PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEGAL DIVISION San Francisco, California

Date: April 27, 2017

Resolution No. L-522

**R E S O L U T I O N**

**RESOLUTION AFFIRMS STAFF’S WITHHOLDING AND REDACTION OF REQUESTED RECORDS PURSUANT TO THE PUBLIC RECORDS ACT. DENIES MICHAEL J. AGUIRRE’S APPEAL OF STAFF’S ACTION.**

# Summary

Michael J. Aguirre (Aguirre) requested records from the Commission on December 12, 2016 pursuant to the California Constitution and the Public Records Act (the Public Records Act or PRA).**[[1]](#footnote-2)** That request was assigned and is identified as PRA #16-258. On December 23, 2016 staff, via counsel, denied that request on the basis that the requested records were exempt from disclosure pursuant to deliberative process and mental process privileges, and on the basis that a portion of the documents were communications with the Governor’s Office. On December 30, 2016 Aguirre appealed that Staff determination, requesting an order directing the release of the withheld records under Commission General Order (GO) 66-C section 3.4 regarding PRA #16-258.

This Resolution denies Aguirre’s appeal seeking access to records withheld or redacted by Staff in response to PRA #16-258. Staff’s withholding and redaction of the requested records is consistent with exemption from disclosure pursuant to deliberative process and mental process privileges and with the exemption for communication with the Governor’s Office.

# Background

**The SONGS Shutdown and Commission Investigation**

San Onofre Nuclear Generating Station (SONGS) is a nuclear power plant located in Southern California, and owned by Southern California Edison Co. (SCE), [City of Riverside](https://en.wikipedia.org/wiki/Riverside,_California) and San Diego Gas & Electric. In January 2012, engineers at SONGS discovered a radiation leak in one of the steam generating units, and shut the plant down permanently. In October 2012, the Commission issued an Order Instituting Investigation (SONGS OII) into the causes of the shutdown. Aguirre, as attorney for Ruth Henricks, intervened in that proceeding. On November 25, 2014, the Commission issued Decision (D.) 14-11-040 resolving the SONGS OII by approving a settlement agreement involving the rates related to SONGS.

In March 2013, at the Hotel Bristol in Warsaw, Poland, then-Commission President Michael Peevey held an *ex parte* meeting concerning the SONGS OII and its settlement with a former SCE executive.

On May 9, 2016 we reopened the record of the still pending SONGS OII stating that “the record must be reopened and the Settlement Agreement should be reviewed in light of the intervening ex parte disclosures and Commission decision imposing sanctions as a predicate to considering further procedural actions.”**[[2]](#footnote-3)** Commission President Michael Peevey’s term had expired by this time. Thus, we are currently reconsidering that matter.

On December 12, 2016, Aguirre made the instant PRA request (PRA #16-258). This PRA request is essentially a repeat of an earlier PRA request Aguirre made on January 15, 2015 (identified as PRA #1386), except the instant request is only for those documents withheld from production in response to PRA #1386. (Staff’s response to PRA #1386 and Aguirre’s other SONGS related PRA requests are detailed in the Discussion section below.)

On December 23, 2016, via counsel, staff denied PRA #16-258 on the basis that the a portion of the requested records were exempt from disclosure pursuant to deliberative process and mental process privileges, and on the basis that the remaining portion of the documents were communications with the Governor’s Office. These are the same reasons staff set forth for withholding/redacting the same documents in response to PRA #1386.

On December 30, 2016 Aguirre appealed the Staff determination regarding PRA #16-258 by requesting an order directing the release of the withheld records under Commission General Order (GO) 66-C section 3.4.

**Overview of the Public Records Act**

The Act:

was modeled on the federal Freedom of Information Act (5 U.S.C. § 552 et seq.) for the purposes of giving members of the public access to information possessed by public agencies. (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 425 (*Filarsky*).) In enacting the PRA, the Legislature declared that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code, § 6250.) To that end, the PRA establishes a statutory scheme under which a state agency must respond to a request for public records, either by complying with the request or by notifying the requestor that records are not subject to disclosure and providing the reason why. (See Gov. Code, §§ 6253-6254; *Filarsky*, supra, 28 Cal.4th at p. 425.)**[[3]](#footnote-4)**

The PRA exempts several categories of documents from disclosure. The exemptions relevant here are the deliberative process and mental process privileges (Government Code sections 6254(k), 6255) and the protection of communications between the Commission and the Governor’s office (Government Code section 6254(l)).

