

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

**San Francisco, California
Date: December 17, 1998
Resolution No. L-272**

RESOLUTION

PUBLIC RECORDS ACT REQUEST FOR STAFF RECORDS

BACKGROUND

On January 8, 1998, the San Jose Mercury News (News) filed a request for disclosure of unredacted versions of the electric utility incident reports disclosed by Resolution L-265.¹ In Resolution L-265, the Commission authorized disclosure to the California Alliance for Utility Safety and Education (CAUSE) of electric utility incident reports for the past ten years, with the names and addresses of incident victims and witnesses redacted to protect their privacy.² The News was offered the redacted reports disclosed by Resolution L-265, and informed that Public Utilities Code Section 583 and General Order 66-C prohibit staff disclosure of the redacted portion of the reports absent formal action by the Commission.

The Los Angeles Times (Times) filed a request for disclosure of a broad range of records concerning electrical accidents; specifically:

1. All records of telephonic reports, and the follow-up written reports, of electrical accidents reported by public utilities in California.
2. All records of inquiries, investigations, requests for information by the Utilities Safety Branch and the responses to those requests, or

¹ Rebecca Smith, the reporter who initiated the News' request, now works for the San Francisco Chronicle. She remains interested in disclosure of the unredacted accident reports.

² CAUSE defined "incident" to mean any event, related to utility owned electric facilities, that resulted in injuries/fatalities, service interruptions to 1,000 or more customers, or property damage of \$10,000 or more.

CAUSE received about 700 service interruption reports, about 6 of which contained personal information requiring redaction, and about 700 accident report summaries from an easily redacted computerized data base. CAUSE did not insist on receipt of a copy of each original accident report.

requests of the Utilities Safety Branch and its responses, concerning any electrical accident reported by a public utility in California.

3. All electronic records of electrical accidents reported by public utilities in California.
4. All records and correspondence between utilities in California and the Utilities Safety Branch concerning the formulation, enactment and enforcement of tree-trimming standards.
5. All records and correspondence between the public and the Utilities Safety Branch concerning any electrical accident reported by a public utility in California.
6. All historical records, including but not limited to narrative summaries, reports or analyses of the tree-trimming standard.

The Times was provided with copies of the redacted electric incident reports disclosed to Resolution L-265 and informed that the Utilities Safety Branch of the Commission's Consumer Services Division (USB) does not maintain a summary log of its investigations of electrical incidents; that staff evaluates each case to determine if a staff report is needed; and that when such a report is prepared, it is not released to the public except to the extent disclosed at a hearing or by formal Commission action (General Order 66-C, Paragraph 2.2 (a).)

The Times was also informed that there is no log of all written correspondence from the public or other agencies about electrical accidents or incidents and all written correspondence from the USB and that the correspondence files are not maintained with discrete isolation of electric incidents. The USB chronological collection of correspondence from 1995 to the present consists of 14 binders, each over three inches thick, which include all correspondence from the USB. The Times was asked to narrow its request and submit a list of the dates and locations of the incidents about which it had the most interest.

On May 29, 1998, the Times responded with a list of 19 incidents in which it was most interested. The Times was provided with a number of relevant documents. The Times was also informed that staff had located other documents prepared by utility representatives which were responsive to the information request, but which were not open to public inspection. These documents did not appear to be disclosed by Resolution L-265. The Times was informed that the question whether these documents could be

made public would be raised to the Commission along with the question of the disclosure of unredacted incident reports.

The Times was informed that the best sources of information regarding the history of tree-trimming and accident reporting standards were the formal files in: (1) Order Instituting Investigation (OII) 94-06-012, which resulted in the following decisions, D.94-06-012, D.96-05-012, D.97-01-044 and D.97-10-056; and (2) OII 95-02-015, which resulted in D.96-09-045, D.96-11-021 and D.97-03-070.

The Times was also provided with staff-prepared summaries of Tariff Rule 20 Reports submitted by utilities, which primarily address the placement of underground electric lines, and a related letter dated October 14, 1993, from Kevin Coughlan, Chief of the Energy Branch of the Commission's former Advisory and Compliance Division, to the New York Office of Energy Efficiency. This information responds to a second information request, dated April 7, 1998.

Since most of the information requested by the Times has already been provided, the remaining issues raised by the News and the Times appear to be:

1. Should the Commission order disclosure of all electrical accidents reports filed by public utilities in California, including the redacted portions of the incident reports already disclosed by Resolution I.-265?
2. Should the Commission order disclosure of all investigative records, reports, correspondence, and requests for information generated by or received by the USB regarding electrical accidents reported by public utilities in California?

DISCUSSION

The electric utility accident reports and investigative records in question constitute public records," as defined by the California Public Records Act (Act), codified as Government Code Section 6250 et seq.³ The Act is intended to provide "access to information concerning the conduct of the people's business" while being "mindful of the right of individuals to privacy." (Section 6250.) The general policy of the Act favors disclosure and a decision to withhold public records must be based on the specific exemptions listed in the Act, or on a determination that the public interest in confidentiality clearly outweighs the public interest in disclosure. (Section 6255; see, e.g., *American Civil Liberties Foundation v. Deukmejian* (1982) 32 Cal.3d 44; *San Gabriel Tribune v.*

³ All statutory references are to the Government Code, unless otherwise noted.

