

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California

Date: October 22, 1997

Resolution No. L-258A

RESOLUTION

Supersedes Resolution L-258 - - Established Procedures For Release Of Public Records Not Open To Public Inspection And Authorizes Commission Staff To Release Such Records To Certain Law Enforcement Organizations Amended By Incorporating The Modification Of Resolution L-258 Ordered In Decision 97-09-124, By Clarifying The Procedures For Record Release Including Commissioner Oversight Review And By Adding The Department Of Treasury, Internal Revenue Services To Ordering Paragraph 2 Of The Resolution

BACKGROUND

The subject of this resolution is the process by which law enforcement organizations can obtain information and records, not open to public inspection, which are in the possession of the Commission and its employees. Presently, General Order (GO) No. 66C enunciates the procedure by which records not open to public inspection¹ can be obtained. It provides that upon written request to the Executive Director of the Commission in the San Francisco office and a showing of good cause for the release of the records, the Commission may authorize the release of said records.

Compliance with the requirements of GO 66C can be a lengthy process which includes preparation of memoranda and a draft resolution and placing the formal request before the full Commission at one of its semi-monthly business meetings. The requirements of our current procedure make effective response to law

¹ Records not open to public inspection are enumerated in GO 66C under paragraph 2, entitled "Exclusions". They include, but are not limited to, records or information of a confidential nature furnished to or obtained by the Commission (see P. U. Code Section 583).

enforcement's requests for information especially challenging. The following list, which is not all inclusive, informs us of some reasons that law enforcement's requests present peculiar problems: (1) law enforcement requests almost always include requests for records not open to public inspection; (2) the response time for such requests generally is very short (e.g. Evidence Code Section 1560 provides for a five day response time to criminal subpoenas as compared to a 15 day response to civil subpoenas); (3) often, law enforcement organizations assert the need for secrecy with respect to the fact and the nature of their record requests.

In the past year, law enforcement requests have accelerated noticeably. At the same time, Commission staffing resources are limited. Because of the diversity of law enforcement interests (issues of fraud, theft, unauthorized operations, health and safety) and the variety of law enforcement agencies authoring the requests (including city attorneys, district attorneys, the State Department of Justice and various federal agencies) the number of law enforcement requests is not expected to diminish.

DISCUSSION

Under present procedures, requests from law enforcement for records not open to public inspection usually must be resolved by action of the Commission at an established meeting. The time needed to obtain and review requested documents and to prepare an appropriate order or resolution for the Commission's consideration combine with the procedural notice requirements associated with publication of the agenda for Commission meetings to create a significant delay before the request can be acted upon by the Commission. Such delay can be particularly troublesome in the case of those law enforcement requests where time is of the essence. In addition, the Commission's established open meeting practice for disposing of confidential record release requests can raise difficult issues when handling law enforcement requests². This practice of placing requests for records not open to public inspection on the published open agenda with data identifying the requesting party and the subject utility can be counter productive to law enforcement investigations where secrecy is crucial. Furthermore, the mere publication of law enforcement's interest could be unfair to the subject utility or party when the issues are only at the investigation stage.

It is clear that law enforcement requests for records not open to public inspection present unusual problems which warrant a specially tailored process for response.

² The Commission's ability to dispose of these requests in closed session is limited by statutes which mandate open meetings. However, those statutes do contain certain exceptions, such as the "pending litigation" exception. (See Gov't Code sec. 11126(e)(1).)

Section 11180.5 of the Government Code states that upon request of a prosecuting attorney or the Attorney General, state agencies "may assist in conducting an investigation of any unlawful activity which involves matters within or reasonably related to the jurisdiction of such agency, bureau, or department." When considering our response to the legitimate request of law enforcement personnel acting in the course of their official duty, this Commission will not act as a shield against the discovery of unlawful activities. There is no question but what we should cooperate with law enforcement requests. Our present procedures for sharing records not available to public inspection are ill-suited to such cooperation. In the ordering paragraphs of this Resolution we shall remedy that problem. We shall authorize designated staff (or their delegates) to release to specified law enforcement agencies Commission records not open to public inspection upon execution of: (i) a written request in the course of said law enforcement agency's official duties; and (ii) an agreement to continue the confidential treatment of the records.

Under our new procedure, allowing law enforcement agencies to review records not open to public inspection will not make those documents public and will not diminish our authority to decide whether such documents should be made public. Public Utilities Code sec. 583, for example, provides that information provided to the Commission on a confidential basis may be made public on order of the Commission. It is appropriate for the Commission to exercise this authority, among other reasons, because (i) the Commission, as the regulatory body overseeing these entities, has the expertise to determine the relative sensitivity of different kinds of confidential information; and (ii) the Commission can weigh whether making specific information public will discourage regulated entities from providing similar information to the Commission in the future and thereby make the Commission's regulatory tasks more difficult.

