

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

Date: September 21, 2023

Resolution No.: L-622

RESOLUTION

RESOLUTION L-622 AFFIRMING STAFF’S SEARCH FOR RECORDS IN RESPONSE TO PUBLIC RECORDS ACT REQUEST #20-533

SUMMARY

On October 27, 2020, the California Public Utilities Commission (“Commission”) received public records request #20-533 under the California Public Records Act (“CPRA”) seeking disclosure of Commission records related to multiple Commission employees’ personnel records. On December 29, 2020, Legal Division responded to this public records requests, releasing some records and withholding others based on specific exemptions of the CPRA. The requester appealed each of the initial denials of the records pursuant to General Order (“G.O.”) 66-D Section 5.5. Under these conditions, G.O. 66-D Sections 5.5 and 6 require Legal Division to issue a Resolution addressing the confidentiality claims and a determination regarding the release of the requested records, to be voted on by the full Commission. Here, we affirm Legal Division’s determination to withhold certain records.

DISCUSSION

I. CPRA Request (“PRA”) #20-533 at Issue

PRA #20-533 was filed on October 27, 2020, by Ms. Pulaski seeking records related to the following:

I would like to request documents reflecting the following information for each person who has been employed at CPUC for the last five years:

1. Employee name
2. Employee number
3. Job classification and salary range
4. Salary paid on a per-month basis
5. Hours worked per month

6. Start date

7. Job application forms

Please feel free to reach out with any questions. Thank you.

On December 23, 2020, Ms. Pulaski wrote to amend her request to seek:

I am writing to amend the request initially submitted on October 27, 2020. I would like to amend the request as follows:

Please provide documents that reflect the following information for each person who has been employed at CPUC at any point over the last five years:

1. Employee number;
2. Employee name(s);
3. Employee gender (if known);
4. Dates employed with CPUC over the last five years;
5. Start date; if the individual has left and rejoined the CPUC, please provide both the original start date and the date of rejoining;
6. All job classifications held over the last five years, and the date range each job classification was held;
7. The salary range for the associated job classifications during the employee's tenure in each classification, including any modifications thereto within that timeframe;
8. The regular salary (excluding benefits and overtime) paid to the employee, on a per-month basis, over the last five years, including any modifications thereto within that timeframe;
9. The employee's hourly basis (e.g., 40 hours per week) over the last five years, with the dates of any transitions in hourly basis;
10. Dates for which the employee was enrolled in any form of curtailed hours (e.g., furlough, FMLA, or voluntary personal leave program), and the regular monthly salary

the employee would have been entitled to during those periods absent any curtailment;

11. Job application forms; and
12. For the past five years: any requests for higher salary from potential new hires and current employees transferring job classifications, hire above minimum (HAM) requests that were submitted by CPUC staff, and any associated emails between employees and/or potential new hires or current employees relating to setting compensation levels, deciding whether or not a HAM was merited, and preparing the HAM.”

On December 29, 2020, the Commission responded releasing a number of responsive documents. The Commission released employees’ names, position numbers, job classifications, and salaries for the last 24 months. The Commission withheld others under Cal. Gov. Code Section 7927.700 which exempts from disclosure in response to records requests: “personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.”¹

On January 8, 2020, Ms. Pulaski filed an appeal, stating the Commission only provided 24 months of information, when she had requested 5 years of personnel information.

On August 13, 2021, the Commission sent a letter to Ms. Pulaski stating we would be drafting a Resolution addressing her appeal.

II. Legal Background

The CPRA authorizes California agencies to adopt regulations stating the procedures to be followed when making its records available, and requires named California agencies, including the Commission, to adopt guidelines for accessibility of records, i.e., as to their execution of the CPRA.² The Commission has implemented its responsibility under California Government (Cal. Gov.) Code Section 7922.640, by adopting guidelines for

¹ Cal. Gov. Code Section 7927.700 was previously Cal. Gov. Code Section 6254(c); the section was renumbered when the CPRA was revised in 2021(Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000). Cal. Gov. Code Section 7927.700 states: “Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.”

² Cal. Gov. Code §§ 7922.630, 7922.640, 7922.635(a)(24) (previously Cal. Gov. Code §§ 6253.4(a), 6253.4(c), 6253.4(b)(28)). Cal. Gov. Code § 7922.640 states that: “Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this division and shall reflect the intention of the Legislature to make the records accessible to the public....”

public access to Commission records.³ These guidelines are embodied in G.O. 66-D. G.O. 66-D Section 5.5 provides that before releasing information in response to a CPRA request, or in any other context, Legal Division will determine whether the information submitter has established a lawful basis of confidentiality. The procedures outlined in G.O. 66-D govern this Resolution.