Superior Court (1983) 143 Cal.App.3d 762, 771-772; and *Re San Diego Gas and Electric Company (Re SDG&E)* [D.93-05-020] 49 Cal.P.U.C.2d 24 1.) The specific exemptions set forth in Section 6254 are permissive, not mandatory; i.e., "they permit nondisclosure but do not prohibit disclosure." (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 655; see also, *Re SDG&E, supra*, 49 Cal.P.U.C.2d at 242.)

As we noted in *Re SDG&E, supra*,

Public Utilities Code section 315 is mandatory in requiring public utilities to file ... accident reports with the Commission; however, it is discretionary in permitting the Commission to determine whether in its judgment an investigation of an accident is required and whether a just and reasonable order or recommendation based on the investigation is desirable. The statute does not prohibit disclosure of a public record under the CPRA. (49 Cal.P.U.C.2d at 242.)

Although both Public Utilities Code Section 583 and General Order 66-C prohibit staff disclosure of the accident reports and records in question in the absence of formal Commission action authorizing disclosure, neither the statute nor the general order create for utilities an absolute privilege of nondisclosure. Because the issues raised by the disclosure of accident reports are somewhat different than those raised by the disclosure of investigative records, the disclosure of these records will be discussed separately.

Accident Reports

Before we discuss the disclosure of accident reports, we will clarify what we mean by this term. We have, on occasion, used the term "accident" report and the term "incident report" fairly interchangeably. In the past, the word "incident" was used to encompass not only the type of event which one would generally consider to be an "accident" involving personal injury or property, but also events which resulted in significant interruptions of utility service.

In Application of Pacific Gas and Electric Company Order Instituting Investigation into the Practices of Pacific Gas and Electric Company [D.96-09-0451] (1996) however, we woe distinguish between service interruption data and other reliability information to be reported annually and accident reports. Ordering Paragraph 6 of D.96-09-045 provides: "All information provided by the utilities pursuant to that investigation, with the exception of accident reports, shall be made public absent a finding that disclosure of such information will compromise utility competitiveness and that nondisclosure is

permitted under the Public Records Act and General Order 66-C." Since future service interruption reports are expressly public, we will not discuss them further.

Our most recent decision modifying accident reporting requirements, D.98-07-097 in Order Instituting Rulemaking for Electric Distribution Facility Standard Setting [R.96-11-004], defines "reportable incidents" as "those which: (a) result in fatality or personal injury rising to the level of in-patient hospitalization and are attributable or allegedly attributable to utility owned facilities; (b) are the subject of significant public attention or media coverage and are attributable or allegedly attributable to utility facilities; (c) involve or allegedly involve trees or other vegetation in the vicinity of power lines and result in fire and/or personal injury whether or not in-patient hospitalization is required." (D.98-07-097, Appendix B, Paragraph 3.) The utility must notify the Commission of a reportable incident within two hours, and must follow up with:

a written account of the incident which includes a detailed description of the nature of the incident, its cause and estimated damage. The report shall identify the time and date of the incident, the time and date of the notice to the Commission, the location of the incident, casualties which resulted from the incident, identification of casualties and property damage. The report shall include a description of the utility's response to the incident and the measures the utility took to repair facilities and/or remedy any related problems on the system which may have contributed to the incident. (*Id.*, Paragraph 2.)

In addition, "[i]ncidents involving damage to property of the utility or others estimated to exceed \$20,000 that are attributable or allegedly attributable to utility owned facilities shall be reported within 60 days of their occurrence to designated staff of the CPUC." (*Id.*, Paragraph 4.)

In the interest of simplicity, we will generally use the term "accident report" to refer to the accident reports of the type currently required, and to the formerly required "incident reports" which concerned personal injuries and not simply service interruptions. Our discussion of the redacted information in accident reports will, of course, also apply to the few past service interruption reports containing such information.

Arguments for Disclosure

Resolution L-265 found that while the public had an interest in the disclosure of the substance of incident reports, victims and witnesses had a reasonable expectation of privacy regarding their names, addresses, and medical records. The resolution found that

the public interest in ensuring that incident victims and witnesses did not suffer further emotional pain from the public release of such personal information clearly outweighed the public interest in such information. In essence, the News asks us to reconsider.

The News properly notes that when nondisclosure of information contained in public records is premised on the privacy rights of individuals, a balancing test must be employed to determine whether the privacy rights outweigh the public interest in disclosure. This balancing test is necessitated by the tension between the inalienable right of privacy guaranteed by Article I, Section 1 of the California Constitution and the Act's emphasis on public access to government records.

Two provisions of the Act highlight this tension. Section 6250 states: "In enacting this chapter, the Legislature, mindful of the rights of individuals to privacy, finds and declares that access to information concerning the people's business is a fundamental and necessary right of every person in this state." And Section 6254 (c) exempts from disclosure: "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." The Section 6254 (c) exemption has the same scope as the right to privacy set forth in the California Constitution. (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332.) Each case balancing privacy rights against the public's right of access to information "must undergo an individual weighing process. The weighing process involves what public interest is served in this *particular* instance in not disclosing the information versus the public interest served in disclosing the information." (*Id.*, 154 Cal.App.3d at 346.)

As Resolution L-265 notes, the California Supreme Court discusses this balancing process in *Hill v. National Collegiate Athletic Association* (*Hill v. NCAA*) (1994) 7 Cal.4th 1:

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 322-40; *see also*, *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 328-31.) 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. (Resolution L-265 at 21.)

The News asserts that these standards show that disclosure of the accident reports would not constitute an invasion of the privacy rights of victims or witnesses. The News first doubts there is a legally recognized right to protect the confidentiality of the names and addresses of victims and witnesses, since there is no evidence this information was provided in response to any assurance of confidentiality, and since such information reveals nothing of substance about such individuals and does not present circumstances comparable to *People v. Chapman* (1984) 36 Cal.3d 98 (warrantless access to names and addresses of holders of unlisted telephone numbers) or *People v. Blair* (1979) 25 Cal.3d 640 (warrantless seizure of credit card bills and telephone calling records).

The News further asserts that:

disclosure of private information does not amount to an unwarranted invasion of privacy unless it results in a "serious invasion of privacy." Hill, 7 Cal.4th at 39-40.) Thus, an invasion into privacy is improper "only if the intrusion is highly offensive to a reasonable person." ' Baughman v. State of California, 38 Cal.App.4th 182, 189 (1995), quoting Hill, 7 Cal.4th at 25-26. There is nothing intrinsically offensive about being identified as a victim of an accident involving an electric utility, or being witness to such an incident.

The News next claims that the Act contains a balancing similar to that required of the Commission here, noting that while Section 6254 (f) permits public agencies to refrain from disclosing certain investigatory records compiled for law enforcement purposes, that section also generally requires disclosure of certain information such as the time and location of all complaints or requests for assistance received by an agency, the name and age of the victim, the factual circumstances of the crime or incident, and a description of any injuries. The News argues that since the privacy interests of crime victims and witness cannot be less than those involved in utility accidents, disclosure of the names and addresses of utility accident victims and witnesses would not be an unwarranted invasion of privacy.

Finally, the News asserts that even if disclosure would implicate a protected privacy interest, that interest is outweighed by the public interest in disclosure:

Without the ability to contact victims and witnesses involved in these incidents, the press is prohibited both from uncovering

the details of the incident (information the utilities will never provide), and from confirming or controverting the versions of these incidents proffered by the utilities. Obviously, the public has a very substantial interest in ensuring that public electric utilities are not immunized from scrutiny, in order to ensure they are acting responsibly. While individual victims no doubt help ensure this, by asserting individual claims against the utilities, no single victim can discern or inform the public about systemic problems.

In conclusion, access to these utility incident reports provides the only realistic opportunity for the press to examine and inform the public regarding the nature of these incidents and the manner in which they reflect on the performance of the State's public utilities. Providing only redacted reports will prevent the press from uncovering the true nature and impact of the incidents reported. Obviously, the utilities have little incentive to describe these incidents in detail, or to fully assess their impact on those involved or on the public generally. The utilities should not be permitted to hide behind the privacy rights of their victims in order to insulate themselves from scrutiny regarding the circumstances that created those victims.

The Times arguments for disclosure are less well developed, but similar.

Response

We agree that the public has a strong interest in the safety of utility facilities, and in Resolution L-265 made the information in ten years of electric utility accident reports available, albeit with names and addresses redacted.⁴ Resolution L-265 balanced issues concerning personal information as follows:

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

⁴ Resolution L-265 explains why Public Utilities Code Sections 583 and 315, and our past decision to not make accident reports automatically public (D.96-09-045), gave victims and witnesses who were aware of these authorities an objectively reasonable expectation of privacy in the personal information in such reports. (Resolution L-265 at 20-25.) We won't repeat that entire discussion here.

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. [Footnote 13 omitted.] (Resolution L-265 at 26.)

We have, for several reasons, reconsidered the balancing of interests we conducted before issuing Resolution L-265. First, we acknowledge that knowing the identities of accident victims would allow one to cross-check the information in such reports with other sources of accident information, and that in some cases interviews with injured individuals might be informative.

