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

Legal Division

San Francisco, California
Date: May 25, 2006
Resolution No. L-331

# RESOLUTION

**RESOLUTION AUTHORIZING DISCLOSURE OF COMMISSION CONSUMER PROTECTION AND SAFETY DIVISION (UTILITY SAFETY AND RELIABILITY BRANCH) INVESTIGATION RECORDS PURSUANT TO PUBLIC RECORDS ACT REQUEST BY MAURO FIORE, JR., SEEKING DISCLOSURE OF COMMISSION STAFF INVESTIGATION RECORDS RELATING TO AN ACCIDENT INVOLVING SOUTHERN CALIFORNIA EDISON FACILITIES IN SANTA MONICA, CALIFORNIA, THAT OCCURRED ON DECEMBER 2, 2004 AND RESULTED IN THE DEATH OF HARPER TREE SERVICE EMPLOYEE SALVADOR CRUZ BENITEZ. (INCIDENT NO. E200412-01).**

## BACKGROUND

A December 13, 2005 letter from Mauro Fiore, Jr., accompanied by an authorization for release of records signed by Maria Benitez, asked the California Public Utilities Commission (Commission) to provide exclusively to Mr. Fiore or his representative a copy of the Commission's written investigation report with regard to the December 2, 2004 incident involving Southern California Edison (Edison) facilities in Santa Monica, California which resulted in the death of Salvador Cruz Benitez.

Ms. Benitez' late husband, Salvador Cruz Benitez, was fatally electrocuted when he came in contact with an Edison facility while working for Harper Tree Services in Santa Monica, California. Commission staff has completed its investigation of this incident, but can not make the report public without the formal approval of the Commission (General Order 66-C § 2.2 (a).)

As a general rule, when the Commission receives a request under the Public Records Act (PRA) (Government Code § 6254 et seq.) for electric incident records, staff provides the requester with a copy of the initial incident report filed by the utility regarding this

incident, in accord with Commission Resolution L-272, and informs the requester that the Commission's investigation report can not be made public until it has been completed, and the Commission has approved its disclosure. Here, the requester seeks the investigation report on a confidential basis, and does not want it released to the public. In many ways, the request is more like an individual's request under the Information Practices Act (IPA) (Civil Code § 1798 et seq.) for records containing personal information pertaining to the individual than it is like a typical request under the PRA.

**DISCUSSION**

The requested report contains personal information, as defined by the IPA (Civil Code § 1798.3), pertaining to Salvador Cruz Benitez. It also includes personal information pertaining to the owner of the property at which the incident occurred, utility employees, Mr. Benitez' employer, and witnesses to the incident. Under the IPA, the individual to whom the personal information pertains, or their authorized representative, is entitled to review the records containing pertinent personal information, with the exception of portions of the records containing personal information pertaining to others. (Civil Code §§ 1798.34 and 1798.42.)

The IPA provides individuals with the right to inspect most agency records that concern the individual, and limits the disclosure of personal information to others. (See Civil Code §§ 1798.34 and 1798.24.) It seems reasonable to consider a deceased or legally incapacitated individual's spouse, or his or her legal representative, to be the individual's authorized representative for the purposes of the IPA. Unlike the PRA, the IPA does not expressly provide a general rule that, once an agency has disclosed records to one member of the public, it must disclose the same information to any other member of the public requesting the same information. (*See* Government Code § 6254.5.)

Unlike the IPA, the PRA does not limit disclosure of personal information to personal information pertaining to the individual requesting the records. Such information may be disclosed, although the agency may, where appropriate, assert the Government Code § 6254 (c) exemption from mandatory disclosure where disclosure of information would constitute an unwarranted invasion of personal privacy. The IPA authorizes disclosure of personal information "Pursuant to the California Public Records Act," (Civil Code § 1798.24 (g)); thus, the PRA governs decisions regarding disclosure of personal information in response to PRA requests.

The Commission has exercised its discretion under Public Utilities Code § 583, and implemented its responsibility under Government 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 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." Section 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 staff's ability to disclose Commission investigation records in the absence of disclosure during a hearing or a Commission order authorizing disclosure, staff denies most initial requests for investigation records. Staff usually informs requesters 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, staff prepares a draft resolution for the Commission's consideration.

There is no statute forbidding disclosure of the Commission's safety investigation records. During the past twelve years the Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions. Disclosure does not interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident/incident under investigation.[1] Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility incidents (accidents), 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/incident.

The Commission has often stated that Public Utilities 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.

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[1] *See, e.g.* Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in D.90-05-020 (1993), 49 CPUC 2d 241; L-309 *Re Corona* (December 18, 2003); and L-320 *Re Knutson* (August 25, 2005).

Disclosure of the investigation records to Mauro Fiore, Jr., on behalf of Ms. Benitez, in response to the records request, whether characterized as a request under the IPA, or the PRA, is appropriate.

The requested report is a "public record" as defined by the PRA. (Government Code § 6252 (e).) The California Constitution, PRA, and discovery law, favor disclosure of public records. The public has a constitutional right to access government information. (California Constitution, Article 1, § 3 (a).) 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. (California Constitution, Article 1, § 3 (b) (2).) New statutes, 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. (Id.)

The PRA provides that a 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.[2] (Government Code § 6255.)

The only personal information in the records requested here consists of references to the identity and contact information of Commission staff and other government employees investigating the incident; the utility employees reporting or investigating the incident, or inspecting utility facilities; Harper Tree Services employees (Harper Tree Services was the employer of Mr. Benitez;), the lawyer for Ms. Benitez, and the owner of the residence near where the incident occurred. While the PRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy (Government Code § 6254 (c)), no information in the current incident investigation file requires redaction other than the identity and contact information of the residence owner.

The disclosure of the identity and contact information of Commission employees, utility employees, employees of the company for whom an inured party or decedent was working at the time of an incident is generally warranted in the context of the disclosure of Commission incident investigation reports. The disclosure of the identity and contact information of individuals not directly associated with the Commission, another governmental agency involved in investigating an incident, utility, or the injured or deceased individual’s employer, however, may constitute an unwarranted invasion of

[2] The fact that records may fall within a PRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records which may not be disclosed by law, 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 Government Code § 6253 (e); *Black Panthers v. Kehoe* (1974) 42 Cal. App.3d 645, 656.

personal privacy. Thus, such information would under Government Code § 6254 (c) be exempt from mandatory disclosure in response to a PRA request.

**COMMENTS ON DRAFT RESOLUTION:**

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on April 25, 2006, in accordance with Public Utilities Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were received.

**FINDINGS OF FACT**

1. The Commission received a letter from Mauro Fiore, Jr., the attorney of the decedent worker's spouse, Maria Benitez, seeking disclosure of Commission investigation records concerning an electric incident in which Mr. Benitez was fatally injured on December 2, 2004 in Santa Monica, California. Access to the records in the investigation file was denied in the absence of a Commission order authorizing disclosure. The Commission's investigation of the accident on December 2, 2004 is closed; therefore, the disclosure of the investigation records would not compromise the investigation.

2. The public interest favors disclosure of the requested investigation records.

**CONCLUSIONS OF LAW**

1. The documents in the requested investigation file and report are public records as defined in the Public Records Act. (Government Code § 6250 et seq.)

2. Under the Information Practices Act (Civil Code § 1798. et seq.), the individual to whom the personal information pertains, or their authorized representative, is entitled to review the records containing pertinent personal information, with the exception of portions of the records containing personal information pertaining to others. (Civil Code §§ 1798.34 and 1798.42.)

3. It is reasonable to consider a deceased or legally incapacitated individual’s spouse, or his or her legal representative, to be the individual’s authorized representative for the purposes of the Information Practices Act.

4. 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 peoples' 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 1, § 3 (b) (1) and (2).)

5. The general policy of the Public Records Act favors disclosure of records.

6. Justification for withholding a public record in response to a Public Records Act request must be based on specific exemptions in the Public Records Act or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code § 6255.)

7. The Commission has exercised its discretion under Public Utilities Code § 583 to limit 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).)

8. Public Utilities Code § 583 does not limit the Commission's ability to order disclosure of records.

9. Public Utilities 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 to Mauro Fiore, Jr., and Maria Benitez, of the Commission's report concerning the investigation of a December 2, 2004 electric incident which killed Mr. Salvador Cruz Benitez is granted.

2. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of May 25, 2006 and that the following Commissioners approved it:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners