

**DOCKETED**

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## **Article 2. Disclosure of Commission Records**

### **§ 2501. Policy.**

The California Legislature and California Constitution have 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, and have also recognized that there are sound reasons for protecting privacy. The Commission has adopted these regulations so that members of the public will fully understand and be given the opportunity to exercise their right to inspect and copy Commission records with the least possible delay and expense, and so that legitimate interests in confidentiality will be protected.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Article 1, Section 3(b), California Constitution; Sections 6250 and 6254, Government Code; and Sections 25223, 25322 and 25366, Public Resources Code.

### **§ 2502. Scope.**

(a) This Article applies to inspection and copying of all records. It applies to any person making any request to copy or inspect records. It applies to any request by any person for the Commission to keep a record confidential, including, but not limited to, requests pursuant to Section 25322 of the Public Resources Code.

(b) Nothing in this article shall be construed to require disclosure of a record that is exempt from disclosure under the California Public Records Act, Government Code sections 6250 et seq. This provision is declarative of existing law.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25322 and 25366, Public Resources Code.

### **§ 2503. Construction and Definitions.**

(a) This Article implements the California Public Records Act (Section 6250 et seq. of the Government Code) and shall be construed in a manner consistent with that Act.

(b) For purposes of this Article the definitions in the California Public Records Act, the definitions in Section 1302 of Article 1 of Chapter 3, and the following definitions shall apply:

(1) "Private third party" means any person other than a federal, state, regional, or local governmental body, or a person under contract to such body, except that for purposes of data submitted pursuant to Chapter 3 (beginning with Section 1301) and Chapter 5 (beginning with Section 1701) of this Division, a federal, state, regional, or local governmental body, or person under contract to such body, shall be deemed to be a private third party.

(2) "Confidential record" means a record that has been determined to be confidential pursuant to Section 2505 or 2506 of this Article.

(3) “Applicant” means a private third party requesting that the Commission keep a record confidential pursuant to Section 2505 of this Article.

(4) “Petitioner” means a person seeking to inspect or copy a confidential record pursuant to Section 2506 of this Article.

(5) “Petition” means a request from a petitioner seeking to inspect or copy a confidential record, pursuant to Section 2506 of this Article.

(6) “Fuel Price” means fuel cost divided by fuel use expressed in dollars, for a specific fuel type.

(7) “Masked” means, but is not limited to, customer, business, or cultural data that has been modified to limit the risk of disclosure of confidential information. Methods of data modification may include, but are not limited to, suppression of data, rounding, swapping of values between like respondents, replacement of data with group averages, grouping of categories, and addition of random values.

(8) “Survey Response” means the answers to survey questions provided by persons or companies.

(9) “Aggregated” means that data is summed, averaged, or otherwise combined to limit the risk of disclosure of confidential information.

(10) “Freedom of Information Act” is contained at Title 5 United States Code Section 552.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25322 and 25366, Public Resources Code; and Sections 6250 et seq., Government Code.

#### **§ 2504. ~~Inspection and Copying.~~**

~~(a) This section applies to all records, except records deemed confidential, which are subject to the provisions of Section 2506.~~

~~(b) A request to inspect or copy a record shall be made orally or in writing to the Office of Chief Counsel. The Public Adviser will assist persons in requesting records. A request shall describe the record sought in sufficient detail so that it can be identified and found by a Commission employee.~~

~~(c) Time and Place. A request to inspect or copy a readily identifiable and available record shall be satisfied within ten days of receipt of the request unless the need to complete processing or filing of the record, the use of the record by another person or a Commission employee, the volume of requests, the unavailability of Commission employees, or other unusual circumstances renders such a response impracticable, in which case the Commission will notify the person making the request of the need for an extension within ten days of the request. Such extension shall not exceed ten working days. All records except records determined to be confidential pursuant to Section 2505, Section 2506, or Section 2508 shall be made available for inspection and copying Monday through Friday, generally between 8 a.m. and 5 p.m. at the~~

~~Commission's offices. The Executive Director shall make reasonable efforts to provide facilities for inspection of records, including a desk for notetaking.~~

~~(d) — Protection of Records. Records may be inspected or copied only at Commission offices. The Executive Director may designate a particular place for the public to inspect or copy records. He or she may establish procedures for responding in a fair and orderly manner to numerous requests, including, when strictly necessary to prevent disruption of Commission functions, establishing a specific time each day for inspection and copying. He or she may require a Commission employee to be present at the time of inspection or copying, but such employee shall not disturb a person inspecting or copying records. Where necessary, copies of records rather than originals may be provided for inspection.~~

