

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

CIVIL RIGHTS DEPARTMENT,

Plaintiff and Respondent.

v.

CITY OF TORRANCE,

Defendant and Appellant.

B352855

(Los Angeles County
Super. Ct. No. 25STCP04155)

APPEAL from an order of the Superior Court of Los Angeles County, Virginia Keeny, Judge. Affirmed.

Liebert Cassidy Whitmore, J. Scott Tiedemann, Megan K. Atkinson and Juliana Pech for Defendant and Appellant.

Rob Bonta, Attorney General, Michael Newman, Assistant Attorney General, Vilma Palma-Solana and Jesse P. Basbaum, Deputy Attorneys General, for Plaintiff and Respondent.

Plaintiff Civil Rights Department (CRD) is investigating whether defendant City of Torrance (Torrance or the City) has violated Government Code section 12952,¹ the Fair Chance Act, which restricts the circumstances in which an employer may decline to hire a prospective employee due to the employee's criminal record. When responding to CRD about a job applicant's complaint concerning the City's adherence to the Fair Chance Act, Torrance provided CRD with a narrative explanation of the City's purported compliance. When CRD later instituted administrative proceedings against Torrance involving that applicant and others, the City withheld documents responsive to CRD's discovery requests on the ground that the documents underlying the City's narrative explanation, which included individualized assessments of prospective employees and forms for creating such assessments, were protected by attorney-client and work product privilege.

CRD sought relief in superior court, and the court granted CRD's motion to compel on the ground that Torrance waived any claim of privilege by describing its compliance with the law as a defense to CRD's claims. We find no abuse of discretion and affirm.

FACTS AND PROCEEDINGS BELOW

A. Background on the Fair Chance Act and the Investigation

Because the underlying dispute in this case concerns the City's compliance with the Fair Chance Act, we begin by

¹ Unspecified statutory references are to the Government Code.

explaining the requirements of that law. An employer with five or more employees may not ask about a prospective employee's conviction history until after making a conditional offer of employment (§ 12952, subd. (a)(1) & (2)), and may not consider at all arrests that did not lead to conviction, referrals to diversion programs, or convictions that have been sealed, dismissed, or expunged (*id.*, subd. (a)(3)). After making a conditional employment offer, the employer may conduct a criminal background check (*id.*, subd. (b)), but it may not rescind the offer of employment on the basis of a criminal conviction unless it conducts "an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position" (*id.*, subd. (c)(1)(A)). The assessment must consider "[t]he nature and gravity of the offense or conduct," "[t]he time that has passed since the offense or conduct and completion of the sentence," and "[t]he nature of the job held or sought." (*Id.*, subd. (c)(1)(A)(i)–(iii).) If the employer preliminarily decides to rescind an employment offer because of the prospective employee's criminal history, it "shall notify the applicant of this preliminary decision in writing" (*id.*, subd. (c)(2)) and give the applicant an opportunity to respond (*id.*, subd. (c)(3)). The employer must take the applicant's response into account before finally revoking the employment offer (*id.*, subd. (c)(4)), and in that case must notify the applicant of his right to file a complaint with the CRD (*id.*, subd. (c)(5)).

On October 27, 2023, Walter J. filed a complaint with the CRD alleging that Torrance had discriminated against him on the basis of his criminal record. Walter interviewed in September 2022 for a position with Torrance as a custodian and

received a contingent job offer. The Torrance Human Resources Department sent him a letter asking him to explain two misdemeanor convictions: one from 2018 for fighting in public, and one from 2011 for driving with a suspended license. Walter submitted a packet of materials that he believed showed he had rehabilitated himself, but Torrance notified him that it was rescinding his job offer because of his criminal history.

