

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: December 2, 2021

Resolution No.: L-613

**R E S O L U T I O N****RESOLUTION DENYING BRANDON RITTIMAN'S APPEAL OF THE COMMISSION'S DETERMINATION THAT RECORDS SOUGHT UNDER CALIFORNIA PUBLIC RECORD ACT REQUEST 20-619 ARE EXEMPT FROM DISCLOSURE****SUMMARY**

The California Public Records Act codifies the public's right to access information concerning the conduct of the people's business, but it also establishes numerous categories of documents that are exempt from disclosure. On November 24, 2020, Brandon Rittiman requested such records from the California Public Utilities Commission ("Commission") pursuant to the California Public Records Act ("CPRA" or "PRA"). On December 30, 2020, staff for the Legal Division of the Commission informed Mr. Rittiman of its determination that the requested records were exempt from disclosure pursuant to the Governor's Correspondence Exemption under California Government Code Section 6254(1); the lawyer-client privilege under California Evidence Code Section 950, *et seq.*; the attorney work product doctrine under California Code of Civil Procedure Section 2018.010, *et seq.*, and/or the deliberative process privilege (*see, e.g., Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325 (1991)).

This resolution denies Mr. Rittiman's subsequent appeal of the Commission Staff determination that the records sought are exempt from disclosure. Having reviewed the request, the responsive documents clearly fall within one or more of the privileges or exemptions identified above, and the Commission continues to invoke the protections afforded therein.

**BACKGROUND**

The Commission has exercised its discretion under Public Utilities Code Section 583, and implemented its responsibility under Government Code Section 6253.4(a), by adopting the guidelines for public access to Commission records embodied in General Order ("G.O.") 66-D. (*See Order Instituting Rulemaking to Improve Public Access to Public Records Pursuant to the California Public Records Act (R.14-11-001)*, last amended by Decision 20-08-031).

When the Commission receives a CPRA request, the Commission's Legal Division determines if the information should be released or withheld pursuant to statutory exemptions or other applicable privileges. If documents are withheld, the Legal Division will inform the CPRA requestor and not release the information. (*See* G.O. 66-D, § 5.5(d).) The requestor may seek reconsideration of the matter by the full Commission by submitting a "Public Information Appeal Form" within ten days of receiving notice that the request has been denied. (*See id.*) The Commission will then reexamine the request and issue a Resolution on the matter.

On November 24, 2020, Brandon Rittiman made the CPRA request to the Commission at issue in this Resolution, and it was subsequently identified as PRA 20-619. Specifically, the request read as follows:

"Please refer below this letter to emails sent to me by Terrie Prosper on 11/18 (EMAIL A) and 11/23 (EMAIL B,) which I refer to collectively as "the email responses" for purposes of this request.

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), please provide me records of the following:

1. Any record or communication regarding the email responses between Terrie Prosper and Marybel Batjer or her principal executive staff.
2. Any record or communication regarding the email responses between any CPUC employee and any agent or employee of the governor's office.

EMAIL A:

Prosper, Terrie D. <terrie.prosper@cpuc.ca.gov> Wed 11/18/2020  
10:57 AM

Hi Brandon,

We are disappointed by the characterization you shared of the CPUC's interactions with Butte County. We cooperated fully with the Butte County District Attorney's Office and provided the information they needed within the requirements of Public Utilities Code Section 583, while maintaining the integrity of our own investigation.

(Here is information on our investigation:

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M337/K016/337016958.PDF>.)

Terrie

EMAIL B:

