

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California
January 7, 1998
Resolution No. L-265

RESOLUTION

Resolution Directing The Release Of Documents Pursuant To Public Records Act Request By California Alliance For Utility Safety And Education And Karen Johanson; The Request Seeks Authority To Inspect and/Or Copy All Utility Incident Reports Filed With The Commission In The Past Ten Years By Pacific Gas And Electric Company, Southern California Edison Company, San Diego Gas And Electric Company, Sierra Pacific, And Pacific Power And Light.

BACKGROUND

On August 28, 1997, the California Alliance for Utility Safety and Education ("CAUSE"), and Karen Johanson, a member of CAUSE, filed a request seeking authority to inspect and/or copy all incident reports filed with the Commission in the past ten years by Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), San Diego Gas & Electric ("SDG&E") (together, "Electric Utilities"), Sierra Pacific Power Company ("Sierra Pacific"), and Pacific Power and Light ("PacifiCorp") in areas served by overhead or underground lines, pursuant to the Public Records Act ("PRA"), Government Code Section 6250, et seq.¹ For the purposes of this request, CAUSE defines "incident" to mean any event, related to utility owned electric facilities, that resulted in injuries/fatalities, service interruptions of 1,000 customers or more, or property damage of \$10,000 or more.

On September 12, 1997, CAUSE was informed that both Public Utilities Code Section 583 and Commission General Order 66-C prohibit staff disclosure of the reports in question in the absence of formal action by the Commission. CAUSE was also informed that once the potentially affected utilities and other interested parties were given an opportunity to comment on the PRA request, a proposed resolution would be prepared which would allow the Commission to consider the request. On September 18, 1997, a

¹ All statutory references are to the Government Code unless otherwise noted.

letter requesting comments on the PRA request was sent to the five electric utilities referenced above, and the Commission's Consumer Services Division Utilities Safety Branch ("USB"), Energy Division, and Division of Ratepayer Advocates. Comments were due September 30, 1997. At the request of the Electric Utilities, the time to respond was extended to October 14, 1997. USB, PacifiCorp, and the Electric Utilities responded to the request for comments. The Electric Utilities provided a single joint response.

USB believes that the PRA request should be denied for the following reasons:

1. The incident reports contain the names of victims and other persons which should be withheld to protect their privacy. USB does not have the resources to provide redacted versions of the records.
2. Release of the records might lead to requests for USB reports of investigations. If utilities cannot be assured that information they supply will be kept in confidence, it will become more difficult for USB to conduct effective incident investigations.
3. If USB incident investigation reports become public information, it is likely that USB engineers will be called to testify in damage suits. Staff time will be diverted from more important work such as insuring compliance with safety rules and investigating gas and electric incidents.

PacifiCorp has no objection to information being provided to CAUSE and Karen Johanson under the PRA. PacifiCorp requests that CAUSE and Karen Johanson continue to treat any information provided to them as confidential.

The Electric Utilities support the position taken by USB, stating that:

1. Release of unredacted incident reports, which include the names, home addresses, or employers of those involved in electric incidents, would be inconsistent with the protection of privacy interests under California law. Section 6250 and 6254 (c) exempt from disclosure "[p]ersonal, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." There is a strong right of privacy in information in which an individual has a reasonable expectation of privacy. (*Burrows v. Superior Court* (1974) 13 Cal.3d 238.) Information invested with an individual's privacy rights can only be released in response to a subpoena or other judicial process. (*People v. Blair* (1979) 25 Cal.3d 640; *People v. Chapman* (1984) 36 Cal.3d 98.) As recently as its September 24, 1997 decision conference, the Commission recognized the interest of individuals in the privacy of their information and held that utility customer information could not be released except in compliance with the case law cited. (*Southern California Gas*

Company, GTE California, Inc. and Pacific Bell, for Rehearing of Resolution L-258 (Order Modifying Resolution No. L-258 and Granting Interested Parties 20 Days to File Comments) [D.97-09-124] (1997) _ Cal.P.U.C.2d _ .

Redaction is not an option for such a sweeping records request because of USB's limited resources.

2. Elimination of confidential treatment of incident reports may interfere with the Commission's ability to obtain clear and candid information quickly about electric incidents and the safety of electric utility systems. Some incident investigations have been aided by an assurance to individuals involved in the incident and witnesses that the information provided would remain confidential.
3. While the Commission has on a number of occasions ordered the release of individual reports, the request for release in some, if not all, cases came from the individual involved in the incident, the individual's family, or a lawyer representing the individual or family. The request itself is a waiver of privacy concerns. Absent such a waiver, a subpoena or other judicial order is required.
4. Release of incident reports may promote litigation and harm the utilities' litigation positions, despite the Public Utilities Code Section 315 prohibition on the introduction of accident reports in civil litigation for damages.
5. Release of incident reports would burden USB staff by necessitating the redaction of private information and by increasing the likelihood that staff will become embroiled as expert witnesses in litigation concerning incidents.
6. Release of incident reports is unnecessary to meet CAUSE's information needs, since CAUSE has other avenues available, including petitioning the Commission for changes in the Commission's undergrounding rules. To the extent information in incident reports would be germane to such a proceeding, the data request process could be conducted without totally removing all confidentiality for the reports.
7. Evidence Code Section 1040 and Government Code Section 6255 permit the Commission to find that for the reasons listed above the public interest in declining to disclose the incident reports outweighs the public interest in disclosure.

CAUSE counters that:

1. The PRA privacy exemption, Section 6254 (c), does not exempt incident reports. Incident victims and witnesses have no protectible privacy interest, because the incidents involve a regulated industry with the duty to file incident reports which include the identities of the victims as well as the Commission's own duty to report on its incident investigations. (*Application of PG&E* [D.96-09-045] (1996) _ Cal.P.U.C.2d _ (Slip Op. at 21).) Nor do they have any

