SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court, Department 21

JUDICIAL OFFICER: HONORABLE SHELLEYANNE W.L. CHANG

Courtroom Clerk: M.Garcia CSR: None

23WM000062 March 5, 2024
8:28 AM

RITTIMAN, et al.
vs
GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF CALIFORNIA

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Court Order

This matter came on for a hearing on the petition for writ of mandate on March 1, 2024. After hearing oral argument, the Court took the matter under submission. The Court now issues its ruling on submitted matter. For ease of review, the Court has reproduced its tentative ruling below.

A. TENTATIVE RULING

I. Factual And Procedural Background

Petitioner Brandon Rittiman is an investigative reporter at KXTV-TV/ABC 10 in Sacramento. Petitioner TEGNA Inc. owns television station KXTV/ABC10.

Pacific Gas and Electric ("PG&E") is one of the largest public utility companies in the United States, providing natural gas and electricity to approximately 5.5 million California households. In 2022, PG&E pleaded guilty to 84 felony counts of manslaughter, and one count of reckless arson for having caused the 2018 Camp Fire. In May 2023, PG&E faced criminal charges and civil sanctions before the California Public Utilities Commission (the "CPUC") due to PG&E's alleged failure to remove a dead tree, sparking the 2020 Zogg Fire. Four people were killed in the Zogg Fire. In mid-May 2023, the CPUC agreed to a settlement with PG&E in which the company would pay a $10 million fine, rather than the initially proposed $150 million in fines.

One week after announcement of the Zogg Fire settlement, the Governor's Cabinet Secretary, Analea Patterson, appeared at PG&E's "Investor Day" at the company's conference center in San Ramon. Ms. Patterson spoke at the event, describing PG&E as a partner for a "whole variety of problems" including "wildfire mitigation."

On June 2, 2023, Rittiman submitted a Public Records Act ("PRA") request to the Governor's Office requesting, "[f]or the month of May 2023: compete copies of all calendar entries involving Ann Patterson and any employee, officer, or agent of PG&E."

On June 12, 2023, the Governor's Office responded to this request, indicating that although they had identified responsive records, these records were exempt from disclosure as the Governor's correspondence and as records revealing the deliberative process of the Governor or his staff. Thus, the Governor's Office declined to produce any responsive records.

After meet and confer efforts between the parties, the Governor's Office released a copy of the May 24, 2023 calendar entry documenting Ms. Patterson's attendance at the PG&E Investor Day, as such attendance was already publicly available information.[1] The Governor's Office has declined to release any further responsive records.

Petitioners now seek a writ of mandate ordering Respondent to release copies of all public records in his custody that are responsive to the PRA request. Petitioners clarify that they are *not seeking* any " 'calendar invitations' or any correspondence either from or to Ms. Patterson, or anyone else in the Governor's Office…" (Pet., ¶ 9.) Petitioners also seek declaratory and injunctive relief.

II. Standard of Review

Code of Civil Procedure section 1085 permits the issuance of a writ of mandate "to compel the performance of an act which the law specially enjoins." The writ will lie where the petitioner has no plain, speedy and adequate alternative remedy, the respondent has a clear, present and usually ministerial duty to perform, and the petitioner has a clear, present and beneficial right to performance." (*Sacramento County Alliance of Law Enforcement v. County of Sacramento* (2007) 151 Cal.App.4th 1012, 1020.) "Two basic requirements are essential to the issuance of the writ. (1) A clear, present and usually ministerial duty upon the part of the respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty." (*Shamsian v. Dept. of Conservation* (2006) 136 Cal.App.4th 621, 640)(citations omitted.)

The Court notes that Michelle Mitchell, Supervising Deputy Attorney General, appears on the pleadings as counsel of record for Respondent. The Court discloses that the Court was the Chief Deputy Legal Affairs Secretary for former Governor Gray Davis and supervised Ms. Mitchell in her capacity as a Deputy Legal Affairs Secretary from approximately 2001-2003.