III. Adequate Search for Records

Here, in response to PRA #20-533, staff in the Legal Division Public Records Office contacted staff in the Human Resources Division, the staff most likely to be able to locate the responsive documents, and requested all relevant records. Human Resources stated they could provide 24 months of information, and provided all records to Public Records Office staff. Public Records Office staff provided all the records to the requestor.

Staff searching for documents in response to PRA requests must use reasonable efforts to locate the documents. “Unless a records request is overbroad or unduly burdensome, agencies are obliged to disclose all records they can locate with reasonable efforts”⁴ A “search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.”⁵ “Under the PRA, a governmental agency is only obliged to disclose public records that can be located with *reasonable* effort and cannot be subjected to a ‘limitless’ disclosure obligation.”⁶ In general, the scope of an agency's search for public records “need only be reasonably calculated to locate responsive documents.”⁷

As stated in *City of San Jose v. Superior Court*,⁸

The CPRA does not prescribe specific methods of searching for requested documents. It is not the case that any particular search method is required or necessarily adequate. Further, agencies may develop their own internal policies for conducting searches.

³ Cal. Gov. Code Section 7922.640 was previously Cal. Gov. Code Section 6253.4(c).

⁴ *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 627, citing *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166; *Community Youth Athletic Center v. National City* (2013) 220 Cal.App.4th 1385, 1420, 1425.

⁵ *Meeropol v. Meese* (D.C. Cir. 1986) 790 F.2d 942, 956.

⁶ *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353, 372; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 453.

⁷ *American Civil Liberties Union of Northern Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 85; *Community Youth Athletic Center, supra*, 220 Cal.App.4th at 1420, 1425; *City of San Jose v. Superior Court* 2 Cal.5th at 627; *California First Amendment Coalition v. Superior Court, supra*, 67 Cal.App.4th at 165-166; *State Board of Equalization v. Superior Court* (1992) Cal.App.4th 1177, 1186.

⁸ *City of San Jose v. Superior Court, supra*, 2 Cal.5th at 627.

Some general principles have emerged, however. Once an agency receives a CPRA request, it must communicate the scope of the information requested to the custodians of its records, although it need not use the precise language of the request. As to requests seeking public records held in employees' nongovernmental accounts, an agency's first step should be to communicate the request to the employees in question. The agency may then reasonably rely on these employees to search their own personal files, accounts, and devices for responsive material.

Here, the requestor sought a large volume of information. The PRA office reached out to relevant staff who conducted a reasonable search for all relevant records and were able to locate 24 months of information. This information was provided to the requestor. It was appropriate and proper to provide all of the records that staff were reasonably able to locate.

CONCLUSION

Based on the foregoing analysis, we conclude that Legal Division public records staff properly conducted an adequate search for records, properly released certain records, and properly withheld those that were exempt from disclosure under an exemption in the CPRA.

NOTICE AND COMMENTS ON DRAFT RESOLUTION

In accordance with Cal. Pub. Util. Code § 311(g), the Draft Resolution was mailed to the parties on August 18, 2023. No comments were filed.

FINDINGS OF FACT

1. PRA #20-533 sought the disclosure of extensive and detailed Commission employee personnel records.
2. Commission staff properly conducted an adequate search for records in PRA #20-533.
3. Commission staff properly released certain records responsive to the request, and withheld some records that were exempt from production under an explicit exemption in the CPRA.

CONCLUSIONS OF LAW

1. The documents in the requested Commission's files are public records as defined by Cal. Gov. Code § 7920.000, *et seq.* (previously Cal. Gov. 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.
3. The California Constitution requires that authority favoring disclosure be broadly construed, and that 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).
4. The general policy of the CPRA favors disclosure of records.
5. 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. Code § 7922.000 (previously Cal. Gov. Code § 6255).
6. The CPRA, in Cal. Gov. Code Section 7927.700, exempts from disclosure in response to records requests "... personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."

THEREFORE, IT IS ORDERED that:

1. The request for additional records is denied, as the search for records was adequate.
2. All documents withheld were properly withheld under an exemption of the CPRA.

The effective date of this Resolution is today.

I certify that this Resolution was adopted by the California Public Utilities Commission at its regular meeting of September 21, 2023, and that the following Commissioners approved it:

Rachel Peterson,
Executive Director