Prosper, Terrie D.  
<terrie.prosper@cpuc.ca.gov>  
Mon 11/23/2020 11:11 AM

Brandon,

We share Butte County's goal of holding PG&E accountable, and that is why at the end of our investigation we penalized PG&E \$1.937 billion, the largest penalty ever assessed by the CPUC, for PG&E's role in the catastrophic 2017 and 2018 wildfires. Unfortunately, it seems that steps we are required by law to take with information in our possession was misinterpreted. We cooperated with the Butte County District Attorney's Office, however there is a process that the CPUC must follow by law to release information. The Legislature adopted Public Utilities Code Section 583, a CPUC-specific statute, that prevents some types information from being disclosed to the public. Any CPUC employee who discloses confidential information is "guilty of a misdemeanor." In recent years, the CPUC has proposed to alter this provision but, to date, the Legislature has declined to adopt any changes. Because this confidentiality statute carries a severe penalty, the CPUC has adopted General Order 66, which contains clear guidelines on how confidential information is released. Before information is released on order of the CPUC, a proposal is circulated for 30-day public comment before being brought for a vote by the CPUC at a public Voting Meeting. Given the limitations of this statute, CPUC staff, who were potentially subject to criminal sanctions under the statute, co-operated as fully as they could with Butte County, and it must be recognized that staff was responsive within the legal structures that control their actions and which the CPUC does not have the authority to change or ignore.

Terrie"

Marybel Batjer is the President of the Commission and was sworn into office on August 16, 2019. Terrie D. Prosper is the Director of the Commission's News and Outreach Office.

On December 4, 2020, via a letter sent by electronic mail, Commission legal staff informed Mr. Rittiman of its determination that the communications sought under Item 2 were exempt from disclosure pursuant to California Government Code Section 6254(l), which explicitly exempts from public disclosure “[c]orrespondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.” (the “Correspondence Exemption”).

On December 4, 2020, Mr. Rittiman emailed Commission legal staff to appeal the determination that the communications sought in PRA 20-619, Item 2 were exempt from disclosure.<sup>1</sup> Mr. Rittiman argued that the Commission should interpret the term “correspondence” as used in Government Code Section 6254(l) narrowly, that the term applies only to communications by (presumably physical) letter, citing *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325, 1337 (1991), and that the Commission should still produce any responsive text messages, emails, and calendar entries. The Commission acknowledged Mr. Rittiman’s appeal the same day.<sup>2</sup> In subsequent correspondence, counsel for Mr. Rittiman has argued that the Correspondence Exemption contained in Government Code Section 6254(l) should apply only to correspondence “sent from individuals, companies, and/or groups who are outside of the government,” citing *California First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 168 (3d Dist. 1998).<sup>3</sup>

On December 30, 2020, via a letter sent by electronic mail, Commission legal staff reiterated its conclusion that documents sought under Item 2 were exempt under the Correspondence Exemption. Staff then informed Mr. Rittiman of its determination that the communications sought under Item 1 were exempt from disclosure pursuant to the lawyer-client privilege (Cal. Evid. Code § 950, *et seq.*); attorney work product doctrine

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<sup>1</sup> Mr. Rittiman did not use the “Public Information Appeal Form,” as required by G.O. 66-D, and instead informally emailed Legal Division staff of his appeal. Although the Commission has undertaken review of his appeal, this Resolution does not constitute precedent that the Commission will waive the procedural requirements of G.O. 66-D in future situations.

<sup>2</sup> The Commission acknowledges that its processing of the appeal and preparation of this Resolution has taken longer than usual. The Commission also acknowledges that, while the CPRA confers substantial public benefits, responding to such requests consumes substantial Commission resources. The Commission received 594 subpoena and CPRA requests in 2017, 653 in 2018, 702 in 2019, 699 in 2020, and is on pace to receive more than that in 2021.

<sup>3</sup> Mr. Rittiman’s PRA request and appeal were both made on his behalf only (“I ask to obtain records,” “I write to appeal.”) Since then, an attorney purporting to represent both Mr. Rittiman and KXTV-TV (ABC10) has advocated for the release of the subject records. The Commission’s determination would be the same regardless of the requestor(s).

(Cal. Code Civ. Proc. § 2018.010 *et seq.*) and/or the deliberative process privilege (*see, e.g., Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325).

On January 7, 2021, Mr. Rittiman emailed Commission legal staff to appeal the determination that documents under Item 1 were exempt from disclosure, requesting a “Vaughn Index for the claimed privileged or exempt records you assert.” The Commission legal staff acknowledged Mr. Rittiman’s appeal the same day, but denied the request for a “Vaughn Index.” Staff noted that “Vaughn Index” is a term used in cases under the federal Freedom of Information Act, but is not applicable to cases under California law. Staff stated that in California, a “privilege log” serves a comparable function as a Vaughn Index, but the Public Records Act does not require that an agency create a privilege log. *Haynie v Superior Court*, 26 Cal.4th 1061, 1075 (2001).