Under our new procedure, law enforcement agencies will be able to use those documents in a confidential manner not opening them to the public. This would, for example, include their use in secret grand jury proceedings, or their submission under seal as evidence at trial. To clarify that there is no waiver of our jurisdiction, in those circumstances where we authorize staff to release records to specified law enforcement organizations, we shall require that an agreement for the exchange of confidential information, to be used in a confidential manner, be executed by Commission staff and an appropriate representative of the law enforcement organization. That agreement will include an express reservation of this Commission's authority to determine whether information kept confidential under GO 66C should be disclosed to the public. If after reviewing the records, the law enforcement agency wishes to make public some records not otherwise

open to public inspection, the agency can ask the Commission for that permission under our regular procedures.³

For the reasons expressed herein, there is a good public policy basis for facilitating responses of this Commission to requests from certain law enforcement agencies for Commission records not open to public inspection.

FINDINGS OF FACT

1. General Order 66 C provides the procedures for examining and obtaining records not open to public inspection.
2. General Order 66C does not adequately provide for expedited procedures to respond to law enforcement requests for records not open to public inspection.
3. Law enforcement agency requests for records sometimes must be kept secret to avoid compromising the investigation.
4. Law enforcement agency requests often require quick response.
5. The number of law enforcement requests for Commission records not open to public inspection has increased significantly in the past year.
6. Law enforcement requests for records not open to public inspection present unusual problems which warrant a specially tailored process for response.

CONCLUSIONS OF LAW

1. The Commission is vested with the jurisdiction to determine whether it is in the public interest to disclose to the public confidential information furnished to or obtained by the Commission or its employees in the course of their duties.
2. Providing confidential records to a law enforcement agency does not, by itself, make those records public. A law enforcement agency is not the public.

³ Similarly, if a law enforcement agency wants to obtain records not open to public inspection without signing an agreement for exchange of confidential information, current procedures will continue to apply.

ORDER

1. The Executive Director with the advice of the General Counsel, or their respective delegates, are authorized to release to the law enforcement organizations specified below, acting in their official capacity, confidential records as described in Paragraph 2 of General Order 66C as "Public records not open to public inspection" upon written request and execution of an agreement with the requesting organization for the receipt of information for use in a confidential manner. In addition to the specific documents requested, the written request shall include an explanation of the purpose for the request and of how pursuit of the request relates to the law enforcement organization's functions. The confidentiality agreement, signed by a person authorized to contractually bind the requesting law enforcement organization, shall include an express reservation of this Commission's authority to determine whether information kept confidential under GO 66C should be disclosed to the public.
 - 1A. No member of the Commission staff shall release any customer information, other than that which is on file in formal proceedings and therefore open to public inspection other than pursuant to appropriate judicial process. (This modification pursuant to D.97-09-124.)
 - 1B. The President of the Commission, or another Commissioner designated by the President or by Commission, shall act in the capacity of oversight for this procedure. In that role, the President or the designated Commissioner shall review all subpoenas, summons or requests (hereafter referred to as requests) for confidential information submitted by the Department of Treasury, Internal Revenue Service and all other requests submitted by the Executive Director for oversight review. The task oversight review shall be for the purpose of determining whether the procedure authorized in Ordering Paragraph No. 1 above should be employed to respond to the specific request being reviewed.
2. The following law enforcement organizations may receive records for the purpose of pursuing criminal and other enforcement activities in the manner described in Ordering Paragraph No. 1, above.
 - A. **FEDERAL**
 - United States Attorney
 - Federal Bureau of Investigation
 - Department of Treasury, Internal Revenue Service

B. CALIFORNIA (State Government)

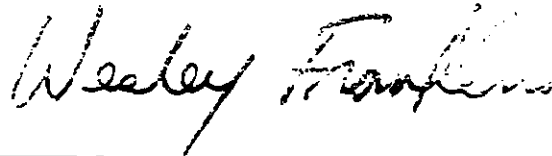
- California Attorney General/Department of Justice
- State Department of Forestry and Fire Protection
- State Fire Marshal
- Department of Fish & Game
- Department of Highway Patrol
- State Department of Corporations

C. CALIFORNIA (Local Government)

- District Attorneys
- Police/Sheriff
- City Attorneys

3. Law Enforcement Agencies which do not appear on the above list may be considered for inclusion by submitting a written request for consideration by the Commission to the Executive Director.
4. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of October 22, 1997. The following Commissioners approved it:



WESLEY FRANKLIN
Executive Director

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