

Bolting the Doors Can Be Costly: “Effective Denial of Access” Theory Affords CPRA Plaintiffs Attorney Fees

By Gena M. Stinnett*

I. INTRODUCTION

Most public agencies are aware of their duties under the California Public Records Act¹ (“CPRA”), and the risk that failure to comply could prove costly. Upon request, a public agency must disclose its records unless they are exempt from disclosure in accordance with law.² A person who believes access to public records has been improperly denied may initiate proceedings for injunctive relief, declarative relief, or a writ of mandate “to enforce his or her right to inspect or to receive a copy of any public record or class of public records” under the CPRA.³

If a plaintiff prevails in litigation filed to enforce his or her rights under the CPRA,⁴ the court must award court costs and reasonable attorney fees.⁵ In the past, a plaintiff has been deemed to prevail when the action “results” in a public agency releasing a record it previously withheld.⁶ Releasing a record after the action has been filed is not enough.⁷ The lawsuit must have “motivated” the public agency to disclose the record.⁸ Even the release of just one record can justify costs and fees under the CPRA if its release was motivated by the lawsuit.⁹ On the other hand, the mere release of records might not be enough for a requester to prevail if the records obtained as a result of the lawsuit were “minimal or insignificant.”¹⁰

A recent California Court of Appeal case, *Galbiso v. Orosi Public Utility District*,¹¹ departed from the threshold standard that a public agency must release a previously withheld record before costs and fees are awarded. In *Galbiso*, there was no showing that records requested before the action begun were released after the action commenced. Instead, the court awarded costs and fees under a general “denial of access” theory,¹² because the agency had refused the plaintiff’s request to

inspect records at its premises and insisted she make her request in writing. Thus, *Galbiso* has broadened the scope of cases that will qualify for attorney fees under the CPRA.

Galbiso serves as a warning that failure to honor the basic policy of open access to public records may result in an award of attorney fees to the successful plaintiff. Additionally, plaintiffs are finding new tools with which to attack an agency’s CPRA policies and procedures. For example, a taxpayer action is being used to attack various agencies over their public record policies.¹³

Public agencies, however, have it within their power to prevent an adverse outcome. Good faith attempts to assist requesters with their requests will continue to provide the best defense.¹⁴ Further, reasonable regulations designed to protect the agency’s records and maintain orderly function of the agency’s offices from undue and direct interference continue to be permissible, so long as they are not “any broader than is strictly essential to prevent inefficiency or chaos in public offices.”¹⁵

II. THE CASE OF *GALBISO V. OROSI PUBLIC UTILITY DISTRICT*

A. BACKGROUND

Behind the CPRA issues in *Galbiso* was a long running dispute between a public utility district (the “District”) and a property owner over sewer hookup assessments.¹⁶ During the pendency of that dispute, the property owner attempted to inspect the District’s records relating to her land and the disputed assessments. The District claimed she was disruptive and asked her to leave on several occasions without allowing her to inspect the

records.¹⁷ The District then sent a letter to her attorney, instructing the attorney to make any further CPRA requests in writing, which the District would honor if disclosure was not exempt under the CPRA.¹⁸ After receiving the letter, the property owner sought an injunction to prohibit the District from interfering with her right to inspect and copy its public records.¹⁹

B. TRIAL COURT DENIES ATTORNEY FEES

The trial court granted a preliminary injunction. Prior to trial on the merits, the parties entered into a settlement agreement.²⁰ In the agreement, the District agreed to abide by the CPRA, but admitted no wrongdoing. The issue of attorney fees was not resolved in the settlement. The District argued the property owner was not the prevailing party because she had merely succeeded in obtaining its agreement to follow the law, which it claimed to have been doing all along.

The trial court held that the District violated the CPRA in two respects. First, the CPRA was violated when the District refused to allow the property owner access to its offices to inspect public records. The second violation occurred when the District told the property owner she must make her requests in writing. Oral requests are permissible under the CPRA and must be honored by a public agency.²¹

Notwithstanding the District’s violation of the CPRA, the trial court did not award attorney fees to the property owner. Section 6259²² of the CPRA provides that “[t]he court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to *this section*.”²³ Section 6259 is limited to situations where records “are being improperly withheld from a

member of the public” and judicial determination is sought to decide whether disclosure is required. Even though the property owner was denied access to inspect all records when she was turned away and forced to make her request in writing – and a preliminary injunction was granted to stop the improper denial of access – the trial court concluded her lawsuit did not qualify for attorney fees. The lawsuit had not alleged that any particular record was withheld.