Second, as we review Resolution L-265 and the authorities cited therein in light of the public disclosure interests cited by the News, we realize that the specific privacy interests we desire to protect are not entirely at odds with the disclosure requested. *Hill v. NCAA, supra*, discusses the reasons the November 7, 1972 "Privacy Initiative" added "and privacy" to the list of inalienable rights guaranteed by Article I, Section 1, of the California Constitution:

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 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, supra, traces the origin of the common law right to privacy to an 1890 law review article by Samuel D. Warren and Louis D. Brandeis which observed a legal trend toward protection of the "involute personality" - "the right of determining, ordinarily, to what extent [a person's] thoughts, sentiments, and emotions shall be communicated to others." (Warren and Brandeis, *The Right to Privacy* (1890) 4 Harvard Law Review 193,

205, 198, quoted in *Hill v. NCAA, supra*, 7 Cal.4th at 23.) *Hill v. NCAA* then links the Privacy Initiative:

The Privacy Initiative's debt to the legal tradition begun by Warren and Brandeis is revealed in ballot arguments: "The right of privacy is *the right to be left alone*.... It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose." (Ballot Argument, *supra*, at p. 27, italics added." (7 Cal.4th at 24.)

Hill v. NCAA cites examples of the type of potential invasion of privacy issues we fear might arise from the automatic disclosure of personal information in accident reports: television producer and camera crew entered home without permission to film unsuccessful efforts of paramedics to save the life of plaintiff's husband who had suffered heart attack (*Miller v. National Broadcasting Co., supra*, 187 Cal.App.3d 1463); and, private investigator entered hospital room to interrogate patient (*Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654). (7 Cal.4th at 24.) We wish to avoid similar intrusive behavior regarding utility accidents. The heart of our privacy concerns is not a desire to shield utilities from appropriate public scrutiny, but rather a desire to insulate accident victims from involuntary exposure to a potentially unwelcome public spotlight.

We recognize that some electric accident victims might welcome, rather than object to, public attention, and may have waived an invasion of privacy claim by their voluntary disclosure of personal information. As *Hill v. NCAA* notes: "the plaintiff in an invasion of privacy case must have conducted him or herself in a manner consistent with an actual expectation of privacy, *i.e.*, he or she must not have manifested by his or her conduct a voluntary consent to the invasive actions of defendant." (*Id.* at 26.)

We also recognize that, in general, deceased accident victims have few legally protectible privacy rights. While relatives and friends may suffer from a visit to the painful past, this issue is not easily addressed in a response under the Act.

Perhaps the issue may be best summed up by simply noting that incident victims, witnesses, and their families may have broadly varying expectations of, and interests in, the privacy of their identities. The question then becomes whether the desirability of protecting the privacy of the portion of the electric accident victim population which both reasonably expects and desires that their identities and similar personal information will not be disclosed to the world creates a public interest in protecting from disclosure

personal information concerning all accident victims which clearly outweighs the public interest in disclosure.⁵

We wish it was realistic to protect against disclosure the personal information of those with reasonable expectations of and interests in privacy, and thus shield such persons from any unwanted public spotlight. In an ideal world, we might contact each past accident victim and witness to determine if they had a specific expectation that their names and addresses would remain confidential.

Practical considerations, however, make such an effort impossible. Many accident reports do not include the names of accident witnesses, or their addresses. Many reports include the names of accident victims, but not their addresses. While such reports may include the address of the accident, such addresses are often job sites rather than residences. Even where reports include both the names and addresses of accident victims and witnesses, many of these addresses will not be current, since many have undoubtedly moved within the past ten years. Furthermore, not all accident victims and witnesses would respond to an inquiry regarding their privacy expectations. An individualized review of privacy expectations and interests would be cumbersome, and would be likely to impede the work of our USB in investigating utility accidents and carrying out their other responsibilities. Thus, we must for reasons of practicality leave the protection of personal privacy interests to laws governing the invasion of privacy.

We now believe that, on balance, the public interest in knowing the identities of accident victims outweighs the public interest in the nondisclosure of such information. Disclosure will allow those interested to cross-check electric utility accident reports against other sources of information, and to interview willing accident victims. Disclosure may lead to the greater public awareness of the hazards of utility facilities, to the development of safer utility facilities and practices and, perhaps, ultimately to a reduction in the number of future accidents.

Our accident reporting requirements have evolved over time, and while current accident reports must identify the location of the incident and include the "identification of casualties," they need not contain other personal information. (D.98-07-097, Appendix B.) This should help alleviate future privacy concerns. We intend to further simplify the privacy issue, and remove any ambiguity regarding future expectations of privacy, by stating here that future accident reports filed by utilities will be subject to public disclosure upon request unless it is shown that in the specific circumstances of a

⁵ Naturally, the disclosure of personal information regarding those who consent to disclosure would not impair no personal privacy interests, and the public interest in nondisclosure of the portions of accident reports which contain such information is non-existent, and certainly does not outweigh the strong public interest in the disclosure of accident reports.

particular accident or related proceeding the public interest in nondisclosure clearly outweighs the public interest in disclosure. Such circumstances include situations in which an accident report contains confidential personal information concerning a victim, the redaction of which is permitted by law.

