



**FILED**

03/27/23

04:59 PM

**A2303012**

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

Application of CPRA Requester  
Seth Rosenfeld for Rehearing of  
Resolution L-618

Docket No.:

Filed:

**APPLICATION OF CPRA REQUESTER SETH ROSENFELD FOR  
REHEARING OF RESOLUTION L-618**

Seth Rosenfeld  
Freelance Reporter and Requester  
San Francisco Public Press  
<https://www.sfpublicpress.org/>  
415-200-9590  
[Sarose95@outlook.com](mailto:Sarose95@outlook.com)

Filed, Signed and Served on March 27, 2023

## TABLE OF CONTENTS

<b>I. Introduction</b>	...	<b>1</b>
<b>II. Summary</b>	...	<b>2</b>
<b>III. Background</b>	...	<b>3</b>
<b>IV. Discussion</b>		
<b>1. PRA 22-203</b>	...	<b>3</b>
<b>2. PRA 20-29</b>	...	<b>7</b>
<b>3. PRA 20-210</b>	...	<b>13</b>
<b>4. PRA 21-514</b>	...	<b>15</b>
<b>5. The Resolution's Legal and Factual Errors</b>	...	<b>17</b>
<b>6. Oral Argument Requested</b>	...	<b>21</b>
<b>V. Conclusion</b>	...	<b>21</b>

## SELECTED AUTHORITIES CITED HEREIN

California Public Records Act, California Government Code, Division 7920.000 et seq

California State Constitution, especially Article 1, Section 3

## REQUESTER'S *SAN FRANCISCO PUBLIC PRESS* CITED HEREIN

California Agency Is Hiding Uber and Lyft Accident Reports, 1/7/20

<https://www.sfpublicpress.org/california-agency-is-hiding-uber-and-lyft-accident-reports/>

Dumped on the Highway, Passengers Fought Uber Secrecy in Court, 1/7/20

<https://www.sfpublicpress.org/dumped-on-the-highway-passengers-fought-uber-secrecy-in-court/>

Safety Report From Uber Leaves Out Most Accidents, 1/7/20

<https://www.sfpublicpress.org/safety-report-from-uber-leaves-out-most-accidents/>

Officials Demand Disclosure of Ride-Hail Accident Data, 1/20/20

<https://www.sfpublicpress.org/officials-demand-disclosure-of-ride-hail-accident-data/>

Commission Says Ride-Hailing Secrecy Footnote to Be Addressed Soon, 1/28/20

<https://www.sfpublicpress.org/commission-says-ride-hailing-secrecy-footnote-to-be-addressed-soon/>

CPUC Proposes Repealing Secrecy of Uber, Lyft Accident Data, 2/11/20

<https://www.sfpublicpress.org/cpuc-proposes-repealing-secrecy-of-uber-lyft-accident-data/>

Uber, Lyft Lose Shield on Safety Reports as California Regulator Rescinds Secrecy Rule, 3/12/20

<https://www.sfpublicpress.org/uber-lyft-lose-shield-on-safety-reports-as-california-regulator-rescinds-secrecy-rule/>

California Failed to Consistently Track Ride-Hailing Assault and Harassment Complaints, 10/2021

<https://www.sfpublicpress.org/california-failed-to-consistently-track-ride-hailing-assault-and-harassment-complaints/>

Officials Demand Reform on Uber, Lyft Assault Reports, 11/19/21

<https://www.sfpublicpress.org/officials-demand-reform-on-uber-lyft-assault-reports/>

Utilities Agency Admits More Problems in Tracking Ride-Hailing Assaults, 1/21/22  
<https://www.sfpublicpress.org/utilities-agency-admits-more-problems-in-tracking-ride-hailing-assaults/>

How California Utilities Commission Undermines the Public Records Act, 5/2/22  
<https://www.sfpublicpress.org/how-california-utilities-commission-undermines-the-public-records-act/>

Uber, Lyft Must Adopt Measures to Prevent Sexual Assaults, California Regulator Rules, 7/20/22  
<https://www.sfpublicpress.org/uber-lyft-must-adopt-measures-to-prevent-sexual-assaults-california-regulator-rules/>

#### **REQUESTER'S *LOS ANGELES TIMES* ARTICLES CITED HEREIN**

Court says California utilities commission must obey state Public Records Act, 6/20/22  
<https://www.latimes.com/california/story/2022-06-20/court-says-california-puc-must-obey-state-public-records-act>

How the Public Utilities Commission circumvents the California Public Records Act, 5/27/22  
<https://www.latimes.com/california/story/2022-05-27/how-the-california-public-utilities-commission-circumvents-the-state-public-records-act>

Uber and Lyft must adopt measures to prevent sexual assaults, California regulator rules, 7/20/22  
<https://www.latimes.com/california/story/2022-07-20/state-utilities-regulator-new-rules-sexual-assaults-ouber-lyft-rides>

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

Application of CPRA Requester  
Seth Rosenfeld for Rehearing of  
Resolution L-618

Docket No.:

Filed:

**APPLICATION OF CPRA REQUESTER SETH ROSENFELD FOR  
REHEARING OF RESOLUTION L-618**

**I. INTRODUCTION**

Pursuant to Rule 8.1 of GO 96-B, Commission Rule of Practice and Procedure 16.1, and all other applicable rules and laws, including the California Public Records Act and the State Constitution, Requester hereby respectfully submits this Application for a Rehearing of Resolution L-618. Requester also requests oral argument if the rehearing is granted. The grounds are set forth below.