CRD notified Torrance of the complaint and requested a response to the allegations. The City denied it violated the law in rescinding Walter's offer of employment. It stated that, pursuant to its policy, it performed a criminal background check only after conditionally offering Walter employment. The California Department of Justice (DOJ) provided a report showing many misdemeanor convictions beginning with a conviction for theft in 1996. Torrance performed an initial individualized assessment and "determined that [Walter's] criminal conviction history had a direct and adverse relationship with the specific duties of the [c]ustodian position that justified preliminarily rescinding the offer of employment." The City notified Walter that "a preliminary decision has been made to rescind the job offer based on the five misdemeanor convictions for driving with a suspended license, driving without a license, driving while under the influence of alcohol, domestic battery, providing false identification to a [p]eace [o]fficer, fighting in a public place or challenging someone to fight and a felony conviction for false personation of another."²

² According to the DOJ report, the conviction for fighting occurred in 2019. Walter was convicted of driving without a license in 2018, driving on a suspended license once in 2010, once

The City stated that it considered the information Walter provided in response to its notification and made a final decision to rescind the job offer. In its letter to Walter, the City explained that it accepted Walter's explanation as to several of his convictions. In particular, it agreed that Walter's conviction for providing false identification had been dismissed, that he had successfully rehabilitated from domestic battery, that the conviction for false personation was too old to be relevant, and that the driving offenses were not being considered due to the elapsed time, the nature of the custodian position, and Walter's possession of a valid driver's license. Nevertheless, the City decided that the 2019 conviction for fighting in a public place or challenging someone to fight was recent enough and relevant enough to the duties of a custodian to preclude Walter's employment.

In its response to the CRD, Torrance elaborated on this explanation, noting that "custodians are required to work and interact daily with colleagues, supervisors, managers, other City employees, and members of the public," and that because of their visibility as City employees, they are required to "exercise solid judgment and decision making at all times." Torrance also cited its zero tolerance policy on workplace violence as justifying the decision. The City identified two decision makers who conducted the individualized assessment. The City concluded that it "compli[ed] with the requirements of . . . [s]ection 12952" and that its decision to revoke Walter's employment offer "was not based

in 2013, and twice in 2014, domestic battery and providing a false identification to a police officer in 2006, and false personation of another in 2001.

on his sex/gender or race,” but “was based solely on his criminal conviction history.”

On October 24, 2024, CRD notified the City that it had filed a director’s complaint against Torrance.³ The notice stated that the CRD “ha[d] obtained information which, if proven, indicates that [Torrance] . . . engage[d] in unlawful discriminatory practices adversely affecting a group or class of applicants with criminal records by disqualifying applicants from employment based on the presence of certain types of crimes in their criminal history without performing an adequate individualized assessment, in violation of . . . section 12952, subdivision (c).” The investigation conducted pursuant to the complaint “shall include, but is not limited to,” Walter’s claims of discrimination, and would be treated as a group or class investigation.

B. The Instant Petition

One year after filing its director’s complaint, CRD filed a petition in the superior court for an order compelling compliance with its investigative requests for production. The petition alleged that Torrance had unreasonably refused to comply with the following CRD requests for the production of documents:

“Request for Production No. 3: Any and all documents that reflect any practice relating to your evaluation of an applicant’s

³ CRD enforces many of California’s employment related laws, including the Fair Chance Act. (§§ 12930, subds. (f)-(h), 12965.) To discharge that enforcement responsibility, CRD can conduct administrative investigations, including document production requests, to determine whether violations have occurred. (E.g., §§ 12930, subd. (g)(1) & (4), 12963.5, subd. (a).)

criminal history, including individualized assessment templates, forms, and instructions, since January 1, 2022. [¶] . . .

“Request for Production No. 6: For each applicant who was denied employment by you solely or in part because of their criminal history since January 1, 2022, all documents related to your assessment of whether that applicant’s conviction history had a direct and adverse relationship to the specific job duties of the position applied for. [¶] . . .

“Request for Production No. 9: For each applicant who was denied employment by you solely or in part because of their criminal history since January 1, 2022, all documents related to your re-assessment, if any, of whether that applicant’s conviction history had a direct and adverse relationship to the specific job duties of the position applied for.” (Boldface and capitalization omitted.)

Torrance acknowledged it had documents responsive to each request but refused to produce them. In each case, Torrance had objected that the requests were vague, ambiguous, and overbroad, and also claimed that the requests sought documents protected by attorney-client and work product privileges because the City’s “individualized assessments were prepared with counsel.” Torrance identified documents responsive to each of the three requests that it regarded as privileged. In particular, an assistant city attorney declared that “[t]he City has utilized two documents when starting to conduct individualized assessments. These two documents contain my conclusions of what the law requires.” In addition, the City acknowledged that it possessed documents of its individualized assessments of applicants with criminal records, but it claimed these documents were privileged. The assistant city attorney declared that in making

individualized assessments of applicants with criminal records, “I consult with” two city employees, and these employees “document my legal advice. The City has withheld these documents because they are privileged.”

