Blogs
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Agencies Must Preserve Emails For CEQA Record of Proceedings

An agency's duty to preserve documents for inclusion in the record of proceedings under CEQA prevails over a local agency's document retention and destruction policies. *Golden Door Properties v. Superior Court (County of San Diego)*, 52 Cal.App.5th 837 (2020) In their action challenging an EIR certification, petitioners moved to compel San Diego County to produce and include in the record all em[illegible]bout the project and the environmental review process. The County responded that, u[illegible]tention policy, all emails not flagged as "official records" had been automatic[illegible]that remained

would be produced and included in the certified record. Public

Resources Code section 21167.6 states that the record of proceedings in CEQA litigation shall include "written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with [CEQA] or with respect to the project . . . including . . . all internal agency communications . . . ." The appellate found these terms to be mandatory, broadly inclusive and unambiguous, and meant "*all* and not *some*" of the correspondence and internal agency communications. The duty to include these documents in the record, the court said, also required the agency to retain the documents. "It would be pointless," it reasoned "for the Legislature to have enumerated mandatory contents of the record of proceedings if, at the same time, an agency could delete such writings not to its liking, and then claim they are not in the record because they no longer exist." Accordingly, the court held, notwithstanding any contrary records retention policies, "a lead agency may not destroy, but rather must retain writings section 21167.6 mandates for inclusion in the record of proceedings." The court also flatly rejected the County's claim that it could not be compelled to produce the emails through discovery because "discovery is generally not permitted" in a CEQA action. The court pointed out that the Civil Discovery Act applies to both civil actions and special proceedings of a civil nature, including CEQA proceedings, and that the CEQA statute explicitly contemplates discovery in a CEQA case by providing that good cause for extension of a briefing schedule may include "the conduct of discovery." (§ 21167.4(c).) This statutory reference to discovery unambiguously established that discovery was permissible in a CEQA case, and prior case law confirmed that courts have allowed such discovery.