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Bertoli v. City of Sebastopol

Court of Appeal, First District, Division 4, California - January 20, 2015 - Cal.Rptr.3d - 2015 WL 251444

Pedestrian, who was struck by car as she walked inside crosswalk located on highway owned by city, and pedestrian's attorney filed writ of mandate seeking order requiring city and its departmental employees to produce electronically stored information (ESI) responsive to attorney's Public Records Act (PRA) request for documents sought in anticipation of litigation related to accident.

The Superior Court denied petition. Pedestrian and attorney filed extraordinary writ challenging the trial court's decision. The Court of Appeal summarily denied writ. Pedestrian and attorney filed petition for review. The Supreme Court denied petition. City and employees filed request for attorney fees and costs. The trial court granted request. Pedestrian and attorney appealed.

The Court of Appeal held that petition was not clearly frivolous, such that award of fees and costs was improper.

Petition for writ of mandate seeking order requiring city and its departmental employees to produce electronically stored information (ESI) responsive to Public Records Act (PRA) request for documents sought in anticipation of litigation stemming from accident in which pedestrian was struck by car as she walked inside crosswalk located on highway owned by city was not clearly frivolous, such that award of attorney fees and costs in favor of city and its employees was improper. Petition was not filed to harass city or its employees or for purposes of delay, and petition itself did not entirely lack merit, even though, as drafted, petition was unduly burdensome, overbroad, and would significantly compromise interest in privacy and confidentiality.