III. Discussion

A. The Public Records Act

Effective January 1, 2023, the legislature re-codified the PRA within the Government Code. However, section 7920.100, provides that the recodification *did not*: "substantively change the law relating to inspection of public records. The act is intended to be entirely

nonsubstantive in effect. Every provision of this division and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act." Accordingly, case law interpreting the PRA remains as applicable today as it did before the subject recodification. (Gov. Code § 7920.110.)

The PRA (Gov. Code §7920.00 et seq.[2]) provides that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 7921.000) Public records are to be open to inspection and "any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law." (§ 7922.525.) "Given the strong public policy of the people's right to information concerning the people's business [], and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), "all public records are subject to disclosure unless the Legislature has expressly provided to the contrary. [Citation.]" (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617.)

Several categories of documents are exempt from PRA disclosure. The "exemptions are to be narrowly construed [Citation], and the government agency opposing disclosure bears the burden of proving that one or more apply in a particular case. [Citation.]" (*Labor & Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12.) Relevant to the current litigation are the deliberative process privilege, and the correspondence exemption.

Inherent in the PRA is a recognition that the public's trust is fundamental to the American democratic process. "Openness in government is essential to the functioning of a democracy." *(International Federation of Professional and Technical Engineers, Local 21, ALF-CIO et al. v. Superior Court of Alameda County* (2007) 42 Cal.4th 319, 328.) "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." (*CBS, Inc. v. Sherman Block* (1986) 42 Cal.3d 646, 651.)

B. The Deliberative Process Privilege

Pursuant to section 7922.000, an agency "shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record *clearly outweighs* the public interested served by disclosure of the record." (Emphasis added.)

Respondent argues the requested materials are exempted from disclosure pursuant to the deliberative process privilege. Respondent argues disclosing the dates and identities of PG&E employees with whom Ms. Patterson met "could chill the future flow of information to the Governor" as it "could deter some stakeholders from contacting or engaging with the Governor's Office." (Oppo., p. 12.) Further, disclosure would "reveal" the Governor's "priorities and deliberative choices." Respondent also argues that Petitioners have "not stated *any* significant public interest in the requested calendar entries for Ms. Patterson." (Oppo., p. 13.) Respondent suggests it is Petitioners' obligation to demonstrate how Ms. Patterson was involved in the

alleged "failure to hold PG&E accountable" or how she was involved in the CPUC's decision-making process. (Oppo., p. 14.)

Respondent further speculates that if the Court grants the writ, a "requester could submit multiple requests (seeking successive 'narrow' date ranges and multiple 'individual' stakeholders), such that the full scope of a senior advisor to the Governor's activities, meetings, and policy work for an extended period of time could be pieced together." (Oppo., p. 16.)

Petitioners argue the deliberative process privilege must be narrowly construed. Further, materials only fall within the privilege if their disclosure would expose an agency's decision-making process and discourage discussion within the agency. Petitioners maintain that the present circumstances fall within those described by our Supreme Court in *Times Mirror* (discussed herein), such that the request is focused, the extent of the disclosure is limited, and the public interest in nondisclosure does not clearly outweigh the public interest in disclosure. Petitioners maintain there is a "tremendous public interest in learning how many meetings occurred between the Governor's Cabinet Secretary and PG&E (and their duration) in the same month that the CPUC accepted a paltry $10 million payment for PG&E's responsibility in causing the ZOGG fire, and in which Ms. Patterson praised the company at its shareholders' meeting." (Op. Br., p. 10.)[3]

"The deliberative process privilege…protects materials reflecting deliberative or decisionmaking processes." (*Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1142.) "Not every disclosure which hampers the deliberative process implicates the deliberative process privilege. Only if the public interest in nondisclosure clearly outweighs the public interest in disclosure does the deliberative process privilege spring into existence. The burden is on the [agency] to establish the conditions for creation of the privilege." (*Cal. First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172.)