- reasonable expectation of privacy in keeping their identities confidential. "A 'reasonable' expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms...." (*Hill v. National Collegiate Athletic Association* ("*Hill v. NCAA*") (1994) 7 Cal.4th 1, 36-37.) No such norms (e.g., relevant statutes, Commission decisions, judicial decisions, or Attorney General opinions) give incident victims or witnesses any reasonable expectation of privacy.
2. Section 6254 (k), which exempts information barred from disclosure by another federal or state law, does not exempt incident reports. The official information privilege in Evidence Code Section 1040 does not exempt incident reports. Since no law expressly bars disclosure of incident reports, the absolute privilege under Evidence Code Section 1040 (b)(1) does not apply. Since the conditional privilege in Evidence Code Section 1040 (b)(2) applies only if the necessity for nondisclosure outweighs the necessity for disclosure in the interest of justice, and since this weighing process involves the same elements utilized under Section 6255 (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 656), Section 1040 (b)(2) provides no independent grounds for nondisclosure. Further, only a public official can claim the privilege. USB did not do so, and the Electric Utilities cannot.
 3. Since the incident reports do not fall under any Section 6254 exemption, they must be evaluated under the balancing test in Section 6255. There are no proven public benefits of nondisclosure: no evidence that disclosure will increase litigation, or staff involvement in litigation; no evidence of the costs of redacting or organizing the reports for release (such costs would still not justify nondisclosure); and no evidence that disclosure would lead utilities to fail to file incident reports as required.
 4. A Commission proceeding is no substitute for disclosure. A petition to change undergrounding rules, with a request seeking incident reports under a confidentiality order, is inadequate. Confidentiality orders typically limit disclosure of sensitive material, and, without such orders, CAUSE would have insufficient information to initiate any proceeding. In any event, the availability of information to a party in a Commission proceeding has no relevance to PRA disclosure questions.
 5. There are substantial public interests in disclosure. Disclosure promotes government and public utility accountability, and will allow the public to determine how the Commission is monitoring electric power line safety and reliability and deter utility carelessness or indifference to such issues. Disclosure will also ensure the accountability of cities making decisions regarding underground power lines.

6. The PRA presumes a public interest in disclosure. There are substantial public benefits from disclosure, and no proven benefits of nondisclosure. Therefore, the information requested must be disclosed.

DISCUSSION

The incident reports in question are "public records" as defined in the PRA, and must be made available for public inspection and for copying unless they are "exempt" from disclosure pursuant to a specific exemption or the agency demonstrates that the public interest served by not making the records public clearly outweighs the public interest served by disclosure of the records. (Section 6255; *See, e.g., American Civil Liberties Union Foundation v. Deukmejian ("ACLU")* (1982) 32 Cal.3d 440.)

The PRA is intended to provide "access to information concerning the conduct of the people's business" while being "mindful of the rights of individuals to privacy." (Section 6250.) PRA exemptions must be construed narrowly to ensure maximum disclosure of government operations. (*New York Times v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585.) If a record contains both exempt and nonexempt information, and the exempt information is reasonably segregable, the nonexempt portion of the record must be made available after deletion of the portions exempt by law. (Section 6257; *see also, ACLU, supra*, 32 Cal.3d at p.453, fn. 13; and 69 Ops.Cal.Atty.Gen. 139 (1986).)

The PRA "imposes no limits upon who may seek information or what he may do with it." *ACLU, supra*, 32 Cal.3d at p.451; *see also, San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762 at 780.) With few exceptions, disclosure of exempt material to any member of the public waives any further claim of exemption. (Section 6254.5.)

We will review CAUSE' request for disclosure of incident reports in light of the above, and answer the following questions:

- 1) Under the facts involved with this request, does the PRA require disclosure of all electric utility power line incident reports to CAUSE?
- 2) If so, does the PRA require disclosure of incidents in their entirety, or must personal information within such reports be redacted before the reports are disclosed?

Disclosure Of All The Electric Utility Power Line Incident Reports Requested By CAUSE

Both Public Utilities Code Section 583 and General Order 66-C prohibit staff disclosure of incident reports in the absence of formal action by the Commission. Neither the statute nor the general order, however, create an absolute privilege of nondisclosure.

We have, in a number of recent resolutions, found that incident reports filed by utilities do not appear to fall within either the specific exemptions or the general public interest exemption of the PRA. (E.g., Commission Resolution Nos. L-240 *Re Arrequin Maldonado*, January 22, 1993 (rehearing denied in *Re San Diego Gas and Electric Company* [D.93-05-020] (1993) 49 Cal.P.U.C.2d 241), L-247 *Re U.S.A. Airporter*, (March 22, 1995); L-248 *Re Lopez 1*, April 26, 1995; L-249 *Re Lopez 2*, August 11, 1995; L-255 *Re Murillo*, May 21, 1997; L-257 *Re Johanson*, June 25, 1997 [summary incident information]; L-260 *Re Banda*, August 1, 1997; and L-261 *Re Peralta and Boyadjian*, September 24, 1997.) We have found that Public Utilities Code Section 315, which expressly prohibits the introduction of the reports in question "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. Most of the above resolutions responded to disclosure requests filed by individuals involved in the electric utility incident, by the families of such individuals, or by the legal representatives of such families or individuals.

We have declined requests to make incident reports generally available to the public. Our most recent comprehensive review of electric utility safety issues, *Application of PG&E* [D.96-09-045] (1996) _ Cal.P.U.C.2d _, adopts and makes public a number of safety standards and reporting requirements, but continues our policy of maintaining the general confidentiality of accident reports. Ordering Paragraph 6 states:

All information provided by the utilities pursuant to this investigation, with the exception of accident reports, shall be made public absent a finding that public disclosure of specific information will compromise utility competitiveness and that nondisclosure is permitted under the Public Records Act and General Order 66-C. (Slip Op. at 40)

As the Electric Utilities point out, CAUSE's request goes far beyond any previous recent records request by seeking access to all of the power line incident reports filed with the Commission over the past ten years. USB estimates that approximately 150 incident reports are received each year. Granting CAUSE' request may well, as a practical matter, require the granting of most future requests for incident reports. Once confidential

information has been released to one party, it is generally available to all others who request it. (Section 6254.5.)²

CAUSE's request provides us with an opportunity to review our basic incident report disclosure policy and explore the reasons why we fairly routinely authorize disclosure of individual incident reports, but refrain from a more universal policy of disclosure. The simplest way to reconcile our specific report disclosure trend with our general policy against disclosure is to recognize that it is, at first glance, easier to see the need for disclosure in a specific context in which disclosure may speed the resolution of litigation surrounding an incident, or serve some other individual purpose, than it is to see the need to reverse the general expectations of confidentiality which have developed over the years. Accordingly, we must determine whether the public benefits of nondisclosure clearly outweigh the public benefits of disclosure, and, therefore, whether the PRA justifies nondisclosure.

As noted above, we have in a number of resolutions found that incident reports are not included within any specific PRA exemption. The only specific exemptions raised by the Electric Utilities are the privacy exemption in Section 6254 (c) and the official information exemption derived from Section 6254 (k). We will defer consideration of the privacy exemption until we have reviewed the broader question whether incident reports must be universally disclosed. There is no need to determine what, if any, personal information should be redacted from incident reports unless the general release of such reports is required. We will first review the applicability of Section 6254 (k), and then engage in the weighing process mandated by Section 6255.

