

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	No. CV 78-87
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of	:	<u>January 4, 1979</u>
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Attorney General	:	
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Rodney Lilyquist, Jr.	:	
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SUBJECT: PRECLUSION OF BOOKKEEPING SERVICE FROM DISCLOSING CLIENT’S RECORDS—Civil Code section 1799.1 precludes a bookkeeping service from disclosing to third parties the contents of records prepared by it without the consent of the subjects of such records.

The Honorable Larry Chimbole, Assemblyman for the 34th District, has requested an opinion on the following question:

Does Civil Code section 1799.1 preclude a business entity that performs bookkeeping services from disclosing to third parties the contents of records prepared by it without the consent of the subjects of such records, if the identities of the individual subjects are not disclosed with the information?

The conclusion is:

Civil Code section 1799.1 precludes a business entity that performs bookkeeping services from disclosing to third parties the contents of records prepared by it without the consent of the subjects of such records, even though the identities of the individual subjects would not be disclosed with the information.

## ANALYSIS

We are informed that certain business entities that perform bookkeeping services wish to prepare composites of the information contained in the records they maintain for clients. The composites would be provided to a third party that would group the composites on a district, state, regional and national basis. The information so compiled would be distributed and sold to other business entities. No identifying names would be used in the composites, and the identities of the subjects of the records would not be disclosed.

The question presented for analysis is whether the composites of information may be disclosed without the consent of the subjects of the information, if the subjects are not identified in the disclosure. We conclude that disclosure in such circumstances would be a violation of Civil Code section 1799.1.<sup>1</sup>

In 1977 the legislature enacted sections 1799–1799.2, prohibiting business entities that perform bookkeeping services from disclosing generally the contents of their prepared records without the consent of the subjects of the records. Specifically, the legislation provides:

“No business entity which performs bookkeeping services shall disclose in whole or in part the contents of any record, including the disclosure of information in the record in any composite of information, which is prepared or maintained by such business entity to any person, other than the individual or business entity which is the subject of the record, without the express written consent of such individual or business entity.” (§ 1799.1, subd. (a).)

The legislation expressly exempts certain disclosures that are made pursuant to a subpoena, court order, judicial discovery request, or search warrant, or disclosures to law enforcement or taxing agencies. (§ 1799.1, subd. (b).)

Section 1799.2 authorizes the filing of a civil action for damages, with a minimum recovery of \$500 plus costs and attorneys’ fees, against any business entity that violates section 1799.1.

Whether this legislative scheme is applicable to disclosures in which the individual subjects are not identified presents an issue of statutory construction. Several well-established principles concerning interpretation govern our discussion.

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<sup>1</sup> All unidentified section references hereinafter refer to the Civil Code.

The cardinal rule of statutory construction is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*Cossack v. City of Los Angeles* (1974) 11 Cal. 3d 726, 732; *Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645.) In determining legislative intent, we turn first to the words used in the statute, giving effect to the statute according to the usual and ordinary import of the language. (*Moyer v. Workmen's Com. p. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) Where the language is clear, its plain meaning is to be followed. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155; *Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal. 3d 434, 438.)

Here, the plain language of section 1799.1 prohibits the disclosure of “in whole or in part the contents of any record, including the disclosure of information in the record in any composite of information,” without the consent of the subject of the record. The statute appears to present a clear prohibition without reference to disclosures in which the subjects are not identified.

Although no exception allows disclosure merely because the identity of the subject is withheld, certain other specific exceptions are contained in the statutory scheme. The familiar rule of construction, *expressio unius est exclusio alterius*, provides in such circumstances that “where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed. [Citations.]” (*Wildlife Alive v. Chickering* (1976) 18 Cal. 3d 190, 195.)

While the above described rule “is inapplicable where its operation would contradict a discernible and contrary legislative intent” (*Ibid.*), we can find no expression of legislative intent upon which to base a contrary conclusion. Indeed, the purpose of the statute is undoubtedly to protect the privacy rights of the subjects of the records, and the right to privacy appears to be an expanding concept. (See Cal. Const., art. I, § 1; *Porten v. University of San Francisco* (1976) 64 Cal. App. 3d 825, 829; Comment, *Roe and Paris: Does Privacy Have a Principle?* (1974) 26 Stan. L. Rev. 1161, 1162–1164.)

Although the right to privacy involves differing aspects (see *White v. Davis* (1975) 13 Cal. 3d 757, 774 fn. 10), it includes the right of selective disclosure in which “individuals, groups, or institutions . . . determine for themselves when, how, and to what extent information about them is communicated to others.” (A. Westin, *Privacy and Freedom* (1967) p. 7; see also *White v. Davis, supra*, 13 Cal. 3d 757, 774; Gross, *The Concept of Privacy* (1967) 42 N.Y.U. 1. Rev. 34, 35–36.) It may also involve the mere collection and retention (without disclosure) of information. (*White v. Davis, supra*, 13 Cal. 3d 757, 774–775; Comment, *The Supreme Court of California 1974–1975* (1976) 64 Cal. L. Rev. 229, 352–354.)

With regard to the bookkeeping records in question, it is uncertain whether the withholding of the subjects' identities will guaranty their anonymity; it may be possible in some circumstances for the recipients of the information to ascertain individual identities and connect them to specific information provided. From the language of section 1799.1, it appears that the legislature intended to protect broad privacy rights of the subjects of the records by allowing them to have control, except in certain specified circumstances, over the disclosure of all information relating to them, regardless of whether their individual identities are made known in the disclosure. It is for the subjects of the information to decide whether a particular disclosure would unduly encroach upon their privacy rights in each circumstance.

The conclusion to the question presented, therefore, is that Civil Code section 1799.1 precludes a business entity that performs bookkeeping services from disclosing to third parties the contents of records prepared by it without the consent of the subjects of such records, even though the identities of the subjects would not be disclosed with the information.

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