CRD contended the City’s privilege claims were meritless because “the dominant purpose of the [City’s] documented individualized assessments is not to facilitate and further the attorney-client relationship, but rather to evaluate whether there is a direct and adverse relationship between the disqualifying conviction sufficient to justify the job denial.” CRD also alleged that Torrance had implicitly waived its claim of privilege by asserting that its individualized assessment of Walter’s criminal history was adequate, thereby “plac[ing] at issue a communication which ‘goes to the heart of the claim in controversy.’” (*Chicago Title Ins. Co. v. Superior Court* [(1985)] 174 Cal.App.3d [1142,] 1149)”

The superior court granted CRD’s petition to compel production of the documents at issue. The court found that the City had waived any claim of privilege by raising the adequacy of its individualized assessments as a defense to CRD. Torrance timely appealed, and we have jurisdiction to consider this interlocutory order. (§ 12963.5, subd. (d).)

DISCUSSION

The City claims the documents at issue are protected by attorney-client and work product privilege, and that the superior court erred by finding it waived any claim of privilege.⁴ We

⁴ The superior court also rejected Torrance’s claim that the requests for production were vague and overly broad. Torrance

review the superior court's determinations on questions of privilege, like other discovery orders, for abuse of discretion. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.) "The abuse of discretion standard is not a unified standard; the deference it calls for varies according to the aspect of a trial court's ruling under review. The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious." (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712, fns. omitted.)

Torrance has identified two classes of documents that it claims are privileged. In the first class are two documents "[t]he City has utilized . . . when starting to conduct individualized assessments." CRD characterizes these as "blank templates that were used to conduct individualized assessments." The City claims this is an "oversimplif[ication]," but it does not elaborate further. According to the attorney who prepared these documents, they "contain my conclusions of what the law requires," and the City claims they are privileged on that basis. (See Code Civ. Proc., § 2018.030.) The second category comprises the written assessments themselves, which were prepared by two Torrance human resources professionals in consultation with the same attorney who created the templates. According to the City, these are privileged because they served to "initiate and assist in discussions with [the attorney] and the documents contain [the attorney's] legal advice."

does not challenge that aspect of the court's decision, and we do not address it.

CRD contends neither category of document is privileged, arguing that any legal advice the attorney provided in reference to the individual assessments was only incidental to what is an ordinary human resources function. Communications with a lawyer do not become privileged merely because they concern an issue of legal significance unless “the dominant purpose of these communications was of a legal nature.” (*Montebello Rose Co. v. Agricultural Labor Relations Bd.* (1981) 119 Cal.App.3d 1, 32; accord, *Costco Wholesale Corp. v. Superior Court*, *supra*, 47 Cal.4th at p. 735.) CRD argues that by routinely involving a lawyer in the individual assessments and then asserting privilege as to all resulting documents, Torrance is attempting to use privilege to shield its ordinary human resources decisions from scrutiny and disclosure.

We need not decide whether the documents were privileged in the first instance because the court did not abuse its discretion in finding that Torrance waived any claim of privilege that might apply to the documents in question.

“[T]he person or entity seeking to discover privileged information can show waiver by demonstrating that the client has put the otherwise privileged communication directly at issue and that disclosure is essential for a fair adjudication of the action.” (*Southern Cal. Gas Co. v. Public Utilities Com.* (1990) 50 Cal.3d 31, 40 [attorney-client privilege]; see also *People v. Superior Court (Jones)* (2021) 12 Cal.5th 348, 364-365 [attorney work product].) In *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, the court applied this doctrine to a case where an employer sought to defend itself from a lawsuit alleging a hostile workplace environment. The employer claimed it had taken the appropriate steps to respond to the

employee's complaints, including by hiring a law firm to investigate the case. The court stated that "the employer's injection into the lawsuit of an issue concerning the adequacy of the investigation where the investigation was undertaken by an attorney or law firm must result in waiver of the attorney-client privilege and work product doctrine." (*Id.* at p. 128, citing *Harding v. Dana Transport, Inc.* (D.N.J. 1996) 914 F.Supp. 1084.) In other words, "[i]f a defendant employer hopes to prevail by showing that it investigated an employee's complaint and took action appropriate to the findings of the investigation, then it will have put the adequacy of the investigation directly at issue, and cannot stand on the attorney-client privilege or work product doctrine to preclude a thorough examination of its adequacy." (*Wellpoint, supra*, at p. 128.)