We conclude that the electric accident reports at issue here do not appear to fall within the specific exemptions, or the general public interest exemption, of the Act, with the exception of certain records which may fall within the Section 6254 (f) exemption for investigative records or which may contain confidential personal information concerning an accident victim, the redaction of which is permitted by law. Public Utilities Code Section 315 prohibits the introduction of these reports in any proceeding for damages, and therefore offers sufficient protection for utilities. In view of the above, we will grant the requests of the News and the Times for disclosure of unredacted accident reports as to the names and addresses of accident victims and witnesses, but not as to redactions of confidential personal information, where redaction is permitted by law. Disclosure will follow a further review by our staff to determine whether it is in the public interest to refrain from disclosing a limited number of records which may fall within the investigative records exemption, or to redact records which may contain confidential personal information concerning an accident victim, and/or other information, the redaction of which is permitted by law.

At the same time, we request that these entities act with sensitivity and respect to the maximum extent possible the privacy of those who expect and desire not be contacted by the media or placed in the public spotlight for any one or more of the reasons discussed in Resolution L-265 or in this current resolution. We further appeal to other members of the media and to others who may request access to electric accident reports to be sensitive to the emotional well-being of those who have been involved in or witnessed electric accidents, or who suffered the loss of loved ones involved in such accidents.

We hope that invasion of privacy laws and related sanctions will suffice to ensure compliance with reasonable standards of human decency. We may reconsider our balancing of disclosure interests if we find that the disclosed information is being used in a manner which clearly invades the privacy of utility accident victims.

Records of Commission Investigations

The current request of the Times for electric accident investigation records is certainly more extensive than any request we have received before. The Times seeks: 1) "All records of inquiries, investigations, requests for information by the Utilities Safety Branch and the responses to those requests, or the requests of the Utilities Safety Branch and its responses, concerning any electrical accident reported by a public utility in

California; and 2) "All records and correspondence between the public and the Utilities Safety Branch concerning any electrical accident reported by a public utility in California."

As noted earlier, much of the information is simply not available, or is available only in a form different from that anticipated in the Times' request. For example: 1) the USB does not maintain a summary log of staff investigations of electrical incident reports filed by utilities; 2) the USB evaluates each case to determine whether a staff investigation and report is necessary, but does not routinely prepare investigation reports for all accidents; 3) the USB does not maintain a discrete log of all correspondence from the public or other agencies about electrical accidents, or of all correspondence from the USB about such accidents, but instead maintains a chronological file which consists of 14 binders, each over three inches thick, which include all correspondence from the USB.

We are pleased that the Times responded to our staff's request to narrow its request by submitting a list of the 19 incidents about which it had the most interest, and that the Times has already received many related documents. However, even this narrowed request is far broader than similar requests we have received, which have generally been limited to information concerning a single incident.

Many issues regarding the release of USB investigative records are common to requests of any magnitude. Such issues include both the specifically relevant exemptions from disclosure set forth in the Act, and our own balancing of the public interest involved in the disclosure of accident investigation records.

Many of our utility accident investigation records fall within the scope of Section 6254 (f), which exempts from disclosure investigative records compiled by state agencies for correctional, law enforcement, or licensing purposes when there is a concrete and definite prospect of enforcement proceedings.⁶ (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 361-362; see also *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 212-213.) As the California Supreme Court notes in *Williams, supra*:

The exemption for investigatory files serves an important purpose. When an investigation, as defined in *Uribe* ... has

⁶ State and local law enforcement agencies are generally required to make public specified information including the name and occupation of every individual arrested, the name and age of every crime victim, and so on, although the victims of certain crimes are given the right to withhold their names from disclosure. The current addresses of arrested persons and crime victims are not automatically disclosed, but are for the most part subject to disclosure "where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator (Section 6254 (f)(3).)

come into being, a document in the file may have extraordinary significance to the investigation even though it does not on its face purport to be an investigatory record and, thus, have an independent claim to exempt status. (5 Cal.4th at 356.)

The exemption for investigatory files does not terminate with the conclusion of the investigation. Once an investigation, as defined in *Uribe* (*supra*, 19 Cal.App.3d at pp.212-213) has come into being because there is a concrete and definite prospect of enforcement proceedings at that time, materials that relate to the investigation, and, thus, properly belong in the file remain exempt subject to the terms of the statute. (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 361-362; see also *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 212-213.)

The Williams Court was clearly not happy with a permanent investigatory record exemption:

In our view, the matter does appear to deserve legislative attention. Although there are good reasons for maintaining the confidentiality of investigatory records even after an investigation has ended (*ante*, p. 355), those reasons lose force with the passage of time. Public policy does not demand that stale records be kept secret when their disclosure can harm no one, and the public good seems to require a procedure by which a court may declare that the exemption for such records has expired. (5 Cal.4th at 361-362, footnote 13.)

We could in many cases rely on Section 6254 (f) as a basis for refusing to disclose our investigative reports. Instead, we have chosen to grant most requests for the release of investigative records involving completed investigations after making a determination that in those specific cases the public interest in nondisclosure fails to clearly outweigh the public interest in disclosure.⁷

⁷ The records released often consist only of the formal investigative report generated by our USB, and do not include preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the agency in the normal course of business. Such material could be misleading if taken out of context, and is in any event exempt from disclosure pursuant to Section 6254 (a). Similarly, we may in appropriate circumstances withhold disclosure on grounds of the deliberative process privilege, or other privilege, or other statutory exemption or prohibition against disclosure, pursuant to Sections 6254 (a), (c) and (k), or other appropriate authorities.