Section 6254 (k)

Section 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." One such state law is Evidence Code Section 1040, which creates a privilege for "official information," defined as information

² See also, *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 656, which states: "When a record loses its exempt status and becomes available for public inspection, section 6253, subdivision (a), endows every citizen with a right to inspect it. By force of these provisions, records are completely public or completely confidential. The Public Records Act denies public officials any power to pick and choose the recipients of disclosure."

acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.³ That statute states:

- (b) A public entity has a privilege to refuse to disclose official information ... if the privilege is claimed by a person authorized by the public entity to do so and:
 - (1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or
 - (2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interests of justice ...

Addressing a claimed exemption under Evidence Code Section 1040 (b)(2), the California Supreme Court notes that "[t]he weighing process mandated by Evidence Code section 1040 requires a review of the same elements that must be considered under section 6255." *CBS, Inc. v. Block, supra*, 42 Cal.3d at 656. Thus, unless there is a Section 6255 exemption, there is no Evidence Code Section 1040 (b)(2) exemption. The weighing process mandated by Section 6255 is discussed more fully below.

In analyzing whether Evidence Code Section 1040 bars disclosure of records, the issue is whether disclosure will impair the government's ability to obtain similar information in the future. (69 Ops.Cal.Atty.Gen., *supra*, at 134, citing *City and County of San Francisco v. Superior Court* (1951) 38 Cal.2d 156, 162-163.) It is doubtful that Evidence Code Section 1040 would justify nondisclosure of incident reports on the ground that disclosure would make it more difficult to gather information. In reviewing a question regarding the disclosure of records of motor carriers who transport hazardous materials and hazardous waste, the State's Attorney General states:

Here the motor carriers must furnish certain information in order to obtain a license. The remaining information is being gathered by the CHP with respect to accidents, citations, safety compliance ratings and spill data, none of which requires confidentiality in order to be procured. We thus

³ The incident reports at issue here fit the definition of "official information" under Evidence Code Section 1040. Although submission of such reports is mandatory under Public Utilities Code Section 315, the utilities make their submissions under Section 583 of that code and designate the reports as confidential.

conclude that a court would agree with the CHP that Evidence Code section 1040 is inapplicable to these records. (*Id.* at 135.)

A second law prohibiting disclosure of records is the Information Practices Act of 1977 ("IPA"), Civil Code Sections 1798 et seq., which bars release of certain "personal information" contained in state agency files in a number of circumstances. The IPA, however, "shall not be deemed to supersede [the PRA] except as to the provisions of Sections 1798.60 and 1798.70." (Civil Code Section 1798.75.)⁴

Since there is no law expressly barring disclosure of electric utility incident reports, and no clearly applicable conditional exemption based on criteria other than the basic balancing of the public interests for and against disclosure, Section 6254 (k) and Evidence Code Section 1040 appear to provide no independent support for nondisclosure.

Section 6255

Section 6255 states:

The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

Section 6255 requires us to weigh the public interest in the release of large numbers of incident reports against any competing public interest in nondisclosure. We will discuss each major issue cited by CAUSE, USB, and the Electric Utilities.

Commission Access to Incident Information

Incident reports have been filed by the Electric Utilities under the assumption that they would generally remain confidential under Public Utilities Sections 583 and General

⁴ Civil Code Section 1798.60 states that: "An individual's name and address may not be distributed for commercial purposes, sold, or rented by an agency unless such action is specifically authorized by law." Civil Code Section 1798.70 states that the IPA "shall be construed to supersede any other provision of state law, including Section 6253.5 of the Government Code, or any exemption in Section 6254 or 6255 of the Government Code, which authorizes any agency to withhold from an individual any record containing personal information which is otherwise available under the provisions of this chapter."

Order 66-C; except in the relatively rare instance in which the Commission exercises its discretion under these provisions to order disclosure. The Commission has never assured utilities that all incident reports would remain confidential, although it appears that the Electric Utilities may have assured individuals involved in incidents and witnesses that the information provided would remain confidential.⁵ Thus, the wholesale release of such incident reports would represent a significant change in the environment in which incident reports are prepared.

USB states that “[i]f utilities cannot be assured that information they supply will be kept in confidence, it will become more difficult for USB to conduct effective incident investigations.” (USB letter of September 19, 1997.) The Electric Utilities warn:

[T]he Commission needs to listen carefully to the Safety Branch’s concern about the quality of information it will receive from the utilities if there is no assurance that incident reports will be kept confidential. Although the Electric Utilities are mindful of the admonitions of the Commission in *Re San Diego Gas and Electric Company*, Decision 93-05-020 (May 7, 1993) about the legal obligation of each utility to provide accurate and candid incident reports even if there is no assurance that confidentiality will be maintained by the Commission, the Commission needs to recognize that accurate information can be conveyed in different ways. The likely consequence of destroying the confidential status of all incident reports will be a greater scrutiny of these reports by non-engineers to provide as candid and accurate information as possible while at the same time trying to minimize potential negative use of the reports by third parties. In other words, the reports would tend to be written with a very different audience in mind than one composed of Commission engineers. The Electric Utilities believe that this is the point that the Safety Branch was making in its letter regarding the impact that the release of confidential incident report records would have on the ability of the Branch to do an effective job. (Electric Utilities October 13, 1997 Letter at 3-4.)

⁵ Even if we had made assurances of confidentiality, an agency’s assurances of confidentiality are legally insufficient to establish a reasonable expectation of privacy. (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 775.) Agencies “may not change nonexempt records into exempt records merely by assuring the source of the information that it will remain confidential.” (*Id.* at 776.)

CAUSE views the above argument as a threat to ignore *Application of PG&E* [D.96-09-045], *supra*, which requires a standardized format for incident reports. CAUSE notes that the courts have rejected such unsubstantiated claims that disclosure will subvert monitoring. CAUSE cites *State of California Ex Rel. Division of Industrial Safety v. Superior Court* ("*Division of Industrial Safety*") (1974) 43 Cal.App.3d 778, which rejected a state agency's claim that it could refuse to disclose a report concerning an accident at a bridge construction site. The court found that the accident report fell under the conditional privilege for official information in Section 6254 (k) and Evidence Code Section 1040 (b)(2), but rejected the agency's claim that it could not perform its work of ensuring the safety of workers unless the information was kept confidential. Instead, the court found it at least equally plausible that disclosure of the accident report might make everyone more safety conscious and the agency more zealous in enforcing the law.

We have in *Re San Diego Gas & Electric Company* ("*SDG&E*") [D.93-05-020] (1993) 49 Cal.P.U.C.2d 241, 243 rejected the argument that disclosure of an electric incident report would spur litigation and have an adverse impact on safety:

SDG&E offers the rather dire prediction that "[t]he threat of litigation and public scorn could have a chilling effect on the substance and candor of a utility's report to the Commission. ... We shall take this opportunity to remind SDG&E and all public utilities subject to our jurisdiction that they are under a legal obligation to provide the Commission with an accurate report of each accident. (Pub. Util. Code § 315); Commission Rules of Practice and Procedure, rule 1; accord *State of California v. Superior Court* [*Division of Industrial Safety*] (1974) 43 Cal.App.3d 778, 786.) Withholding of such information or lack of complete candor with the Commission regarding accidents would of course result in severe consequences for any public utility. SDG&E's argument in no way provides a basis for withholding the report at issue.

