

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

Date: June 29, 2023

Resolution No.: L-621

RESOLUTION

RESOLUTION AUTHORIZING DISCLOSURE OF RECORDS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION SAFETY AND ENFORCEMENT DIVISION’S INVESTIGATION OF A FIRE INCIDENT THAT OCCURRED NEAR HORSE CREEK ROAD, IN SCOTT BAR, CALIFORNIA ON JULY 22, 2020

BACKGROUND

The California Public Utilities Commission (“Commission”) received a request, PRA #23-6, seeking disclosure of Commission records concerning a fire incident that occurred near Horse Creek Rd., in Scott Bar, California on July 22, 2020. 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-D and Resolution L-436.

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 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

¹ Cal. Gov’t. Code § 7920.000, *et seq.*

² Cal. Const. Article I, § 3(b)(1).

³ Cal. Const. Article I, § 3(b)(2).

⁴ *Id.*

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 § 7922.635 [formerly Cal. Gov't. Code § 6253.4(a)], by adopting guidelines for public access to Commission records. General Order 66-D, which took effect on January 1, 2018, authorizes the disclosure of information submitted to the Commission without a confidentiality claim and describes the manner in which information must be submitted to the Commission if the information submitter wishes to request that the Commission treat specified information as confidential and withhold it from the public. No confidentiality claims were associated with records submitted during the Commission's investigation of the July 22, 2020 fire incident. However, Commission Resolution L-436, issued in 2013, describes the manner in which Commission investigation records will be made public, generally limits disclosure of investigation records while the Commission's incident investigation remains open, and limits disclosure of incident-related information submitted by utilities, in the absence of Commission authorization.

Because Resolution L-436 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 informs requestors that their subpoena or public records request will be treated as an appeal under Resolution L-436 for disclosure of the records. This resolution authorizes the release of records maintained by the Commission related to this incident, the investigation of which is closed.

There is no statute forbidding disclosure of the Commission's safety investigation records. 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

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 § 7922505 [formerly, § 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

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

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,” does not prohibit or limit the disclosure of such records.

The Commission investigation of the fire incident is complete; 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, and any information which is subject to the Commission’s lawyer-client or other privilege.

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution was mailed to the parties on May 26, 2023, in accordance with Cal. Pub. Util. Code § 311(g). Comments were filed on _____. Reply comments were filed on _____.

_____ 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 § 7927.700 [formerly Cal. Gov’t. Code § 6254(c)].

¹¹ Cal. Gov’t. Code § 7927.705 [formerly Cal. Gov’t. Code § 6254(k)].

FINDINGS OF FACT

1. The Commission received a request seeking disclosure of Commission records concerning a fire incident that occurred near Horse Creek Rd., in Scott Barr, California, on July 22, 2020.
2. Access to the records in the Commission's investigation file was denied in the absence of a Commission order authorizing disclosure, pursuant to Commission Resolution L-436.
3. The Commission investigation of the incident is complete. 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, and 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 § 7920, *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 § 7922.000 [formerly Cal. Gov't. Code § 6255(a)].
5. Cal. Gov't. Code § 7927.700 [formerly 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 § 7927.705 [formerly 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."
10. Cal. Pub. Util. Code § 315 does not prohibit or limit disclosure of accident reports filed with the Commission, or orders and recommendations issued by the Commission.

THEREFORE, IT IS ORDERED THAT:

1. The request for disclosure of the Commission records concerning the investigation of a fire incident that occurred near Horse Creek Rd., in Scott Barr, California, on July 22, 2020, is granted, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, any information which is subject to the Commission's lawyer-client or other Commission-held privilege.
2. This Resolution is effective today.

I certify that the foregoing resolution was adopted by the California Public Utilities Commission at its regular meeting of June 29, 2023, and the following Commissioners approved favorably thereon:

Rachel Peterson,
Executive Director