## **DISCUSSION**

The California Constitution and the CPRA confer a public right to access a substantial amount of government information. The preamble to the CPRA declares “that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” Cal. Gov. Code § 6250. However, “[t]he right of access to public records under the CPRA is not absolute.” *Copley Press, Inc. v. Superior Court*, 39 Cal. 4th 1272, 1282 (2006). There are numerous statutory exemptions for documents that the California Legislature has deemed inappropriate for general public disclosure.

### **Item 1:**

#### **ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT DOCTRINE**

Government Code Section 6254(k) exempts from disclosure “[r]ecords, 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.”

In the case of the attorney-client privilege, an assertion of the privilege requires: 1) an attorney-client relationship (Cal. Evid. Code Sections 951, 954); 2) a confidential communication between client and lawyer, as defined in California Evidence Code Section 952, during the course of the attorney-client relationship; and 3) a privilege claim by the holder of the privilege, or by a person who is authorized to claim the privilege by the holder of the privilege (Cal. Evid. Code Section 954).

California Evidence Code Section 952 defines “Confidential Communication Between Client and Lawyer” as follows:

As used in this article, “confidential communication between client and lawyer” means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or to those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purposes for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

As the privilege holder, the Commission bears the burden of proving its right to assert the attorney-client privilege.<sup>4</sup> As the California Supreme Court noted in *Costco Wholesale Corp. v. Superior Court*, (“*Costco*”) 47 Cal.4th 725, 733 (2009):

The party claiming the privilege has the burden of establishing the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an attorney-client relationship. ... Once that party establishes facts necessary to support a prima facie claim of privilege, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply.<sup>5</sup>

While the Commission holds and claims the attorney-client privilege in this case, the attorney work product doctrine is held by the Commission attorneys. Under the attorney work product doctrine, “a writing that reflects an attorney’s impressions, conclusions, opinions or legal research or theories” is absolutely protected from disclosure. (Code Civ. Proc. § 2018.030(a); *Rico v. Mitsubishi Motors Corp.*, 42 Cal.4th 807, 814 (2007).)

The communications reflected in the documents subject to the Commission’s current assertion that they are subject to the attorney-client privilege and/or the attorney work product doctrine were communications between Commission lawyers, Commissioners, and other Commission employees made in confidence during the course of the Commission’s attorney-client relationships. They involve legal consultation and the provision of attorney work product, in the form of legal opinions and advice regarding the email entitled: “CPUC comment on Camp Fire reporting” sent to Terrie Prosper,

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<sup>4</sup>The Public Records Office is authorized to assert the Commission’s privileges and exemptions from disclosure in response to records requests and subpoenas, as appropriate.

<sup>5</sup> See also, Cal. Evid. Code § 917(a); *Wellpoint Health Networks, Inc. v. Superior Court* (“*Wellpoint*”) 59 Cal.App.4th 110, 123-124 (1997.)

Director of the Commission's News and Outreach Office from Mr. Rittiman on November 17, 2020.

The Commission, through its Commissioners and other employees, routinely consults with its lawyers for the purposes of securing confidential legal services or advice. The privileged communications were not with utilities or individuals outside the Commission. The privileged communications did not involve communications between Commission attorneys and utility employees regarding the planning of, or holding of, ex parte meetings, or communications between Commission attorneys and Commissioners or other Commission employees regarding the planning of, or holding of, such meetings.

Rather, these emails involve legal opinion and advice from Commission attorneys to their Commission clients regarding allegations set forth by Mr. Rittiman on the Commission's interactions with the Butte County District Attorney's Camp Fire investigation and prosecution.

### **THE DELIBERATIVE PROCESS PRIVILEGE**

In addition to the attorney-client privilege and the attorney work product doctrine, the Commission withheld some documents under Item 1 under the deliberative process privilege. This privilege protects confidential, deliberative advice given to agency decisionmakers, and the confidential information used to develop such advice. (*Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at 1339-1346.)