This application incorporates the record of each of these requests, including the appeals, the Draft Resolution, Requester's comments on the Draft Resolution, the final Resolution, and all related correspondence, all of which are in the agency's possession. This application also incorporates by reference Requester's articles concerning the Commission for the *San Francisco*

*Public Press* and the *Los Angeles Times*, which also are in the Commission's possession. URLs are also provided.

## II. SUMMARY

In Resolution L-618, issued February 24, 2023, the Commission purported to resolve the requester's appeals concerning PRA requests No. 20-29, 20-210, 21-514 and 22-203. See Resolution, page 1, Summary; pages 12-14 (Summary, Notice and Comments on Draft Resolution, Findings of Fact; Conclusions of Law; and Order).

However, a review of the record in this case, and of the CPRA, shows that the Resolution is erroneous and unlawful in material respects and that the agency is continuing to fail to comply with the letter and spirit of the law in resolving these requests.

As set forth more fully below, Resolution L-618's factual errors and unlawful holdings fall into four general categories:

- 1) The Resolution fails to order the search for and production of responsive records that must be released by law.
- 2) The Resolution fails to order the release of fully withheld records, and additional reasonably segregable portions of records, that must be released by law.
- 3) The Resolution makes only general and disconnected assertions of confidentiality privilege and fails to provide the legally required specificity demonstrating how each exemption claim applies to respective documents and the respective redactions within the documents.<sup>1</sup>
- 4) The Resolution makes factually erroneous and misleading statements about the procedural record of these requests, resulting in an account that obscures the agency's failure to comply with

---

<sup>1</sup> It should be noted that the Resolution claims at several points that a "small number" of records are being withheld but provides no actual count, or any list of the records or redactions and their respective exemption claims.

the CPRA, misleads the public, and prejudices the requester's ability to exercise his right to pursue these claims in the appropriate court.

Therefore, the Commission should order a rehearing to correct these factual and legal errors and ensure that additional searches and releases of public records are promptly made as required by law, and that lawfully required particularized justifications for any withholdings are provided.

### **III. BACKGROUND**

Requester is a freelance reporter whose articles concerning the Commission, ride-hailing safety and transparency have appeared since 2020 in the *San Francisco Public Press*, a nonprofit news site that focuses on public policy matters, and in the *Los Angeles Times*. His articles revealed that the Commission maintained data about sexual assaults and other safety threats on the Uber and Lyft platforms but withheld it from the public and other government agencies on the basis of a one-sentence confidentiality clause that the Commission added to its regulations in 2013 without prior public notice amidst illegal industry lobbying. In the wake of those articles, the Commission released some of the safety data to Requester, whose investigation found that the Commission had inconsistently collected the data, raising questions about its reliability and whether the agency was fulfilling its avowed duty to monitor the industry to ensure public safety. In another article, Requester reported that despite vows to be more transparent, the Commission had systematically violated the public's right to know about its handling of deadly disasters and corporate scandals, according to court records and First Amendment attorneys. Requester files the current Application for Rehearing as part of his continuing research on these subjects.

### **IV. DISCUSSION**

#### **1) PRA 22-203 re Next Request, submitted April 11, 2022:**

Resolution L-618 erroneously and unlawfully affirms the Legal Division's claim that it had searched adequately and had no responsive records for this request. See Resolution, page 1,

Summary; page 9, para. 3; pages 12-14, Summary, Notice and Comments on Draft Resolution, Findings of Fact; Conclusions of Law; and Order.

It remains truly astonishing that Legal Division, and now the Commission, maintain that there are no records of any kind responsive to this request, which seeks any and all records in any way concerning the definitions of terms used in the Next Request system that Legal Division itself uses to track public records requests. After all, the Commission (i.e., the taxpayer) has paid a private vendor for the use of this system, and the Legal Department uses Next Request on a daily basis to monitor the flow of requests under the CPRA and its own legal compliance with the CPRA and the State Constitution.

How can it be that the Commission has no record *in any way related* to the definitions of the terms that the Next Request system uses? Surely there is a document in paper or electronic form, a manual, a web address, or an Internet link, that the Commission uses to refer to these definitions so it understands the data generated by Next Request. To insist there are no responsive records is to suggest that Commission staff are perhaps using telepathy to access these definitions, or that the Commission is using Next Request without regard to how it operates and how it is managing the flow of PRA requests from the public and other government agencies.

