

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: June 21, 2018

Resolution No.: L-566

RESOLUTION**RESOLUTION AUTHORIZING DISCLOSURE OF RECORDS
OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
SAFETY AND ENFORCEMENT DIVISION'S INVESTIGATION
OF TRANS BAY CREW COMPANY FOR VIOLATIONS OF
THE PUBLIC UTILITIES CODE RELATING TO CHARTER
PARTY CARRIERS****BACKGROUND**

The California Public Utilities Commission ("Commission") received a request seeking disclosure of the Commission Safety and Enforcement Division's investigation records related to an inquiry into the business records of Trans Bay Crew Company. The Commission staff could not make the investigation records public without the formal approval of the full Commission. The request is treated as an appeal to the full Commission for release of the requested records pursuant to Commission General Order (G.O.) 66-C § 3.4.

DISCUSSION

The requested records are "public records" as defined by the California Public Records Act ("CPRA").¹ The California Constitution, the CPRA, 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, court rules, or other authority that limit the right of access must be

¹ Cal. Gov't. Code § 6250, *et seq.*

² Cal. Const. Article I, § 3(b)(1).

³ Cal. Const. Article I, § 3(b)(2).

adopted with findings demonstrating the interest protected by the limitation and the need to protect that interest.⁴

The CPRA provides that an agency must base a decision to withhold a public record in response to a CPRA request upon the specified exemptions listed in the CPRA, 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 Cal. Pub. Util. Code § 583, and implemented its responsibility under Cal. Gov't. Code § 6253.4(a), by adopting guidelines for public access to Commission records. General Order 66-D took effect on January 1, 2018, and describes the manner in which information must be submitted to the Commission in order to be treated as confidential. However, the information related to this incident was submitted prior to September 25, 2016. Consequently, under Sections 3.1 and 5.4(b) of G.O. 66-D, this information is governed by the prior regime, described in G.O. 66-C. G.O. 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.” G.O. 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 G.O. 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 inform requestors that their subpoena or public records request will be treated as an appeal under G.O. 66-C § 3.4 for disclosure of the records.

There is no statute forbidding disclosure of the Commission’s investigation records. With certain exceptions, we generally refrain from making most investigation records public until Commission staff’s investigation is complete, where an investigation is not associated with a formal Commission proceeding. Commission staff and management need to be able to engage in confidential

⁴*Id.*

⁵ The fact that records may fall within a CPRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records subject to a law prohibiting disclosure, CPRA 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.

deliberations regarding an investigation without concern for potential interference by regulated entities or others with possible interests in the investigation.

The Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.⁶ Disclosure of such records 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 The same basic principles apply to non-safety related investigations as well.

Portions of investigation records which include personal information may be subject to disclosure limitations in the Information Practices Act of 1977 (“IPA”).⁸ The IPA authorizes disclosure of personal information “[p]ursuant to the [CPRA].”⁹ The CPRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy.¹⁰ Investigation records may include information subject to the Commission’s lawyer-client privilege, official information privilege, or similar disclosure limitations. The CPRA exempts such information from disclosure.¹¹

The Commission investigation of the business records was completed on February 05, 2016; therefore, the public interest favors disclosure of the requested Commission’s investigation records, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission’s lawyer-client or other privilege.

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution of the Commission’s Legal Division in this matter was mailed to the parties in interest on May 22, 2018, in accordance with Cal. Pub. Util. Code § 311(g). Comments were filed on _____. Reply comments were filed on _____.

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 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).

¹¹ Cal. Gov’t. Code § 6254(k).

FINDINGS OF FACT

1. The Commission received a request which seeks disclosure of the Commission's investigation records concerning an investigation into General Order 157-D violations by Trans Bay Crew Company.
2. Access to the records in the Commission's investigation file was denied in the absence of a Commission order authorizing disclosure.
3. The Commission investigation of the business records was completed on February 05, 2016. Therefore, the public interest favors disclosure of the requested Commission's investigation records, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission's lawyer-client or other Commission-held privilege.

CONCLUSIONS OF LAW

1. The documents in the requested Commission's 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 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. Cal. Const. Article I, §§ 3(b)(1) and (2).
3. The general policy of the CPRA favors disclosure of records.
4. Justification for withholding a public record in response to a CPRA request must be based on specific exemptions in the CPRA or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. Cal. Gov't. Code § 6255.
5. Cal. Gov't Code § 6254(c) exempts from mandatory disclosure personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

6. Cal. Gov't Code § 6254(k) exempts from disclosure records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.
7. The Commission has exercised its discretion under Cal. Pub. Util. Code § 583 to limit Commission staff's disclosure of investigation records in the absence of formal action by the Commission or disclosure during the course of a Commission proceeding. G.O. 66-C § 2.2 (a).
8. Cal. Pub. Util. Code § 583 does not limit the Commission's ability to order disclosure of records.

ORDER

1. The request for disclosure of the Commission records concerning the investigation of Trans Bay Crew Company, completed on February 05, 2016, is granted, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission's lawyer-client or other Commission-held privilege.
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 June 21, 2018, and that the following Commissioners approved it:

ALICE STEBBINS
Executive Director