

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California
Date: June 11, 1997
Resolution No. L-256

RESOLUTION

BACKGROUND

On April 28, 1997, a civil subpoena duces tecum was served on the Commission by regular mail for disclosure and production of quarterly financial reports of Gilreath Trucking, Inc. ("Gilreath") for the period January 1, 1996 through May 21, 1997. Gilreath is a dump truck carrier that holds a permit issued by the Commission. Under Commission regulations, Gilreath is required to file quarterly financial reports with the Commission. Gilreath, however, is not required to file annual financial reports because its revenues are below the threshold level triggering such requirement. The Commission has a record of only three quarterly reports, beginning January 1, 1996 and ending September 30, 1996, for the period requested by the subpoena.

DISCUSSION

The quarterly reports in question are "public records," as defined by the California Public Records Act, Government Code, Section 6250 *et seq.* The general policy of the Public Records Act favors disclosure, unless the records fall under specified exemptions enumerated in the Public Records Act, or a showing is made that the public interest in confidentiality outweighs the public interest in disclosure.

The requested quarterly financial reports are confidential under the Commission's General Order No. 66-C, and may not be released absent an order by the Commission, or an order from a court of competent jurisdiction. Annual reports filed by carriers contain similar financial information, but are not considered confidential under General Order No. 66-C.

On September 30, 1996, jurisdiction over highway carriers was transferred from the Commission to the Department of Motor Vehicles. Accordingly, Section 3709 of the Public Utilities Code, which required staff, absent an order from the

Commission, to maintain the confidentiality of certain records filed by highway carriers, was repealed. Nevertheless, when the reports in question were received by the Commission, they were subject to the nondisclosure provisions of Section 3709. The repeal of that section does not change the confidential nature of these reports. This view is consistent with Evidence Code Section 1040, which provides that a public agency may refuse to disclose information acquired in confidence by a public employee in the course of his duties. The confidential nature of the reports thus attaches at the time the reports are acquired by the agency, not when the reports are requested for release by subpoena. The fact that documents have been requested subject to the transfer of jurisdiction over highway carriers from this agency to another does not automatically remove the cloak of confidentiality that these reports have enjoyed.

Notwithstanding the above, the Commission may determine whether good cause exists to permit the release of the requested quarterly reports. The quarterly reports do not appear to fall within any of the specified exemptions of the Public Records Act that favor maintaining their confidentiality. Nor does the general public interest exemption of the Public Records Act favor maintaining their confidentiality. In this case, the most current financial information contained in these reports is over eight months old, and is unlikely to be commercially sensitive. Had Gilreath been required to file an annual report for 1996, the same type of financial information contained in the three quarterly reports from 1996 would have been publicly disclosed. Given these facts, there does not appear to be any public policy basis for withholding the requested reports .

FINDINGS OF FACT

1. A civil subpoena for production of copies of quarterly financial reports of Gilreath Trucking, Inc. for the period January 1, 1996 through May 21, 1997 was served on the Commission by regular mail on April 28, 1997.
2. The Commission has a record of three quarterly reports, beginning January 1, 1996 and ending September 30, 1996, for the period requested by the subpoena for Gilreath Trucking, Inc.
3. The public interest in confidentiality of the requested quarterly reports fails to outweigh the public interest in disclosure.

CONCLUSIONS OF LAW

1. The quarterly financial reports at issue are "public records," as defined by Government Code Section 6252(d).
2. At the time the quarterly reports were filed with and acquired by the Commission, Section 3709 of the Public Utilities Code and General Order No. 66-C prohibited disclosure of the reports absent an order by the Commission or a court of competent jurisdiction.
3. Although Section 3709 was repealed as of September 30, 1996, the confidential nature of the reports attached at the time they were acquired by the Commission.
4. The general policy of the California Public Records Act favors disclosure of records.
5. Withholding of a public record must be found among specified exemptions in the Public Records Act or upon a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure.
6. The quarterly reports in question do not fall within the specified exemptions contained in the Public Records Act.
7. Under the specific facts of this case, the public interest served by withholding the quarterly reports fails to clearly outweigh the public interest served by disclosure of the reports.

ORDER

1. The civil subpoena for release of the quarterly reports, beginning January 1, 1996 through September 30, 1996, for Gilreath Trucking, Inc. is granted.
2. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of June 11, 1997. The following Commissioners approved it:

Wesley Franklin

WESLEY, FRANKLIN

Executive Director

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

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