

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Improve)
Public Access to Public Records Pursuant)
to the California Public Records Act.)
_____)

R.14-11-001
(Filed November 6, 2014)

NOTICE OF PROPOSED ADDITIONAL CONFIDENTIALITY MATRIX TOPICS

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September 22, 2017

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NOTICE OF PROPOSED ADDITIONAL CONFIDENTIALITY MATRIX TOPICS

Pursuant to Ordering Paragraph 3 of the August 18, 2017 Assigned Commissioner’s Ruling Regarding Phase 2B: Development of Confidential Matrices (“Phase 2B Ruling”), California Water Association (“CWA”) files this notice setting forth additional proposed confidentiality matrix topics for confidentiality matrices to be considered by the Commission in this rulemaking.

The Phase 2B Ruling currently lists four topics under “Matrix subject” with directions for “working groups” to populate the potential matrices with lists of information that legitimately meets the categories:¹

- Personally identifiable information of regulated entity customers protected by Gov’t. Code §6254(c).
- Investigations of regulated entities covered by Gov’t. Code §6254(f).
- Competitive information covered by Gov’t. Code §6255(a), which is commonly referred to as the “public interest balancing test.”
- Critical infrastructure covered by Gov’t. Code §6254(e).

¹ Phase 2B Ruling, p. 3.

Regarding the first matrix topic above, CWA recommends amending it to state: “Personal information protected by Gov’t Code §6254(c).” This change would simplify and broaden the topic to align its language with the intent of the statute² and recognize the need to protect “personal information,” as statutorily defined, of employees, officers, and contractors of utilities in addition to that of their customers. Alternatively, CWA proposes to simply track the statutory language of Gov’t Code §6254(c): “Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy as protected by Gov’t Code §6254(c).”

Additionally, CWA proposes to add the following matrix topics:

1. Litigation records protected by Gov’t Code §6254(b).

Gov’t Code §6254(b) exempts from disclosure under the California Public Records Act (“CPRA”) records pertaining to pending litigation to which the Commission is a party. Litigation involving the Commission may have consequences relevant to particular utilities and therefore CWA recommends adding this subject as a matrix topic to ensure that sensitive documents that arise during litigation are not disclosed through the CPRA process. This subject area may not be encompassed within the four subject topics identified in the Phase 2B ruling and therefore should be added.

2. Privileged records protected by Evidence Code §954 or Code of Civil Procedure §2018.030 as incorporated by Gov’t Code §6254(k).

Evidence Code §954 protects confidential communications between an attorney and his or her client. Code of Civil Procedure §2018.030 protects the research, analysis, impressions and conclusions of an attorney. There may be circumstances in which the Commission compels a utility to produce such information to the Commission without

² Gov’t Code § 6254(c) lists “Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.”

waiving its privileged status. Under such circumstances, a utility may properly one or both of the referenced statutory protections through Gov't Code § 6254(k) to prevent the disclosure of such information that is in the Commission's possession. Therefore, such attorney records should be recognized as a separate matrix topic. This subject area may not be encompassed within the existing four subject topics in the Phase 2B ruling and therefore should be added.

3. Trade secrets protected by Evidence Code §1060 as incorporated by Gov't Code §6254(k).

Evidence Code §1060 protects trade secrets. Trade secrets of value to water utilities may involve confidential knowledge of, for example, particular geological, hydrological, or meteorological information, mechanical or electronic processes or systems, or customer databases. Gov't Code §6254(k) prevents the disclosure of information protected under Evidence Code §1060. The Commission and its staff routinely require the production of information from utilities that may implicate trade secrets. Therefore, it is necessary to recognize trade secrets as a separate matrix topic. This subject area may not be encompassed within the existing four subject topics in the Phase 2B ruling and should be added.

4. Information related to the issuance of securities protected by Gov't Code §6254(d).

Gov't Code §6254(d) exempts from disclosure under the CPRA various types of information provided to "any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies." The Commission is such a "state agency," because it is "responsible for the regulation or supervision of the issuance of securities" by public utilities. The Commission is routinely involved in the authorization and supervision of debt and equity securities pursuant to Pub. Util. Code §816 *et seq.*, a process that involves the submission and analysis of the types of

information contemplated under Gov't Code §6254(d). The Commission's more general ratemaking oversight of certain utilities, including all water utilities, also includes supervision of the issuance of securities by such utilities, especially with respect to the determination of such utilities' cost of capital. Therefore, it is necessary to recognize information provided to the Commission in the context of its responsibility for regulating or supervising the issuance of securities as a separate matrix topic. This subject area may not be encompassed within the existing four subject topics in the Phase 2B ruling and should be added.

5. Property or contract-related records protected by Gov't Code §6254(h).

Gov't Code §6254(h) exempts from disclosure under the CPRA the contents of real estate appraisals or documents relating to real estate made for or by state or local agencies relating to the acquisition of property or for prospective public supply and construction contracts. Utilities routinely collaborate with state or local agencies in the planning or construction of capital projects. The Commission evaluates and approves capital budgets or specific projects based upon documentation that may include documents encompassed by Gov't Code §6254(h). Therefore, it is appropriate to consider such real estate records as a separate matrix topic. This subject area may not be encompassed within the existing four subject topics in the Phase 2B ruling and should be added.

Conclusion

CWA respectfully requests that the Commission accept the additional matrix topics proposed above and adopt CWA's proposal regarding the existing matrix topics in the Phase 2B ruling.

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