C. COURT OF APPEAL AWARDS ATTORNEY FEES ON “DENIAL OF ACCESS” THEORY

The Court of Appeal disagreed with the trial court, finding that an award of attorney fees was appropriate based on the “highly unique circumstances” in the case.²⁴ The trial court impliedly found the property owner was not ejected for being disruptive.²⁵ Having found no basis for the District’s refusal to allow inspection at the agency’s office, the Court of Appeal found substantial evidence supported the trial court’s finding that the property owner was the prevailing party under a “denial of access theory.”²⁶

The Court of Appeal then concluded that Section 6259 is broad enough to encompass an award of attorney fees when a public agency “effectively den[ies] access to all public records” and the requester sues to correct the problem.²⁷ The plaintiff did not have to demonstrate that the District was required to release specific records. The District’s refusal to allow access for inspection and its refusal to honor oral requests improperly withheld all public records from her.

In reaching its conclusion, the court reasoned it would be an “absurd result” to award attorney’s fees in cases where only one document was provided, but deny attorney fees if the District completely barred access to inspect public records.²⁸ The court recognized it was making an analytical leap to fill a gap in the law in order to provide the plaintiff with attorney fees. The District denied the plaintiff her right to inspect records at its office, undermining a fundamental provision of the CPRA, and she sued to regain that right. The court believed an award of attorney fees under these facts was consistent with the “overall remedial purposes of the Public Records Act to broaden access to public records.”²⁹ The purpose of

awarding attorney fees is to encourage the public to seek judicial intervention to vindicate its right of inspection.

III. STATE LAW PROVIDES MULTIPLE TOOLS FOR CHALLENGING PUBLIC RECORD POLICIES AND PRACTICES

Galbiso stands for the proposition that where a public agency effectively denies access to all records, that denial of access may result in an award of attorney fees even though no documents are ultimately produced. Gone is the threshold requirement that specific records were improperly withheld. It is likely the holding in *Galbiso* will open the doors for plaintiffs to challenge policies and practices adopted by agencies. While not all of those lawsuits will be successful, plaintiffs will be encouraged to challenge policies and practices they view as procedural roadblocks to public record access.

Even without *Galbiso*’s broad interpretation of Section 6259, CPRA plaintiffs are becoming more sophisticated in using other tools to attack the administration of public record requests. Taxpayer actions brought under Section 526a of the Code of Civil Procedure are being used to challenge procedures and policies taxpayers claim are illegal under the CPRA. A taxpayer action allows a citizen who is a resident and a taxpayer to bring suit “restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state.”³⁰ A recent appellate court decision, *County of Santa Clara v. Superior Court (“Naymark”)*,³¹ upheld the right of plaintiffs to bring such an action in the public records context.

In *Naymark*, the Court of Appeal acknowledged that Section 6259 was the “exclusive remedy for resolving whether a public entity has erroneously refused to disclose a particular record or class of records.”³² The court went on to conclude, however, that the CPRA does not limit or prohibit other “legal action ‘concerning’ public records” so long as an allegation is not being made that a particular record or class of records was improperly withheld.³³ The court reasoned that the “purpose of the CPRA is furthered, not obstructed” by such taxpayer suits.³⁴

The plaintiff had alleged that the following policies and practices were illegal acts:³⁵

- Requiring identification before permitting inspection or copying of records
- Requiring the requester to state the reason the records were sought
- Charging for research and other illegal fees
- Requiring the requester to purchase copies of records in order to inspect them
- Failing to respond in a timely fashion (or at all) to public record requests
- Refusing to accept requests for public records
- Refusing to release records upon request

These allegations did not involve a dispute over a particular record or class of records, and thus were permissibly brought under a taxpayer action. The defendant’s demurrer was denied and the temporary stay was lifted, allowing the case to proceed on its merits in superior court.

A successful plaintiff in a taxpayer action may receive an award of attorney fees, depending upon the facts and circumstances.³⁶ Generally, in the American system, each party pays for their own litigation costs unless a specific statute provides otherwise.³⁷ When a plaintiff has successfully enforced “an important right affecting the public interest,” however, the plaintiff can move for an award of attorney fees under the private attorney general theory.³⁸ The private attorney general theory applies broadly to any important right affecting the public interest. Consequently, a successful plaintiff who enforces an important CPRA right in the form of a taxpayer action could conceivably receive attorney fees.³⁹

IV. PROTECTING YOUR AGENCY IN LIGHT OF GALBISO AND NAYMARK

For those advising public agencies on CPRA issues, a conservative approach to public record requests continues to be the best approach. Given the uncertainty over how far an agency can go without being on the losing end of an attorney fees issue, *Galbiso* and

Naymark are warning bells that failure to honor the important rights guaranteed by the CPRA could result in an award of attorney fees even if a specific record is not withheld. Although those cases raise some disturbing possibilities, agencies are not without ways to protect themselves.

A. AGENCY’S GOOD FAITH ATTEMPT TO ABIDE BY CPRA APPEARS TO INFLUENCE COURTS

In *Galbiso*, the District appeared to have unclean hands and the court stretched to find a rationale to justify recovery of the plaintiff’s attorney fees. *Galbiso* does not, however, change the fundamental rule guiding an award of attorney fees under Section 6259 of the CPRA: The litigation must be the motivating factor behind the agency’s ultimate compliance with the Act for plaintiff to prevail.

Although courts do not apply a “good faith” test⁴⁰ to determine whether a deviation from the CPRA’s requirements is excusable, courts have been willing to overlook deviations where the public agency’s failure to comply was not willful, but rather arose out of administrative errors or reasonable delays. A showing of administrative difficulties may suggest to a court that disclosure would “ultimately have occurred” without recourse to a lawsuit.⁴¹ Consequently, an award of attorney fees will not automatically result even when records are produced after litigation is filed.

Even mistakes made in the original search for records that are not discovered until after a lawsuit is filed have been excused. Where public agency personnel produced e-mails at a deposition that had not been produced in response to a CPRA request, the court nevertheless found it “insubstantial evidence of a failure to timely produce available documents.”⁴² In that situation, the agency representative had a habit of deleting e-mails and believed she had not retained any. Later, it was discovered that her laptop computer was saving some of the e-mails. No attorney fees were awarded based upon that mistake.

It is difficult to read these cases⁴³ and not conclude that a “good faith” standard applies, notwithstanding explicit judicial comments to the contrary. On a practical level, it appears

that courts are influenced by their perception of the public agency’s actions. If an agency appears to be cooperating with a requester in an effort to fulfill a request, courts seem more inclined to excuse errors or delays. But where the agency appears resistant, and creates roadblocks that interfere with its obligations to comply with its duties under the CPRA, or appears to be hiding from public oversight, courts are less forgiving.

B. PUBLIC AGENCIES MAY ESTABLISH REASONABLE RULES FOR RESPONDING TO CPRA REQUESTS

Galbiso did not alter a public agency’s authority to establish reasonable rules to manage the process of responding to public record requests. Both *Galbiso* and *Naymark*, however, raise the specter that impermissible rules may

result in an award of attorney fees. Attorneys who advise public agencies must know the contours of permissible rules in light of the potential ramifications of *Galbiso* and *Naymark*.

1. The Purpose of Permitted of Rules

The right of access to public records is “not absolute.”⁴⁴ Instead, an “implied rule of reason” applies to requests made under the CPRA.⁴⁵ Public agencies are permitted to adopt regulations that serve any of three basic purposes:⁴⁶

- Safeguard the records from accidental or intentional damage
- Safeguard the records from theft
- Maintain orderly function of the agency’s offices from undue and direct interference


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Even though a rule may temporarily interfere with a requester's access to public records, the rule might not constitute a general "denial of access" when it is necessary to achieve these purposes.

Considerations that might trump a requester's immediate access to inspect nonexempt public records include (1) the records are needed by agency staff, (2) other members of the public occupy the space set aside for public record inspections, (3) the agency has a valid basis to fear damage or theft of the records and immediate supervision is not possible, or (4) an individual is monopolizing the records to the detriment of either the agency that needs to use the records or other members of the public who wish to inspect the records.⁴⁷

Rules requiring reasonable supervision during inspection of public records have found favor with the courts.⁴⁸ Inspection can be denied when staff is not available to supervise original records in a manner to ensure the records are not tampered with, destroyed or stolen. On the other hand, the rule must be reasonably applied, and cannot be used as a means to undermine record inspections. Efforts to accommodate spontaneous requests for inspection of nonexempt records are always advisable. When that is not possible, scheduling an appointment for the requester to return and inspect the records may be an alternative method to show the agency's reasonableness.

