

State Bar Doesn't Have to Disclose Racial Data

In *Sander v. State Bar of California* (August, 2018), the Court of Appeal reaffirmed the rule that the Public Records Act does not require the creation of new records to satisfy a request.

The Petitioners, in this case, sought individually unidentifiable records for all applicants to the California Bar Examination from 1972 to 2008 in the following categories: race or ethnicity, law school, transfer status, year of law school graduation, law school and undergraduate GPA, LSAT scores, and performance on the bar examination. Petitioners believed that making these records available to the public in a manner that protects the applicants' privacy and anonymity, would allow researchers to study the potential relationship between preferential admissions programs in higher education and a gap in bar passage rates between racial and ethnic groups. On a different issue, this case made its way to the California Supreme Court (*Sander v. State Bar of California* (2013) 58 Cal.4th 300), where the Court held that there "is sufficient public interest in the information contained in the admissions database such that the State Bar is required to provide access to it if the information can be provided in a form that protects the privacy of applicants and if no countervailing interest outweighs the public's interest in disclosure." The Supreme Court remanded the case to the trial court to determine whether and how the admissions database might be redacted or otherwise modified to protect applicants' privacy and whether any countervailing interests weigh in favor of nondisclosure. During the trial, experts testified about whether disclosure of the admission records may reveal bar applicants' private information or require the State Bar to create new records not already in its possession. The trial court denied the petition on five independent grounds, including that the disclosure of the requested records pursuant to any of Petitioners' four proposed protocols would require the creation of a new record, and thus the State Bar is not required to disclose the data. The Court of Appeal affirmed the ruling of the trial court and held that a government agency cannot be required to create a new record by changing the substantive content of an existing record or replacing existing data with new data.

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