~~(e) — Computer Records. Inspection and copying of computer records and other records whose form makes inspection or copying difficult or impracticable shall be in a manner determined by the Executive Director. If providing an exact copy is impracticable, some type of copy shall nevertheless be provided.~~

~~(f) — Copies. Except for records determined to be confidential pursuant to Section 2505 or Section 2506, copies and certified copies of all records are available to any person for a fee which shall be paid at the time a request is made. The fee for providing a copy or a certified copy shall be no higher than the actual cost of providing the copy, or the prescribed statutory fee, whichever is less.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25322 and 25366, Public Resources Code; and Sections 6253(a), 6256 and 6257, Government Code.~~

## **§ 2505. Designation of Confidential Records.**

(a) Third Parties.

(1) Any private third party giving custody or ownership of a record to the Commission shall specify if it should be designated a confidential record and not publicly disclosed. An application for confidential designation shall:

(A) be on a sheet or sheets separate from, but attached to, the record;

(B) specifically indicate those parts of the record that should be kept confidential;

(C) state the length of time the record should be kept confidential, and justification for the length of time;

(D) cite and discuss the provisions of the Public Records Act or other law that allow the Commission to keep the record confidential. If the applicant believes that the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, the application shall also state the specific nature of that advantage and how it would be lost, including the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others;

(E) state whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking

required. If the information cannot be disclosed even if aggregated or masked, the application shall justify why it cannot;

(F) state how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances;

(G) contain the following certification executed by the person primarily responsible for preparing the application:

1. "I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge," and

2. State whether the applicant is a company, firm, partnership, trust, corporation, or other business entity, or an organization or association, and

3. State that the person preparing the request is authorized to make the application and certification on behalf of the entity, organization, or association.

(H) If the record contains information that the applicant has received from another party who has demanded or requested that the applicant maintain the confidentiality of the information, the applicant shall address the items in (B) through (F) of this subsection to the greatest extent possible and shall explain the demand or request made by the original party and the reasons expressed by the original party. If the basis of an application for confidential designation is an order or decision of another public agency pursuant to the Public Records Act or the Freedom of Information Act, the application shall include only a copy of the decision or order and an explanation of its applicability. The Executive Director shall consult with that agency before issuing a determination.

(2) A deficient or incomplete application shall be returned to the applicant with a statement of its defects. The record or records for which confidentiality was requested shall not be disclosed for fourteen days after return of the application to allow a new application to be submitted except as provided in Section 2507 of this Article.

(3) Executive Director's Determination.

(A) The Executive Director shall, after consulting with the Chief Counsel, determine if an application for confidential designation should be granted. An application shall be granted if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential. The Executive Director's determination shall be in writing and shall be issued no later than thirty days after receipt of a complete application. The Executive Director or the Chief Counsel may, within fourteen days after receipt of an application for confidential designation, require the applicant to submit any information that is missing from the application. If the missing information is not submitted within fourteen days of receipt of the request by the Executive Director or Chief Counsel, the Executive Director may deny the application.

(B) If an application is denied by the Executive Director, the applicant shall have fourteen days to request that the Commission determine the confidentiality of the record. If the applicant makes such a request, the Commission shall conduct a proceeding pursuant to the provisions of Section 2508.

(C) After an application has been denied, the information sought to be designated confidential shall not be available for inspection or copying for a period of fourteen days, except as provided in Section 2507 of this Article.

(4) Repeated Applications for Confidential Designation. If an applicant is seeking a confidential designation for information that is substantially similar to information that was previously deemed confidential by the Commission pursuant to Section 2508, or for which an application for confidential designation was granted by the Executive Director pursuant to subdivision (a)(3)(A) of this section, the new application need contain only a certification, executed under penalty of perjury, stating that the information submitted is substantially similar to the previously submitted information and that all the facts and circumstances relevant to confidentiality remain unchanged. An application meeting these criteria will be approved.

(5) Automatic Designation. Information submitted by a private third party shall be designated confidential without an application for confidentiality if the requirements of subsections (a)(5)(A) and (B) of this Section are met. If the requirements of subsection (a)(5)(A) and (B) are not met, the Executive Director shall inform the private third party that the record will not be deemed confidential. Except as provided in Section 2507 of this Article, the record for which confidentiality was requested shall not be disclosed for fourteen days to allow the requirements of subsection (a)(5)(A) and (B) to be met or to allow the filing of an application pursuant to subsection (a)(1) of this section.