It appears that both the Legal Division and Commission have construed PRA 22-203 in an impermissibly narrow manner as indicated by how the Resolution inaccurately describes it. As the Resolution notes at page 6, this request sought:

“A glossary, dictionary, or record by any other name that contains definitions for the terms used in staff reports generated in the Next Request system used by the CPUC, including but not limited to the following terms:

“Fulfillment

“Late Response

“Overdue

“Paused

“No responsive documents released



“Other government inquiry

“Not assigned

“Not commission regulated

“Forwarded for review

“This request also seeks any additional information or definitions for the terms used and for how to interpret the staff reports.”

However, the Resolution *fails to reflect* that this request also sought more broadly all records related to or referencing the above, as evidenced in the below highlighted excerpts of the request:

“The term “documents” is intended to be understood **in its broadest sense** to include, without limitation: (i) originals, as that term is defined in California Evidence Code section 255 and in Federal Rule of Evidence 1001, subdivision (3), and writings, as used in California Evidence Code section 250 and in Federal Rule of Evidence 1001, subdivision (1); (ii) all copies which are different in any way from originals (whether by interlineations, receipt stamp, notation, highlighting, indication of copies sent or received or otherwise); and, (iii) all drafts (whether printed, filed recorded or reproduced by hand) of the following: handwriting, typewriter, printing, photostating, photographing, and every other means of recording upon any tangible thing or medium and form of communication or representation **including electronically stored, computerized stored, or telephonically stored (e.g., text messages), correspondence, letters, notes, memoranda, contracts, documents, invoices, notices, permits, schedules, words, pictures, drawings, plans, specifications, calculations, survey, voicemails, computer entries, computer discs, work papers, electronic mail, sounds or symbols, combinations thereof.**

“**The terms "related to" or "relevant" should be construed in its broadest sense meaning evidencing,** mentioning, memorializing, describing, constituting, containing, concerning, reflecting, summarizing, referring to, pertaining to, supporting, refuting, and/or purporting to evidence, mention, memorialize, describe, constitute, contain, concern, reflect, summarize, refer to, pertain to, support, refute and/or in any way being relevant to, in whole or in part, the subject matter referred to this request.

“We request that CPUC provide copies of all public records, **including but not limited to files, documents, drafts of documents, records, staff memoranda, internal and external written or verbal communications and correspondence, emails, text messages, notices, evaluations, studies, applications, approvals, permits, licenses, agreements, and contracts, including documents retained in both paper and electronic form (including telephones), referring to, evidencing or relating to the categories identified above.**”

In other words, this request sought any and all records concerning, or relevant to, the requested definitions and dictionary describing the terms used in the Next Request system, whether in electronic or paper form.

Nonetheless, the Resolution states at page 7, para. 3:

“We still do not have any records responsive to request #22-30. And further, we are not required to create records where none exist.”

Requester agrees that an agency need not “create” records. However, an agency must provide copies of specifically requested records in the specified formats.

Thus, if any unit of the CPUC possesses such records, or sent emails or other communications about them, or if there is an operations manual or contract containing the definitions, *or even a web address or link to a website* where such definitions and information reside, then Legal Division should have provided that information in response this request.

Further, if by virtue of having a contract or other relationship with Next Request, the agency has the ability to access a website or log-in, where it can access definitions used in the Next Request system, then records referencing that access or that website must be released.

It must be emphasized that the CPRA and the State Constitution prohibit agencies from denying records requests based on overly technical and non-substantive grounds, and in fact require agencies to take reasonable steps to help requesters resolve their requests in a fruitful manner. The relevant portion of the CPRA is quoted below:

“ARTICLE 4. Duty to Assist in Formulating Request [7922.600 - 7922.605]  
( *Article 4 added by Stats. 2021, Ch. 614, Sec. 2.* )

“[7922.600.](#)

“(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and “effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

“(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

“(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Article 1 (commencing with Section 7922.500) or Article 2 (commencing with Section 7922.525).

*“(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000.)”*

However, the CPUC took no such steps in regard to this request. Instead, the Legal Division on April 21, 2022, referred Requester to the Commission’s News and Outreach Office for “further assistance,” as noted in the Resolution at page 7, para. 1.

Requester duly inquired of the News and Outreach Office, but it never replied.

Something here simply does not add up: the CPUC must have some record in some way concerning the definitions for the Next Request system it uses on a daily basis.

It should be noted that neither the Resolution, nor the entire record of this request, provides any indication that the CPUC to this date has conducted an independent review or made any factual inquiry into the handling of this request or any of the others at issue in this Resolution, suggesting that the CPUC’s appeal process does not provide true oversight of the agency’s initial PRA determinations.

