

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: June 18, 1998

Resolution No. L-271

RESOLUTION

Resolution Directing the Release of Documents Pursuant to Public Records Act Request by the City of Pinole. The Request Seeks the Release Of An Incident Report Prepared by CPUC Staff Of an Explosion That Occurred on February 17, 1998 in the City of Pinole.

BACKGROUND: The City of Pinole filed a Public Records Act (PRA) request seeking disclosure of a CPUC Staff Investigative Report concerning an explosion that occurred on February 17, 1998 at 2101 San Pablo Avenue in Pinole, California. The CPUC received the request on April 27, 1998. The incident involved the rupture of a PG&E gas line. It appears that an East Bay Municipal Utility District (EBMUD) crew was trenching down School Street to install a new water main when it struck a ½ inch copper PG&E lateral which provided gas service to St. Joseph's Parish Hall located at 2100 San Pablo Avenue. The impact severed the copper service line which crossed the trench. EBMUD apparently tried to stop the gas leak where the pipe was severed, but it was not apparent to EBMUD crews that the copper service lateral was pulled from the tee by the force of the dig-in because the main and tee remained buried. Gas escaped and migrated underground to 2101 San Pablo Avenue, entered the building, and ignited. The resulting explosion and fire destroyed the building. PG&E was notified of the gas leak at 9:14 a.m. The Staff Report concluded that PG&E was not at fault.

DISCUSSION: The incident report in question is a "public record" as defined in the PRA.¹ The PRA is intended to provide "access to information concerning the conduct of the people's business" while being "mindful of the rights of individual to privacy." (Gov. Code Sec. 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.) A public record must be made available for public inspection unless it is "exempt" from disclosure pursuant to a specific exemption or the agency demonstrates that the public interest served by not making the records public clearly

¹ Government Code Section 6252(d) defines public records as including "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

outweighs the public interest served by disclosure of the records. (Gov. Code Sec. 6255; See, e.g., *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.) The incident report does not fall within the specific exemptions to the Public Records Act. Therefore, the Commission has the burden of justifying the withholding of the incident report by showing that the public interest served by not making the record public clearly outweighs the public interest served by its disclosure.

Pinole's interest in obtaining access to the Staff Report is well-founded. The explosion occurred on City property, damaged City buildings, and injured City employees. The City is conducting an investigation, and indicates that it needs the information in order to help prevent a similar incident from occurring. It is therefore reasonable that the City, charged with protecting the health, safety, and welfare of its citizens, would seek to know the cause of the blast. The Commission's ability to obtain and safeguard confidential information from regulated utilities should not be adversely impacted since PG&E does not object to the disclosure of the Staff Report. The public interest in disclosure clearly outweighs the public interest in nondisclosure. Given these facts, there does not appear to be any public policy basis for withholding the disclosure of the Staff Report.

FINDINGS OF FACT

1. On April 27, 1998, the Commission received a Public Records Act request from the City Attorney of Pinole for the CPUC Staff Report of an incident involving an explosion that occurred in the City of Pinole on February 17, 1998.
2. The Commission conducted an investigation into the explosion and CPUC Staff filed an incident report.
3. The City of Pinole has an interest in the Staff Report because the explosion occurred on City property, damaged City buildings and injured City employees.
4. The City of Pinole is conducting an investigation in order to help prevent another incident of a similar nature from occurring.
5. The public interest in disclosure outweighs the public interest in confidentiality.

CONCLUSIONS OF LAW

1. Incident reports prepared by CPUC Staff are public records, as defined by Government Code Section 6252(d).
2. Public Utilities Code Section 583 and General Order 66-C prohibit the disclosure of incident reports in the absence of formal action by the Commission or disclosure at a formal hearing.
3. The general policy of the California Public Records Act favors disclosure of records.

4. The 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.
5. The incident report in question does not fall within the specified exemptions contained in the Public Records Act.
6. Public Utilities Code Section 315 bars the admission into evidence of any incident reports, CPUC Orders or Recommendations in any action for damages for loss of life, or injury to persons or property, arising out of an incident.
7. Under the specific facts of this case, the public interest served by withholding the incident report fails to clearly outweigh the public interest served by the disclosure of the report.

ORDER

1. The Public Records Act request by the City of Pinole for the release of the incident report prepared by CPUC Staff 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 18, 1998. The following Commissioners approved it:



WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners