

High court sides with Times

Salaries of government employees, including police, must be made available to the public, state judges rule

By Thomas Peele

STAFF WRITER

The salaries of government employees in California, including police officers, are a public record and must be available upon request to "ensure transparency," the state Supreme Court ruled in a decision released

Monday.

"Openness in government is essential to the functioning of a democracy," Chief Justice Ronald George wrote in a 30-page opinion, ending a lawsuit the Contra Costa Times filed more than three years ago against the city of Oakland.

Justices found that government employees should not have an expectation of privacy about their gross salaries even if disclosure of the information "may cause discomfort or embarrassment."

The justices wrote that police salaries must also be made public except in narrow circumstances "where an officer's anonymity is essential to his or her safety," the decision states.

The justices affirmed that police cannot use broad claims of officer safety to make blanket denials of salary information.

The ruling overturns a 2003 appellate court decision involving five cities in San Mateo County where employee unions blocked the release of salaries to the Palo Alto Daily News.

In that case, known as the Priceless decision after the Daily News' former owner, a Superior

Court judge ruled that employees' privacy rights trumped the newspaper's right to the salaries.

The appellate court affirmation of that decision became the basis for local governments around the state to refuse to release salaries.

"Unfortunately, it's been the instinct of many government bureaucrats nowadays to slam the

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Salaries

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door on inquiries for public information, and the Priceless decision always gave them the ammunition they needed," said the Times executive editor, Kevin Keane.

"Monday's court ruling put Priceless in its rightful place. It's a great win for the First Amendment," Keane said.

Also on Monday, the state Supreme Court released another long-anticipated decision in a related case. It ruled that the public also is entitled to the names of police officers and their dates of hire. The state Commission on Police Officer's Standards and Training claimed those records were confidential.

The high court ordered that case, brought by the Los Angeles Times, back to Superior Court to work out how to release the information.

The decision in the Contra Costa Times case is a defeat for several government worker unions. The Oakland Police Officers Association and Local 21 of the Professional and Technical Engineers fought to keep the salaries private, appealing a 2004 Alameda County Superior Court decision, which ordered the records released.

"Despite the wrong-headed and persistent opposition of public employee unions, the court has reaffirmed a basic tenet of American democracy, that public business must be conducted in public," said John Armstrong, president and publisher of the Contra Costa Times.

The newspaper's attorney, Karl Olson, called the decision "a landmark opinion affirming the public's right of access to information about how the government is run and how tax dollars are spent.

"Three different courts and 11 judicial officers have now looked at this case and all have concluded that the public's right to know public employee salaries is paramount," Olson said.

TIMELINE

The fight for government employee salary information in California.

■ **February 2003** — Palo Alto Daily News files routine California Public Records Act requests with 10 San Mateo County cities for the names and yearly salaries, including bonuses and overtime, of all government employees. Two employee unions object, and five cities — Atherton, Belmont, Burlingame, Foster City and San Carlos — reject the request.

■ **April 2, 2003** — San Mateo County Superior Court Judge Rosemary Pfeiffer grants an injunction stopping the release of salary data, ruling that employees' right to privacy trumps the public's right to the information. Daily News soon appeals. San Jose Mercury News joins the suit.

■ **Oct. 29, 2003** — The California First District Court of Appeal rules in favor of the employees, upholding Pfeiffer's decision. The decision says employees' salaries are held in personnel files, which are off-limits to the public. The case becomes known as the "Priceless decision" for the name of the Daily News' owner, the Priceless company.

■ **May 21, 2004** — The newspapers settle the case by allowing the cities to release a list of all employee salaries and a separate list of all employee names. The lists don't associate a specific employee with a specific salary. The newspapers' attorney says a Supreme Court appeal was not filed because the unions initiated the case and the media would prefer to pursue a case of its own choosing.

■ **June 7, 2004** — Oakland, which has released employees' salaries with names for at least a decade, announces it will no longer make them public. The City Council cites privacy concerns, basing its decision on the Priceless case. City Attorney John Russo disagrees with the decision and says he will recuse himself if the decision faces legal challenges.

■ **June 28, 2004** — Times reports that some cities and government agencies, including BART and the city of Richmond, are now citing the Priceless case in announcing salaries will not be released. Other cities soon make similar announcements.

■ **July 22, 2004** — Times sues Oakland in Alameda County Superior Court, demanding the names and salaries of the city's employees. The state's newspapers quickly rally to the case on the side of disclosure. Public employee unions join the case on the side of the city.

■ **Nov. 8, 2004** — Alameda County Superior Judge Steven Brick orders the disclosure of salaries, writing the information is needed "so that citizens can effectively monitor the activities of the government." The data show that 74 of the cities' 100 highest-paid employees are police and firefighters, and some increased their yearly gross by more than \$100,000 through overtime.