In *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, our Supreme Court recognized the deliberative process privilege, which was intended to "prevent injury to the quality of executive decisions." (*Id.*, at p. 1341.) "'Accordingly, the . . . courts have uniformly drawn a distinction between predecisional communications, which are privileged [citations]; and communications made after the decision and designed to explain it, which are not. [Citation.] As Professor Cox in his seminal article on executive privilege has explained, protecting the predecisional deliberative process gives the chief executive 'the freedom 'to think out loud,' which enables him to test ideas and debate policy and personalities uninhibited by the danger that his tentative but rejected thoughts will become subjects of public discussion. Usually the information is sought with respect to past decisions; the need is even stronger if the demand comes while policy is still being developed.' [Citation.]" (*Times Mirror*, 53 Cal.3d at 1341.)

In *Times Mirror*, pursuant to the PRA, a reporter requested copies of the Governor's appointment schedules, calendars, notebooks, and any other documents that would list his daily activities over a period of five years. (*Id.* at p. 1329.) The Governor's legal affairs secretary objected to disclosure, contending the records were exempt pursuant to section 6254, subdivision (l) as "correspondence of and to the Governor or employees of the Governor's office." (*Ibid.*)

When the Governor's Office refused to disclose the records, Times Mirror filed suit, seeking injunctive and declaratory relief. In opposition the Governor asserted additional exemptions, including "the public interest exemption of section 6255, which applies when the public interest in nondisclosure 'clearly outweighs' the public interest in disclosure" as the release of the requested documents would "(1) create a risk to his personal security, and (2) inhibit the free and candid exchange of ideas necessary to the decisionmaking process." (*Ibid.*)

The trial court found the records were exempt, while the appellate court reversed the decision and remanded to the trial court. The Supreme Court reversed the appellate court, finding the records were properly exempt from disclosure. (*Id.* at p. 1332.)

The Supreme Court found the records were not covered by the correspondence exemption, as they were not communications by letter. (*Id.* at p. 1337.) However, the Court found the records were subject to the deliberative process privilege, in that their disclosure was the "equivalent of revealing the substance or direction of the Governor's judgment and mental processes; such information would indicate which interests or individuals he deemed to be of significance with respect to critical issues of the moment." (*Id.* at p. 1343.) The Court was concerned that compelled disclosure could discourage the Governor from meeting with an unpopular or controversial group, thus eliminating their viewpoint from his consideration. (*Id.* at p. 1344.)

Finding the deliberative process privilege applicable, the court then balanced whether the public interest in nondisclosure clearly outweighed the public interest in disclosure. (*Ibid.*) The Court found,

> "whatever merit disclosure might otherwise warrant in principle is simply crushed under the massive weight of the Times's request in this case: the newspaper seeks almost five years of the Governor's calendars and schedules, covering undoubtedly thousands of meetings, conferences and engagements of every conceivable nature. We are not persuaded that any identifiable public interest supports such a wholesale production of documents." (*Id.* at p. 1345.)

Consequently, the Court found the public interest in nondisclosure clearly outweighed the public interest in disclosure. The Court found additional support for its finding in the evidence relating to the potential threat to the Governor's physical security. In light of the breadth of the request, the Court found a person could use the information to stalk and potentially harm the Governor by identifying his activity patterns. (*Id.* at p. 1346.)