We see no reason to repudiate our holding in *SDG&E* that the disclosure of incident reports will not prevent us from gathering adequate information regarding electric utility incidents. Our decision is in accord with the similar judicial decision in *Division of Industrial Safety, supra*, which ordered disclosure of an agency report concerning an accident at a bridge construction site.

Further support for disclosure may be found in *Iryal Realty Inc., et al. v. Board of Public Utilities Commissioners of the State of New Jersey* ("*Iryal*") (1972) 61 N.J. 366 [1972 N.J. LEXIS 185], which ordered the New Jersey Board of Public Utilities Commissioners

to release accident reports filed by utilities and investigation reports prepared by the Board's staff. Applying both common law and the New Jersey Right to Know Law (N.J.S.A. 47:1A-1 et seq.) - the New Jersey equivalent of California's PRA- the New Jersey Supreme Court affirmed lower court rulings concluding that the plaintiffs' need to receive all reasonable assistance in the prosecution of their claims clearly outweighed the adverse effect upon the public that might result if disclosure of accident reports led utilities to provide less information regarding accidents and potential preventative measures.⁶

Utility Litigation

The Electric Utilities assert that disclosure of incident reports may promote litigation and harm the utilities' litigation position. The Electric Utilities recognize that we have uniformly rejected this argument, citing Public Utilities Code Section 315, which prohibits the introduction into evidence of incident reports in civil litigation action for damages.⁷ The Electric Utilities believe that, notwithstanding the protection theoretically afforded by Public Utilities Code Section 315, any skilled plaintiff's attorney with a copy of an incident report would find Section 315 to be only a minor inconvenience:

Armed with the information in an incident report, a plaintiff's attorney could, as the Safety Branch points out, subpoena the knowledgeable Safety Branch engineer for deposition and/or testimony at trial. Further, incident report information could aid such a plaintiff's attorney in framing deposition questions and discovery requests to the utility witnesses and generally charting overall litigation strategy to the potential, unfair, disadvantage of the utility.⁸ (Electric Utilities Letter at 5.)

⁶ *Irval* did note that there may be cases in which some material in an accident report should not be revealed because the public interest will be best served by its remaining secret. The Court stated that in all future cases, where a controversy arises, the trial judge should examine the report or other record and determine whether some or all of the information should not be revealed, and then make the remainder available. (1972 N.J. LEXIS 185 at 11.)

⁷ See, e.g., Resolution L-260 (*Banda*), *supra*.

⁸ The Electric Utilities point out that "CAUSE, through its legal counsel in this matter, Charles Wolfinger, is an active litigant. Most recently, CAUSE has sued the City of San Diego concerning the SDG&E franchise agreement and the City's undergrounding policies. CAUSE is also active in local legislative and administrative proceedings involving undergrounding issues. It is possible that incident reports may be admitted into evidence in such proceedings notwithstanding the prohibition contained in Public Utilities Code § 315 applicable to actions for damages." (*Id.* at 5 [footnote 6].)

CAUSE questions how making incident reports public could increase litigation, since anyone involved in such incidents may already sue. CAUSE states that if litigation does not increase, neither should the number of USB engineers called to testify. In any event, CAUSE notes, USB may recover some of its costs in witness fees and travel expenses pursuant to Section 68097.2. CAUSE further asserts that more litigation testimony might cause USB to better monitor power line safety, which is clearly in the public interest.

In *SDG&E, supra*, we noted that the potential issue of incident report information finding its way into the evidentiary record despite Public Utilities Code Section 315 was "more representative of SDG&E's private interest and does not adequately weigh the public interest in disclosure of public records." (49 Cal.P.U.C.2d at 243.)

SDG&E also found that, even if the incident report details did not find their way into the evidentiary record, they:

could prove helpful to an early settlement of any possible lawsuit resulting from this incident and thus would provide a speedier resolution of the case than a protracted trial. Further, it is possible that the information contained in the report could alert other farm workers to the potential danger of utility wires hidden in overgrown trees. (*Id.*)

Again, we find no reason to repudiate our *SDG&E* discussion of the impact of disclosing incident reports on the litigation position of utilities. Indeed, many of our resolutions releasing individual incident reports note that the information in such reports may be relevant to personal injury actions and reiterate *SDG&E*'s conclusion that disclosing incident reports might help settle litigation. For example, Resolution L-249 *Re Lopez 2, supra*, states:

While Public Utilities Code Section 315 prohibits the use of accident reports as evidence in a civil case, it does not preclude discovery of such reports. Decision No. 78162 (1971), 71 CPUC 688, allows the Commission to permit disclosure of information in the accident reports if the information is relevant and material to the issues in the proceeding. 71 CPUC at 692. Petitioner contends that the accident reports are relevant and material to the issue of safety as this issue applies to Edison's underground equipment. ... Because the requested documents are relevant and material to the issue of safety in a personal injury action, and may lead to the discovery of admissible evidence, the disclosure of the

information appears to be in the public interest. (Resolution L-249 at 1-2; *see also*, Resolution L-248 *Lopez I; supra*, and Resolution L-247 *U.S.A. Airporter, supra*.)

And Resolution L-260 states in regard to records concerning the electrical accident of Juvenito Banda:

The public interest in confidentiality of the records fails to clearly outweigh the public interest in disclosure, in that disclosure may assist in achieving settlement of any possible litigation resulting from the incident. (*See San Diego Gas and Electric Co. App. for Rehearing of Resolution L-240* (1993) 49 CPUC 2d 241, 243.)

Obviously, CAUSE seeks far broader disclosure than did the parties whose requests were granted in the above resolutions. The difference in scope creates a distinction that is primarily quantitative, not qualitative, however.⁹ The public interest in the safety of electrical facilities remains the same.

Motives of Requesting Party

The Electric Utilities argue that if the sweeping CAUSE request is granted on the vague justification of power line safety issues, the Commission will be on "the very slippery slope of developing precedent for granting all future requests for any and all incident reports regardless of the true motive of the requesting party." (Electric Utilities Letter at 2.)

While we understand the importance of today's decision, we note that the motive of the requesting party is irrelevant in a PRA proceeding. The PRA "imposes no limits upon who may seek information or what he may do with it." (*ACLU, supra*, 32 Cal.3d at 451; *see also, San Gabriel Tribune v. Superior Court* (1983) 43 Cal.App.3d 762 at 780.)