■ **Dec. 1, 2004** — The Oakland Police Officers' Association and Local 21 of the International Federation of Professional and Technical Engineers appeal Brick's ruling to the state appellate court.

■ **April 18, 2005** — The California First District Court of Appeal upholds Brick's decision in a 3-0 ruling. "Payment of public employees' salaries is a public expense, and the amounts and recipients of that expense are public records," the justices wrote. The decision sharply contradicts the October 2003 decision by a different panel of appellate justices in the Priceless case.

■ **May 27, 2005** — The unions appeal to the Supreme Court, which July 27 grants review of the case.

■ **May 30, 2007** — The high court hears oral arguments in San Francisco. Justices indicate they believe salary records are public. They spend most of an hourlong argument grilling lawyers on whether information on police officers working undercover should be exempt from salary disclosure.

■ **Aug. 27, 2007** — The Supreme Court rules 7-0 in favor of disclosure of nonpolice officer salaries. It also carves a small exemption for officers working undercover or in other positions in which the release of their names may endanger them, but otherwise rules that police salaries can be disclosed. One justice dissents from the release of police data.

a lawyer for white collar workers in Oakland who appealed to the high court said the justices ignored privacy issues.

"This court has less concerns about privacy rights than the federal courts," Duane Reno, Local 21's lawyer, said Monday.

Reno argued unsuccessfully before three courts that the release of gross salary data for individual employees violated privacy rights and makes them susceptible to telemarketers and identity thieves.

"The California Supreme Court doesn't think it's important if you have people calling you when you don't want to be called," Reno said.

The attorney who represented the Oakland Police Officers Association, Alison Berry Wilkinson, did not return telephone calls Monday.

An attorney who filed a friend of the court brief on behalf of police officers around the state said the exemption issue for some police officers leaves the case open-ended.

"What is a high risk position?" said David Mastagni "You could argue that (all police) are high risk. It is possible the exception could consume the rule."

Olson dismissed that argument, noting that the justices specifically wrote that concerns over some officers could not be used to block the release of salaries of an entire department.

Justice Ming W. Chin wrote in a dissenting opinion that he agreed with police that no officer's salary should be disclosed.

Public records advocates praised the Supreme Court's ruling.

It "is one of the most unqualified and ringing endorsements of open government that the Court has ever issued," said Peter Scheer of the California First Amendment Coalition.

"There is no longer any doubt" about the public nature of government salaries.

Lucy Dalglish, of the Washington, D.C.-based Reporters Committee for the Freedom of the Press, said the decision shows that salaries "should not be a big secret and are not a big secret anywhere else in America. Openness leads to accountable government."

Longtime public records attorney Terry Francke, of the watchdog group Californian's Aware, said the decision is "more sweeping" than anticipated and is "a very ringing endorsement of government scrutiny."

Every daily newspaper in the state supported the Times' effort, either through friend of the court

briefs or through the California Newspaper Publisher's Association.

"The significance of this case is that the people of this state will now be able to understand the decisions about how public employees are paid," Tom Newton, the association's general counsel said Monday.

One public employee union supported the Times — the Coalition of University Employees at the University of California.

"The notion that 'personal privacy' should prevent the public from knowing how much public employees are paid was always a farce," said the association lawyer, Thomas Burke. "Taxpayers pay the salaries of these public employees. Secreting salary information only served to hide inequities in pay — people who were being paid too much, or in many cases, too little."

The case drew wide interest. In addition to the California dailies, the New York Times filed a friend of the court brief as did the ACLU and the Howard Jarvis Taxpayer Association

Unions representing law enforcement groups, including the California Correctional Peace Officers Association, filed briefs in support of the Oakland Police union.

Police have long held that any records of an officers employment is confidential, even salaries. State law does grant greater restrictions on police records than those of other government workers. Police are the only employees to which the public does not have a right to disciplinary records, for example.

But until the decision in-

THE RULING

"Counterbalancing any cognizable interest that public employees may have in avoiding disclosure of their salaries is the strong public interest in knowing how the government spends its money. As we have observed in the context of the public's right of access to court proceedings and documents, public access makes it possible for members of the public to expose corruption, incompetence, inefficiency, prejudice, and favoritism."

The Newspapers submitted to the trial court numerous examples of articles published throughout the state that used information concerning public employee salaries to illustrate claimed nepotism, favoritism, or financial mismanagement in state and local government. For instance, one article disclosed that a city department manager's wife was earning \$80,000 as an information technology specialist assigned to that department while the department was suffering a budget shortfall requiring layoffs. Another article exposed the circumstance that a city assessor hired a number of individuals who had contributed to (or worked on) her election campaign. Other articles revealed numerous additional instances of questionable use of public funds.

volving the Palo Alto Daily News in 2003, most government agencies released police pay records.

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