

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: September 20, 2007

Resolution No. L-348

RESOLUTION

RESOLUTION AUTHORIZING DISCLOSURE OF CALIFORNIA PUBLIC UTILITIES COMMISSION CONSUMER PROTECTION AND SAFETY DIVISION INVESTIGATION RECORDS REGARDING AN INVESTIGATION OF THE MAY 8, 2007, COLLISION AT THE CLARIBEL ROAD RAILROAD CROSSING IN RIVERBANK, CA, PURSUANT TO PUBLIC RECORDS ACT REQUEST BY STEVE RANK

BACKGROUND

A July 18, 2007, email from Steve Rank seeks disclosure of records concerning the investigation by the California Public Utilities Commission's ("Commission") Consumer Protection and Safety Division of the May 8, 2007, collision at the Claribel Road railroad crossing in Riverbank, CA. The Commission staff could not make the investigation records public without the formal approval of the full Commission. Pursuant to Commission General Order 66-C, § 3.4, Mr. Rank's email is treated as an appeal to the full Commission for release of the requested records.

DISCUSSION

The requested records are "public records" as defined by the California Public Records Act ("PRA").¹ The California Constitution, the PRA, and discovery law favor disclosure of public records. The public has a constitutional right to access most government information.² Statutes, court rules, and other authority limiting access to information must be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access.³ New statutes,

¹ Cal. Gov't Code § 6250 *et seq.*

² Cal. Const. art. I, § 3(b)(1).

³ Cal. Const. art. I, § 3(b)(2).

court rules, or other authority that limit the right of access must be adopted with findings demonstrating the interest protected by the limitation and the need to protect that interest.⁴

The PRA provides that an agency must base a decision to withhold a public record in response to a PRA request upon the specified exemptions listed in the Act, or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure.⁵

The Commission has exercised its discretion under California Public Utilities (Cal. Pub. Util.) Code § 583, and implemented its responsibility under California Government (Cal. Gov't) Code § 6253.4 (a), by adopting guidelines for public access to Commission records. These guidelines are embodied in General Order 66-C. General Order 66-C, § 1.1 provides that Commission records are public, except “as otherwise excluded by this General Order, statute, or other order, decision, or rule.” General Order 66-C, § 2.2 precludes Commission staff’s disclosure of “[r]ecords or information of a confidential nature furnished to or obtained by the Commission including: (a) Records of investigations and audits made by the Commission, except to the extent disclosed at a hearing or by formal Commission action.” General Order 66-C, § 2.2(a) covers both records provided by utilities in the course of a Commission investigation and investigation records generated by Commission staff.

Because General Order 66-C, § 2.2(a) limits Commission staff’s ability to disclose Commission investigation records in the absence of disclosure during a hearing or a Commission order authorizing disclosure, Commission staff denies most initial requests and subpoenas for investigation records. Commission staff usually informs requestor of the option under General Order 66-C, § 3.4 to appeal to the Commission for disclosure of the records. If an appeal is received, Commission staff prepares a draft resolution for the Commission’s consideration.

There is no statute forbidding disclosure of the Commission’s safety investigation records. The Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.⁶ Disclosure does not

⁴ *Id.*

⁵ The fact that records may fall within a PRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records subject to a law prohibiting disclosure, PRA exemptions are discretionary, rather than mandatory, and the Commission is free to refrain from asserting such exemptions when it finds that disclosure is appropriate. *See* Cal. Gov't Code § 6253 (e); *Black Panthers v. Kehoe* (1974) 42 Cal. App. 3d 645, 656.

⁶ Where appropriate, the Commission has redacted portions of investigation records which contain confidential personal information, the disclosure of which would constitute an unwarranted invasion of privacy, and other exempt or privileged information.

interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident or incident under investigation.⁷ Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility accidents or incidents, the families of such individuals, the legal representatives of such individuals or families, or the legal representatives of a defendant, or potential defendant, in litigation related to an accident or incident.

Portions of incident investigation records which include personal information may be subject to disclosure limitations in the Information Practices Act (“IPA”).⁸ However, the IPA authorizes disclosure of personal information “[p]ursuant to the [PRA].”⁹ While the PRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy,¹⁰ no information in the current incident investigation file requires redaction.

The Commission has often stated that Cal. Pub. Util. Code § 315, which expressly prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, “as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property,” offers utilities sufficient protection against injury caused by the release of requested investigation records.

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution of the Commission’s Legal Division in this matter was mailed to the parties in interest on August 21, 2007, in accordance with Cal. Pub. Util. Code § 311(g). Comments were filed on _____, by _____ . Reply comments were filed on _____, by _____.

⁷ See, e.g., Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in Decision 93-05-020, (1993) 49 P.U.C. 2d 241; L-309 *Re Corona* (December 18, 2003); L-320 *Re Knutson* (August 25, 2005).

⁸ Cal. Civ. Code § 1798 *et seq.*

⁹ Cal. Civ. Code § 1798.24(g).

¹⁰ Cal. Gov’t Code § 6254(c).

FINDINGS OF FACT

1. The Commission received from Steve Rank an email dated July 18, 2007, who seeks disclosure of Commission investigation records concerning an investigation of the May 8, 2007, collision at the Claribel Road railroad crossing in Riverbank, CA. Access to the records in the Commission investigation file was denied in the absence of a Commission order authorizing disclosure.
2. At this time, the public interest favors disclosure of the requested Commission's investigation records.

CONCLUSIONS OF LAW

1. The documents in the requested investigation file and report are public records as defined by Cal. Gov't Code § 6250 *et seq.*
2. The California Constitution favors disclosure of governmental records by, among other things, stating that the people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. Furthermore, the California Constitution also requires that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting disclosure be construed narrowly; and that any new statutes, court rules, or other authority limiting disclosure be supported by findings determining the interest served by keeping information from the public and the need to protect that interest. California Constitution, Article I, § 3 (b) (1) and (2).
3. The general policy of the Public Records Act favors disclosure of records.
4. Justification for withholding a public record in response to a Public Records Act request must be based on specific exemptions in the PRA or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. *See* Cal. Gov't Code § 6255.
5. The Commission has exercised its discretion under Cal. Pub. Util. Code § 583 to limit Commission staff disclosure of investigation records in the absence of formal action by the Commission or disclosure during the course of a Commission proceeding. General Order 66-C, § 2.2 (a).

6. Cal. Pub. Util. Code § 583 does not limit the Commission's ability to order disclosure of records.
7. Cal. Pub. Util. Code § 315 prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property."

ORDER

1. The request for disclosure of the Commission's records concerning the investigation of the May 8, 2007, collision at the Claribel Road railroad crossing in Riverbank, CA is granted.
2. The effective date of this order is today.

I certify that this Resolution was adopted by the California Public Utilities Commission at its regular meeting of September 20, 2007, and that the following Commissioners approved it:

PAUL CLANON
Executive Director