(A) The entity submitting the information shall label each individual item of the submittal that is entitled to be designated confidential.

(B) The entity submitting the information shall attest under penalty of perjury that the information submitted has not been previously released and that it falls within one of the following categories:

1. Information that is derived from energy consumption metering, energy load metering research projects, or energy surveys provided pursuant to Section 1343 or 1344 of Article 2 of Chapter 3, and that is one or more of the following:

a. for the residential customer sector and the commercial customer sector - customer identifiers, energy consumption, and any other information that could allow a third party to uniquely identify a specific respondent;

b. industrial major customer sector - all information;

c. survey design information - all information used to design a survey, stratify billing records, devise a sample scheme, select a sample, sample specific end-users for participation in a survey or a pre-test of a questionnaire or interview form.

2. Energy sales data provided pursuant to Section 1306, 1307, or 1308(c), of Article 1 of Chapter 3, if the data is at the greatest level of disaggregation required therein.

3. Information submitted by each LSE that is not a UDC that consists of:
  - a. Load forecasts and supporting customer projections by UDC distribution service area submitted pursuant to subdivision (b) of Section 1345 of Article 2 of Chapter 3.
  - b. Retail electricity price forecasts submitted pursuant to subdivision (a) of Section 1348 of Article 2 of Chapter 3.
4. Fuel cost data provided for individual electric generators under Section 1304 and fuel price data provided pursuant to subdivision (d) of Section 1308 of Article 1 of Chapter 3.
5. Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.
6. Electric power plant-specific hourly generation data.
7. Electric power plant name, nameplate capacity, voltage at which the power plant is interconnected with a UDC system or transmission grid, address where the power plant is physically located, power plant owner's full legal name and address or longitude and latitude, if power plant is privately owned and its identity as a power plant is not public knowledge, (e.g., backup generator or solar installation at residence or business) under Section 1304 of Article 1 of Chapter 3.
8. Information the release of which is prohibited pursuant to the Information Practices Act (Civil Code Section 1798 et seq.)
9. All information provided pursuant to Section 1314 of Article 1 of Chapter 3 and Section 1353 of Article 2 of Chapter 3.

(6) Failure to request confidentiality at the time a record is submitted to the Commission does not waive the right to request confidentiality later; however, once a record has been released to the public, the record can no longer be deemed confidential. Although a record designated as confidential shall remain confidential during the application and appeal process, subject to the provisions of Section 2507(b) of this Article, the application itself is a public document and can be released.

(b) Governmental Entities. When another federal, state, regional, or local agency or state-created private entity, such as the California Independent System Operator, possesses information pertinent to the responsibilities of the Commission that has been designated by that agency as confidential under the Public Records Act, or the Freedom of Information Act, the Commission, the Executive Director, or the Chief Counsel may request, and the agency shall submit the information to the Commission without an application for confidential designation. The Commission shall designate this information confidential.

(c) Commission Generated Information

~~(1) The Executive Director in consultation with the Chief Counsel, may designate information generated by Commission staff as confidential under the Public Records Act. A confidential designation made in this manner shall be summarized in the agenda for the next~~

~~Commission Business Meeting. Any private third party or public entity may request to inspect or copy these confidential records by filing a petition pursuant to Section 2506 of this Article.~~

~~(2)~~(1) Contracts and Proposals

(A) Information received by the Commission in response to a solicitation shall be kept confidential by the Commission and its evaluators before posting of the notice of the proposed award. The solicitation document shall specify what confidential information the proposal may contain and how that confidential information will be handled after the posting of the notice of the proposed award.

(B) The Executive Director, in consultation with the Chief Counsel, may designate certain information submitted under a contract as confidential in accordance with the Public Records Act or other provisions of law. The designation and its basis shall be in writing and contained in the contract governing the submittal of the information or in a separate statement. The contract or written statement shall also state exactly what information shall be designated confidential, how long it shall remain confidential, the procedures for handling the information, and all other matters pertinent to the confidential designation of the information.

~~(3)~~ All data generated by the Commission that is the same type as the data described in Section 2505(a)(5)(B) of this Article shall be kept confidential by the Commission.

(d) All documents designated confidential pursuant to this Section shall be treated as confidential by the Commission except as provided in Section 2507.