Upon further reflection, the Commission will not assert the deliberative process privilege for the documents responsive to Item 1. However, all of these documents remain confidential under the attorney-client privilege and attorney work product doctrine as described above.

### **THE CORRESPONDENCE EXEMPTION**

After further review, the Commission also asserts the Governor's Correspondence Exemption for one email responsive to Item 1. See discussion of this Exemption under Item 2 below.

**Item 2:****THE CORRESPONDENCE EXEMPTION**

Item 2 of this CPRA request seeks “[A]ny record or communication regarding the [above-referenced] email responses between any CPUC employee and any agent or employee of the governor’s office.” Any such communications or correspondence are facially exempt from disclosure under the clear terms of Government Code Section 6254(1), which exempts from public disclosure “[c]orrespondence of and to the Governor or employees of the Governor’s office. . . .”

Mr. Rittiman argues, however, that the term “correspondence” should be interpreted narrowly and “must be confined to communications by letter,” citing *Times Mirror Co. v. Superior Court*, 53 Cal. 3d at 1337. We believe Mr. Rittiman’s interpretation of *Times Mirror* is incorrect.

In *Times Mirror*, a newspaper sought the “appointment schedules, calendars, notebooks and any other documents that would list [the Governor’s] daily activities as governor from [his] inauguration in 1983 to the present.” *Id.* at 1329. In determining whether such a request implicated the Correspondence Exemption in Government Code Section 6254(1), the California Supreme Court relied on Webster’s definition of “correspondence” as “communication by letters.” *Id.* at 1337. Because all that was sought by the newspaper were internally generated appointment schedules, calendars, and notebooks, the Court did not consider these to meet the definition of “correspondence” under Government Code Section 6254(1). *Id.*

By contrast, Mr. Rittiman is asking for “any record or communication” between Commission employees and employees of the Governor’s office on the Rittiman/Prosper emails at issue, a much broader request that squarely implicates Government Code Section 6254(1). To the extent that Mr. Rittiman argues that the term “correspondence” should be limited to communications by (paper or physical) letter, pursuant to the Court’s reliance on Webster’s definition of “correspondence” in *Times Mirror*, that argument is unavailing. *Times Mirror* was published in 1991 and involved a request for records created between 1983 and 1988, largely before the advent of electronic communication. Webster’s current definition of correspondence, for example, is “communication by letters *or email*” (emphasis added).<sup>6</sup> There is no logical distinction to be made between an email and a text message and an electronically communicated calendar entry, which often contains messaging elements. The statutory prohibition on disclosure of “[c]orrespondence of and to the Governor or employees of the Governor’s office” should not hinge on what type of computer or phone application a correspondent uses. The documents sought by Mr. Rittiman in his CPRA request (“any record or

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<sup>6</sup> See <https://www.merriam-webster.com/dictionary/correspondence>.



communications”) are by definition exempt from disclosure pursuant to California Government Code Section 6254(l).

Mr. Rittiman also seizes on a piece of dicta in *California First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159 (3d Dist. 1998) to argue that the Correspondence Exemption contained in Government Code Section 6254(l) applies only to communications coming “to” the Governor’s Office from “outside of government.” This argument ignores the statute and misreads the case.

In *California First Amendment Coalition*, the Court of Appeal was deciding whether or not application materials sent to the Governor’s office for appointment to an open county supervisor position were “correspondence” and thus exempt from disclosure under Government Code Section 6254(l). In its discussion, the Court of Appeal examined the *Times Mirror* case for precedent, noting that, “[i]n *Times Mirror*, the Supreme Court feared that treating internally generated documents as correspondence would create an exemption so broad that all records in the custody of the Governor or employees of the Governor’s would be exempt from disclosure.” *California First Amendment Coalition*, 67 Cal. App. 4th at 168.

