



Information on the California Appellate Court Ruling Regarding the Critical Infrastructure Information Act of 2002 and PCII Protections

On February 5, 2009, the California Appellate Court affirmed a trial court decision (*PDF, 41 pages - 105 KB*) ordering Santa Clara County to comply with a California First Amendment Coalition (CFAC) request for an electronic copy of the County's Geographic Information System (GIS) Basemap, which was validated by the Department of Homeland Security as Protected Critical Infrastructure Information (PCII).

The matter has been remanded to the trial court to permit a decision on the allowable costs the County may charge for reproducing the GIS Basemap. The County may still petition the California Supreme Court to review the case until March 17, 2009.

As the only significant test of the Critical Infrastructure Information (CII) Act of 2002 at any level, the decision may raise concerns for Protected Critical Infrastructure Information (PCII) Program stakeholders. The Department is aware of these concerns and will in due course provide a legal analysis of the decision's implications. From an operational perspective, the Department does not currently anticipate any changes to the PCII Program.

The PCII submitter community, however, should bear in mind the following:

- Private sector submitters should be aware that the decision does not impact the treatment of their PCII. Once voluntarily submitted CII is received, validated and marked as PCII, it becomes federal information that is protected from disclosure under the Freedom of Information Act and similar state and local laws.
- Likewise, state and local government entities should be aware that the decision does not affect the treatment of CII voluntarily shared with the federal government. This information, once it is validated and marked as PCII, is always protected in accordance with the CII Act.
- Originals and copies of CII which are retained by state and local submitters, however, may be public records that are subject to disclosure under respective state and local sunshine laws. Those originals and copies are not PCII and are not marked as PCII. State and local submitters of CII should, therefore, be advised to work with local counsel regarding applicable State and local recordkeeping and disclosure laws, and the impact of this decision on their unmarked CII.

Contact

The PCII Program Office can be reached at (202) 360-3023 or by email at pcii-info@dhs.gov with any questions concerning this topic.

This page was last reviewed/modified on March 2, 2009.