~~(e) — Every three months, the Executive Director shall prepare a list of data designated confidential pursuant to this Section during the previous three months. The Executive Director shall give the list to each Commissioner. The list shall also be made available to the public upon request.~~

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25322, 25364 and 25366, Public Resources Code; and *Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041.

**§ 2506. Petition for Inspection or Copying of Confidential Records; Chief Counsel Decision.**

(a) Form of Petition. A petition for inspection or copying of any confidential record shall be written, and shall be served on the Chief Counsel. It shall state the facts and legal authority supporting a conclusion that the Commission should disclose the confidential record. If the request is for inspection or copying of records deemed confidential after a Commission decision issued pursuant to Section 2508, the petition shall identify new information that has become available or changed circumstances that have occurred that materially affected the previous determination.

(b) Delegation of Commission Decision to the Chief Counsel.

(1) The decision of the Commission on a petition for inspection or copying of confidential records is delegated to the Chief Counsel.

(2) If the petition is for inspection or copying of a record received from a private third party, a person under contract to the Commission, or another government agency, the Chief Counsel shall:

(A) within one day of service of the petition, provide both a copy of the petition to the person or entity that submitted the information and a written request for written approval of release of the record. Any party not wishing to give permission for the record's release may supplement the initial application for confidential designation, if any, or provide any additional information within five working days of the receipt of the request for permission. Failure to respond to the Chief Counsel's request to release the record shall not be deemed consent for release.

(B) within five working days of receipt of a petition, provide the petitioner with a written summary of the basis of the original confidential determination and a copy of the Commission's regulations governing the disclosure of Commission records.

(3) The Chief Counsel shall issue a decision on the petition within ten days of its service on the Chief Counsel, unless unusual circumstances renders such a decision impossible, in which case the Chief Counsel will notify the petitioner of the need for an extension within ten days of the filing of the petition. Such extension shall not exceed fourteen days.

(4) The Chief Counsel shall base his or her decision on whether the entity seeking to maintain the confidentiality of the record has met its burden of proof in demonstrating that confidentiality is warranted under the California Public Records Act, and that, considering all the facts and circumstances, the record should be kept confidential.

(5) If the request is for inspection or copying of records deemed confidential after a Commission decision issued pursuant to Section 2508, the Chief Counsel shall deny the petition unless the petition identifies new information that has become available or changed circumstances that have occurred that materially affect the previous determination.

(6) Any party may request that the full Commission reconsider the Chief's Counsel's decision, in which case, the Commission shall conduct a proceeding pursuant to the provisions of Section 2508. Any such request shall be filed within fourteen days of the issuance of the Chief Counsel's decision.

(7) A decision that a record should be disclosed shall ordinarily be effective fourteen days after issuance, although an earlier effective date may be specified in unusual circumstances, consistent with maintaining the opportunity of the person originally submitting the information to prevent its release by requesting reconsideration or appealing the decision to a court of competent jurisdiction. A decision that the record is exempt from disclosure shall be effective immediately.

(c) List of Records Determined to be Confidential. The Executive Director shall maintain a list of records the Commission orders held confidential pursuant to this section.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25322 and 25366, Public Resources Code; Sections 6250 et seq., Government Code; and *Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041.

**§ 2507. Disclosure of Confidential Records.**

(a) No confidential record shall be disclosed except as provided by this Section, Section 2506, or Section 2508, unless disclosure is ordered by a court of competent jurisdiction.

(b) No record that is the subject of a pending request for confidentiality pursuant to subdivisions (a) or (c) of Section 2505, a pending petition for inspection or copying of confidential records pursuant to subdivision (b)(5) of Section 2506, or a pending request pursuant to subdivision (e)(2) and (f)(2) of this section shall be disclosed except as provided in this section, unless disclosure is ordered by a court of competent jurisdiction.

(c) The Executive Director may disclose records previously designated as confidential to:

(1) Commission employees or representatives whose Commission work requires inspection of the records;

(2) Persons under contract to the Commission whose work for the Commission requires inspection of the records and who agree in a contract to keep the records confidential; and

(3) Other governmental bodies and state-created private entities, such as the California Independent System Operator, that need the records to perform their official functions and that agree to keep the records confidential and to disclose the records only to those employees or contractors whose agency work requires inspection of the records.