Availability of Information in Another Forum

The Electric Utilities state:

⁹ Not having reviewed all electric incident reports or having received such information from any other source, we cannot tell the number of lawsuits that might be affected by the wholesale release of incident information. In any event, it seems evident that many potential litigants would be barred by the applicable statutes of limitation.

CAUSE/Johanson appear to be concerned about general policy governing undergrounding versus overhead electric facilities. Pursuit of that issue, however, does not justify access to all incident reports filed with the Commission and the total destruction of confidential status for such reports. Other avenues are available to CAUSE/Johanson, including petitioning the Commission for changes in the Commission's undergrounding rules. To the extent information contained in incident reports would be germane to such a proceeding, the data request process would be available and could be conducted without totally removing all confidentiality protection for the reports. Thus, Commission action denying the CAUSE/Johanson Public Records Act request does not leave the requesting parties without recourse. (Electric Utilities Letter at 4.)

CAUSE responds:

A CPUC proceeding is not an adequate forum for obtaining general information for dissemination to the public. The [confidentiality] orders typically limit disclosure of sensitive information. The hearing officer controls the scope of the utilities' response. Moreover, without the orders, CAUSE and others will have insufficient information to start any proceeding.

The public cannot rely on the traditional forums of court or the CPUC to protect its interests in undergrounding. (Cf. *San Diego Gas & Electric Co. v. Superior Court (Covalt)* (1996) 13 Cal.4th 893, 935-43; *CAUSE v. SDG&E*, Case No. 95-11-019, Dec. No. 97-01-033 (1997).)

The Big Three Utilities misconstrue the purpose of the CPRA. It is not limited to parties to formal proceedings. The CPRA is not a discovery law. It does not limit the use to which any public record may be put. Its provisions do not depend on the reasons why any particular requestor wants the information.

The fact that the information may be available to a party who has filed some complaint with the CPUC has no relevance to whether the information should be made public. As shown in

Part 6.3 below, there are many uses to which these reports may be put that have nothing to do with a CPUC proceeding. (CAUSE Letter at 11-12.)

CAUSE is correct. As noted earlier, the purpose for which public records are sought is irrelevant to the question whether the records must be released under the PRA. The availability of another potential forum for obtaining information is also irrelevant: the PRA does not require exhaustion of other avenues for obtaining information. The heart of the Electric Utilities' concern - privacy - will be addressed later.

Redaction Costs

USB believes that incident reports contain the names of victims and other persons which should be withheld to protect their privacy, and states that it does not have the resources to prepare redacted versions of the records. The Electric Utilities note the substantial burden the Commission would face in allowing access and arranging duplication of thousands of incident reports and/or in redacting the reports to protect privacy interests. The Electric Utilities also note that CAUSE requests only incident reports concerning power line safety, and that presumably the record release would be limited to that category of incident reports. Since many reports do not involve power lines, USB would need to segregate the records into those which concern power lines and those which do not. The Electric Utilities contend that if the USB lacks resources to redact incident reports, it must also lack resources to categorize incident reports.¹⁰

CAUSE responds that every public agency incurs costs in responding to PRA requests because it must search for records, review them for exempt material, delete any exempt material, and disclose the rest. Agencies may not use costs as a basis for violating the PRA by charging a requesting party for the cost of searching and reviewing records. Section 6257 states: "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions exempt by law." Thus, an agency may not rely on the presence of some exempt information as a justification for withholding entire documents, since deletion of exempt material is a statutorily mandated agency function. However, "[t]he burden of segregating exempt from nonexempt materials ... remains one of the considerations which the court can take into account in determining whether the public interest favors disclosure under Section 6255." (*ACLU, supra*, 32 Cal.3d at 453.)

¹⁰The Electric Utilities note that another approach which constitutes an equal or greater drain on Commission resources would be to obtain authorization or disclosure from each individual or organization named in an incident report. They point out that the PRA requires neither redaction nor disclosure waivers.

We have yet to review more than a small sample of incident reports; thus, even if we assume that privacy concerns require redaction of personal information, the precise scope and cost of any such redaction is not yet clear. USB did not in its September 19, 1997 letter quantify these issues. Nonetheless, since our agency must expect to bear some costs in responding to PRA requests, we find insufficient reason to use the cost of redaction as a basis for refraining from disclosing incident reports. The same applies to any costs of segregating incident reports into those which relate to power line incidents and those which do not.

Disclosure Benefits

CAUSE contends that there are substantial public interests in the disclosure of incident reports, and that recitation of these interests will show the wisdom of the PRA presumption in favor of disclosure. CAUSE states that the primary benefit of disclosure is to promote government accountability: "In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power." (*CBS v. Block, supra*, 42 Cal.3d at 651.) CAUSE notes that disclosure may lead to changes in agency policy. (*City of Los Angeles v. Superior Court* (1996) 41 Cal.App.4th 1083, 1093.)

More specifically, CAUSE states that disclosure allows the public to review how the Commission is monitoring the safety and reliability of electric power lines. CAUSE states that public monitoring is warranted, since the Commission no longer summarizes reported incidents in a publicly available annual report. The last such summary was for fiscal years 1985/86 and 1986/87. In response to CAUSE's inquiries following its first successful PRA request concerning utility responses to a USB data request which included a request for summary incident information (Resolution L-257 (*Re Johanson, supra*)), CAUSE was informed that the Commission had no plans to renew the practice of providing such incident report summaries. CAUSE also cites *Application of PG&E, supra*, as a justification for public monitoring. There, the Commission stated that a central regulatory goal in the mainly deregulated electric industry remains the reliability of the electric transmission and distribution system (*Id.* at 6.) The Commission developed a set of reporting requirements for monitoring reliability, including standardized reporting for accidents or incidents affecting reliability. (*Id.* at 20-22.)

CAUSE also claims:

Disclosure will also deter utility carelessness or indifference to the safety and reliability of electric power lines. (*Register Div. Of Freedom Newspapers v. Co. of Orange* (1985) 1158 Cal.App.3d 893, 909 [disclosure of claims deters frivolous

tort claims]; *New York Times v. Superior Court, supra*, 218 Cal.App.3d 1586 ["Publication of overdrafting by customers will deter profligate use of water"].) It is unnecessary to show that the agency is having problems; accountability is sufficient. (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 776 "Nor is a showing of egregious conduct necessary to gain access to relevant data, since in many cases knowledge of such could only be gained by such access").) Where private companies perform vital municipal services, the decisions of government agencies to monitor those services require no less disclosure than if they were performed by government itself. (CAUSE Letter at 13.)