Accordingly, the Commission should grant a rehearing on this matter in order to resolve it as required by law.

## **2) PRA 20-29 re TNC safety issues, submitted 1-24-20:**

The Resolution notes at the bottom of page 1 that this request sought a broad range of records related to the following “verbatim”:

- “1) TNC driver training programs.
- “2) TNC accident patterns
- “3) Cases of TNC-involved accidents
- “4) TNC driver problems,
- “5) Bad driving of TNC drivers.
- “6) Any other issues concerning road safety, of TNC vehicles,
- “7) The adequacy of TNC programs to screen driving records,
- “8) Whether there are patterns of TNC accidents that could be addressed through safety measures and/or regulations
- “9) ways of making TNC services safer.
- “10) Any one or more accidents involving TNCs.”

But again, the Resolution does not reflect that this request also specified that it was seeking particular kinds of records concerning the above, as noted in the highlighted excerpts below:

“This PRA Request seeks public records as that term is defined by Government Code section 6252, subdivision (e). The term "documents" is intended to be understood **in its broadest sense to include, without limitation:** (i) originals, as that term is defined in California Evidence Code section 255 and in Federal Rule of Evidence 1001, subdivision (3), and writings, as used in California Evidence Code section 250 and in Federal Rule of Evidence 1001, subdivision (1); (ii) all copies which are different in any way from originals (whether by interlineations, receipt stamp, notation, highlighting, indication of copies sent or received or otherwise); and, (iii) all drafts (whether printed, filed recorded or reproduced by hand) of the following: handwriting, typewriter, printing, photostating, photographing, and every other means of recording upon any tangible thing or medium and form of communication or representation **including electronically stored, computerized stored, or telephonically stored (e.g., text messages), correspondence, letters, notes, memoranda, contracts, documents, invoices, notices, permits, schedules, words, pictures, drawings, plans, specifications, calculations, survey, voicemails, computer entries, computer discs, work papers, electronic mail, sounds or symbols, combinations thereof.**

“The terms "related to" or "relevant" should be construed in its broadest sense **meaning evidencing, mentioning,** memorializing, describing, constituting, containing, concerning, reflecting, summarizing, referring to, pertaining to, supporting, refuting, and/or purporting to evidence, mention, memorialize, describe, constitute, contain, concern, reflect,

summarize, refer to, pertain to, support, refute and/or in any way being relevant to, in whole or in part, the subject matter referred to this request.

“We request that CPUC provide copies of **all public records, including but not limited to files, documents, drafts of documents, records, staff memoranda, internal and external written or verbal communications and correspondence, emails, text messages, notices, evaluations, studies, applications, approvals, permits, licenses, agreements, and contracts, including documents retained in both paper and electronic form (including telephones), referring to, evidencing or relating to the categories identified above.**

**“Please note that this PRA Request seeks copies of any and all studies, reports, summaries, recommendations, analyses, overviews, audits, investigations, memos, emails, or any other records of any type, created by CPUC staff, or by anyone else, that were produced or acquired between June 1, 2019 and the date that you complete processing of this request ....”**

At page 9, para. 3, the Resolution states that all records responsive to this request have been released. However, this assertion is flatly contradicted by the Resolution’s other statements, as will be shown in the following discussion. Clearly, some parts of the Resolution are erroneous.

At page 2, para. 3, the Resolution states, “*We are withholding some emails* under eight privileges [...]” (Emphasis added.)

The stated privileges include Cal. Government Code 7927.500, which states, inter alia, that “this division does not require disclosure of any preliminary drafts, notes, or interagency or intraagency memoranda that are not retained by a public agency in the ordinary course of business, *if the public interest in withholding those records clearly outweigh the public interest in disclosure.*” (Emphasis added.)

At page 10, para. 2, the Resolution adds:

“In PRA #20-29, we initially released 13 records on February 19, 2020, and we are here releasing an additional 307 emails. *We are withholding a small number* under the attorney-client privilege, deliberative process privilege, investigation exemption, litigation exemption, official information privilege, personal information exemption, and settlement communications privilege.” (Emphasis added.)

Yet the Resolution states at page 9 that it provided *all* records in response to this request:

“The bases for the appeals of PRAs #20-29, #21-514 and #22-203 are unclear, since the *Legal Division provided all records responsive to PRA #20-29* and PRA #21-514, and informed the requester that the commission had no responsive records in PRA #22-203. We simply re-iterate here that *the commission has provided all existing responsive records*, and affirm that the Legal Division conducted an adequate search for records as to all of the PRAs above.” (Emphasis added.)

And in another contradiction, the Resolution states at page 12, para. 7:

“As to PRA #20-29, we are releasing additional emails/documents, and *withholding 19 emails* under the deliberative process privilege, attorney-client privilege, mediation exemption, personal information exemption, public interest exemption, official information privilege, and litigation exemption.” (Emphasis added. Footnote numbers deleted for clarity.)

The Resolution does not comply with the CPRA and the State Constitution in several ways.

First, Requester submits that the public interest in the release of some or all of the withheld records and portions of records outweighs the asserted interest in withholding the records. As indicated above, ensuring public safety on the widely used ride-hailing platforms is a paramount concern and duty of the Commission, which is the industry’s primary regulator. Thousands of people have been killed or seriously injured using these platforms. The records thus go directly to the heart of the Commission’s duty to protect public safety, and whether it is fulfilling that duty.

As to the claim that some unspecified records fall under an exemption that sometimes allows the withholding of preliminary drafts, the CPRA states as follows:

“CHAPTER 11. Preliminary Drafts and Similar Materials [7927.500- 7927.500.]  
( *Chapter 11 added by Stats. 2021, Ch. 614, Sec. 2.* )

“**7927.500.**

“Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any preliminary drafts, notes, or interagency or intraagency memoranda that

are not retained by a public agency in the ordinary course of business, *if the public interest in withholding those records clearly outweighs the public interest in disclosure.* (Emphasis added.)

*(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000.)*

Yet there is no demonstration in the record that any this balancing test was made, or what and how such considerations and balancing were made, as to each redaction and each withholding, as required by law.

Although the above passage states that 19 emails are being withheld, it does not specify which exemptions are claimed with respect to each email, or the various redactions within each email. It makes only vague and untethered assertions that *some* exemptions allegedly apply to *some* emails. No connection is made between any specific email and any specific exemption.

Nor does it say whether, or how many, other kinds of records besides emails are being withheld, or what exemptions are being claimed for each withholding and redaction in those records.

Thus, the Resolution does not comport with Cal. Government Code 7922.000, which requires agencies to “justify withholding any record by *demonstrating* that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Emphasis added.)

No such demonstration is provided in the Resolution or anywhere else in the record of this request, or of the other requests at issue herein. Instead, the Resolution makes only bald assertions that a laundry list of exemptions applies to an inconsistently described and ultimately unknown number of withheld records.

Requester also submits that Commission has failed to conduct an adequate search. Requester hereby incorporates his arguments concerning the previously addressed request.

In addition, Requester submits that the Commission is continuing to impermissibly withhold reasonably segregable portions of records.

The Commission should thus grant a rehearing on this matter to ensure that all records have been searched for, that all public records and reasonably segregable portions are released, and that any withheld records and portions of records are specifically demonstrated to be exempt.

In regard to the latter, the agency should provide a particularized list of the records by descriptor and date with the specific exemption being claimed for each withheld portion. This is necessary to comply with the CPRA 7922.000 and to ensure that all public information is released.

The Commission should also ensure that the agency has conducted the necessary and specific balancing tests to take into account the overriding public interest in disclosure.

The need for such an accounting is not only required by law but is also warranted in light of preceding record in this matter, which shows that the Legal Division has made numerous delays and dubious denials in this request.

For example, as Legal Division stated in the draft resolution (Page 2, para.1), it previously told Requester it was withholding records because they pertained to an “evaluation of a program or were being debated deliberatively in an ongoing proceeding.” However, the CPRA and California Constitution do not recognize such claims as exemptions. Indeed, the fact that requested records concern the evaluation of a tax-payer funded program or are subject to debate in proceeding concerning the public’s business only serves to render them all the more important to release in a timely way.

At another point in the draft resolution (page 2, para. 3), Legal Division stated, “Staff have since become more liberal in our interpretation and expanded our search to include all emails pertaining to these topics and are here providing 352 additional documents responsive to this request.” Yet this suggests the exact opposite: that Legal Division’s previous interpretations were overly narrow and in violation of the law.

As you know, the legal presumption is that all records are public unless they are specifically shown to be exempt.

Moreover, factual parts of records can be reasonably segregated from opinions and recommendations and be released.



Given the track record of delayed and denied releases in response to this request, and the failure to release reasonably segregable portions, and given the important public safety issues involved, Requester asks the Commission to grant a rehearing of this matter.

### **3) PRA 20-210 re TNC sexual assaults, submitted May, 14, 2020:**

As the Resolution notes at page 4, this request seeks:

“Copies of any and all studies, reports, summaries, presentations, and/or records of any kind produced by the CPUC and/or its staff, and/or by any other entity, in any way relating to any transportation network company and sexual assault, sexual harassment and/or sexual misconduct of any type. This encompasses but is not limited to records concerning any aspect of the general topic, as well as records concerning specific cases. The period covered by this request is from 9-1-13 to the date you complete processing this request.”

However, once again the resolution gives an impermissibly narrow description of this request. As requester noted in his comments on the draft resolution, this request also specified that it is broadly seeking records relating to the above, stating:

“Relating to” means referring to, constituting, representing, defining, depicting, concerning, embodying, reflecting, identifying, stating, mentioning, governing, addressing, or pertaining to the subject matter of the request in whole or in part, directly or indirectly.”

Requester submits that the agency is withholding additional public records concerning this important public safety issue that should be released in whole or in part.

In this regard, the Resolution makes impermissibly vague statements about the number of records being held in response to PRA 20-210 and the reasons why.

For example, at page 5, para. 1, it states, “We are withholding *some* emails under three privileges: one, as settlement discussions pursuant to Commission Rules of Practice and Procedure Rule 12.6,11 two, as draft exemptions under the Cal. Gov. Code Sec. 7927.500, and three, under Cal. Gov’t Code § 7922.000, the public interest exemption. In doing the public’s business, it is essential for Commission staff to be able to circulate confidential internal draft documents, to brainstorm ideas or take contrary positions. If staff could not do so, we would be

unable to fully develop the issues and reach a well-reasoned final position. Accordingly, the public interest in withholding these records clearly outweighs the public interest in disclosure.” (Emphasis added.)

Likewise, at page 10, para. 3, the Resolution states the Commission is “withholding a *small number* of documents that transportation staff had turned over, but which were drafts and not intended for public release.” (Emphasis added.)

And at page 11, para. 1, the Resolution states that the Commission is “withholding *several* which are exempt pursuant to Commission Rules of Practice and Procedure Rule 12.6, draft exemptions under the Cal. Gov. Code Sec. 6254(a), or information provided under seal and/or confidentially to a public employee in the course of their duty, and thus subject to the official information privilege Cal. Evid. Code Sec. 1040 and therefore exempt from disclosure in response to records requests, pursuant to Cal. Gov’t Code Sec. 7927.70525, and Evid. Code Sec. 954 (the attorney-client privilege).

It continues, “*We also withheld a small number* of internal draft documents produced by Commission staff that were not intended for public release under Cal. Gov’t Code Sec. 7927.500 and 7922.000.” (Emphasis added. Footnote numbers deleted for clarity.)

These vague assertions do not comport with the CPRA and the State Constitution. Requester hereby incorporates his arguments concerning the previously addressed requests.

As noted above concerning the previously discussed requests, the law requires agencies to demonstrate that withholdings are proper, that is, to provide a particularized accounting of each record or part of record at issue, the redactions therein, and the respective exemptions being claimed for each.

Further, the agency must balance the public interest in withholding against the public interest in disclosure, and demonstrate that it has done so.

Here, the public interest in the release of the information clearly outweighs the interest in withholding them, as it will provide important information about a serious public safety issue and how the Commission has conducted its duty to address it.

Requester submits that the Commission is continuing to impermissibly withhold entire records as well as reasonably segregable portions of records.

Requester also submits that Commission has failed to conduct an adequate search for the requested records.

Requester therefore asks that the Commission order a rehearing to ensure a thorough search, the release of all public records and parts thereof, and the provision of a particularized list of all records withheld by descriptor and date with the specific exemption being claimed for each redaction therein.

#### **4) PRA 21-514 re All Access Program, submitted August 27, 2021**

As the Resolution notes at page 5, this request sought:

“1) All Quarterly Reports

“2) All Exemption Requests

“3) All Offset Requests (including retroactive Offset Requests)

“4) All Access Provider Applications

“5) All Advice Letters

“6) All protests to each Exemption Request

“7) All protests to each Offset Request

“8) All protests to each Advice Letter

“9) All consolidated Quarterly Reports submitted by each and every Access Fund Administrator and/or statewide Access Fund administrator. The above enumerated records are requested for all TNCs, for all geographic areas, and for the period dated from 1-1-19 to the date you complete processing this request.”

But once again the draft resolution does not note that this request also sought a broad range of records relating to the above, as noted below:

“The term "documents" is intended to be understood in its broadest sense to include, without limitation: (i) originals, as that term is defined in California Evidence Code section 255 and in Federal Rule of Evidence 1001, subdivision (3), and writings, as used in California Evidence Code section 250 and in Federal Rule of Evidence 1001, subdivision (1); (ii) all copies which are different in any way from originals (whether by interlineations, receipt stamp, notation, highlighting, indication of copies sent or received or otherwise); and, (iii) **all drafts** (whether printed, filed recorded or reproduced by hand) of the following: handwriting, typewriter, printing, photostating, photographing, and every other means of recording upon any tangible thing or medium and form of communication or representation **including electronically stored, computerized stored, or telephonically stored (e.g., text messages), correspondence, letters, notes, memoranda, contracts, documents, invoices, notices, permits, schedules, words, pictures, drawings, plans, specifications, calculations, survey, voicemails, computer entries, computer discs, work papers, electronic mail,** sounds or symbols, combinations thereof.

**“The terms "related to" or "relevant" should be construed in its broadest sense meaning evidencing, mentioning,** memorializing, describing, constituting, containing, concerning, reflecting, summarizing, referring to, pertaining to, supporting, refuting, and/or purporting to evidence, mention, memorialize, describe, constitute, contain, concern, reflect, summarize, refer to, pertain to, support, refute and/or in any way being relevant to, in whole or in part, the subject matter referred to this request.

“We request that CPUC provide copies of all public records, including but not limited to files, documents, drafts of documents, records, staff memoranda, internal and external written or verbal communications and correspondence, **emails, text messages,** notices, evaluations, studies, applications, approvals, permits, licenses, agreements, and contracts, including documents retained in both paper and electronic form (including telephones), **referring to, evidencing or relating to the categories identified above.**”

Once again, the Resolution makes contradictory statements about its compliance with the CPRA. In this case, the Resolution states at page 6, para. 1, that “On April 18, 2022, staff released all records responsive [...]. But on the same page, at para. 3, the Resolution also states, “As discussed in greater detail below, the Commission did conduct an adequate search for records, *and has since sought out additional records as well in order to construe this request in the broadest possible sense.* We are here releasing all records we found responsive to this request. *We are releasing 116 additional records.*” (Emphasis added.)

And at page 10, para. 4, the Resolution states, “In PRA #21-514 we initially released 18 documents on April 18, 2022, and we are here releasing 116 additional records.”

Thus, on the one hand the Resolution insists an adequate search was done and that all records were released as of April 18, 2022, but on the other it admits that an additional search was done to comply with the broad language of the initial request and that only now are 116 additional records being released.

Significantly, these 116 records were released only after Requester's appeal and the issuance of the Resolution. It is thus somewhat disingenuous to state, as the Legal Division does at page 9, para. 3, that it is "unclear" what the basis for Requester's appeal was because Legal Division had provided "all" responsive records to Requester.

Legal Division states at page 6, para. 3, and at page 10, para. 4, that it is not withholding any records in response to this request.

However, Requester believes the agency has not conducted an adequate search to locate all specifically requested records.

Requester also submits that the agency is improperly withholding records in whole or in part that must be released in the public interest.

Further, as discussed regarding the foregoing requests, Requester submits that for any records withheld in whole or in part the agency must provide a particularized justification as required by law, that includes balancing the public interest in disclosure.

Requester hereby incorporates the legal and factual arguments made concerning the previously discussed requests as they apply here, as well.

## **5) The Resolution's Legal and Factual Errors:**

In addition to the factual and legal errors cited above, and hereby incorporated by reference, Requester submits the following:

The Resolution is written to make it appear that the agency properly released all records and there were no bases for appeal. But this is self-serving and inaccurate. As shown below, Legal Department closed these requests and *refused* to release numerous responsive public records.

The matter would have ended there but for Requester's appeals. Indeed, it was only after Requester had appealed each denial, and those appeals were addressed in the Resolution, that Legal Division released numerous previously withheld public records, in some cases years after they were requested.

To wit:

At page 9, para. 3, the Resolution states:

"The bases for the appeals of PRAs #20-29, #21-514 and #22-203 are unclear, since the Legal Division provided all records responsive to PRA #20-29 and PRA #21-514, and informed the requester that the commission had no responsive records in PRA #22-203. We simply re-iterate here that the commission has provided all existing responsive records, and affirm that the Legal Division conducted an adequate search for records as to all of the PRAs above."

And at page 12, para. 6, the final Resolution states in reply to Requester's earlier comments on the draft Resolution:

"In response, the Commission is not being internally inconsistent by stating we properly conducted our searches and properly withheld the records we withheld, and at the same time we conducted additional searches and are releasing additional records here."

But the bases for the appeal is clear and the Resolution is internally inconsistent. The facts contained in the Resolution itself show the agency *for years* wrongly withheld numerous public records in violation of the CPRA and the State Constitution.

For example, at page 1, para. 1, the Resolution states:

"Here, we affirm Legal Division's determination to withhold records and authorize the disclosure of additional records that are no longer as sensitive *dues* (sic) to the passage of time."

But the "passage of time" does not cover the admitted wholesale failure to timely search for clearly requested records:

At page 2, para. 3, the Resolution states in regard to PRA 20-29:

“Staff have since become more liberal in our interpretation and expanded our search to include all emails pertaining to these topics and are here providing 307 additional documents responsive to this request.”

But as previously noted, emails were clearly specified in the original request. Becoming “more liberal” does not explain the refusal to timely search for and release them as was required.

At page 6, para. 3, the Resolution states in regard to PRA 21-514:

“As discussed in greater detail below, the Commission did conduct an adequate search for records, and has since sought out additional records as well in order to construe this request in the broadest possible sense.”

But the initial request clearly specified a broad search. The CPRA also required a broad search. Instead Legal Division chose to do an impermissibly narrower search, and only after Requester’s appeal and the issuance of the Resolution were an additional 116 records released. As with the other records, they should have been released long ago.

At page 10, para. 3, the Resolution concedes in regard to PRA 210:

“In addition, after these appeals, we have re-done the email searches and returned an additional 49 emails which we are disclosing concurrently with this Resolution, though with redactions under the settlement privilege and the attorney client privilege.”

At page 10, para. 2, the Resolution again confounds itself:

“Here, for PRAs #20-29, #20-210, #21-514, and #22-203, staff in the Legal Division Public Records Office contacted staff in the transportation section and requested all relevant records. Transportation staff then provided all relevant records which were then reviewed by the public records office staff. Public records office staff released the majority of records or pointed the requester to the portions of the Commission’s website, if responsive records were already publicly available and accessible, *and withheld a small number of records under specific exemptions of the CPRA*” (Emphasis added.)

But on the same page the Resolution states that it is concurrently releasing a total of more than 450 additional records -- hardly a “small” number.

On the other hand, at page 12, para. 1, the Resolution flatly disagrees with Legal Division’s earlier failure to release reasonably segregable parts:

“Upon review, we believe Legal Division public records staff should have released the reasonably segregable portions of any withheld records, and we will in this Resolution order the release of any reasonably segregable portions of any withheld records.”

Thus, it is not exactly right to declare, as the Resolution does at page 12, para. 6, that “the Commission is not being internally inconsistent by stating we properly conducted our searches and properly withheld the records we withheld, and at the same time we conducted additional searches and are releasing additional records here.”

In fact, all clearly requested records were not searched for and timely released, as a close reading of the Resolution has shown.

It is not an academic point. The law requires timely release of public records. Only in this way can the public have meaningful and useful access to important information pertaining to contemporaneous concerns. Access delayed is access denied.

As to those records, or portions of records, that are still being withheld, the agency has failed to comply with Government Code Section 7922.000, which requires demonstration of a particularized justification for each redaction and withheld record.

Nor is there any demonstration, for any redaction or withholding, that the agency complied with Government Code 7927.500 and conducted the necessary balancing of confidentiality with the public interest in disclosure.

In short, the Resolution obscures the true record of the agency’s failure to timely search for and release all responsive records, as well as the number of records still being withheld and the specific basis for each redaction and withholding. It is a misleading public record concerning public business.



Indeed, the Resolution speaks out of both sides of its mouth, saying on the one side that the agency had made adequate searches and releases, and on the other that it only now has made long-ago requested searches and releases. This creates an inaccurate record that prejudices Requester's lawful right to pursue appropriate judicial remedies.

Requester thus asks that the Commission order a rehearing to clarify and correct the erroneous factual statements and legal conclusions in the Resolution.

#### **6) Oral Argument Requested:**

Oral argument is appropriate here as it will materially assist the Commission in resolving the application by, *inter alia*, permitting a more efficient dialogue and discussion of the issues. Oral argument is also appropriate because the challenged resolution concerns a matter of paramount public importance, namely the Commission's handling of public records act requests on topics of public safety.

Further, to the extent that the Resolution maintains that the Commission's handling of the requests at issue therein were proper, the application raises salient questions concerning whether the agency's practices fail to comply with the CPRA, the State Constitution and its own rules and regulations.

### **V. CONCLUSION**

Requester respectfully submits that the Commission should grant a rehearing in this matter to order:

- 1) The conducting of further searches to locate all responsive records.
- 2) The release of all public records still being withheld in whole or in part from each request, including but not limited to properly interpreting PRA 22-203 in the broad sense in which it was submitted and assisting Requester as required under the CPRA to make a productive request that identifies and releases responsive public information that the agency obviously has in some form.

3) The full and fair consideration of the public interest in full in releasing each redacted record or portion thereof as required.

4) The provision to Requester of a particularized justification for each record, and portion of record, still being withheld, specifying the exemptions claimed for each withholding.

Each justification must comport with Cal. Government Code 7922.000, which requires agencies to “justify withholding any record by *demonstrating* that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Emphasis added.)

5) The correction of the vague, inconsistent and inaccurate statements in the Resolution that materially distort the record and thereby mislead the public and prejudice Requester in violation of the CPRA, so that there is a clear and accurate record of the agency’s multiple failures to timely comply with these requests.

Requester also asks that the Commission grant oral argument for the reasons stated herein.

RESPECTFULLY SUBMITTED BY,

Seth Rosenfeld  
Freelance Reporter/Requester  
San Francisco Public Press  
<https://www.sfpublishpress.org/>  
415-200-9590  
[Sarose95@outlook.com](mailto:Sarose95@outlook.com)

March 27, 2023

/s/ SETH ROSENFELD  
Seth Rosenfeld