Additionally, a public agency is permitted to adopt rules to improve the public's access to its records. Those rules may "allow for faster, more efficient, or greater access to records than prescribed by the minimum standards" in the CPRA, provided those rules are not otherwise prohibited by law.⁴⁹ Many public agencies have moved towards putting frequently requested records on their website to facilitate greater access.

2. Scope of Reasonable Rules Is Limited

A tension exists between the requester's right of access and the public agency's need to safeguard records and prevent administrative chaos. The rules adopted by an agency may not alter or contradict the basic obligations imposed upon agencies under the CPRA. Further, they must not be "any broader than is

strictly essential to prevent inefficiency or chaos in public offices."⁵⁰

A public agency cannot require a public records requester to put his or her request in writing. A permissible rule, on the other hand, may be to offer the individual making an oral request a form designed for public record requests and encourage the requester to put the request in writing. Written requests are less subject to misunderstanding than oral requests. Staff should clearly understand, however, that a requester may refuse to use the form offered. In that case, it may be advisable for staff to complete the form on behalf of the requester.

3. Dealing with Disruptive Requesters

It is impermissible for a public agency to restrict access to public records because the requester's purpose is upsetting or because release of the information might increase the agency's workload.⁵¹ As highlighted by *Galbiso*, denial of access cannot be based upon the agency's reaction to the requester's purpose or because the requester and agency are adverse in litigation.⁵²

A public agency may, however, adopt regulations for dealing with disruptive or verbally abusive requesters. Some options to consider include diffusing the situation, if possible, by providing access to the records. If that is not possible, staff should be instructed to write down the request being made before asking the person to leave, and then follow the requirements of the CPRA by responding to the request within 10 days with the agency's determination.

Documenting the problem is also an essential part of any policy dealing with disruptive requesters. The nature of the disruption, what was said, and why the person's request could not be complied with immediately should be documented in detail. An additional option might be to give the difficult person an appointment time to return to meet with a department manager to discuss the matter. An hour of staff time is a cost effective alternative to litigation.

Training is also an important component of any CPRA policy. Public agency staff who are in a position to receive records requests need to understand the agency's obligations under

the CPRA. And staff members who work at agency counters and interact with the public will benefit from basic customer service training on how to diffuse situations, as well as CPRA training.

V. CONCLUSION

Galbiso serves as a cautionary tale for all public lawyers. The battle over attorney fees has shifted, and will now include instances where a public agency effectively denies all access to public records. Further, *Naymark* opens the door for new forms of lawsuits over public record procedures adopted by public agencies.

It is clear courts expect public agencies to abide by the spirit of the CPRA as well as the letter of the law. Shutting the agency's doors against a requester because the agency finds the requester abrasive or annoying will not be tolerated. While an agency may take necessary steps to prevent interference with its functions, providing access to its records is one of the agency's functions. Any restrictions on the right to inspect records must either be justified by an established exemption under the CPRA, or else narrowly constructed to prevent inefficiencies and chaos in the agency's office while being consistent with the policy and purpose behind the CPRA. Agencies that fail to heed the warnings provided by *Galbiso* and *Naymark* may find the results costly.

ENDNOTES

1. Gov't Code § 6250 et seq.
2. Gov't Code § 6253(a), (b).
3. Gov't Code § 6258.
4. Gov't Code § 6259.
5. Gov't Code § 6259(d).
6. *Belth v. Garamendi* (1991) 232 Cal. App. 3d 896, 898.

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9. See Cal. Welf. & Inst. Code § 391 (Deering 2006).
10. See Cal. Welf. & Inst. Code § 391; see also Bussiere et al., *supra* note 1 at 163.
11. See Cal. Welf. & Inst. Code § 391; see also *In re Tamika C.*, 131 Cal. App. 4th 1153, 1168 (2005), discussed *infra*, and Children's Advocacy Institute, *supra* note 2 at 9.
12. See Administrative Office of the Courts: Center for Families, Children & the Courts, *supra* note 4 at 6-8.
13. See, e.g., Bussiere et al., *supra* note 1 at 159. See also Alice Bussiere, *Permanence for Older Foster Youth*, 44 Fam. Ct. Rev. 231, 232 (April 2006).
14. See Howard Davidson (ed.), Jane Kim, and Kevin Sobczyk, American Bar Association Center on Children and the Law, *Continuing Court Jurisdiction in Support of 18 to 21 Year-Old Foster Youth*, available at http://www.abanet.org/child/youthtransitioning/court_jurisdiction.doc.
15. See Bussiere, *supra* note 14 at 232.
16. Jennifer Pokempner and Lourdes M. Rosado, *Dependent Youth Aging Out of Foster Care in Pennsylvania: A Judicial Guide* (2003).
17. Children's Advocacy Institute, *supra* note 2 at 7.
18. Children's Advocacy Institute, *supra* note 2 at 5-6.
19. See, e.g., Children's Advocacy Institute, *supra* note 2 at 2, 7; Bussiere, *supra* note 20 at 232; Keely A. Magyar, *Betwixt and Between but Being Booted Nonetheless: A Developmental Perspective on Aging Out of Foster Care*, 79 Temp. L. Rev. 557 (Summer 2006).
20. See generally Magyar, *supra* note 20 at 573-77.
21. See Magyar, *supra* note 20 at 559.
22. Children's Advocacy Institute, *supra* note 2 at ii-iii, 2.
23. Children's Advocacy Institute, *supra* note 2 at iii.
24. Howard Davidson et al., *supra* note 15 at 1.
25. Howard Davidson et al., *supra* note 15 at 1, 5, 22.
26. See Nicolina Friedman, Ethell Anderson, Lucy Hernandez, Fred Linderman, and Dorothy M. Schneider, Los Angeles County Civil Grand Jury Investigate Committee, Los Angeles County Civil Grand Jury Final Report (2007-2008) at 18-21, 28-30.
27. See Cal. Welf. & Inst. Code § 391.
28. Cal. Welf. & Inst. Code §§ 290.1- 290.2 (Deering 2006).
29. Cal. Welf. & Inst. Code § 391.
30. Cal. Welf. & Inst. Code § 366 (Deering 2006).
31. Cal. Welf. & Inst. Code § 11403.
32. Stats. 2003 ch.813 § 12 (AB 408) (2003), codified at Cal. Welf. & Inst. Code §16500.1(b)(11) (Deering 2006).
33. See Howard Davidson et al., *supra* note 15 at 3.
34. See Howard Davidson et al., *supra* note 15 at 12.
35. See Howard Davidson et al., *supra* note 15 at 2.
36. See AB 3051, 2007-2008 Leg. Sess. (Cal. 2008), available at http://www.bayareanewsgroup.com/multimedia/mn/news/assemblybill_3051.pdf. For more information about the proposed bill, see also Karen de Sá, *Bill would strength kids' voices in foster care court*, MERCURY NEWS, March 7, 2008, http://www.mercurynews.com/ci_8486519%20&csid=0. The problems that arise when children are not present at these hearings are further discussed in Karen de Sá, *Broken Families: Broken Courts: Part III: Big stakes, but little voice for kids*, MERCURY NEWS, February 12, 2008, http://www.mercurynews.com/dependency/ci_8237949.
37. See California Youth Connection, *Conference Policy Report: Juvenile Justice* (2007) at 4.
38. See Children's Advocacy Institute, *supra* note 2 at viii, and Howard Davidson et al., *supra* note 15 at 1.
39. See 131 Cal. App. 4th 1153 (2005).
40. See Cal. Welf. & Inst. Code § 391(c). See also Cal. Welf. & Inst. Code § 11403; Children's Advocacy Institute, *supra* note 2 at i.
41. *Tamika C.*, 131 Cal. App. 4th at 1161.
42. See 383 U.S. 541, 546 (1966).
43. See *Kent*, 383 U.S. at 548.
44. See *Kent*, 383 U.S. at 553, 556.
45. See *Kent*, 383 U.S. at 553.
46. See *Kent*, 383 U.S. at 553-54, 565-66.
47. See *Kent*, 383 U.S. at 554-55.
48. See *Kent*, 383 U.S. at 554-55.
49. See *Kent*, 383 U.S. at 562.

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7. Courts have denied costs and fees even though records were released after an action began. In those cases, “substantial evidence supported a finding that the ‘litigation was **not** the cause’” of the disclosure. *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal. App. 4th 1381, 1391 [hereinafter *Los Angeles Times*].
8. *Rogers v. Superior Court* (1993) 19 Cal. App. 4th 469, 482; *Motorola Communication & Electronics, Inc. v. Department of General Services* (1997) 55 Cal. App. 4th 1340, 1344-1345.
9. *Los Angeles Times*, 88 Cal. App. 4th at 1390-1391.
10. *Id.* at 1392.
11. (2008) 167 Cal. App. 4th 1063 [hereinafter *Galbiso*].
12. *Id.* at 1087.
13. *County of Santa Clara v. Superior Court* (2009) 171 Cal. App. 4th 119.
14. See, *infra*, Section IV.A.
15. *Bruce v. Gregory* (1967) 65 Cal. 2d 666, 677; see, *infra*, Section IV.B.
16. *Galbiso*, 167 Cal. App. 4th at 1069.
17. *Id.* at 1085.
18. *Id.* at 1086. In a prior letter, the District documented that the property owner had been “argumentative and disruptive” when she appeared at the District’s offices. The