In addition to deterring utility carelessness, CAUSE states that:

A separate set of interests beyond the CPUC and utilities are in comparing the relative merits of overhead versus undergrounding of existing power lines to persuade municipalities to increase undergrounding overall or in particular areas. (*Id.*)

CAUSE notes that in 1968 the Commission "launched a long range program to convert most existing utility distribution lines to underground facilities." (*Re Undergrounding Conversion Program* [D.82-01-18] (1982) 7 Cal.P.U.C.2d 757, 758.) It did not dictate how soon the conversion must be completed, how much should be spent, or which projects should be funded: "Each local community was allowed to decide where and how its annual share of utility funds for undergrounding should be spent." (*Id.* at 759.)

CAUSE notes that it has advocated increased funding for burying power lines in San Diego, but has been hampered by a lack of information about the full costs of overhead versus underground power lines, and by "the secret deals made by the City with SDG&E over the issue." (CAUSE Letter at 13.) CAUSE states that the Court of Appeals has recently required the City to defend its actions at trial (*CAUSE v. City of San Diego* (1997) 56 Cal.App.4th 1024), and that the Court noted the substantial public interest in the issue, which is "in the most general sense ... over a long-term contract with the provider of a vital public service and involves literally hundreds of millions of dollars in potential infrastructure improvements over the next 23 years." (*CAUSE, supra*, 56 Cal.App.4th at 1030.) CAUSE concludes that the release of the incident reports will show the kind of information the public could use at hearings to prevent massive

reductions in undergrounding, and that the accountability of local public officials under the electric franchise is an important public interest served by disclosure.

To sum up, the Electric Utilities ask us to revisit our analysis in *SDG&E* and its numerous progeny resolutions which support disclosure of individual incident reports, while CAUSE implicitly asks us to revisit our determination in D.96-09-045 that incident reports should not automatically be made public.

While Public Utilities Code Section 583 and General Order 66-C preclude the disclosure of information submitted by utilities, absent an order of the Commission or its introduction into the record of a proceeding, we have always been free to order the release of information submitted by utilities, and we have ordered the release of a number of individual incident reports to those with an interest in the incident. We have also released summaries of incident reports, when available, prepared either by our staff or by the utilities. We have never, however, made incident reports public on a wholesale basis.

Weighing in favor of disclosure are the public benefits listed by CAUSE: governmental and utility accountability regarding power line safety and reliability, and access to information which may allow CAUSE to hold cities such as San Diego accountable for such issues as well.

On the other side of the scale, the asserted public benefits of nondisclosure are: 1) staff will not have to make available and/or redact confidential information from hundreds of incident reports; 2) incident victims and witnesses may be more willing to come forward with information if they know the information will be kept confidential; thus, the Commission may obtain more candid and useful information concerning utility incidents; and 3) USB staff may be less likely to have to participate in civil litigation related to utility incidents. An additional benefit asserted by the Electric Utilities is maintenance of a more favorable litigation position.

On the whole, after considering the contentions advanced by the parties, we find that the benefits of nondisclosure do not clearly outweigh the benefits of disclosure. We have made this determination in a number of decisions and resolution concerning far more limited disclosure requests, but see no fundamental reason why this determination should not apply to all electric utility power line incident reports requested here. In particular, we note that courts have ordered state agencies with similar responsibilities, such as the Division of Industrial Safety, to release accident reports, finding that disclosure of accident information may make both the oversight agency and the overseen industry more conscientious with regard to safety issues. In *SDG&E, supra*, we too found that the benefits of disclosing an individual incident report outweighed the benefits of nondisclosure, noting that Public Utilities Code Section 315 protects utilities in litigation;

and that since we have the power to compel utilities to provide us with incident information, we need not be concerned that disclosure will significantly reduce our ability to effectively address utility safety issues. The essential logic of *Division of Industrial Safety, supra, p. 5*, and *SDG&E, supra*, are mirrored in the New Jersey decision which ordered release of utility accident reports.

We must still determine the scope of disclosure. For this reason, we next explore the privacy issue.

PRIVACY

Having determined that disclosure of incident reports requested by CAUSE is in the public interest, we now explore whether any portion of such reports should be redacted in order to protect the privacy rights of those involved with power line incidents.

Section 6254 (c)

Section 6254 (c) exempts from disclosure “[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” This privacy exemption echoes Section 6250, which states: “In enacting this chapter, the Legislature, *mindful of the right of individuals to privacy*, finds and 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.” (Emphasis added.)

Section 6254 (c) has the same scope as the right to privacy set forth in Article 1, Section 1 of the California Constitution, which states:

All people are by nature free and independent and have inalienable rights. Among these rights are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, *and privacy*.¹¹ (Italics added; see, *Braun v. City of Taft* (1984) 154 Cal.Ap.3d 332, 337.)

Hill v. NCAA, supra, observes:

Informational privacy is the core value furthered by the Privacy Initiative. (*White v. Davis, supra*, 13 Cal.3d at p. 774.) A particular class of information is private when well-

¹¹ The phrase “and privacy” was added by an initiative adopted November 7, 1972 (“Privacy Initiative”).

established social norms recognize the need to maximize individual control over its dissemination and use to prevent unjustified embarrassment or indignity. Such norms create a threshold reasonable expectation of privacy in the data at issue. (7 Cal.4th at 35.)

Hill v. NCAA sets forth a three part balancing test for evaluating constitutional privacy claims, involving: (1) a plaintiff's tort cause of action for invasion of the right; (2) the defenses justifying the invasion; and (3) any less intrusive alternatives to the invasion. (7 Cal.4th at 32-40; see also, *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 328-331.) To prevail, a plaintiff must show a legally protected privacy interest, a reasonable expectation of privacy, and conduct by defendant constituting a serious invasion of privacy. A defendant may prevail by negating one of these elements, or proving that the invasion of privacy is justified because it serves countervailing interests. The plaintiff, in turn may show there are feasible and less invasive alternatives. We will apply this test to the personal information contained in incident reports.

The level of personal information contained in incident reports varies greatly, since there has not until recently been a standard format or list of requirements for such reports. A review of a sample of incident reports show that many reports contain little, if any, personal information regarding victims or witnesses. Often, the reports do not include the names, addresses, or phone numbers of such individuals. It is unlikely that many incident reports would contain significant medical records or notations, given that the initial incident reports are generally submitted within hours of the incident. The list of incident report requirements set forth in the Appendix to *Application of PG&E, supra*, will increase the degree of standardization of incident reports, and will also, since it includes the names of those injured, increase the mandatory level of personal information contained in such reports.

The IPA, *supra*, defines "personal information" as "any information that is maintained by an agency that identifies or describes an individual, including ... his or her name, ... home address, home telephone number ... and medical or employment history. It includes statements made by, or attributed to, the individual." (Civil Code Section 1798.3 (a).) Under Civil Code Section 1798.24, "No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless" certain limited circumstances prevail. Thus, the IPA clearly defines a protectible "informational privacy" interest in personal information held by governmental agencies.