Additional information about the PRA, including a link to make a PRA request and Frequently Asked Questions, is available at: <http://cpuc.ca.gov/record_requests/>.

**DISCUSSION**

**Summary**

Michael J. Aguirre (Aguirre) requested records from the Commission on December 12, 2016 pursuant to the PRA. That request was assigned and is identified as PRA #16-258. On December 23, 2016 staff, via counsel, denied that request on the basis that the requested records were exempt from disclosure pursuant to deliberative process and mental process privileges (Government Code section 6254(k))**[[4]](#footnote-5)** and the protection of communications between the Commission and the Governor’s office (Government Code section 6254(l)). On December 30, 2016, pursuant to Commission General Order (GO) 66-C section 3.4, Aguirre appealed that Staff determination by requesting an order directing the release of the withheld records.

This Resolution affirms Staff’s withholding and redaction of the requested records; Staff’s withholding and redaction of the requested records is consistent with constitutional and statutory exemptions.

**Aguirre requests that the Commission issue a resolution that directs release of the requested documents:**

On December 12, 2016, Aguirre submitted a PRA request that sought the following:

Please provide to me under the Cal. Public Records Act and Art I, Sec. 3 of the Cal. State Constitution the writings the CPUC stated in the 21 August 2015 letter from CPUC outside counsel Katherine A. Alberts regarding PRA #1386 it was redacting or withholding from its PRA production. Specifically, please so provide the redacted texts of the 2 communications to or from employees of the Governor's office identified in the 21 August 2015 letter.

Furthermore, please provide the redacted texts from the three records identified in the 21 August 2015 letter reflecting discussions between Picker and his advisors. And please provide the withheld 124 writings consisting of 65 records of communications to or from employees of the Governor's office and 63 records of communications between Picker, his advisors, top level advisory staff and/or top level state officials.

The Commission assigned this request identification number PRA #16-258. PRA #16-258, the instant request, refers back to a previous Aguirre generated PRA request, PRA #1386. PRA #1386, in turn, sought the following documents:

Please provide me under the Cal Pub Records Act and Cal State Constitution any and all records of communication, including all emails relating to San Onofre, including the settlement of the Order of Investigation proceedings related to Songs.  Please include any and all emails or communications between Michael Picker and the Governor or anyone in the Governor’s office related to San Onofre.

Prior to submitting PRA #1386, Aguirre had submitted multiple document requests that are almost entirely duplicative of PRA #1386. Since January 2012 Aguirre (or his law firm) had submitted at least 35 PRA requests to the Commission regarding records related to the same subject matter, including but not limited to: PRA Request Nos. 852, 856, 864, 924, 1136, 1157, 1165, 1179, 1232, 1236, 1258, 1260, 1262, 1298, 1299, 1301, 1302, 1304, 1314, 1319, 1334, 1365, 1384, 1388, 1389, 1414, 1418, 1426, 1427, 1460, 1464, 1466, 1492, 1493 & 1511.

In response to PRA #1386, the Commission produced ~880 pages of responsive documents. Redactions were made to fourteen (14) of the produced records. Redactions for private cell phone numbers, email addresses and private resident addresses were made on 11 records pursuant to the right to privacy and Government Code sections 6254(k) and 6255.**[[5]](#footnote-6)** Three (3) other records were redacted based on two statutory exemptions to the PRA, Government Code section 6254(k) (deliberative and mental process privileges) and section 6254(l) (correspondence with the Governor’s Office exemption). In addition, over 5,000 documents have been produced to date in response to the other PRA numbers listed in the immediately preceding paragraph.

The Commission also withheld from production records based on statutory exemptions to the PRA. Specifically, 59 records constituted communications to or from the Governor’s Office and were withheld pursuant to Government Code section 6254(l). Fifty-six (56) records were withheld pursuant to the deliberative process and mental process privileges and are exempt from disclosure pursuant to Government Code sections 6254(k) and 6255. These records consist of communications between now Commission President Picker and his advisors, top level advisory staff and/or top level state officials that discuss matters of policy and/or decisions in proceedings before the Commission and not any others. Of these 56 records, 16 are also protected from disclosure by the attorney-client privilege and Government Code sections 6254(k) and 6255.**[[6]](#footnote-7)**

Aguirre responded to the withholding and redaction of those documents by filing a lawsuit against the Commission in the California Superior Court (San Francisco). The Commission demurred on multiple grounds, including that under Public Utilities Code section 1759 the Superior Court had no subject matter jurisdiction over this matter, and that Aguirre had failed to exhaust his administrative remedies before filing the lawsuit. The Superior Court held three hearings on the demurrer, and permitted a second round of briefing and a status update. The Superior Court originally issued a tentative ruling sustaining the demurrer, but eventually overruled the demurrer. That ruling was overturned by the Court of Appeal after briefing and oral argument.**[[7]](#footnote-8)**

**Legal Division evaluated PRA #16-258 and the instant appeal based on the following criteria:**

* + Do documents exist that are responsive to the request?; and, if so,
  + Do any of those responsive documents fall within any of the exemptions to disclosure contained in the PRA.

**Documents do exist that are responsive to the request**

Yes, over 5,000 documents have been produced in response to Aguirre’s multiple SONGS’ specific PRAs.**[[8]](#footnote-9)** Hundreds of pages were produced pursuant to Aguirre’s PRA #1386, which again is essentially the subject of the instant request (PRA #16-258). Commission staff did withhold and redact documents based on the following PRA exemptions: Government Code section 6254(k) (deliberative process and mental process privileges), section 6254(l) (correspondence with Governor’s Office exemption), and section 6255. Additional private information, such as home addresses, was also redacted, but is not subject to the instant appeal.

**A portion of those responsive documents fall within the exceptions to disclosure contained in the PRA**

In its response to the PRA Request #1386, the Commission withheld 56 documents based on Government Code sections 6254(k) and 6255 (deliberative process and mental process privileges) and 59 documents were withheld based on section 6254(l) (correspondence with Governor’s office exemption). Of the 56 records withheld based on the deliberative process and mental process privileges, sixteen (16) are also subject to the attorney client privilege and thus exempt from disclosure pursuant to Government Code section 6254(k).

In the instant appeal, Aguirre asserts that the public interest favors disclosure due to alleged facts regarding the decision to approve the SONGS settlement. The Commission rejects that argument. Specifically, Aguirre asserts in his appeal that the “decision to end the San Onofre OII has been thoroughly discredited because of the undisclosed ex parte discussions.”

**The deliberative process and mental process privileges**

“The right of access to public records under the [California Public Records Act] is not absolute.” Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272, 1282. Government Code section 6254(k) exempts from disclosure “[r]ecords, 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.” Government Code section 6255, in addition, provides that documents need not be disclosed where “on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

The deliberative process and mental process privileges provide for confidential treatment of pre-decisional deliberative advice given to agency decision-makers, and confidential information used to develop such advice.**[[9]](#footnote-10)** There is a need for preserving the confidentiality of such information since disclosure would discourage future candid and thorough discussions between Commissioners, their advisors, and Commission staff. See, e.g., *Times Mirror Co. v. Superior Court* (1991) 53 Cal. 3d 1325; *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159. In other words, these privileges protect the public’s interest in allowing its policy makers to have “frank discussion of legal or policy matters,” an interest that would be “inhibited if ‘subjected to public scrutiny’” and “greatly hampered if, with respect to such matters, government agencies were ‘forced to operate in a fishbowl.’” *Times Mirror Co., supra at* 1340.

The emails withheld on these grounds are between President Picker and his advisors, Commission advisory staff and/or top level state officials. A formal investigation proceeding, such as the SONGS proceeding, which is still open, is a quasi-judicial proceeding wherein an Administrative Law Judge (ALJ) and ultimately the Commissioners sit as judges. Thus, the documents sought are the same as a court’s communications with its staff, such as a bench memo from law clerks, research attorneys and other advisory staff about a matter before that court. A request for a bench memo would be highly inappropriate, patently unreasonable, and not ever granted. But yet, these are the types of communications Aguirre wants disclosed. “[I]nquiry into the mental processes of administrative decisionmakers is usually to be avoided.” *Citizens to Preserve Overton Park v. Volpe* (1971) 401 U.S. 402, 420 (citing *United States v. Morgan* (1941) 313 U.S. 409). Many cases have held that the deliberative process and/or mental process privileges protect from disclosure the pre-decisional deliberations of administrative agencies and their officers, such as the Secretary of Agriculture, in *Morgan*; the Secretary of Transportation, in *Volpe*; the members of the Federal Communications Commission, in *United States v. American Telephone and Telegraph Co*. (D.C.D.C.1981) 524 F.Supp. 1381; the National Labor Relations Board, in *NLRB v. Sears, Roebuck & Co*. (1975) 421 U.S. 132; or the Environmental Protection Agency, in *EPA v. Mink* (1973) 410 U.S. 73;. As the court in *United States v. AT & T* noted:

