



CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION
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March 8, 2011

Honorable Lou Correa
California State Senate
Room #5052
Sacramento, CA 95814

RE: Support SB 46 – Disclosure of public officials' compensation

Dear Sen. Correa:

The California Newspaper Publishers Association is pleased to support your SB 46, which would require certain public officials to annually file a compensation disclosure form that provides compensation information from the prior year. SB 46 would require every compensation form to be open for public inspection and copying and would require agencies with Internet web sites to post the information contained on the disclosure form and the agency's written policy for the reimbursement of expenses, if applicable.

SB 46 would require officials to disclose the public agency's cost for the public official's annual salary or stipend; the agency's cost to provide benefits to the public official, including but not limited to, deferred compensation or defined benefit plans; the agency's expense reimbursement payments to the public official; the agency's cost to provide the public official with any other monetary or non-monetary perquisites; and, the date on which the official completed ethics training required by law, if applicable.

Californians like their Sunshine. In 2004 nearly 83 percent of voters approved Prop 59 – the Constitutional Sunshine Amendment – to enshrine in the state Constitution these eloquent words: *The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.* The amendment requires laws that enhance public access to be liberally construed and laws that restrict public access to be narrowly construed.

Public pay is the public's business. It is that simple. That is the law today. This notion, however, that the public has the right to control the institutions it has created by understanding the exact and complete compensation paid each and every identified public employee, is one that was not completely and finally settled until only a short time ago when the *Contra Costa Times*, backed by amicus curiae CNPA and many of its member newspapers, prosecuted a case seeking public access to public employee compensation all the way to the California Supreme Court. On August 27, 2007, the Supreme Court filed its opinion in the case of *International Federation of Professional and Technical*

Engineers, Local 21 v. Sup.Ct. of Alameda County (IFPTE v. Sup. Ct.) 42 Cal. 4th 319 (2007).

In the case, the *Contra Costa Times* made a request of the City of Oakland for the names and salaries of all of its employees whose annual salary exceeded \$100,000. The city said no, the *Times* sued, and deciding the case under the California Public Records Act, both the trial court and appellate court held the Act required disclosure of public employee salaries. The Supreme Court in *IFPTE* affirmed once and for all the public's right of access to the gross salaries of identified public employees. While the decision ruled on the limited facts – salaries of high-earning public employees – the principles established in the case have been universally interpreted to apply to the salaries of all public employees. The only potential exception to public disclosure to the names and salaries of public employees, the court said, was the possible nondisclosure of an undercover law enforcement officer's name in connection with his or her salary, if, on the facts of the particular case, disclosure of the name would place the officer in jeopardy.

The court said: "The salary information sought by the newspapers in the present case . . . is not private information that happens to be collected in the records of a public entity. Rather, it is information regarding an aspect of government operations, the disclosure of which contributes to the public's understanding and oversight of those operations by allowing interested parties to monitor the expenditure of public funds. The disclosure of such information under the Act does not violate the right of privacy protected by the California Constitution."

Until *IFPTE*, the law had developed slowly. For top level public employees that serve the public pursuant to an individual written contract, the law has long held that that contract is required to be disclosed (Govt. Code Sec. 6254.8).

In the 1980s and 1990s several newspapers initiated litigation to compel the release of exact compensation data for identified public employees under the California Public Records Act (CPRA). Enacted in 1968, the Act presumes all records held by state and local agencies, with the exception of the courts and legislature, are accessible to the public upon request. The law creates specific exemptions from disclosure, and both case law and the state constitution require those exemptions to be narrowly construed.

In every case in which the newspapers sought public employee salary information, public agencies like the cities of Visalia, Huntington Beach and Santa Rosa, denied disclosure, arguing the information was exempt from disclosure under the so-called personnel exemption (e.g., records are exempt if they are "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy" Govt. Code Sec. 6254 (c)); or, that employee compensation

records were exempt pursuant to the Act's public interest balancing test (e.g., that, "on the facts of the particular case the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records" (Govt. Code Sec. 6255)). Newspapers argued the information was not exempt under these laws and that the public was entitled to the exact compensation of identified public employees to deter corruption, self-dealing, nepotism, favoritism and to control the overall cost of government services.

In all of these cases the trial courts were uniformly unmoved by the defendant public agencies' arguments and found that the public's interest in accessing public employee salary information was paramount to the individual privacy interests of public employees, if any existed, in keeping that information secret. None of these cases were appealed, so the decisions were controlling only for the litigants.

That changed for the worse in 2003 when an appellate court affirmed a trial court's decision to grant a preliminary injunction sought by a number of employee unions, requiring a city to withhold salary records pending resolution of the case. (*Teamsters Local 856 v. Priceless, LLC (2003) 112 Cal.App.4th 1500 (Priceless)*). Procedurally, the case, to use a legal term, was screwed up. Since the unions sought a temporary restraining order (TRO) against public disclosure, the case was not forwarded as a public records act case, so the strong presumption of access required by the CPRA was subordinated to the low TRO standard that, on the bare record presented, the employees might have an interest in privacy that would be harmed by public disclosure.

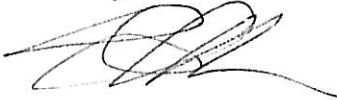
Following *Priceless*, public agencies began refusing public records requests for salary information, even the City of Oakland, which had in previous years disclosed this information. The *IFPTE* decision expressly overturned *Priceless* and finally and completely settled the public's right of access to public pay under the California Public Records Act.

SB 46 represents nothing more than a codification of the principles established by the Supreme Court in *IFPTE*, along with common sense disclosure requirements that will allow Californians to more easily access and monitor the total compensation paid to public officials. It will make the shenanigans that occurred in the City of Bell and other California cities and counties harder to perpetuate, and help to stop abuses from occurring in the University of California and every other public agency, both large and small, in the future.

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On behalf of the approximately 850 daily, weekly and student newspaper members of the CNPA, thank you for introducing SB 46. We look forward to working with you to quickly move this bill to the governor for his signature approval.

Sincerely,



Thomas W. Newton
CNPA General Counsel

cc: Ron Redfern, CNPA President, President and Publisher, Riverside Press-Enterprise
Karlene Goller, CNPA Governmental Affairs Committee Chairwoman, Vice President and Deputy General Counsel, Los Angeles Times
Jack Bates, CNPA Executive Director
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