



Certified Payroll Records and Public Records Act Requests...

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Why are we talking about this?

- ▶ Many of you have been contacted by an association called “Northern California Fire Protection Compliance Group LMC”
- ▶ They claim to be a “joint labor-management organization” and have made Public Records Act requests regarding regulation of fire sprinkler systems
- ▶ First, they ask for the name and phone number of whomever at the District is responsible for contracting
- ▶ Then, they ask for contracts, inspection records, and certified payroll records

What is the Public Records Act?

- ▶ A constitutional right of access to public records
- ▶ Purpose and scope - to provide the public access to information concerning the conduct of the people's business
- ▶ A public record is any "writing" containing information relating to conduct of the public's business prepared, owned, used or retained by any local agency, regardless of physical form
- ▶ Contracts and inspection records are public records

What is not a public record?

- ▶ Privileged -- attorney client, doctor patient, pending litigation records
- ▶ Preliminary drafts, notes, agency memos not kept in ordinary course of business. Need for secrecy must outweigh interest in disclosure.
- ▶ Personnel, medical or similar files if it would invade personal privacy
- ▶ Law enforcement investigation records
- ▶ Where interests are balanced and need for secrecy outweighs need for disclosure

What do you do if you get a PRA request for contracts or inspection records, etc.?

- ▶ Don't ignore it!
- ▶ You should probably route it to the business office
- ▶ Need to respond within 10 days to say whether you have any responsive records and when you expect to be able to provide them. You don't have to actually produce the records within the 10-day response timeframe
- ▶ You should evaluate whether any of the requested records are exempt from disclosure. If not, you should arrange to have them copied
- ▶ You can charge per page for the copies, so keep track of how many you make
- ▶ You can't charge for staff time

What are certified payroll records?

- ▶ Per Cal. Labor Code § 1776, each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- ▶ Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury

What's the deal with certified payroll records?

- ▶ Contractors and subcontractors on most Public Works projects are required to submit certified payroll records (CPRs) to the Labor Commissioner using the DIR's electronic certified payroll reporting system.
- ▶ As the awarding body, the district must ensure its public works contracts contain stipulations to effectuate the certified payroll requirements.

What is the public's right to access certified payroll records?

- ▶ A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof.
- ▶ A request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement.
- ▶ If the request is made to the awarding body (i.e., the district), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made.
- ▶ Also, if the public requests the CPRs, then they must be marked or obliterated to prevent disclosure of an individual's name, address, and SSN.
 - ▶ The name and address of the contractor/sub awarded the contract can't be redacted.

What is a joint labor-management committee?

- ▶ It's an arcane type of union trust authorized by the obscure Labor-Management Cooperation Act of 1978, a law signed by President Jimmy Carter and implemented by the Federal Mediation and Conciliation Service.
- ▶ Inspired by the decline of unionized manufacturing in the Northeast, this federal law was meant to help industrial management and union officials build better personal relationships and cooperate against the threat of outside competition.
- ▶ There are no federal or state regulations specifically addressed toward these committees, and they do not have any reporting requirements to the U.S. Department of Labor's Office of Labor-Management Standards.

What can a joint labor-management committee do?

- ▶ A joint labor-management committee, established pursuant to a specified provision of federal law, is authorized to bring an action against any employer who fails to pay prevailing wages as required by state law. The action is required to be commenced not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work, or some part thereof, was performed, or not later than 18 months after acceptance of the public work, whichever occurs last.

So what is the Northern California Fire Protection Compliance Group all about?

- ▶ Their website states that their “primary goal is to ensure that that all contractors have an equal opportunity to bid on fire sprinkler public projects and enforce the federal and state labor codes throughout Public Works projects that occur in the nine counties that comprise the Bay area.”
- ▶ This group is not involved in the DSA process for inspection of school construction, nor are they part of the testing and maintenance process.
- ▶ Education Code section 17074.52 sets forth the requirements for fire detection, alarms and sprinkler systems, and it states that the entire system shall be installed, tested, and maintained in accordance with the regulations of the State Fire Marshal. Per the Office of the State Fire Marshal, this group does not play any official role in fire safety inspections, etc.

Certified payroll records and joint labor-management committees

- ▶ Any copy of payroll records made available for inspection by, or furnished to, a joint labor-management committee, established pursuant to federal law, is required to be marked or obliterated only to prevent disclosure of an individual's social security number.
 - ▶ So they get to review names and addresses for workers associated with payroll records for prevailing wage projects.
 - ▶ Apparently, the idea was that this will serve as a deterrent for unfair practices and prevents employers from hiding behind redacted CPRs, which made it harder to identify workers on a project.

Recommendations

- ▶ Make sure your public works contracts include language requiring contractors and subs to abide by certified payroll record requirements
- ▶ Check the DIR website to make sure your contractors have uploaded the certified payroll records for their projects
 - ▶ <https://efiling.dir.ca.gov/eCPR/pages/search.action>
- ▶ Refer the Northern California Fire Protection Compliance Group to the DIR website for certified payroll records

Recommendations

- ▶ If they demand unredacted copies of CPRs, (except for SSNs, which must still be obliterated), then require them to provide proof that they are a joint labor-management committee properly established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a)
 - ▶ From a risk management standpoint, we wouldn't want to provide workers' names and addresses without confirming that this group is legally entitled to that information.
- ▶ If they can establish their status as a joint labor-management committee that is entitled to receive worker names and addresses from certified payroll records, you probably have to provide these records.
 - ▶ Note that Labor Code section 1776(b)(3) states: "... the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made." Be sure to keep track of the costs incurred to respond to these requests and to receive reimbursement prior to handing over the certified payroll records, and be sure they are redacted to obliterate workers' SSNs.