questions which tend to probe the mental processes of the individual members of the Federal Communications Commission, calling either for the reasons underlying various decisions of the Commission or for their understanding of what these decisions meant ... are part of the agency's deliberative process and as such are clearly privileged.

Moreover, the California Supreme Court has held that in a quasi-judicial proceeding in California, “the rule of *United States v. Morgan* [citation] precludes inquiry outside the administrative record to determine what evidence was considered, and reasoning employed, by the administrators.” *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 779. This includes situations where the party seeking disclosure alleges bias or improper motives. *Id*. The solution is to challenge the administrative decision through the judicial process, because decisions that would otherwise meet the *City of Fairfield* standard (no inquiry outside of the administrative record) should not be collaterally attacked based on an individual’s internal motivations, biases or pre-conceived ideas.

Aguirre notes in his appeal that President Picker indicated to the California Assembly that he based his November 20, 2014 decision regarding the SONGS settlement solely on the public record. From this, Aguirre contends that because President Picker based his decision regarding the SONGS settlement solely on the record, there can be no other deliberative records. This contention is without legal logic or factual merit because any judge bases his or her decision on the public record of the proceeding. However, as discussed above, a judge can have private, deliberative communications with his or her staff regarding the evidence in the record and the arguments of the parties. Records of these communications are clearly protected from disclosure by the deliberative process and mental process privileges. Similarly here, while Commissioners base their decisions on the record, they are still allowed to ask for staff recommendations and obtain analyses of the record and the positions of the parties.

Moreover, the application of these privileges does not change when the Commission is acting in a quasi-legislative role, such as when addressing future policy issues regarding SONGS and replacement power and grid reliability for Southern California. See *San Joaquin Local Agency Formation Commission v. Superior Court* (2008) 162 Cal.App.4th 159.

We will not disclose the information contained in these emails because doing so would impermissibly chill further candid discussions between Commissioners and Commission employees.

**Communications with the Governor’s Office**

Aguirre claims the withheld records should be disclosed because the “public is highly interested in knowing the role the Governor’s Office played in connection with San Onofre.” The plain language of Government Code section 6254(l), however, shows that the exemption to disclosure of documents exchanged with the Governor’s Office is an absolute exemption; it does not include a balancing test. Therefore, the public’s alleged interests in the disclosure of these records are not relevant. The Legislature has already concluded that the public’s interest in protecting these records from disclosure qualifies them for exemption from disclosure without qualification.

CONCLUSION

We deny Aguirre’s appeal seeking access to records withheld or redacted by Staff in response to PRA #16-258. We affirm Staff’s determination that the withheld and redacted records are subject to the deliberative process and mental process privileges (and are thus exempt from disclosure pursuant to Government code sections 6254(k) and 6255), and/or the PRA exemption for communications with the Governor’s Office (Government code section 6254(l)).

COMMENTS ON DRAFT RESOLUTION

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft resolution was mailed to parties on March 28, 2017 for comments, and will be placed on the Commission's agenda no earlier than 30 days from today. Comments were received from Aguirre on April 7, 2017.

Those comments argue a number of points, several of which overlap. Regarding the records withheld pursuant to Government code sections 6254(k) and 6255, the comments argue that the settlement of the SONGS Investigation is tainted and that taint justifies disclosure of the withheld documents. After reciting a long history, Appellant’s primary argument seems to be that Commission President Picker is inconsistent between what he represented to the California Assembly and assertion of the deliberative process and mental process privileges. Appellant quotes from a letter President Picker wrote to an Assemblyman and from a transcript of President Picker’s testimony before an assembly committee that he decided to vote to approve the settlement based on the public record. From this, Appellant states that “[h]e told the Assembly he made up his mind solely based on the public record. Yet, he now says his decision also rested on 63 undisclosed and 3 redacted emails.” Comments at 19. We do not see these as inconsistent. All of our decisions must be based only on the record before us, but that does not preclude discussion with advisors about what is in the record, the strength of arguments, or the advantages/disadvantages of differing policy choices.