In *Labor & Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12, a PRA request was made in response to the enactment of Assembly Bill No. 1513. (*Id.* at p. 16.) The bill addressed the issue of minimum wages for employees paid on a piece-rate basis, but included a safe-harbor provision for employers that made timely backpay. (*Ibid.*) The safe-harbor provision did not cover all companies, including two identified as Fowler and Gerawan. (*Ibid.*) Fowler and Gerwan submitted a PRA request for "any and all public records referring or relating to communications between the California Labor & Workforce Development Agency, its

officers, and its staff and the United Farm Workers of American regarding AB 1513; Any and all public records referring or relating to the statutory carve out for an claim asserted in a court pleading filed prior to March 1, 2014, as codified in AB 1513 section 226.2(g)(2)(A); and Any and all public records referring or relating to AB 1513 and Fowler and Gerawan." (*Id.* at pp. 16-17.) Any responsive records "would necessarily include the identities of parties who communicated confidentially with the Labor and Workforce Development Agency [] that took the lead in formulating the policies enacted in Assembly Bill 1513." (*Id.* at p. 17.)

The trial court ordered the agency to produce an index identifying the author, recipient, and subject matter of the responsive documents. (*Ibid.*) This order was made after the trial court determined the agency had established that it "solicited input from stakeholders on a confidential basis" and that the "agency's interest in preserving the confidentiality of communications regarding the legislative proposal outweighs the public interest in disclosure." (*Id.* at p. 30.) The agency petitioned the Third District Court of Appeal for writ relief to "prevent disclosure of the identities of the parties with whom the Agency communicated confidentially in formulating Assembly Bill 1513, the substance of these communications, and communications with the Office of Legislative Counsel [] during the drafting process." (*Ibid.*)

The court of appeal noted, "candor is likely to be threatened when a party knows communications will be revealed to the public… 'Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances…to the detriment of the decisionmaking process.' [Citation.]" (*Ibid.*) The court concluded that "revealing the identities of third parties who communicated confidentially with the [a]gency…will tend to dissuade stakeholders on issues subject to future legislative efforts from commenting frankly, or at all, on matters for which only varying viewpoints can provide a more complete picture." (*Ibid.*) The court concluded that the deliberative process privilege protected from disclosure the identities of the persons who communicated confidentially with the agency in connection with the formulation of Assembly Bill 1513. (*Id.* at p. 31.)

The Court finds that the deliberative process privilege *does not* prevent disclosure of the information sought by the June 2, 2023 request, as clarified by the Petition in this matter. Petitioners' request is limited to a single month, regarding meetings with individuals from a single corporate entity. The public interest in the number of times Ms. Patterson met with PG&E representatives in the same month that the CPUC agreed to a settlement of $140 million less than the initial fine sought is clearly significant and of interest to the public. Ms. Patterson also publicly attended an "Investor Day" in support of PG&E only one week after this settlement, increasing the public interest in the Governor's Office's potential involvement in PG&E's business affairs. While Ms. Patterson may, in fact, have had no input on the CPUC's decision in connection with this settlement, the Court finds no authority that Petitioners are required to make such an evidentiary showing prior to PRA disclosure.

With respect to the public interest in nondisclosure, Respondent has made only generalized arguments, which arguments fail to tip the scale in favor of nondisclosure. Respondent argues that any required disclosure of the identities of, and dates on which the governor's Cabinet Secretary meets with *any* shareholder *could* chill the flow of information to the Governor and *could* deter individuals from engaging with the Governor's office. These

arguments are speculative and do not provide any information as to how this specific, and fairly limited, request will harm the Governor's deliberative process. For an asserted public interest "to carry weight, it must be more than 'hypothetical' or 'minimal.'" (*Los Angeles Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222, 242.) A court may indeed consider potential threats, but these threats must be supported by more than mere speculation, including a declaration making a "particularized connection" between the information sought by the request and the potential harm. (See *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 612.) Respondent has not provided a declaration in this matter demonstrating a "particularized connection" between the requested calendar entries and a public interest in nondisclosure. The only declaration Respondent provided is a speculative and generalized expression of potential harm any time a senior advisor meets with an agency or individual. These generalized "parade of horribles" arguments do not provide the Court with any information upon which it would determine that the public interest in nondisclosure clearly outweighed the public interest in disclosure in *this case* and under *these factual circumstances.*

Respondent has also failed to identify any "decision" that the Governor's Office was engaged in making when meeting with PG&E representatives, such that these calendar entries would reflect "predecisional communications" protected by the privilege.