We recently noted in *Southern California Gas Company, GTE California, Inc. and Pacific Bell, Application for Rehearing of Resolution L-258 (Order Modifying Resolution*

L-258 and Granting Interested Parties 20 days to File Comments) [D.97-09-124] (1997) __ Cal.P.U.C.2d__, (Slip Op. at 4):

Although the Commission does not maintain on a regular basis records pertaining to individual customers, it does have access on a limited basis to this information, as in the case of informal complaints. It is clear that such records are protected by California's privacy law.

California courts have held that a customer has a constitutional right of privacy in his records. The test, stated in *Burrows v. Superior Court*, (1974) 13 Cal.3d 236 is whether a person has exhibited a reasonable expectation of privacy, and if so, whether this expectation has been violated by government intrusion.

Thus, in *People v. McKunes* (1975) 651 Cal.App.3d 487, the court held that a district attorney's acquisition of a defendant's toll records from a telephone company without having first secured a subpoena or other court order violated the state constitutional right to privacy because of the reasonable expectation that toll records will only be used for accounting purposes. *People v. Blair* (1979) 25 Cal.3d 640, 653-659 found that this right of privacy extended to utility customers and credit card holders. [Footnote omitted.] In *People v. Chapman* (1984) 36 Cal.3d 98 the California Supreme Court held that the action of the police, in seizing unlisted telephone information without a warrant, consent, or exigent circumstances, violated Article I, Section 1 of the California Constitution.

To the extent that the Commission retains incident reports which contain personal information concerning incident victims and witnesses, most of whom are undoubtedly utility customers, such individuals have a protectible "informational privacy" right in such information. Having established the existence of a protectible privacy interest in personal information contained in incident reports, we move on to review the reasonableness of expectations of privacy in such information.

Section 6254 (f)

CAUSE contends that even if incident reports involve a protectible privacy interest, accident victims and witnesses have no reasonable expectation of privacy in their identity. Citing Section 6254 (f), CAUSE argues that the PRA expressly requires disclosure of the names and addresses of vehicle accident victims and witnesses, and crime victims and witnesses, unless they are "confidential informants."

Section 6254 (f) exempts from disclosure:

Records of complaints to, or investigations conducted by, ... any state and local police agency ... or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident ...

Section 6254 (f) has been interpreted as applying only to agency records in cases which involve a concrete and definite prospect of enforcement at the time the file is created. (*Williams v. Superior Court* (1993) 5 Cal.4th 337; see also, *Uribe v. Howie*, (1971) 19 Cal.App.3d 194, 212-213; *ACLU, supra*, 32 Cal.3d at 449-450.) To say that the exemption was applicable to any document which might be used in a disciplinary or other enforcement proceeding would create too broad of an exemption for public agencies, and partially defeat the purpose of the PRA. (*Id.*) Thus, Section 6254 (f) does not apply to all Commission records concerning electric utility incidents, but rather only to those which involved a concrete and definite prospect of enforcement at the time they were created.

Further, to the extent that vehicle accident reports provide a useful analogy, it is doubtful that Section 6254 (f) overrides the confidentiality provided for certain vehicle accident reports by the Vehicle Code. Vehicle Code Sections 16005 and 20012 require that certain accident reports filed by persons involved in accidents be kept confidential unless the person seeking access has a proper interest in disclosure. (69 Ops.Cal.Atty.Gen., *supra*, at 136.)

As the State Attorney General notes:

These confidentiality statutes are to encourage full and accurate accounts and cover only the required reports where the interests of the reporting private parties might otherwise be compromised. The facts of the accidents themselves are not confidential. As stated by the Supreme Court in *Davis v. Superior Court, supra*, 36 Cal.App.3d at p. 299:

"Since highway accidents are public occurrences, and are often the object of press reports, it seems unlikely that the legislative purpose was to keep confidential either the fact of the accident or information about its nature and causation. Nor is there any reason to protect the identity of the

investigating officer, since that information is also readily available from other sources. It seems probable, therefore, that the Legislature intended to protect the privacy of the reporting parties by keeping confidential their identities and information that might disclose identity.”

Although victims or witnesses to electric utility incidents do not have the same statutory privacy afforded to those involved in automobile accidents, Public Utilities Code Sections 583 and 315 create a similar expectation of privacy. This expectation is furthered by the Commission’s past treatment of incident reports. We have only recently begun releasing incident reports to interested parties on a relatively routine basis, and have in *Application of PG&E, supra*, deliberately stopped short of making all incident reports public.

Commission, Judicial, and Attorney General Precedent

CAUSE notes that our decisions regarding PRA requests have allowed disclosure of not just incident reports but also the full USB investigative reports, including names of victims and witnesses (Resolutions L-240 (1/22/93), L-255 (5/21/97), L-260 (8/1/97)) and that no such decision analyzes privacy interest waivers or includes a protective order limiting disclosure to the requester only. CAUSE points out that a requester cannot waive the privacy interests of everyone else mentioned in the report.

Although we do not argue with the facts stated by CAUSE, we note that each of the cases cited appears to involve a narrow request by parties to civil litigation regarding the incidents in question, rather than a broad request for all power line incident reports filed within the last ten years. Our past resolutions do not, however, preclude a more thorough analysis of privacy rights in the context of the current, far broader, records request.

CAUSE notes that court decisions under the PRA have eliminated the expectation in the privacy of one’s name when the person becomes involved with an agency’s performance of its duties. (*Div. Industrial Safety, supra*, [names of employees and employers in investigation reports of bridge accident]; *CBS, Inc. v. Block, supra*, [names of holders of concealed weapons permits]; *New York Times Co. v. Superior Court, supra*, 218 Cal.App.3d at 1585-86 [names and addresses of water customers exceeding supply allocation]; *New York Times Co. v. Superior Court* (1997) 60 Cal.Rptr.2d 410 [names of deputies firing weapons].)

We agree that in many situations those in contact with a government agency performing its duties have no reasonable expectation of privacy. We note, however, that most of the decisions cited by CAUSE involve information of a less emotionally charged nature than the personal information in incident reports. For example, disclosure of the names of

those who consumed water in excess of the limits imposed by certain water districts in drought situations is clearly less likely to cause personal anguish than is the disclosure of the identity or address of an incident victim.

In terms of emotional sensitivity, records concerning vehicle accidents or industrial accidents provide the best analogies. As noted earlier, vehicle accident reports are made available to those with an interest in the accident, but not to the general public. We have generally followed a similar policy. And while *Division of Industrial Safety, supra*, does require release of a bridge construction accident report, the extent to which the report identifies the victim and witnesses remains unclear. Thus, not all required contact with government agencies forces one to yield all expectations of privacy.