For example, Resolution L-260 states in regard to the release of investigative records a prepared by Commission staff regarding the electrocution injury 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.)

On identical grounds, Resolution L-261 (ordered disclosure of staff investigative records regarding a fire on October 13, 1995 in the Montclair area of Oakland, that apparently resulted from Pacific Gas & Electric Company overhead lines. (See also, Resolution L-273 *Re Walt Disney* (October 8, 1998); Resolution L-271 *Re City of Pinole* (June 18, 1998)); Resolution L-263 *Re Schwab* (October 22, 1997); Resolution L-262 *Re Peralta and Adel Boyadjian* (September 24, 1997); Resolution L-255 (*Re Murillo* (May 21, 1997); Resolution L-249 *Re Lopez 2* (August 11, 1995); Resolution L-248 *Re Lopez 1* (April 26, 1995); Resolution L-247 *Re USA Airporter* (March 22, 1995); Resolution L-240 *Re Arreguin-Maldonado* (January 22, 1993), application for rehearing denied in *Re San Diego Gas and Electric Company* [D.93-05-020] (1993) 49 Cal.P.U.C.2d 24 1)); Resolution L-146 *Re Crossing B.A.M-386 9* (September 7, 1973); Resolution L-138 *Re Crossings BG 504.09C et al* (May 22, 1973); Resolution L-135 *Re Crossing B-110. 9* (May 15, 1973); and Resolution L-131 *Re Poore v. Atchison, Topeka and Santa Fe Railway Company et al.* (March 22, 1973).)

There is one significant qualification to our general practice of disclosure: we do not generally release investigative records while an investigation is still underway, since the disclosure of such information could compromise our investigation and in some cases the safety of the personnel involved. We have made exceptions to this general rule where disclosure is sought by another governmental entity, subject to certain restrictions on the release of the disclosed investigative information. (See, e.g.: Resolution L-175 *Re City of Cotati* (July 6, 1976) and Resolution L-174 *Re City of Cotati* (May 25, 1976).) We have also, on occasion, similarly restricted access to records relating cases in which claims were filed against the Commission and/or the State. (See, e.g., Resolution L-173 *Re Bradshaw* (February 18, 1976); Resolution L-165 *Re Release of Documents to Bureau of Investigation within the Department of Justice* (June 17, 1975); Resolution L-164 *Re Petrie et al and Wotisky et. al. v. California Public Utilities Commission et al.* (March 25, 1975); Resolution L-162 *Re Cuevas v. State of California* (December 30, 1974); and Resolution L-133 *Re Filippi, et al v. State of California* (April 24, 1973).)

In Resolution L-258A we established a procedure for disclosing information to certain designated law enforcement agencies which sign confidentiality agreements. As we noted in D.98-02-041 (*Re App. for Rehearing of Resolution L-258 and 258A*), Section 6251(f) specifically excludes federal, state, and local agencies from the Act's definition of "public," and thus excludes them from the provisions of the Act. (*Id.* at 2.) Under Section 6254.5 (e), our disclosure of information in such circumstances does not waive our right to assert any privileges or exemptions from disclosure to the public.

Once the staff investigation is complete, the release of investigative records will generally not compromise the investigation or otherwise harm the public interest. Because this may not always be the case, records concerning completed investigations should not subject to automatic public disclosure, but rather should be disclosed once the Commission has determined that the balancing of public interests favors disclosure.

After considering the specific circumstances involved here, we find that as a general rule the public interest in nondisclosure of the requested investigation records of our USB does not clearly outweigh the public interest in disclosure. The safety of utility facilities is for good reasons of great interest to the public. However, premature disclosure of requested investigative records which relate to ongoing investigations by the Commission's USB or by other governmental entities could interfere with the USB's important responsibility ability to investigate accidents involving public utility facilities and/or the responsibilities of other Commission staff and/or other governmental entities to investigate utility accidents and enforce relevant laws and regulations. We find that the public interest in the nondisclosure of requested investigative records which relate to ongoing investigations by the Commission's USB or by other governmental entities clearly outweighs the public interest in disclosure.

We also find that certain investigative records may contain privileged or otherwise confidential information which falls within one of the Act's specific or general exemptions, the disclosure of which would clearly be against the public interest. For this reason, we find that decisions regarding the applicability of specific exemptions to specific records and the balancing of the public interests for and against disclosure must continue to be made on a case by case basis.

We conclude that while Section 6254 (f) and other provisions of the Act give us discretion to exempt from disclosure certain investigative records, we should in this instance disclose the requested records, subject to certain conditions. First, we will not disclose investigative records which relate to ongoing investigations by our USB or by other governmental entities.

Second, we will not disclose preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the agency in the normal course of business. This material could be misleading if taken out of context, and may include documents subject to the deliberative process privilege designed to insulate from disclosure the thoughts of agency decisionmakers, or to the attorney-client privilege. Such records are exempt from disclosure pursuant to Section 6254 (a) and, in the case of privileged records, Section 6254 (k) as well.

