

Mail Date:
June 26, 2007

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California
Date: June 21, 2007
Resolution No. L-344

RESOLUTION

RESOLUTION AUTHORIZING DISCLOSURE OF CALIFORNIA PUBLIC UTILITIES COMMISSION'S CONSUMER PROTECTION AND SAFETY DIVISION INVESTIGATION RECORDS REGARDING A GAS EXPLOSION ON DECEMBER 3, 2006, AT THE ADDRESS LOCATED AT 224 EDWARDS AVENUE, SAN JOSE, CALIFORNIA INVOLVING VICTOR TAPIA, PURSUANT TO A PUBLIC RECORDS ACT REQUEST BY JOHN J. GARVEY, III OF THE LAW OFFICES OF JOHN J. GARVEY, III, A PROFESSIONAL CORPORATION

BACKGROUND

A May 4, 2007, letter from John J. Garvey, III of the Law Offices of John J. Garvey, III, A Professional Corporation seeks disclosure of records concerning the investigation by the California Public Utilities Commission's (hereafter referred to as the "Commission") Consumer Protection and Safety Division of a gas explosion that occurred on December 3, 2006, at the address located at 224 Edwards Avenue, San Jose, California involving Victor Tapia. See Commission Reportable 420 Form 120306. The Commission's staff could not make the Commission's Consumer Protection and Safety Division investigation records public without the formal approval of the Commission. Pursuant to Commission General Order 66-C, section 3.4, Mr. Garvey, III's letter 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, PRA, and discovery law favor disclosure of public records. The public has a constitutional right to access government information.² Statutes, court rules, and other authority limiting access

¹ Cal. Gov't Code § 6250 *et seq.*

² Cal. Const. art. I, § 3(b)(1).

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, 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 Public Utilities Code section 583, and implemented its responsibility under Government Code section 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, section 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, section 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." 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, section 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's of the option under General Order 66-C, section 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. During the past twelve years the Commission has ordered disclosure of records concerning completed safety incident investigations on numerous

³ Cal. Const. art. I, § 3(b)(2).

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 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.

occasions.⁶ 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 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 California Public Records Act.”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 Public Utilities Code section 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 Legal Division in this matter was mailed to the parties in interest on May 22, 2007, in accordance with Public Utilities Code section 311(g). Comments were filed on June 8, 2007, by John J. Garvey, III of the Law Offices of John J. Garvey, III, A Professional Corporation regarding correcting factual statements in the Draft Resolution. No other comments were received. The Resolution has been amended to correct the factual misstatements.

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.

⁷ See, e.g., Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in Decision 93-05-020, (1993) 49 CPUC 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 a letter dated May 4, 2007, from John J. Garvey, III of the Law Offices of John J. Garvey, III, A Professional Corporation seeking disclosure of the Commission's Consumer Protection and Safety Division's investigation records concerning a gas explosion that occurred on December 3, 2006, at the address located at 224 Edwards Avenue, San Jose, California involving Victor Tapia. Access to the records in the Commission's Consumer Protection and Safety Division investigation file(s) was denied in the absence of a Commission order authorizing disclosure.
2. The Commission's Consumer Protection and Safety Division investigation of the December 3, 2006, accident is still open; therefore, the disclosure of the Commission's Consumer Protection and Safety Division investigation records would compromise the Commission's Consumer and Protection Safety Division investigation.
3. At this time, the public interest does not favor disclosure of the requested Commission's Consumer Protection and Safety Division investigation records.

CONCLUSIONS OF LAW

1. The documents in the requested investigation file and report are public records as defined by Government Code section 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 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 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 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 section 6255.

5. The Commission has exercised its discretion under Public Utilities Code Section 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 section 2.2 (a).
6. Public Utilities Code Section 583 does not limit the Commission's ability to order disclosure of records.
7. Public Utilities Code Section 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 Consumer Protection and Safety Division records concerning the investigation of a gas explosion that occurred on December 3, 2006, at the address located at 224 Edwards Avenue, San Jose, California involving Victor Tapia is denied until the Commission's staff has completed its full investigation of the matter.
2. At such time, the Commission's staff will release the requested records to John J. Garvey, III of the Law Offices of John J. Garvey, III, A Professional Corporation, located at Ten Almaden Boulevard, Suite 1250, San Jose, California 95113-2233
3. 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 June 21, 2007, and that the following Commissioners approved it:

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY A. SIMON
Commissioners