As our Supreme Court noted in *Times Mirror*, overly broad disclosure of a governor's calendar entries could "discourage the Governor from meeting with an unpopular or controversial group, thus eliminating their viewpoint from his consideration." (*Times Mirror*, *supra*, 53 Cal.3d at 1344.) However, the Court also held that the five-year request for "undoubtedly thousands of meetings, conferences, and engagements of every conceivable nature" was not supported by "any identifiable public interest." (*Id.* at p. 1345.) The Court also noted:

> "…we caution that our holding does not render inviolate the Governor's calendars and schedules or other records of the Governor's office. There may be cases where the public interest in certain specific information contained in one or more of the Governor's calendars is more compelling, the specific request more focused, and the extent of the requested disclosure more limited; then the court might properly conclude that the public interest in nondisclosure does *not* clearly outweigh the public interest in disclosure, whatever incidental impact on the deliberative process." (*Id.* at p. 1345-46.)

The Court finds that this matter presents such a case. The public interest is significant, the request is focused on one month and one "shareholder." Respondent has not established that the public interest in nondisclosure *clearly outweighs* the public interest in disclosure.

This matter is also distinguishable from *Labor & Workforce Development Agency*, as Respondent has not provided any evidence that those individuals meeting with Ms. Patterson did so with the understanding that such meetings were confidential, or that they met in order to discuss and formulate pending legislation or other governmental policy. Such a particularized showing could be made to the Court (potentially by way of a declaration filed under seal, should such declaration meet the legal requirements for sealing) without divulging the policymaker's

decisionmaking process in order for the Court to conduct the balancing test required. The Court will not entertain a request by Respondent to permit further briefing in order to make such an evidentiary showing, should such a request be made at the hearing. Respondent has had ample opportunity to present relevant and persuasive evidence to support its claims of privilege.

The Court's analysis is also not altered by Respondent's citation to *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469. In *Rogers*, the petitioner requested the "wholesale production of all City-reimbursed telephone records of all city council members of a one-year period." (*Id*. at p. 480.) The Second District Court of Appeal noted that this one-year period was not conceptually different from the five-year period at issue in *Times Mirror*, and that the request was "nonspecific and unfocused" which was "dispositive." Again, the request in this litigation is limited to one "shareholder" and is for a period of only one month. The public interest in such disclosure is significant, and is not clearly outweighed by the public interest in nondisclosure.

C. The Correspondence Exemption

Pursuant to section 7928.000, subdivision (a) all "correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary" are exempt from disclosure under the PRA.

Respondent argues the requested materials are exempted from disclosure pursuant to this correspondence exemption. Respondent argues that the calendar entries are the result of "meeting invitations" which consisted of "email exchanges with outside parties." (Sapp Decl., ¶ 7.) As such, Respondent maintains the Outlook Calendar entry that "was created upon the acceptance or issuance of a meeting invitation via email" constitutes exempt correspondence within the meaning of the PRA.

This is an argument that was expressly rejected by the *Times Mirror* court. In consideration of whether the Governor's calendar constituted correspondence, our Supreme Court concluded that "for purposes of the [PRA], the correspondence exemption must be confined to communications by letter. The Governor's appointment calendars and schedules plainly do not meet this definition, and therefore are not exempt from disclosure" under the correspondence exemption. (*Times Mirror, supra*, 53 Cal.3d at 1337.)

The Court recognizes that *Times Mirror* was decided in 1991, and likely the Governor's calendar was not the result of electronic Outlook Calendar invitations. Thus, the *Times Mirror* court did not have to consider whether electronic communications sent to another party resulting in a calendar entry constituted "communications by letter." Nevertheless, Petitioners *are not seeking* copies of the calendar invitations sent to external parties. Petitioners are merely seeking the same information that would have been contained on a handwritten calendar (or perhaps an early version of word-processing calendar): The names of attendees, location, date, and time, of the subject meetings. Respondents have not identified any information on the *actual calendar entries* that would constitute "correspondence" within the meaning of the PRA.

