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**VIA ELECTRONIC MAIL**

Sheri L. Damon, Esq.  
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Re: Public Records Request for Claim under Government Claims Act

Dear Ms. Damon:

I write on behalf of the First Amendment Coalition, a nonprofit organization dedicated to defending freedom of speech, freedom of the press, and the people's right to know. I understand the City of Seaside has denied a public records request for a claim submitted to the City under the Government Claims Act. This letter explains why the City's denial is mistaken and the claim and any attachments must be disclosed immediately.

As you know, the California Public Records Act ("CPRA") contains an exemption for "[r]ecords pertaining to pending litigation to which the public agency is a party, until the pending litigation has been finally adjudicated or otherwise settled" and "[r]ecords pertaining to a claim made" under the Government Claims Act "until the pending claim has been finally adjudicated or otherwise settled." Govt. Code § 7927.200 (formerly § 6254(b)).

This exemption does not authorize withholding records simply because they might be relevant to potential or pending litigation. Instead, it covers only documents "specifically prepared for use in litigation" by the agency itself. *Board of Trustees of California State University v. Superior Court*, 132 Cal. App. 4th 889, 897 (2005).

In particular, the pending litigation exemption does not cover claims submitted under the Government Claims Act. *Poway Unified Sch. Dist. v. Superior Court*, 62 Cal. App. 4th 1496, 1502–05 (1998). As the court noted, such claims are subject to public inspection under the Brown Act. *Id.* at 1503; see also Govt. Code § 54956.9(e)(3). Harmonizing the CPRA and Brown Act, the court held that the relevant Brown Act provision "simply announces the preexisting status of the Claims Act claim itself as a disclosable public record." *Poway Unified Sch. Dist.*, 62 Cal. App. 4th at 1504.

The court also explained that the legislative history of the pending litigation exemption "demonstrates an intent to protect only documents created by the public entity." *Id.* The exemption "was primarily designed to prevent a litigant opposing the government from using the [Public] Records Act'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.” *Id.* (quoting *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 372 (1993)). However, “[t]here is no unfair disadvantage to the public entity from disclosure” of the claim itself, because the claim is already available to the entity’s adversary, and therefore such a claim “does not fall within the exemption of section 6254, subdivision (b),” now codified at section 7927.200. *Id.* at 1505.

For all these reasons, a claim and attachments submitted under the Government Claims Act are not covered by the pending litigation exemption and must be disclosed on request, perhaps with limited redactions for certain private information such as social security numbers if necessary. Please note, however, that one who submits a claim to a public agency does not have cognizable privacy interests in the substance of the claim or any attachments. See *Register Div. of Freedom Newspapers v. County of Orange*, 158 Cal. App. 3d 893, 902 (1984) (“By making his personal injury claim, Clemens placed his alleged physical injuries, and medical records substantiating the same, in issue. Furthermore, by voluntarily submitting these records to the County for the purpose of reaching a settlement on his claim, Clemens tacitly *waived* any expectation of privacy regarding these medical records.”).

Thank you for your time and attention. Please let me know if you have any questions.

Sincerely,

FIRST AMENDMENT COALITION



David Loy  
Legal Director