Third, we may in appropriate circumstances withhold disclosure of certain other records on grounds of the deliberative process privilege, or other privilege, or other statutory exemption or prohibition against disclosure, pursuant to Section 6254 (a) and (k) and/or any other applicable provision of law. Section 6254 (c) may in certain circumstances form the basis for our exemption from disclosure of "[p]ersonnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of privacy."⁸ We do not intend to disclose confidential personal information concerning electric accident victims, where redaction is permitted by law.

Fourth, we will initially respond to the Times' request for investigative records by providing only those records which pertain to the 19 accidents in which the Times expressed the most interest. We appreciate the Time's willingness to narrow its request for investigative records. We will order staff to: 1) review the files related to these accidents to determine whether they contain any records exempt from disclosure pursuant to Section 6254 (a), (c), (k), or other provision of the Act; and 2) disclose all non-exempt records in these files. Our primary intent here is to disclose all records relating to these accidents which may be disclosed without running afoul of a specific exemption or compromising the ability of our staff to carry out its important safety and other regulatory responsibilities. If the Times later requests investigative records concerning other accidents within the scope of its original request for disclosure, such requests will be responded to in accord with these procedures.⁹

We will continue to review requests for disclosure of investigative records on a case by case basis, and may reach different disclosure decisions in appropriate circumstances. For example, we will review requests from law enforcement and other governmental entities for the disclosure of investigative and other records in accord with the guidance

⁸ We will, of course, not apply Section 6254 (c) so broadly as to cover the names of accident victims we are disclosing in our release of electric utility accident reports.

⁹ We note that our standard practice is to retain USB records for three years, and that our investigative records may, therefore, be more limited than our summary records concerning electric utility accidents, which may in some cases reach back until the early 1990's.

provided in Resolution L-258A, and not automatically reject such requests on the ground that a Commission investigation is currently underway.

The Times' request for disclosure of records concerning the Commission's investigations of accidents involving utility facilities is granted, subject to the restrictions, principles, and procedures outlined above.

FINDINGS OF FACT

1. On January 8, 1998, Commission staff received a request from the San Jose Mercury News for the disclosure of unredacted incident (accident) reports filed by electric utilities during the past ten years.
2. On March 12, 1998, Commission staff received a request from the Los Angeles Times for disclosure of:
 - A. All records of telephonic reports, and the follow-up written reports, of electrical accidents reported by public utilities in California.
 - B. All records of inquiries, investigations, requests for information by the Utilities Safety Branch and the responses to those requests, or requests of the Utilities Safety Branch and its responses, concerning any electrical accident reported by a public utility in California.
 - C. All electronic records of electrical accidents reported by public utilities in California.
 - D. All records and correspondence between utilities in California and the Utilities Safety Branch concerning the formulation, enactment and enforcement of tree-trimming standards.
 - E. All records and correspondence between the public and the Utilities Safety Branch concerning any electrical accident reported by a public utility in California.
 - F. All historical records, including but not limited to narrative summaries, reports or analyses of the tree-trimming standard.
3. The Los Angeles Times has already been provided with or informed how to acquire most of the information requested, with the exception of. 1) the unredacted incident/accident reports also sought by the San Jose Mercury News, 2) investigative records concerning 19 accidents in which the Los Angeles Times expressed the most interest; and 3) certain correspondence and investigative records which are encompassed within its records request, but which have not been provided either because to do so would excessively burden our Utilities Safety Branch staff or

because the records relate to accidents in which the Los Angeles Times has expressed less interest.

4. The electric utility incident/accident reports sought by the San Jose Mercury News and the Los Angeles Times have been released to the California Alliance for Utility Safety and Education, and other members of the public, pursuant to Resolution L-265, issued January 7, 1998; with the names and addresses of most accident victims and witnesses redacted in the interests of privacy.
5. As set forth in Resolution L-265, some electric accident victims currently have an objectively reasonable expectation in the privacy of their names, addresses, and other personal information which may be contained in incident/accident reports.
6. While some accident victims and witness may expect and desire that their identities remain confidential, shielded from the public limelight, others may be indifferent, or even welcome disclosure of such information and the possible media coverage and other attention that may follow.
7. Many incident/accident reports filed by electric utilities in the past ten years do not include the names of accident witnesses, or their current addresses. Many accident reports include the names of accident victims, but not their addresses. Accident reports often include job site, rather than residential, addresses.
8. It would be excessively burdensome and, indeed, impossible for the Commission to explore on an individual basis the extent to which each specific electric utility accident victim has an objectively reasonable expectation of privacy in any personal information contained in incident/accident reports filed with the Commission by electric utilities over the past ten years, and the extent to which they have acted in manner consistent with that expectation.
9. Disclosure of the usually meager amount of personal information contained in electric incident/accident reports, which consists mainly of the names of accident victims and occasionally their addresses or other personal information, may serve the public interest in the safety of electric utility facilities: 1) by making it possible to crosscheck the accident information provided by the electric utilities against accident information which may be available from other sources; and 2) by allowing people to attempt to contact and interview those who have been injured in, or who have witnessed, accidents involving electric utility facilities in the hope of learning more about such incidents.