This conclusion is not altered by either of the cases cited by Respondent: *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159; and *Rittiman v. Public*

Utilities Commission (2022) 80 Cal.App.5th 1018. In *California First Amendment Coalition,* the PRA request was for the "names and qualifications of applicants for appointment to a vacant county supervisor position." (67 Cal.App.4th at p. 160.) The Third District Court of Appeal found this was a request for "all documents containing information regarding applicants, including, specifically, information submitted by the applicant as documenting his or her fitness for the position." (*Ibid.*) The court noted that the applicants expressed interest in the position by letter, and that the application forms "were transmitted to the applicants by letter. The application is the end product of an exchange of correspondence between the Governor's office and an outside correspondent…" (*Id.* at p. 168.)

In *Rittiman*, the PRA request was for "all communications between" the CPUC president and members of the Governor's office, for a little over a year. (*Rittiman, supra*, 80 Cal.App.5th at p. 1027.) Rittiman subsequently modified the request to "all text messages, emails, and calendar entries" in light of the *Times Mirror* court determination that "correspondence" was defined as "communications by letter." (*Ibid*.) The First District Court of Appeal rejected Rittiman's argument that the correspondence exemption was limited to correspondence from private parties. (*Id*., at pp. 1044-1050.) The court also noted that it was not "readily apparent…how calendar entries could constitute a communication 'between'" an agency and the Governor's staff. (*Id.* at p. 1051.) The court did not need to resolve whether text messages or emails constituted correspondence, because Rittiman did not advance an argument regarding this issue. But the court noted that the "salient question in the wake of *Times Mirror Co.,* is whether a communication is fairly characterized as correspondence or some other form of written communication, such as a calendar or schedule, a private memo dictated and used solely by the Governor, or a legislative analysis prepared by and for the use of the Governor's office." (*Ibid.*)

In both *California First Amendment Coalition* and *Rittiman*, the records sought were clearly "correspondence" transmitted between two parties, for the purpose of exchanging information. As the *Rittiman* court noted, correspondence *is not* "some other form of written communication, such as a calendar or schedule…" (80 Cal.App.5th at p. 1051.) The Court recognizes Respondent's argument that the Outlook Calendar process involves sending a meeting request to the other participant(s), and that such meeting request *could potentially* constitute correspondence. The Court need not resolve this issue, however, as Petitioners do not seek copies of any meeting requests or responses. Petitioners simply seek copies of the subject calendar entries. If the Court accepted Respondent's argument, it would effectively shield *all* calendar entries for members of the Governor's Office from the PRA's reach, if those entries were input by way of the Outlook Calendar process. Such a result is absurd, and would subsume the *Times Mirror* court's caution that "that our holding does not render inviolate the Governor's calendars," because of an electronic technicality.

IV. Conclusion

The petition for writ of mandate is **GRANTED**. A judgment shall be issued in favor of Petitioners, and against Respondent, and a peremptory writ shall issue commanding Respondent to take action specially enjoined by law in accordance with the Court's ruling, but nothing in the writ shall limit or control in any way the discretion legally vested in Respondent. Respondent shall make and file a return within 60 days after issuance of the writ, setting forth what has been

done to comply therewith.

B. FINAL RULING

At the hearing on this matter, Petitioners requested the Court clarify some of its factual determinations. While not at all clear to the Court based on Petitioners' initial PRA request, or as clarified in the Petition, at the hearing Petitioners indicated that they *do not* seek the names or identities of the PG&E representatives, which information may appear on the subject calendar entries. Thus, should such information appear on the subject entries, the Court orders that Respondent may redact such information prior to production.

Petitioners also took issue with the Court's characterization that, "[a]fter meet and confer efforts between the parties, the Governor's Office released a copy of the May 24, 2023 calendar entry documenting Ms. Patterson's attendance at the PG&E Investor Day, as such attendance was already publicly available information." Petitioners requested that the Court note such documentation was only produced after the instant petition for writ of mandate was filed. The Court so notes.

Respondent argued Petitioners have not established a "heightened" public interest in Ms. Patterson's meetings with PG&E, as Petitioners have not demonstrated that the Governor's Office has any influence on decisions made by the CPUC. The Court finds no basis for requiring a "heightened" public interest showing by a requesting party when the subject agency is asserting the deliberative process privilege. The cases discussing the need for a "heightened" public interest involve factual circumstances implicating an individual's privacy interest weighed against the public interest in disclosure. (See *Edais v. Superior Court* (2023) 87 Cal.App.5th 530.)

As Petitioners have clarified in this matter, they are not seeking the identities or names of the PG&E representatives who attended the subject meetings. And Respondent has not raised any arguments regarding specific privacy rights, if any, implicated by the subject requests. The Court finds the public interest in the subject meetings is significant, and that Respondent asks the Court to naively accept that the Governor's Office is not involved in any aspect of the CPUC's agency business. Even if such an assertion were true, the Court finds there is a significant public interest in whether Ms. Patterson met with representatives from PG&E prior to her public appearance at their shareholders' meeting, given PG&E's involvement in the Camp and Zogg fires. The Court finds this public interest *is increased* by the timing, even if such timing is coincidental, of the CPUC's settlement with PG&E regarding the Zogg fire, which was followed a week later by Ms. Patterson's public appearance at the PG&E shareholders' event.

Respondent *carries the burden* of establishing that the public interest in nondisclosure *clearly outweighs* the public interest in disclosure. At the hearing on this matter, Respondent argued that he was not required to make a particularized showing regarding the public interest in nondisclosure of the subject calendar entries. Rather, Respondent argued, *Times Mirror* permits a broad, generalized declaration as to the potential harm that could result any time the Governor's calendar entries are disclosed in response to a PRA request. Respondent conflates the *five-year* time period in *Times Mirror*, with the very narrow and particularized request at issue in this

matter. Further, if the Court were to accept Respondent's interpretation, it would render meaningless the *Times Mirror* Court's caution that "our holding does not render inviolate the Governor's calendars and schedules or other records of the Governor's office." (*Times Mirror, supra*, 53 Cal.3d at p. 1345.)

Making a straw man argument, Respondent mischaracterizes the Court's ruling as *requiring* a declaration to be filed under seal or for *in camera* review in every case involving the deliberative process privilege and that this is not required by case law. The Court required no such thing. The Court pointed out that a declaration *might* be a mechanism for a party opposing such a PRA request to make the requisite showing. Respondent has not even attempted to demonstrate that Ms. Patterson was engaged in the "deliberative process" or identify that she was engaged in making any decision(s) during any responsive meetings with PG&E representatives Surely, such an assertion could be made without needing to resort to *in camera* review. Further, the *Times Mirror* Court did not need to make such a particularized determination as, clearly, five years' worth of appointment schedules, calendar entries, notebooks and any other documents that would list the Governor's daily activities, including the identity of those persons who met with the Governor sought by petitioner in that case would disclose the Governor's deliberative processes. In his declaration submitted in *Times Mirror*, the Governor stated that routine disclosure of the identities of the persons with whom he met would inhibit the deliberative process by discouraging persons from attending meetings. (*Times Mirror, supra*, 53 Cal.3d. at p. 1331.) In contrast, here, it is not clear that revealing that meetings occurred in a one-month time-frame, with one business entity, not individuals, even implicates the deliberative process, absent a particularized showing. (See *Connell, supra*, 56 Cal.App.4th at p. 612.)

Respondent also asserted that the Court's interpretation of *Labor & Workforce Development Agency* would require Respondent to obtain declarations from third-party attendees of meetings regarding their expectations of confidentiality. Again, making a straw man argument, Respondent exaggerates the Court's ruling. As clarified at the hearing, Petitioners do not request the identities or names of the PG&E representatives, and do not request any information regarding the topics discussed at the subject meetings. Thus, this matter is distinguishable from *Labor & Workforce Development Agency*, as the petitioner sought the subject matter, and identities of the authors of the subject responsive documents. (19 Cal.App.5th at p. 17.) The Third District Court of Appeal held that, "revealing the identities of third parties who communicated confidentially with the [a]gency…will tend to dissuade stakeholders on issues subject to future legislative efforts from commenting frankly, or at all, on matters for which only varying viewpoints can provide a more complete picture." (*Id.* at p. 30.) This analysis is not relevant to the request at issue in this litigation because the PG&E representative's identities will not be disclosed.

Further, in *Labor & Workforce Development Agency* the agency established it, "solicited input from stakeholders on a confidential basis." (*Ibid.*) Thus, even *if* Petitioners were seeking the identities of the PG&E representatives, Respondent has made *no showing* that he sought input on a matter for which he was engaged in the deliberative process, and that such input was sought on a "confidential basis." Respondent's assertion that the Governor *always* meets with individuals on a confidential basis does not pass the straight-face test when engaging in the delicate balancing test of the public's interest in disclosure versus the public's interest in

nondisclosure of records evidencing the conduct of the people's business.

The Court emphasizes the Legislative findings regarding the purpose of the PRA, "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 7921.000.) Further, the Legislature chose to place the burden on the responding agency to demonstrate that the subject record is either statutorily exempt from disclosure or meets the public interest balancing test. (§ 7922.000.) Respondent's arguments are, essentially, that the Governor's calendars are *never* subject to disclosure, absent the requestor making a showing of a "heightened" public interest. Such a position is directly contrary to the PRA, as well as our Supreme Court's holding in *Times Mirror* and subsequent case law.

Respondent has failed to establish that the public interest in nondisclosure *clearly outweighs* the public interest in disclosure of, "[f]or the month of May 2023: compete copies of all calendar entries involving Ann Patterson and any employee, officer, or agent of PG&E" with any information regarding the subject matter of the meeting or the identities of the PG&E representatives redacted. In the absence of such a showing, Respondent must disclose the requested records in accordance with the PRA.

The petition for writ of mandate is **GRANTED**. A judgment shall be issued in favor of Petitioners, and against Respondent, and a peremptory writ shall issue commanding Respondent to take action specially enjoined by law in accordance with the Court's ruling, but nothing in the writ shall limit or control in any way the discretion legally vested in Respondent. Respondent shall make and file a return within 60 days after issuance of the writ, setting forth what has been done to comply therewith.

In accordance with Local Rule 1.06, Petitioners' counsel is directed to prepare an order granting the petition, incorporating this ruling as an exhibit to the order, a writ of mandate, and a separate judgment; submit them to opposing counsel for approval as to form in accordance with CRC 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b).

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[1] The Court does not find the production of this information, which was already public knowledge, constituted waiver of Respondent's argument that the remaining responsive documents are subject to a PRA exemption and/or privilege.

[2] Further undesignated statutory references are to the Government Code.

[3] Petitioners argue the Governor's calendars are not subject to the deliberative process privilege because other public officials or previous governors have disclosed the contents of their calendars. The Court finds that the practice of other public officials is not relevant to whether the deliberative process privilege applies to the records at issue in this matter, and will not discuss this argument further. The Court does however, find noteworthy that a former governor recognized that calendar entries are not categorically exempt from production under the PRA, and in fact disclosed those calendar entries.

/s/ M. Garcia

M. Garcia, Deputy Clerk

By:

Minutes of: 03/05/2024
Entered on: 03/05/2024