PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division Date: March 4, 2021

 Resolution No.: L-608

R E S O L U T I O N

**RESOLUTION AUTHORIZING DISCLOSURE OF RECORDS
OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION SAFETY AND ENFORCEMENT DIVISION’S INVESTIGATION OF A GAS INCIDENT THAT OCCURRED AT 16399 WEST BERNARDO DR., RANCH BERNARDO, CALIFORNIA, ON MAY 3, 2018**

BACKGROUND

The California Public Utilities Commission (“Commission”) received a request for incident report, any pictures or other documentation complied by Commission staff regarding an incident involving a struck gas line at 16399 West Bernardo Drive, Ranch Bernardo, California, on May 3, 2018 (“incident”). In accord with Commission Resolution L-436, Commission staff provided the requester with most of the Commission’s records regarding its investigation of the incident, since the Commission’s investigation of the incident is closed, and informed the requester that staff could not make the remaining investigation records public without the formal approval of the full Commission. The requester subsequently requested the remaining records.

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 the records of the Commission’s investigation of the incident.

**DISCUSSION**

The requested records are “public records” as defined by the California Public Records Act (“CPRA”).**[[1]](#footnote-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]](#footnote-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]](#footnote-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]](#footnote-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 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. Resolution L-436 authorizes the disclosure of certain Commission generated investigation reports and correspondence once an investigation is closed, but limits disclosure of information provided by utilities, in the absence of Commission authorization. As a result, Commission staff denies most initial requests and subpoenas for investigation records, especially while investigations remain open. 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, 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.**[[5]](#footnote-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]](#footnote-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]](#footnote-7)** The IPA authorizes disclosure of personal information “[p]ursuant to the [CPRA].”**[[8]](#footnote-8)** The CPRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy.**[[9]](#footnote-9)** 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.**[[10]](#footnote-10)**

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 gas line incident is closed. However, as previously noted, Resolution L-436 constrains staff’s ability to provide portions of the incident investigation records that were generated by San Diego Gas & Electric Co., in the absence of a Commission resolution authorizing disclosure. As also noted earlier, staff has already disclosed the Commission’s investigation records to the extent authorized by Resolution L-436. For this reason, this resolution for the disclosure of the Commission’s incident investigation records will, as a practical matter, result only in the disclosure of the remaining investigation records.

We will not authorize disclosure of our entire investigation records. In accord with our standard practices, 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”)**[[11]](#footnote-11)** where conditions on disclosure which have not been met;**[[12]](#footnote-12)** or which may be subject to other exemptions, privileges, or similar limitations on disclosure which we find applicable and necessary to assert.

With the exception of records, or portions of records, containing the information referenced above, we authorize disclosure of records concerning the Commission’s investigation of the incident that occurred at 16399 West Bernardo Drive,
Ranch Bernardo, California, on May 3, 2018.

**COMMENTS ON DRAFT RESOLUTION**

In accordance with Cal. Pub. Util. Code § 311(g), the Draft Resolution was mailed to the parties on January 29, 2021. No comments were received.

**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 16399 West Bernardo Drive, Ranch Bernardo, California, on May 3, 2018.
2. Access to the records in the Commission’s investigation file was provided in part, and denied in part, in the absence of a Commission order authorizing disclosure.
3. The Commission’s investigation of the incident is closed, and disclosure of the incident 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 at16399 West Bernardo Drive, Ranch Bernardo, California, on May 3, 2018, 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.
2. 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 March 4, 2021, and the following Commissioners approved favorably thereon:

|  |
| --- |
| Rachel Peterson, Executive Director |

1. Cal. Gov’t. Code § 6250, *et seq*. [↑](#footnote-ref-1)
2. Cal. Const. Article I, § 3(b)(1). [↑](#footnote-ref-2)
3. Cal. Const. Article I, § 3(b)(2). [↑](#footnote-ref-3)
4. *Id.* [↑](#footnote-ref-4)
5. 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. [↑](#footnote-ref-5)
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). [↑](#footnote-ref-6)
7. Cal. Civ. Code § 1798, *et seq*. [↑](#footnote-ref-7)
8. Cal. Civ. Code § 1798.24(g). [↑](#footnote-ref-8)
9. Cal. Gov’t. Code § 6254(c). [↑](#footnote-ref-9)
10. Cal. Gov’t. Code § 6254(k). [↑](#footnote-ref-10)
11. Cal. Civ. Code § 1798, *et seq*. [↑](#footnote-ref-11)
12. 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. [↑](#footnote-ref-12)