CAUSE points out that State Attorney General opinions under the PRA have ordered disclosure of names and more by an agency charged with monitoring the safety of publicly regulated industries (69 Ops.Cal.Atty.Gen. 129, 132-33 (1986) [motor carriers of hazardous material records of California Highway Patrol]), and have required disclosure in other circumstances as well (*see, e.g.*, 62 Ops.Cal.Atty.Gen. 436, 439 (1979) [names of owners of state registered bonds]; and 78 Ops.Cal.Atty.Gen. 103 (1996) [names, addresses and telephone numbers of persons filing noise complaints over city airport]).

Again, we do not quarrel with CAUSE's citations, but merely with their relevance. While the first opinion noted orders disclosure of CHP records concerning motor carriers of hazardous materials, it also references the Vehicle Code reporting confidentiality provisions discussed earlier, and thus highlights the reasonableness of the privacy expectations of accident victims and witnesses.

We find that incident victims and witnesses have a reasonable expectation of privacy in their identities and addresses. We believe that Public Utilities Code Sections 583 and 315, General Order 66-C, and the Commission's past treatment of incident reports provide the basis for an objectively reasonable expectation of privacy in the personal information contained in incident reports.¹²

¹² To the extent that victims or witnesses of utility incidents are also utility customers, D.97-10-124, *supra*, which conditions the release of utility customer information to law enforcement agencies upon the existence of a subpoena or similar court order, or upon the signing of a confidentiality agreement, reinforces the expectation of privacy in personal information.

Section 6255

Having found that incident victims and witnesses have an objectively reasonable expectation in the confidentiality of their personal information, we now weigh the public interest in favor of and against disclosure of such information.

While it is apparent that the public would benefit from disclosure of the nonpersonal substance of incident reports, the same benefits do not flow from the disclosure of personal information regarding incident victims and witnesses. The identities and addresses of such individuals are not likely to aid CAUSE or anyone else in efforts to improve governmental or utility accountability for electric power line safety. Disclosure could, on the other hand, disappoint objectively reasonable expectations of privacy and, perhaps, cause emotional distress.

Weighing all considerations, we conclude that the public interest in refusing to disclose personal information such as the identity, addresses, and medical files of incident victims or witnesses outweighs the public interest in disclosure, since disclosure of such information could disappoint such individuals' expectations of confidentiality and cause emotional pain without providing any substantial countervailing public benefit.¹³

CONCLUSION

The Electric Utility power line incident reports at issue do not appear to meet either the specific exemptions of the PRA or the general public interest exemption of the Act, with the exception of certain personal information contained within these reports; specifically, the identities, addresses, personnel, and medical files of victims or witnesses to such incidents. Public Utilities Code Section 315 expressly prohibits the introduction of the reports in question "as evidence in any action for damages based on or arising out of such loss of life," and therefore offers the utility sufficient protection. (*SDG&E, supra; see also Resolutions L-240, L-247, L-248, L-249, L-255, L-257, L-260, L-261, and L-262, supra.*) In view of the above, the request for disclosure of the electric power line incident reports, or, if such reports are not available, summaries thereof, is granted, subject to the

¹³ We find one exception. To the extent that a utility employee who is the victim or a witness to an incident is also the contact person responsible for informing the Commission of the incident, the identity of the employee as contact person need not remain confidential. Status as a contact person is not within the sensitive areas of personal information requiring protection. (*See, 69 Op. Atty. Gen., supra, at 132-133.*)

following conditions.¹⁴

Actual production of the incident reports in question, or summaries thereof, will be deferred pending redaction of personal information concerning incident victims and witnesses, and pending an arrangement between the Commission staff and CAUSE regarding how records reflecting incident reports currently contained or summarized in the Commission's computer data base should be created.

FINDINGS OF FACT

1. A Public Records Act request for the disclosure of all power line incident reports filed by the electric utilities during the past ten years was served on the Commission on August 7, 1997 by the California Alliance for Utility Safety and Education.
2. Some of the material requested may be only available in summary form in computerized data bases.
3. Electric power line incident victims and witness have an objectively reasonable expectation in the privacy of their personal information, such as name, address, telephone number, medical records, and personnel files, with the exception of individual utility employees who may be the victim of or a witness to an incident, but who may also be the utility contact person required to report the incident to the Commission; such individuals have no reasonable expectation of privacy in their identity, although they do retain the remaining expectations of privacy.

CONCLUSIONS OF LAW

1. The incident reports at issue are "public records," as defined by Government Code Section 6252(d).
2. Both Public Utilities Code Section 583 and General Order 66-C prohibit disclosure of incident reports in the absence of formal action by the Commission or disclosure at a formal hearing.
3. Neither Public Utilities Code Section 583 nor General Order 66-C create for the utility an absolute privilege of nondisclosure by the Commission.

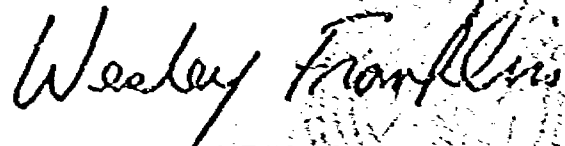
¹⁴ Many of the incident reports at issue may exist only in a USB computer data base. Further review is necessary to determine whether the data base contains entire incident reports, or only summaries of incident reports. We have already provided CAUSE with the Commission's last formal published incident report summary, which covered the years 1985/86 and 1986/87.

4. The general policy of the Public Records Act favors disclosure of public records.
5. Public records may only be withheld if they fall within a specified exemption in the Public Records Act, or if it is shown that the public interest in confidentiality clearly outweighs the public interest in disclosure.
6. The materials in the reports regarding the incidents do not fall within the specific exemptions contained in the Public Records Act, with the exception of personal information concerning electric power line incident victims and witnesses.
7. Public Utilities Code Section 315 bars the introduction of any incident reports filed with the Commission in any action for damages for loss of life, or injury to persons or property, arising out of an incident.
8. Under the specific facts of this case, the public interest served by withholding the redacted incident reports fails to clearly outweigh the public interest served by disclosure of the reports, with the exception of personal information concerning electric power line incident victims and witnesses.
9. The public interest served by withholding the identities of utility employees who may be incident victims or witnesses, but who are also the utility contact persons responsible for informing the Commission of an electric power line incident, do not clearly outweigh the public interest in the disclosure of the identity of the contact persons.

ORDER

1. The Public Records Act request for production of the incident reports is granted, subject to the condition that personal information concerning electric utility power line incident victims and witnesses, such as their identities, addresses, telephone numbers, personnel, and medical files, be redacted prior to disclosure. Disclosure is deferred until redaction has occurred, and until the Commission's Utilities Safety Branch and the California Alliance for Utility Safety and Education have worked out details concerning the format for reporting electric incidents currently contained or summarized in a computerized data base.
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 January 7, 1998. The following Commissioners approved it:



WESLEY M. FRANKLIN
Executive Director

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners