

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: February 11, 2021

Resolution No.: L-605

RESOLUTION**RESOLUTION AUTHORIZING DISCLOSURE OF RECORDS
OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION SAFETY
AND ENFORCEMENT DIVISION'S INVESTIGATION OF A GAS
INCIDENT THAT OCCURRED AT THE SENTINEL ENERGY
CENTER FACILITY, 15775 MELISSA LN., N. PALM SPRINGS,
CALIFORNIA, ON MARCH 6, 2017****BACKGROUND**

The California Public Utilities Commission ("Commission") received a request seeking disclosure of the Commission Safety and Enforcement Division's investigation records of a safety incident that occurred at the Sentinel Energy Center facility, 15775 Melissa Ln., N. Palm Springs, California, on March 6, 2017 ("incident"). The Commission staff could not make the investigation records public without the formal approval of the full Commission. This is a resolution responding to this records request in accord with Commission General Order (G.O.) 66-D § 6. This resolution authorizes the release of certain records maintained by the Commission related to this incident at this time and authorizes the disclosure of additional records as soon as the Commission's incident investigation is closed.

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 granting 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

¹ Cal. Gov't. Code § 6250, *et seq.*

² Cal. Const. Article I, § 3(b)(1).

³ Cal. Const. Article I, § 3(b)(2).

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 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, Commission Resolution L-436 describes the manner in which Commission investigation records will be made public.

Resolution L-436 limits Commission staff's ability to disclose Commission investigation records in the absence of disclosure during a proceeding, a Commission order authorizing disclosure, or an agreement between the Commission and the utility authorizing disclosure. As a result, Commission staff denies most initial requests and subpoenas for investigation records. Commission staff usually informs requestors that their subpoena or public records request will be treated as an appeal under Resolution L-436 for disclosure of the records.

There is no statute forbidding disclosure of the Commission's safety investigation records. Nevertheless, with certain exceptions for incident reports filed with the Commission, we generally refrain from making most accident investigation records public until Commission staff's investigation of the incident is complete. Commission staff and management need to be able to engage in confidential deliberations regarding an incident investigation without concern for the litigation interests of plaintiffs or regulated entities.

The Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.⁶ Disclosure of such records does not interfere

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.

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.

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 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 Incident investigation records may include information subject to the lawyer-client privilege, official information privilege, or similar disclosure limitations. The CPRA exempts such information from disclosure.¹¹

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 potential injury caused by the release of requested investigation records.

The Commission’s investigation of the incident is still open. To ensure staff’s ability to conduct investigations effectively, we have usually found that the public interest favors withholding investigation records until the Commission’s investigations are complete. Once an investigation is closed, disclosure no longer interferes with our investigations, and our usual practice has been to authorize disclosure of records of our completed investigations, with the exception of records which include information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or information subject to the Commission’s attorney-client privilege, official information privilege, or other Commission held privilege that may be asserted to limit disclosure.

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).

While our resolutions typically authorize disclosure of investigation records only after an investigation is closed, we note that some federal agencies, such as the National Transportation Board (“NTSB”) disclose factual information early in the investigation process, and that we may choose to disclose records during an investigation if we find it appropriate to do so.¹²

We know that people and businesses involved in, or affected by, an incident, other governmental entities, and members of the public, often have a great interest in safety-related incidents and our incident investigations, and that these interests must be taken into consideration when we make disclosure determinations. Refraining from disclosing any investigation records until our sometimes lengthy investigations are fully complete may unnecessarily interfere with such interests.

As an investigation proceeds, and staff gathers facts and evidence, concerns about interference with staff may somewhat lessen, and the balance of interests may shift in favor of disclosure. We believe the balance of interests here has shifted in favor of our disclosure of a portion of the Commission’s records regarding the current investigation.

We will not authorize disclosure of our entire investigation records, since staff is still engaged in completing the investigation. We will withhold records, or portions of records, which contain information subject to our attorney-client privilege; attorney work product doctrine; official information privilege; and deliberative process privilege; as well as portions of records which contain confidential personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or are subject to California Information Practices Act (“CIPA”)¹³ where conditions on disclosure which have not been met;¹⁴ or which may be subject to other exemptions, privileges, or similar limitations on disclosure which we find applicable and necessary to assert.

The Commission will determine whether any information in the file requires redaction or withholding because its disclosure would constitute an unwarranted invasion of personal privacy, or because it is subject to the attorney-client privilege or another Commission-held privilege that may limit disclosure, and whether disclosure would

¹² Resolution L-423, *Sept. 17. 2009 Incident*, at 3: “Because there is no statute prohibiting disclosure of the Commission’s incident investigation records, the official information privilege governing information obtained in confidence by public employees during the course of their duties and not open, or officially disclosed, to the public, is not absolute, and the Commission has discretion whether to exercise the privilege. Cal. Evid. Code § 1040(b).”

¹³ Cal. Civ. Code § 1798, *et seq.*

¹⁴ Cal. Civ. Code § 1798.24(k) authorizes disclosure of personal information in response to subpoenas if the agency reasonably attempts to notify the individuals to whom the record pertains. Cal. Code Civ. Pro. §§ 1985.3 and 1985.4 require subpoenaing parties to send notices in some situations.

appear likely to interfere with our Safety and Enforcement Division's ability to complete its investigation effectively.

With the exception of records, or portions of records, containing the information referenced above, we authorize disclosure of records concerning this investigation at this time. We authorize disclosure of other records associated with this investigation once the investigation is closed, with the exception of records, or portions of records, which include information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or information subject to a Commission-held privilege that may limit disclosure.

COMMENTS ON DRAFT RESOLUTION

In accordance with Cal. Pub. Util. Code § 311(g), the Draft Resolution was mailed to the parties on January 8, 2021. Comments were filed on _____. Reply comments were filed _____.

FINDINGS OF FACT

1. The Commission received a request which seeks disclosure of the Commission's investigation records concerning a safety incident that occurred at the Sentinel Energy Center facility, 15775 Melissa Ln., N. Palm Springs, California, on March 6, 2017.
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's investigation of the incident is still open; however, certain investigation records can be disclosed at this time without compromising the Commission's ability to complete its investigation effectively.
4. Once the Commission's investigation of the incident is complete, disclosure of additional investigation records would not compromise the Commission's investigation.

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. Resolution L-436.
8. Cal. Pub. Util. Code § 583 does not limit the Commission's ability to order disclosure of records.
9. 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 records concerning the investigation of a safety incident that occurred at the Sentinel Energy Center facility, 15775 Melissa Ln., N. Palm Springs, California, on March 6, 2017, 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 attorney-client or other Commission-held privilege or similar lawful limitation on disclosure asserted by the Commission; subject to the following temporal caveats: 1) at present, disclosure is limited to investigation records, or portions of records, the disclosure of which would not be likely to interfere with the Commission staff's ability to effectively complete its

investigation; 2) once the Commission's investigation is completed, additional records concerning the investigation may be disclosed. The effective date of this order is today.

I certify that the foregoing Resolution was adopted by the California Public Utilities Commission at its regular meeting of February 11, 2021, and the following Commissioners approved favorably thereon:

Rachel Peterson
Executive Director