(d) The Executive Director may disclose data collected in association with customer surveys of the type described in Section 1343 of Article 2 of Chapter 3 and that are not masked or aggregated to the following entities:

(1) Demand side management program administrators, funded through the Energy Efficiency Public Goods Charge (EEPGC) established in Public Utilities Code Section 381(c), which need the survey responses to perform their official functions and that agree to keep the records confidential and to disclose the records only to those employees, and contractors, who need that data for EEGGC program evaluation and planning.

(2) Utilities that opt into collaborative surveys funded by the Commission, or that contribute funds for the implementation of a survey coordinated by the Commission, pursuant to Section 1343(f) of Article 2 of Chapter 3, may have access to that portion of survey responses by customers included within their service area provided they agree to keep the records confidential and to disclose the records only to those employees, and contractors, who need the data for distribution system planning.

(e) The following data granted automatic designation as confidential pursuant to subdivision (a)(5) of Section 2505 may be released, unless the filer submits an application for confidential designation pursuant to subdivision (a)(1) of that Section that is granted pursuant to (a)(3) of that Section prior to the expiration of the confidentiality status, in accordance with the following timelines:

(1) Load forecasts and supporting customer projections by UDC distribution service area submitted pursuant to subdivision (b) of Section 1345 of Article 2 of Chapter 3 may be released no sooner than 3 years from the date of submittal.

(2) Retail electricity price forecasts submitted pursuant to subdivision (a) of Section 1348 of Article 2 of Chapter 3 may be released no sooner than 3 years from the date of submittal.

(3) Fuel price data provided pursuant to subdivision (d) of Section 1308 of Article 1 of Chapter 3 may be released no sooner than 5 years from the data of submittal.

(4) Electric power plant-specific hourly generation data may be released no sooner than 5 years from the date of submittal.

(5) LSE and UDC reports submitted pursuant to Sections 1306, 1307, or 1308(c) of Article 1 of Chapter 3 may be released no sooner than 5 years from the date of submittal.

~~(e)~~(f) The Executive Director may release records previously designated as confidential in either of the following circumstances:

(1) where the confidential information has been masked or aggregated at the as-levels described below in subdivisions (A)-(D)

(A) Data provided pursuant to Section 1306(a)(1), 1306(a)(4), 1306(b), Section 1307(a), and Section 1308(c)(1) of Article 1 of Chapter 3 may be disclosed at the following levels of aggregation or higher:

1. For an individual LSE for whom electricity is delivered by one or more UDCs, data for each LSE aggregated at the statewide level by year and ~~major~~ customer sectors.

2. For an individual gas retailer for whom gas is delivered by one or more gas utilities, data for each gas retailer aggregated at the statewide level by year and ~~major~~ customer sector.

3. For the sum of all LSEs for whom electricity is delivered by one or more UDCs (1) data aggregated at the county level by residential and non-residential groups, and (2) data aggregated at the distribution service area, planning area, or statewide level by ~~major~~ customer sector.

4. For the sum of all gas retailers for whom gas is delivered by gas utilities (1) data aggregated at the county level by residential and non-residential groups, and (2) data aggregated at the distribution service area, planning area, or statewide level by ~~major~~ customer sector.

5. For a UDC with a peak load of less than 200 MW during both of the previous two years or a gas utility with deliveries of less than 50 billion cubic feet per year during both of the previous two years, data aggregated at the distribution service area, planning area, or statewide level by ~~major~~ customer sector.

6. For a UDC with a peak load of 200 MW or more during both of the previous two years or a gas utility with deliveries of 50 billion cubic feet or less during both of the previous two years, (1) data aggregated at the county level by residential and non-residential groups, and (2)

data aggregated at the distribution service area, planning area, or statewide level by major customer sector.

7. For the total sales by county:

a. sum accounts, kWh, and revenue reported by all UDCs, aggregated at the county level by the subsector (3-digit) code level identified in the NAICS as defined in subdivision (b)(40) of Section 1302~~economic industry groupings used by the California Employment Development Department in its September 2005 Current Employment Statistics survey county reports.~~

b. sum accounts, therms, and revenue reported by all gas utilities, aggregated at the county level by the subsector (3-digit) code level identified in the NAICS as defined in subdivision (b)(40) of Section 1302 ~~economic industry groupings used by the California Employment Development Department in its September 2005 Current Employment Statistics survey county reports.~~

