influx of new and renewed CPRA requests for audio and video records.

If you have any questions about the *National Lawyers Guild* decision or the California Public Records Act in general, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).