The superior court in this case found the reasoning in *Wellpoint* directly applicable: "Because the City contends in the face of the investigation by the CRD that it complied with these requirements in conducting its individualized assessment, *Wellpoint* holds that it cannot shield the investigation it conducted by asserting the attorney client or work product privileges. The court further observes that applying *Wellpoint* to investigations initiated by the CRD is particularly appropriate, if not required, because otherwise an employer could avoid its obligation to properly review and analyze criminal history records by simply delegating that task wholesale to in-house counsel."

We agree with the superior court's reasoning, especially as to its last statement. In her declaration, the assistant city attorney stated that she is involved in the hiring process "when applicants have a criminal history." In its statement of decision,

the superior court stated that “[t]he City conceded at [oral] argument that it has withheld all documents reflecting and constituting the assessment process, as well as the reassessment process, because all such documents were prepared in this manner.” By routinely involving an attorney in decisions on the Fair Chance Act and claiming privilege, Torrance seeks to shield all internal documents regarding its decision-making process from review.

The City contends the superior court erred by rejecting its claim of privilege wholesale, rather than examining each document individually, as the court advised in *Wellpoint*. (*Wellpoint Health Networks, Inc. v. Superior Court*, *supra*, 59 Cal.App.4th at p. 122.) But the City, as the party seeking the protection of the privilege, bears the burden of establishing the preliminary facts in support of the privilege (*Costco Wholesale Corp. v. Superior Court*, *supra*, 47 Cal.4th at p. 733), and it has not shown any basis for distinguishing between the documents at issue. CRD is investigating Torrance’s compliance with section 12952. We do not see, and the City does not explain, why it would have waived its claim of privilege as to one document but not to another.⁵

Torrance also contends *Wellpoint* does not apply because unlike in that case, it did not “put the adequacy of the investigation directly at issue.” (*Wellpoint Health Networks, Inc. v. Superior Court*, *supra*, 59 Cal.App.4th at p. 128.) The City

⁵ Torrance refused to produce a privilege log, and instead provided a list of 23 applicants whose criminal histories were investigated in the same manner as Walter’s as part of a Fair Chance Act review.

claims “it complied with . . . section 12952,” but it also claims it “has never put the sufficiency of its individualized assessments at issue.” Both things cannot be true. The City cannot demonstrate it complied with section 12952 without putting at issue the adequacy of the individualized assessments it conducted pursuant to that section. The statute requires an employer, when making an initial assessment, to consider “[t]he nature and gravity of the offense or conduct,” “[t]he time that has passed since the offense or conduct and completion of the sentence,” and “[t]he nature of the job held or sought.” (*Id.*, subd. (c)(1)(A)(i)-(iii).) When making a final assessment, the employer must also “consider information submitted by the applicant . . . before making a final decision.” (*Id.*, subd. (c)(4).) The governing regulation makes clear what was implicit in the text of the statute: an individualized assessment must be “a reasoned, evidence-based determination of whether the applicant’s conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position.” (Cal. Code Regs., tit. 2, § 11017.1, subd. (c)(1).) To comply with the statute, an employer may not go through the motions. By claiming it complied with the statute and regulations, the City put at issue the way it performed its individualized assessments. In so doing, Torrance waived any claim to privilege as to the content of those assessments.

DISPOSITION

The superior court's order is affirmed. Respondent is awarded its costs on appeal.

WEINGART, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.

Filed 10/27/26

CERTIFIED FOR PUBLICATION

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ORDER CERTIFYING
FOR PUBLICATION

The opinion in the above-entitled matter filed on September 29, 2026, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.

WEINGART, J.

ROTHSCHILD, P. J.

BENDIX, J.