- letter also instructed the attorney to use litigation discovery to obtain the information sought, but the District changed its position in a subsequent letter before the property owner filed her lawsuit.
19. *Id.* at 1071.
 20. The plaintiff also alleged the agency violated the Ralph M. Brown Act, Gov't Code Section 54950 et seq. *Id.* at 1075-1084. The settlement agreement covered the alleged Brown Act violations as well as the Public Records Act issues. Whether attorney fees should be awarded under the Brown Act was also left for the trial court to decide, which denied an award of fees. The Court of Appeal also found the Brown Act violations justified an award of attorney fees to the plaintiff.
 21. See *Los Angeles Times*, 88 Cal. App. 4th at 1392.
 22. All section references are to the California Government Code unless otherwise indicated.
 23. Gov't Code § 6259(d) (emphasis added).
 24. *Galbiso* at 1089.
 25. *Id.* at 1087n.13.
 26. *Id.* at 1087.
 27. *Id.*
 28. *Id.* at 1088.
 29. *Galbiso* at 1088.
 30. Code Civ. Proc. § 526a.
 31. *County of Santa Clara v. Superior Court* (2009) 171 Cal. App. 4th 119 [hereinafter *Naymark*] (Janice Naymark is the real party in interest).
 32. *Id.* at 129 (emphasis added).
 33. *Id.* at 130.
 34. *Id.* (emphasis in the original).
 35. *Id.* at 131.
 36. See *Serrano v. Priest* (1977) 20 Cal. 3d 25. - *Serrano v. Priest* articulated three theories under which a successful party could recover attorney fees even though no statute explicitly provided recovery. These included "common fund," "substantial benefit," and "private attorney general theory." Subsequent to the case, the legislature codified the private attorney general theory at Section 1021.5 of the Code of Civil Procedure.
 37. *Id.* at 34; Code Civ. Proc. § 1021.
 38. Code Civ. Proc. § 1021.5.
 39. See *Vasquez v. State* (2008) 45 Cal. 4th 243 (where plaintiff was successful in a taxpayer action forcing payment of prevailing wages to state prison inmates, attorney fees were awarded under private attorney general theory). Under Section 1021.5 of the Code of Civil Procedure, the successful party must further demonstrate that "(a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."
 40. See *Motorola Communication & Electronics, Inc. v. Department of General Services* (1997) 55 Cal. App. 4th 1340, 1345-1346 [hereinafter *Motorola Communication*] (production of records would have ultimately occurred without lawsuit; administration difficulties and ambiguous request caused delay; see also *Rogers v. Superior Court* (2 Dist. 1993) 19 Cal. App. 4th 469, 482-483 (voluminous request justified six month delay in providing all responsive records; attorney fees not justified as search for records was begun before lawsuit was filed and would have been produced without legal action). Federal cases under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, have included "a good faith effort to discover and disclose material" as a factor that may be considered in determining whether a plaintiff did not prevail in a FOIA action. *Alliance for Responsible CFC Policy, Inc. v. Costle* (D.D.C. 1986) 631 F. Supp. 1469, 1470.
 41. *Motorola Communication*, 55 Cal. App. 4th at 1346.
 42. *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District* (2006) 139 Cal. App. 4th 1356, 1411.
 43. See, *supra*, note 40 and 42.
 44. *Bruce v. Gregory* (1967) 65 Cal. 2d 666, 676 (interpreting CPRA predecessor provisions, Section 1892 of the Code of Civil Procedure and Section 1227 of the Government Code); *Rosenthal v. Hansen* (3 Dist. 1973) 34 Cal. App. 3d 754, 761 (applying the analysis found in *Bruce v. Gregory* to the CPRA).
 45. *Id.*
 46. *Id.*
 47. *Bruce v. Gregory*, 65 Cal. 2d at 678.
 48. *Id.* at 675-676.
 49. Gov't Code § 6253(e).
 50. *Bruce v. Gregory*, 65 Cal. 2d at 677.
 51. *Id.* at 678.
 52. See Gov't Code § 6257.5.