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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California
Date: December 17, 1998
Resolution No. L-275

RESOLUTION

The Resolution Orders The Release Of Documents Pursuant To A Public Records Act Request By Lawrence J. Winking, Counsel On Of Behalf Sabrina Lopez. The Request Seeks The Release Of The Investigative Report Prepared By The Utilities Safety Branch Of The Commission's Consumer Services Division Concerning The Electrocution Of Benjamin Lopez.

BACKGROUND

By subpoena dated November 16, 1998, the law firm of Lawrence J. Winking, on behalf of Sabrina Lopez, requested release of the California Public Utilities Commission (Commission) reports pertaining to electrocution of Benjamin Lopez on April 4, 1997, in Moreno Valley, California. Lawrence J. Winking seeks the investigative report prepared by the Utilities Safety Branch of the Commission's Consumer Services Division in connection with its investigation of the electrocution of Benjamin Lopez.

DISCUSSION

The material in the Commission's investigative file and the requested investigative report regarding the accident are "public records," as defined by the California Public Records Act, (Government Code Section 6250 et seq.). Both Public Utilities Code Section 583 and General Order 66-C prohibit staff disclosure of the materials in question. Neither the statute nor the general order, however, create an absolute privilege of nondisclosure of materials related to an accident. The general policy of the Public Records Act favors disclosure of public records, and a justification for withholding a public record must be found either among the specified exemptions enumerated in the Act, or on a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure. The investigative file for the accident appears to fall within a specific exemption of the Public Records Act, Government Code § 6254 (f). The fact that records may fall within a Public Records Act exemption does not preclude the Commission from releasing such records in appropriate circumstances.

Applying the relevant statutes to the facts of this case argues for the release of the requested investigative report. One person was killed by contact with an electric utility facility, and disclosure of the investigative report may assist in settlement of litigation resulting from the accident. (See, *San Diego Gas and Electric Company Application for Rehearing of Resolution L-240* (1993) 49 CPUC 2d 241, 243.)

There are no compelling reasons to withhold the requested information. California citizens who are injured are entitled to pursue discovery for the cause of that injury. We have, in a number of recent resolutions, ordered release of such records which may lead to discovery of admissible evidence. (E.g., Commission Resolution Nos. L-240 *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 I*, 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.) Most of the above resolutions responded to disclosure requests filed by individuals involved in an electric utility incident, by the families of such individuals, or by the legal representatives of such families or individuals. We have found that Public Utilities Code Section 315, which expressly prohibits the introduction of the report 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 against injury caused by the release of requested investigative reports.

If accident reports filed by electric utilities with the Commission, or the records of an investigation conducted by Commission staff, contain any confidential personal information, or other privileged or exempt information, the redaction of which is permitted by law, such information need not be disclosed. In this specific case, the investigative report prepared by Commission staff appears to contain no information requiring redaction.

FINDINGS OF FACT

1. On November 16, 1998, the Commission was served with a subpoena requesting the release of the investigative report prepared by the Utilities Safety Branch of the Commission's Consumer Services Division concerning the electrocution of Benjamin Lopez on April 4, 1997.
2. The information in the Commission investigative report appears relevant to an issue in a wrongful death action.

3. The Commission's investigation of Benjamin Lopez' electrocution has been closed, and, therefore, the disclosure of the investigative report prepared by the Utilities Safety Branch would not compromise the investigation.
4. Under the specific facts of this case, the public interest in confidentiality of the requested report is outweighed by the public interest in disclosure.

CONCLUSIONS OF LAW

1. The materials in the investigative file and the requested investigative report are public records pursuant to Government Code Section 6250, et seq.
2. The general policy of the California Public Records Act favors disclosure of records.
3. Justification for 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.
4. 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.
5. Neither Public Utilities Code Section 583 nor General Order 66-C create for a utility an absolute privilege of nondisclosure by the Commission.

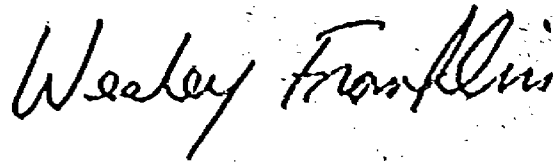
ORDER

1. The request for release of the Utilities Safety Branch investigative report concerning its 1997 investigation of Benjamin Lopez electrocution is granted.
2. This order is effective 20 days from today.

L/mbh*

December 17, 1998

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on 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