10. There is no public interest in refusing to disclose personal information pertaining to people who do not care if that information is disclosed.
11. The public interest in the confidentiality of the currently redacted names and addresses in utility incident/accident reports fails to clearly outweigh the public interest in disclosure, since disclosure may assist in the cross-checking the content and accuracy of electric utility incident accident reports, and in the acquisition of the knowledge concerning electric utility accidents that can only be gained from those involved.
12. Disclosure of accident investigation records to the public while an investigation is still underway could jeopardize the safety and effectiveness of the staff of the Commission or other governmental entity conducting the investigation. The public interest in the confidentiality of Commission records concerning accident investigations which have not been completed clearly outweighs the public interest in the disclosure of such records.
13. Disclosure of incident/accident reports, accident investigation records, and/or other Commission records to other governmental entities which comply with the procedures and safeguards against disclosure set forth in Resolution L-258A is not adverse to the public interest.
14. As a general rule, the public interest in the confidentiality of the records of accident investigations which have been completed by the Commission 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 & Electric Co. App. for Rehearing of Resolution L-240 (1993) 49 CPUC2d 241, 243*), and may extend the public's knowledge of and ability to analyze and respond to accidents involving electric utility facilities.

CONCLUSIONS OF LAW

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

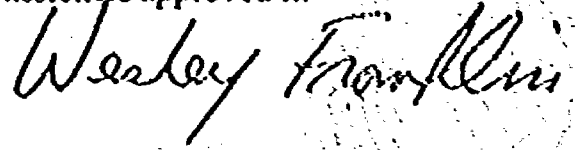
4. Neither Public Utilities Code Section 583 nor General Order 66-C create for a utility an absolute privilege of nondisclosure by the Commission.
5. Public records may only be withheld if they fall within a specified exemption in the Public Records Act, or if the Commission demonstrates that the public interest in confidentiality clearly outweighs the public interest in disclosure.
6. The names and addresses of electric utility accident victims and witnesses which may included in some incident/accident reports filed with the Commission by electric utilities do not fall within the specific exemptions contained in the Public Records Act.
7. The public interest in the nondisclosure of the personal information in incident/accident reports pertaining to people who do not care if that information is disclosed is nonexistent.
8. In this specific case, the public interest in the nondisclosure of the names and addresses in the requested unredacted incident/accident reports does not clearly outweigh the public interest served by disclosure of such information.
9. Investigative records maintained by Commission staff are exempt from disclosure pursuant to a specified exemption in the Public Records Act (Government Code Section 6254 (f)) when they are created when the prospect of an enforcement proceeding is concrete and definite. This exemption does not end when the investigation ends. However, once the investigation is complete, the disclosure of exempt investigative records will generally not compromise the investigation, or otherwise harm the public interest. Indeed, disclosure of exempt records concerning completed investigations may well serve important public interests such as increased public awareness of utility safety issues, the development of safer utility facilities and practices, and the resolution of litigation concerning utility accidents. Because this may not always be the case, and because investigative records may contain privileged or otherwise exempt records the disclosure of which would not be in the public interest, exempt investigative records should not subject to automatic public disclosure. Exempt investigative records should be disclosed in response to Public Records Act requests only after a determination that the balancing of public interests favors disclosure, and the redaction or removal of any privileged or exempt records the disclosure of which would not be in the public interest.

10. Any expectation of future accident victims that their names and addresses will be kept confidential should be replaced with a clear expectation of disclosure.

ORDER

1. The Public Records Act requests of the San Jose Mercury News and the Los Angeles Times for disclosure of unredacted electric incident/accident reports filed by electric utilities during the past ten years are granted as to the names and addresses of electric incident/accident victims, but not as to redactions of confidential personal information where redaction is permitted by law.
2. The Commission's Utilities Safety Branch shall work with electric utilities to ensure that such utilities do not leave electric accident victims or witnesses with the impression that information required to be included in accident reports pursuant to D.98-07-097 will be confidential.
3. The Public Records Act request of the Los Angeles Times for disclosure of investigative records is granted, subject to the following limitation. Certain investigative records which relate to current investigations by the Commission's Utilities Safety Branch or other governmental agencies, and certain other records which are also subject to specific or general exemptions in the Public Records Act, including those related to the deliberative process and attorney-client privileges, will not be disclosed unless it is clearly in the public interest to do so.
4. The Commission's Utilities Safety Branch and the Legal Division shall review the requested incident/accident reports and investigative records, and future accident reports and investigative records, to determine whether these records, or any portions thereof, relate to ongoing investigations by the Commission or other governmental agency, and/or contain confidential personal information concerning accident victims or any other information or material which is clearly exempt from disclosure under the California Public Records Act, the disclosure of which would not be in the public interest. Confidential personal information concerning accident victims and other exempt material may be redacted where redaction is permitted by law.
5. This order is effective 30 days from today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of December 17, 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