

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: February 11, 2021

Resolution No.: L-606

RESOLUTION

RESOLUTION AUTHORIZING DISCLOSURE OF RECORDS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION SAFETY AND ENFORCEMENT DIVISION’S INVESTIGATION OF A SAFETY INCIDENT THAT OCCURRED AT 7561 CENTER AVENUE, HUNTINGTON BEACH, CALIFORNIA ON OCTOBER 5, 2019; A SAFETY INCIDENT THAT OCCURRED AT GOLDEN SHORES AND WEST SEASIDE IN LONG BEACH, CALIFORNIA, ON NOVEMBER 20, 2018; AND A POWER OUTAGE AND BREAKER FAILURE IN A SUBSTATION IN HUNTINGTON BEACH, CALIFORNIA, ON FEBRUARY 15, 2012

BACKGROUND

The California Public Utilities Commission (“Commission”) received a subpoena seeking, among other things, disclosure of the Commission Safety and Enforcement Division’s investigation records of: 1) a safety incident that occurred at 7561 Center Avenue, Huntington Beach, California, on October 5, 2019 (“incident”); 2) a safety incident that occurred in an underground vault at Golden Shore and West Seaside in Long Beach, California, on November 20, 2018; and 3) a power outage and breaker failure that occurred within an electrical substation in Huntington Beach, California, on February 15, 2012. The Commission staff could not make the investigation records public without the formal approval of the full Commission. A previous Commission Resolution, L-599, authorizes disclosure of records associated with the investigation of the safety incident that occurred in underground vault at Golden Shore and West Seaside in Long Beach. However, the investigation remains open and is not expected to close in the near future.

This is a resolution responding to this subpoena 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 these incidents at this time and authorizes the disclosure of additional records as soon as the Commission’s incident investigations are closed.

DISCUSSION

The subpoenaed 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 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 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 certain Commission investigation records in the absence of disclosure during a proceeding or Commission authorization, and limits the disclosure of other investigation records during the course of an investigation. 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 General Order 66-D for disclosure of the records.

There is no statute forbidding disclosure of the Commission’s safety investigation records. Nevertheless, 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.

¹ Cal. Gov’t. Code § 6250, *et seq.*

² Cal. Const. Article I, § 3(b)(1).

³ Cal. Const. Article I, § 3(b)(2).

⁴ *Id.*

⁵ Where appropriate, the Commission has redacted portions of investigation records which contain confidential personal information, the disclosure of which would constitute an

The Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.⁵ 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.⁶ 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”).⁷ The IPA authorizes disclosure of personal information “Pursuant to the [CPRA].”⁸ The CPRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy.⁹ The IPA also authorizes disclosure of personal information “To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.”¹⁰

Cal. Evid. Code § 911 states that:

Except as otherwise provided by statute: (a) No person has a privilege to refuse to be a witness; (b) No person has a privilege to refuse to disclose any matter or to refuse to produce any writing, object, or other thing; (c) No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any writing, object, or other thing.

Incident investigation records may include information subject to the lawyer-client privilege, official information privilege, or similar disclosure limitations. Such privileges and similar provisions may justify the Commission’s withholding of records, or portions of records, in response to a subpoena.¹¹

unwarranted invasion of privacy, and other exempt or privileged information.

⁶ 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).

⁷ Cal. Civ. Code § 1798, *et seq.*

⁸ Cal. Civ. Code § 1798.24(g).

⁹ Cal. Gov’t. Code § 6254(c).

¹⁰ Cal. Civ. Code § 1798.24(k).

¹¹ The CPRA exempts such information from disclosure in response to records requests. Cal. Gov’t. Code § 6254(k).

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 investigations of two of the incidents are 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.

The Commission’s investigation of power outage and breaker failure within a Huntington Beach, California, substation is closed. However, Resolution L-436 constrains staff’s ability to provide portions of the incident investigation records that were generated by Southern California Edison, in the absence of a Commission resolution authorizing disclosure.

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

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).” *See also*, Resolution L-597, *Re 2017 Southern California Fires*.

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 these investigations.

We will not authorize disclosure of our entire investigation records, since staff is still engaged in completing two of the investigations. 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 files 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 appear likely to interfere with our Safety and Enforcement Division's ability to complete its investigations effectively.

With the exception of records, or portions of records, containing information referenced above, and subject to our intent to preserve staff's ability to conduct investigations without interference, we authorize disclosure of records concerning these three investigations at this time. We authorize disclosure of other records associated with the two currently open investigations once those investigations are closed, with the exception of records, or portions of records, which include information, the disclosure of which

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.

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 on _____.

FINDINGS OF FACT

1. The Commission received a subpoena which seeks disclosure of the Commission's investigation records concerning : 1) a safety incident that occurred at Center Ave., Huntington Beach, California, on October 5, 2019; 2) a safety incident that occurred in an underground vault at Golden Shore and West Seaside in Long Beach, California, on November 20, 2018; and 3) a power outage and breaker failure that occurred within an electrical substation in Huntington Beach, California, on February 15, 2012.
2. Access to records in the Commission's investigation files was denied in the absence of a Commission order authorizing disclosure.
3. The Commission's investigations of two incidents are 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 completes its two open incident investigations, disclosure of additional investigation records concerning these incidents would not compromise the Commission's investigation.
5. Disclosure of records concerning the Commission's completed investigation of the February 15, 2012 electrical substation incident would not compromise the Commission's investigation.
6. The public interest favors disclosure of Commission investigation records, with limited exceptions as noted in this Resolution.

CONCLUSIONS OF LAW

1. The documents in the requested Commission's investigation files and reports 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, in response to records requests, personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy.
6. Cal. Gov't Code § 6254(k) exempts from mandatory disclosure, in response to records requests, 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. There is no statute forbidding disclosure of the Commission's safety investigation records.
8. Incident investigation records may include information subject to the Commission's lawyer-client privilege, official information privilege, or similar disclosure limitations.
9. 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.
10. Cal. Pub. Util. Code § 583 does not limit the Commission's ability to order disclosure of records.
11. 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. Staff shall disclose records concerning the Commission's investigations of: 1) a safety incident that occurred at 7561 Center Ave., Huntington Beach, California, on October 5, 2019; and 2) a safety incident that occurred in an underground vault at Golden Shore and West Seaside in Long Beach, California, on November 20, 2018; with the exception of 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.
2. Staff shall disclose records concerning the Commission's investigation of a power outage and breaker failure that occurred within an electrical substation in Huntington Beach, California, on February 15, 2012, with the exception of 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.
3. 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