The Court of Appeal then distinguished the internally generated “Governor’s calendar and schedule” at issue in *Times Mirror* and determined that the application materials for the county supervisor seat were “correspondence” within the meaning of, and thus exempt from disclosure by, Government Code Section 6254(l). In doing so, the Court of Appeal supported the distinction from *Times Mirror* by stating, “[i]n our view, the correspondence exemption was intended to protect communications to the Governor and members of the Governor’s staff from correspondents outside of government.” *Id.*

However, the issue of inter-governmental correspondence was not before the Court of Appeal in *California First Amendment Coalition*, it did not purport to consider the issue, nor do we think the Court was articulating a broader reading of the statute than necessary to reach its holding. “It is, of course, ‘axiomatic that a decision does not stand for a proposition not considered by the court.’” *Wishnev v. The Northwestern Mutual Life Ins. Co.*, 8 Cal. 5th 199, 217 (2019) (quoting *People v. Barker*, 34 Cal. 4th 345, 354 (2004)). Because the Court of Appeal was not actually deciding the issue of whether correspondence by a separate and unique governmental agency, like the Commission, to and from the Governor’s office would be exempt under Section 6254(l), the Court’s statement is dicta and cannot be relied upon.

That the Court of Appeal was only distinguishing the facts of *Times Mirror* and not deciding a question that was not before it is further evidenced by the language the Court used seeming to limit the exemption to communications directed “to the Governor and members of the Governor’s staff.” *California First Amendment Coalition*, 67 Cal. App. 4th at 168. The plain text of Government Code Section 6254(l) exempts from production

“[c]orrespondence **of and to** the Governor or employees of the Governor’s office . . .” (emphasis added), which would obviously include correspondence **from and to** the Governor’s office. A court’s “primary task in construing a statute is to determine the Legislature’s intent. Where possible, ‘we follow the Legislature’s intent, as exhibited by the plain meaning of the actual words of the law. . ..’” *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal. 4th 728, 731 (2003). It seems clear that the Court of Appeal was merely contrasting the type of document it was ruling on (correspondence submitted by private individuals to the Governor’s Office) with that which was before the Court in *Times Mirror* (calendars and schedules internally created by a single governmental entity – the Governor’s Office itself - which were not “correspondence”).

Finally, the CPRA was modeled on the federal Freedom of Information Act (“FOIA,” 5 U.S.C. § 552), and “[t]he legislative history and judicial construction of the FOIA thus ‘serve to illuminate the interpretation of its California counterpart.’” *Times Mirror*, 53 Cal. 3d at 1338; *see also California First Amendment Coalition*, 67 Cal. App. 4th at 169, n.8 (“Because the Public Records Act is modeled after the federal Freedom of Information Act and serves the same purpose, federal decisions under the FOIA are often relied on to construe California’s Act.”).<sup>7</sup> Under federal law, members of the public are not entitled to a President’s records while that President is in office. FOIA does not apply to offices within the Executive Office of the President whose function is to advise and assist the President.<sup>8</sup> *See Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 156 (1980) (noting that the term “agency” does not include “the President’s immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President.”). However, the Presidential Records Act (22 U.S.C. Sections 2201-09) makes many such records available five years after a president leaves office. To the extent the CPRA is based on FOIA, that would militate in favor of applying the Correspondence Exemption to the correspondence Mr. Rittiman has requested.

The overwhelming weight of authority and the plain language of the Correspondence Exemption codified in Government Code Section 6254(1) require that the correspondence sought by Mr. Rittiman be exempt from disclosure.

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<sup>7</sup> The CPRA was amended in 1975 to limit the exemption in Section 6254(1) from all records maintained by the Governor to “correspondence of or to the Governor and his staff.” *Times Mirror*, 53 Cal. 3d at 1337.

<sup>8</sup> Title 5 United States Code Section 552(b)(5) provides that agencies need not disclose “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.”

**NOTICE AND COMMENTS ON DRAFT RESOLUTION**

The Draft Resolution was mailed to Mr. Rittiman and his counsel on October 29, 2021, in accordance with Cal. Pub. Util. Code § 311(g). No comments were received.

**FINDINGS OF FACT**

1. On November 24, 2020, Brandon Rittiman made request PRA 20-619 to the Commission as follows:

“Please refer below this letter to emails sent to me by Terrie Prosper on 11/18 (EMAIL A) and 11/23 (EMAIL B,) which I refer to collectively as “the email responses” for purposes of this request.