8. For total consumption by county:

a. sum electricity deliveries (kWh) reported by all UDCs and electric generation consumed on site (other than for plant use) reported by power plants, aggregated at the county level by the subsector (3-digit) code level identified in the NAICS as defined in subdivision (b)(40) or Section 1302 ~~economic industry groupings used by the California Employment Development Department in its September 2005 Current Employment Statistics survey county reports.~~

b. the sum of natural gas deliveries (therms) as reported by all gas utilities, and natural gas that is produced and consumed on site as reported by gas retailers, with the sum aggregated at the county level by the subsector (3-digit) code level identified in the NAICS as defined in subdivision (b)(40) of Section 1302~~economic industry groupings used by the California Employment Development Department in its September 2005 Current Employment Statistics survey county reports.~~

(B) Electric generator fuel cost data provided pursuant to Section 1304(a)(2)(C) and electric generator fuel price data computed from fuel cost and fuel use data reported pursuant to Section 1304(a)(2)(C), may be disclosed if aggregated by fuel type and gas service area or higher, and if the disclosure is made six months after the end of the month for which prices were reported.

(C) Data of the type described in Section 1343 of Chapter 3, Article 2 and collected in association with customer surveys that are begun after December 8, 2000, may be disclosed in the following manner:

1. Residential customer sector and commercial customer sector survey responses from persons or companies may be released after name, address, and other respondent identifiers have been removed, and usage data and responses to specific survey questions that could allow a third party to uniquely identify a respondent have been masked;

2. Industrial major customer sector responses from companies may not be released. Tabulations of industrial major customer sector survey data may be released only after the data has been aggregated to ensure that information about respondents will not be disclosed.

(2) where information designated as confidential that is other than that identified in subdivision (e)(1) above has been masked or aggregated to the point necessary to protect

confidentiality. When the Executive Director plans to release masked or aggregated confidential data, he or she shall provide notice to the filer of the information, who may, within fourteen days, request that the Commission prohibit the release of the information. During that time, the records shall not be available for inspection or copying. If the filer makes such a request, the Commission shall conduct a proceeding pursuant to the provisions of Section 2508.

~~(f)~~(g) The Executive Director may release records previously designated as confidential in either of the following circumstances:

(1) upon written permission by all entities who have the right to maintain the information as confidential; ~~or~~

(2) where the data has been publicly released either by the filer or by another governmental agency; or

~~(23) under any other circumstance where the information is no longer entitled to confidential treatment. When the Executive Director plans to release such information, he or she shall provide notice to the filer of the information, who may, within fourteen days, request that the Commission prohibit the release of the information. During that time, the records shall not be available for inspection or copying. If the filer makes such a request, the Commission shall conduct a proceeding pursuant to the provisions of Section 2508.~~

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25322 and 25366, Public Resources Code.

#### **§ 2508. Commission Hearing on Confidentiality of Records.**

(a) The Commission shall hold a hearing to determine the confidentiality of Commission records in response to a timely request pursuant to subdivisions (a)(3)(B) and (c)(1) of Section 2505, subdivision (b)(5) of Section 2506, or subdivisions (e) (2) or (f)(2) of Section 2507. The Commission may also hold a hearing to determine the confidentiality of Commission records on its own motion or on a motion by Commission staff. Any person, including but not limited to the Commission staff, may participate in such hearing.

(b) A Commission decision on the confidentiality of records pursuant to this section shall be based on whether the entity seeking to maintain the confidentiality of the record has met its burden of proof in demonstrating that confidentiality is warranted under the California Public Records Act, and that, considering all the facts and circumstances, the record should be kept confidential.

(c) If the Commission has already held a hearing pursuant to this section to determine the confidentiality of a Commission record, it need not hold an additional hearing on the confidentiality of that record unless the entity seeking the additional hearing has demonstrated that there is new information or changed circumstances that materially affects the Commission's previous determination.

(d) If the Commission determines, pursuant to this section, that a record is not entitled to confidentiality, the record that is the subject of the hearing shall not be available for inspection or copying for a period of fourteen days after such determination, unless disclosure is ordered by a court of competent jurisdiction.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25322 and 25366, Public Resources Code; and Bakersfield City School District v. Superior Court (2004) 118 Cal.App.4th 1041.

**§ 2509. Security of Confidential Records.**

The Executive Director is responsible for maintaining the security of confidential records and records determined by the Commission to be unavailable pursuant to Sections 2505 and 2506.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

**§ 2510. Delegation of Authority and Responsibilities.**

The Executive Director may delegate any of his or her authorities or responsibilities under this Article to any Division Chief.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.