Purnell, Daniel

From: Marleen Sacks [redacted]
Sent: Thursday, October 01, 2009 9:23 PM
To: Purnell, Daniel
Subject: Fw: Public Records Request PRR 090192

----- Forwarded Message ----
From: Marleen Sacks <redacted>
To: "Morodomi, Mark" <MMorodomi@oaklandcityattorney.org>
Cc: David@donahue.com
Sent: Friday, September 25, 2009 12:46:39 PM
Subject: Re: Public Records Request PRR 090192

Mark:

The litigation exemption is inapplicable here. The litigation is over. Judgment has been entered. Moreover, the City itself argued "the litigation is over" defense as an argument against Mr. Stein's attorney's fees. The only purpose you could have for shielding the information I am requesting is to somehow prevent repayment of the full amount owed under the final judgment.

A. Applicable Law

The primary purpose of the pending litigation exemption is to prevent the litigant from using the PRA's disclosure provisions "'to accomplish earlier or greater access to records pertaining to pending litigation or tort claims than would otherwise be allowed under the rules of discovery . . . .' [Citation.]" (Roberts v. City of Palmdale (1993) 5 Cal.4th 363, 372.) As applied here, the litigation is over, and I am not seeking discovery.

Courts have repeatedly held that Section 6254's "exemptions are to be narrowly construed" and the government agency opposing disclosure bears the burden of proving that one or more apply in a particular case." (County of Los Angeles v. Superior Court (Axelrad) (2000) 82 Cal.App.4th 819, 825 (County of Los Angeles).) The federal Freedom of Information Act (5 U.S.C. § 552 et seq.) (FOIA), upon which the PRA was modeled, has similarly been interpreted as creating a liberal disclosure requirement, limited only by specific exemptions, which are also to be narrowly construed. (GC Micro Corp. v. Defense Logistics Agency (9th Cir. 1994) 33 F.3d 1109, 1112.)

Because of the narrow construction given to section 6254's exemptions, cases interpreting the section 6254(b) pending litigation exemption have, based upon the facts of those particular cases, given it a more restricted reading. Thus, "[a] document is protected from disclosure under the pending litigation exemption only if the document was specifically prepared for use in litigation." (County of Los Angeles, supra, 82 Cal.App.4th at p. 830, italics added.)

Other cases have further refined and narrowed the scope of documents protected from disclosure under section 6254(b). In Fairley, an individual filed a California PRA (CPRA) request seeking documents relating to his arrest. (Fairley v. Superior Court (1998) 66 Cal.App.4th 1414, 1417 (Fairley).) The trial court denied the petition, without prejudice. (Id. at p. 1419.) The requestor filed a writ petition, claiming that the records were not exempt under the CPRA. (Ibid.) The Fairley court held