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1. Any record or communication regarding the email responses between Terrie Prosper and Marybel Batjer or her principal executive staff.
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(Here is information on our investigation:

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Terrie

EMAIL B:

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Brandon,

We share Butte County's goal of holding PG&E accountable, and that is why at the end of our investigation we penalized PG&E \$1.937 billion, the largest penalty ever assessed by the CPUC, for PG&E's role in the catastrophic 2017 and 2018 wildfires. Unfortunately, it seems that steps we are required by law to take with information in our possession was misinterpreted. We cooperated with the Butte County District Attorney's Office, however there is a process that the CPUC must follow by law to release information. The Legislature adopted Public Utilities Code Section 583, a CPUC-specific statute, that prevents some types of information from being disclosed to the public. Any CPUC employee who discloses confidential information is "guilty of a misdemeanor." In recent years, the CPUC has proposed to alter this provision but, to date, the Legislature has declined to adopt any changes. Because this confidentiality statute carries a severe penalty, the CPUC has adopted General Order 66, which contains clear guidelines on how confidential information is released. Before information is released on order of the CPUC, a proposal is circulated for 30-day public comment before being brought for a vote by the CPUC at a public Voting Meeting. Given the limitations of this statute, CPUC staff, who were potentially subject to criminal sanctions under the statute, co-operated as fully as they could with Butte County, and it must be recognized that staff was responsive within the legal structures that control their actions and which the CPUC does not have the authority to change or ignore.

Terrie"

2. Marybel Batjer is the President of the Commission and was sworn into office on August 16, 2019.

3. Terrie D. Prosper is the Director of the Commission's News and Outreach Office.
4. On December 4, 2020, via a letter sent by electronic mail, Commission legal staff informed Mr. Rittiman of its determination that the communications sought under PRA 20-619, Item 2 were exempt from disclosure pursuant to California Government Code Section 6254(l), which explicitly exempts from public disclosure “[c]orrespondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.”
5. On December 4, 2020, Mr. Rittiman emailed Commission legal staff to appeal the determination that the communications sought in PRA 20-619 Item 2 were exempt from disclosure.
6. Mr. Rittiman did not use the “Public Information Appeal Form,” as required by G.O. 66-D, and instead informally emailed Legal Division staff of his appeal.
7. On December 30, 2020, via a letter sent by electronic mail, Commission legal staff confirmed the conclusion that communications sought under PRA 20-619, Item 2 were exempt from disclosure under Government Code Section 6254(l). Commission legal staff also informed Mr. Rittiman of its determination that the communications sought under PRA 20-619, Item 1 were exempt from disclosure based on the lawyer-client privilege (Cal. Evid. Code Section 950, *et seq.*); attorney work product doctrine (Cal. Code Civ. Proc. Section 2018.010 *et seq.*), and/or the deliberative process privilege (*see, e.g., Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325).
8. On January 7, 2021, Mr. Rittiman emailed Commission legal staff to appeal the determination that the communications sought in PRA 20-619 Item 1 were exempt from disclosure
9. Mr. Rittiman did not use the “Public Information Appeal Form,” as required by G.O. 66-D, and instead informally emailed Legal Division staff of his appeal.

### **CONCLUSIONS OF LAW**

1. The communications sought by Mr. Rittiman in his PRA 20-619, Item 1 request are exempt from disclosure pursuant to California Government Code Sections 6254 (k) and 6254(l).

2. The communications sought by Mr. Rittiman in his PRA 20-619, Item 2 request are exempt from disclosure under California Government Code Section 6254(l).
3. Although the Commission has undertaken review of Mr. Rittiman's appeal, this Resolution does not constitute precedent that the Commission will waive the procedural requirements of G.O. 66-D in future situations.

**ORDER**

1. Mr. Rittiman's appeal of the Commission's determination that records sought under California Public Record Act requests PRA 20-619 is hereby denied.
2. The effective date of this order is today.

I certify that the foregoing Resolution was adopted by the California Public Utilities Commission of the State of California at its regular meeting of December 2, 2021, and the following Commissioners approved favorably thereon:

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RACHEL PETERSON  
Executive Director