Appellant also argues that President Picker said that he relied on the evidentiary hearing, but that he did not attend, thus, presumably making the statement erroneous. Appellant, however, immediately acknowledges that the President could have listened to the hearing or read the transcript.

Appellant devotes several pages to various emails and email chains which deal with reliability of the electric system in light of the loss of power from SONGS (the so called Loss of SONGS Task Force), including the potential of replacement power from the Imperial Irrigation District [(www.iid.com/about-iid/an-overview](http://(www.iid.com/about-iid/an-overview)), and meetings President Picker had with investment analysts and investors. Comments at 29-37. Appellant concludes that section with the statement that “[t]hese serial actions by Picker in favor of the utilities, while denying the public records, violates the Public Records Act and due process.” Comments at 37. The Comments, however, do not explain the connection between efforts to ensure reliability of the electric system after SONGS was shut down and the settlement. There is also no connection made between President Picker’s meetings with investment analysts and investors and the settlement. We do not see a connection between either of these and the approval of the settlement.

The Comments do acknowledge that documents protected by the work-product privilege are not being sought. Comments at 27.

FINDINGS OF FACTS

1. Michael J. Aguirre (Aguirre) requested records from the Commission on December 12, 2016 pursuant to the California Constitution and the Public Records Act. That request was assigned and is identified as PRA #16-258. PRA #16-258 is quoted in the body of this Resolution.
2. PRA #16-258 requests documents that were withheld or redacted in response to a prior Public Records Act request made by Aguirre, identified as PRA #1386.
3. Prior to submitting PRA #1386, Aguirre had submitted multiple document requests that are almost entirely duplicative of PRA #1386. Since January 2012 Aguirre (or his law firm) has submitted at least 35 PRA Requests to the Commission seeking the production of emails and other documents related to the Commission’s investigation of the San Onofre Nuclear Generating Station shutdown and the settlement and meetings, including but not limited to: PRA Nos. 852, 856, 864, 924, 1136, 1157, 1165, 1179, 1232, 1236, 1258, 1260, 1262, 1298, 1299, 1301, 1302, 1304, 1314, 1319, 1334, 1365, 1384, 1388, 1389, 1414, 1418, 1426, 1427, 1460, 1464, 1466, 1492, 1493 & 1511.
4. In response to PRA Request #1386, the Commission produced ~880 pages of responsive documents. Redactions were made to 14 of the produced records. Redactions for private cell phone numbers, email addresses and private resident addresses were made on 11 records pursuant to the right to privacy and Government Code sections 6254(k) and 6255. Three (3) other records were redacted based on two statutory exemptions in the PRA, Government Code section 6254(k) (deliberative and mental process privileges) and section 6254(l) (correspondence with the Governor’s Office exemption). An additional 5,000 documents were produced in response to the other PRA numbers listed in the body of this Resolution.
5. In response to PRA #1386, the Commission also withheld from production records based on statutory exemptions in the PRA. Specifically, 59 records constituted communications to or from the Governor’s Office and were withheld pursuant to Government Code section 6254(l).
6. Also in response to PRA #1386, 56 records were withheld pursuant to the deliberative process and mental process privileges pursuant to the exemptions in Government Code sections 6254(k) and 6255. These records consist of communications between President Picker and his advisors, top level advisory staff and/or top level state officials that discuss matters of policy and/or decisions in proceedings before the Commission and any others. Of these 56 records, 16 were also withheld from disclosure based on the attorney-client privilege and Government Code sections 6254(k) and 6255.
7. Aguirre waived his request for the 16 documents withheld based on the attorney-client privilege.
8. All responsive documents to all Public Records requests identified in this Resolution concern the San Onofre Nuclear Generating Station. San Onofre Nuclear Generating Station was permanently shut down in January 2012. In October 2012, the Commission issued an Order Instituting Investigation into the causes of the shutdown.
9. On December 23, 2016, staff denied PRA #16-258 on the basis that a portion of the requested records were exempt from disclosure pursuant to the deliberative process and mental process privileges, and on the basis that a different portion of the documents were communications with the Governor’s Office. These are the same reasons that the same documents were withheld or redacted as a result of PRA #1386.
10. On December 30, 2016, Aguirre appealed, under Commission General Order (GO) 66-C section 3.4, the Staff determination regarding PRA #16-258 by requesting an order directing the release of the withheld and redacted records.
11. Disclosure of the information contained in the emails withheld based on the deliberative process and mental process privileges would impermissibly chill candid discussions between Commissioners, their advisors, and staff.
12. The 56 records that were withheld pursuant to the deliberative process and mental process privileges, consisting of records of communications between President Picker and his advisors, top level advisory staff and/or top level state officials that discuss matter of policy and/or decisions in proceedings before the Commission were properly withheld.
13. The 59 records constituting communications to or from the Governor’s Office were properly withheld pursuant to Government Code section 6254(l).
14. Under Government Code sections 6254(k) and 6255, the public’s interest in withholding the requested documents is outweighed by the public’s interest in disclosure.
15. Aguirre’s appeal of Staff’s withholding and redaction of requested records related to PRA #16-258 should be denied and Staff’s original determination affirmed.

# ordered

1. Michael J. Aguirre’s appeal of Staff’s withholding and redaction of requested records related to PRA #16-258 is denied and Staff’s original determination is affirmed.
2. This Resolution is effective today.

I certify that the foregoing resolution was adopted by the California Public Utilities Commission at its regular meeting of June 15, 2017 and the following Commissioners approved favorably thereon:

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TIMOTHY J. SULLIVAN

Executive Director

1. California Constitution, Art. I, section 3 and Government Code sections 6250, *et seq*. [↑](#footnote-ref-2)
2. *Joint Ruling of Assigned Commissioner and Administrative Law Judge Reopening Record, Imposing Ex Parte Contact Ban, Consolidating Advice Letters, and Setting Briefing Schedule*, May 9, 2016, at 4, available at: <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M161/K670/161670318.PDF>. [↑](#footnote-ref-3)
3. *California Public Utilities Commission v. Superior Court of San Francisco* *(Aguirre)* (2016)   
   2 Cal.App.5th 1260, at 1267. [↑](#footnote-ref-4)
4. 16 documents were withheld pursuant to the attorney-client and/or work-product privileges. During the meet-and-confer process, Aguirre confirmed that he was not seeking release of those documents. [↑](#footnote-ref-5)
5. Aguirre has not appealed the redactions that were based on the right to privacy. [↑](#footnote-ref-6)
6. See, *California Public Utilities Commission v. Superior Court of San Francisco* *(Aguirre)* (2016) 2 Cal.App.5th 1260. [↑](#footnote-ref-7)
7. *California Public Utilities Commission v. Superior Court of San Francisco* *(Aguirre)* (2016) 2 Cal.App.5th 1260, at 1274. [↑](#footnote-ref-8)
8. In its response to Aguirre’s previously propounded PRA Requests listed above, the Commission produced hundreds of pages that are responsive to those requests. These include, but are not limited to: PRA Request Nos. 852, 856, 864, 924, 1136, 1157, 1165, 1179, 1232, 1236, 1258, 1260, 1262, 1298, 1299, 1301, 1302, 1304, 1314, 1319, 1334, 1365, 1384, 1386, 1388, 1389, 1414, 1418, 1426, 1427, 1460, 1464, 1466, 1492, 1493 & 1511. [↑](#footnote-ref-9)
9. We also note that disclosure of information concerning Commissioner Picker’s pre-decisional deliberations on the adoption of the SONGS settlement could create the potential for conflicts, or the appearance of conflicts, with the Bagley-Keene Open Meeting Act (Bagley-Keene), Government Code sections 11120, *et seq.*, should information disclosed in response to records be provided to other Commissioners. Once a Commissioner’s pre-decisional thoughts regarding a subject are made public, the Commission has no ability to ensure that such information is not conveyed to others, including fellow Commissioners, in situations in which the Commissioners must make future decisions regarding the subject. [↑](#footnote-ref-10)