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Investigative Reporter Wins Access to California Official's Calendar Entries

Court Rejects Governor Newsom's Deliberative Process & Correspondence Exemptions

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On March 5, 2024, Judge Shelleyanne W.L. Chang of the Superior Court for Sacramento, California issued a Final Ruling in a case under California's Public Records Act ("CPRA"), granting a Writ of Mandate that commands Governor Gavin Newsom to release the calendar entries of all meetings between his Cabinet Secretary and any representative of Pacific Gas & Electric ("PG&E") in May 2023. [Rittiman v. Newsome](#).

Factual Background to the Public Records Request & Litigation

In May 2023, PG&E, California's largest public utility company, faced criminal charges and civil sanctions before the California Public Utilities Commission ("CPUC") due to [PG&E's allegedly negligent failure to remove a dead tree that sparked the 2020 Zogg Fire](#). Four people were killed in the Zogg Fire. (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 that consumed more than 10,000 buildings and literally consumed the entire town of Paradise, California). 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. Needless to say, [victims of the Zogg Fire were not pleased](#).

One week after that settlement was announced, the Governor's Cabinet Secretary, Analea Patterson, appeared as an invited guest at PG&E's annual "Investor Day" at the company's conference center in San Ramon. At the event, Ms. Patterson described PG&E as the Governor's Office partner for a "whole variety of problems" including its outstanding work in "wildfire mitigation." Surviving family members of those who died in the Zogg Fire [expressed their displeasure](#) with Patterson's appearance at the PG&E shareholders meeting and her remarks there.

Rittiman's Request, the Governor's Denial, and the Lawsuit

On June 2, 2023, Brandon Rittiman, an investigative reporter at KXTV-TV/Channel 10 ("ABC10") in Sacramento, submitted a Public Records Act ("PRA") request to the Governor's Office in which he sought "[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." (Incidentally, in 2022, Rittiman and ABC10 received [a duPont-Columbia award](#) for their series of long-form investigative reports on the relationship between the Governor's Office, PG&E, and CPUC, entitled "[Fire – Power – Money](#).").

On June 12, 2023, the Governor's Office denied Rittiman's request, stating that the responsive records were exempt from disclosure as the "Governor's correspondence" and as records revealing the deliberative process of the Governor or his staff.

After a letter from ABC10's counsel urging reconsideration was rejected, Rittiman and ABC10 filed a petition for a writ of mandate against Governor Newsom. Prior to filing its Answer to the petition, the Governor's Office provided a single responsive calendar entry, showing Ms. Patterson's appearance at the PG&E "Investor's Day" event, stating it was a matter of public record:

May 24, 2023

Wednesday

May 2023						June 2023								
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	
	1	2	3	4	5	6		4	5	6	7	1	2	3
7	8	9	10	11	12	13		11	12	13	14	15	16	17
14	15	16	17	18	19	20		18	19	20	21	22	23	24
21	22	23	24	25	26	27		25	26	27	28	29	30	
28	29	30	31											

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PG&E Investor Day Discussion ; San Ramon Valley Conference Center (3301 Crow Car

Nevertheless, the Governor continued to withhold all other responsive records under the same two exemptions previously stated.

The Court's Ruling

The Court held a show cause hearing on March 1, 2024 and issued its [Final Ruling](#) on March 5, 2024. Judge Chang found that the deliberative process privilege did not apply to Ms. Patterson's calendar entries that Rittiman had sought because his request was narrowly limited in scope (one month, and only her meetings with one stakeholder) and there was a significant public interest in disclosure of those records that outweighed any countervailing interest in non-disclosure. The court's reasoning was detailed and well-supported by the record:

A. Applicability of the Deliberative Process Privilege Not Established

- Lack of Specificity in the Governor's Showing:** The Court was not persuaded by the Governor's generalized assertions about the purportedly inhibitory effects of disclosure on the deliberative process. The declaration filed by the Governor's Legal Counsel spoke only in broad, generic terms about the supposed need to not identify with whom the Governor, or his staff, speaks at any time; it did not demonstrate with specificity *how* the release of the *particular calendar entries at issue* would actually harm the deliberative process.
- Lack of Proof That The Records Reflected Predecisional or Confidential Communications:** The privilege asserted is designed to protect only predecisional deliberations, allowing officials to communicate candidly before policy decisions are made. However, the Court found that the Governor had not met his evidentiary burden to establish that the meetings in question were held to discuss the formulation of any then-pending legislation or governmental policy nor that revealing the information would hinder the Governor's ability to make policy decisions in the future. Nor had the Governor shown that the individuals from PG&E who had met with his Cabinet Secretary had an expectation of confidentiality.
- Narrow Scope of the Request:** Petitioners' request was narrow, which suggested that the disclosure of the calendar entries would not reveal a substantial amount of internal decision-making processes that the deliberative process privilege is intended to protect.
- Times Mirror Distinguished:** The Court rejected the Governor's assertion that *Times Mirror Co. v. Superior Ct.*, 53 Cal. 3d 1328 (1991) held, or even intimated, that the Governor's schedules, calendar entries, and similar records are *automatically exempt* from disclosure, in all cases; instead, that decision held that any such claim for assertion of the deliberative process privilege must be subject to a balancing test regarding the public interest.

And, in contrast to the ultimate finding in *Times Mirror* that the deliberative process privilege applied to the Governor's calendar entries at issue, here the request was limited only to a single employee's meetings with one company that occurred in only one month; in *Times Mirror*, by contrast, the requester sought *all employees'* calendar entries, covering *all meetings* in which they had participated in the prior *five years*.

B. No Showing that Need for Confidentiality "Clearly Outweighed" Public Interest in Disclosure

As CPRA's catch-all exemption requires, Judge Chang also weighed the public interest in disclosure against the public interest served by nondisclosure. In this case, the Court found that the public interest in understanding the Governor's interactions with PG&E representatives outweighed the asserted need for confidentiality. Judge Chang (who before being elevated to the bench had served as legal adviser to former Governor Gray Davis) found there is significant public interest in the public release of the calendar entries at issue:

- Specificity and Narrow Scope:** The narrow focus of the records request – limited to only one month of meetings with representatives from a single entity – indicated a clear and targeted public interest rather than a broad, unfocused inquiry, as was the case in *Times Mirror*.

Moreover, records requesters do not need to establish a particular interest in the requested set of records, only a general interest in being able to understand how government officials go about performing their public service.

2. **Timing and Relevance to Public Affairs:** Nevertheless, the context of the meetings at issue was especially relevant because they occurred in the same month that the CPUC agreed to a settlement with PG&E, which was \$140 million less than the initially sought fine. Additionally, the Cabinet Secretary’s cheerleading for PG&E at that company’s “Investor Day” event, just one week after the settlement was announced, further amplified public interest.
3. **Government Transparency:** There is a compelling public interest in understanding whether and how the Governor’s Office might have been involved with PG&E’s business matters, particularly in light of the company’s involvement in major public safety incidents such as the Camp and Zogg fires.

In conclusion, the court determined that the public interest in disclosure of the calendar entries was more compelling than any interest in nondisclosure based on the specific circumstances of the request and the context of the meetings.

C. Calendar Entries are Not “Correspondence”

The Court also ruled that the calendar entries of the Governor’s Cabinet Secretary did not fall with the “Governor’s Correspondence” exemption. The Court found that the requested records did not constitute “correspondence,” such as letters, emails or texts, because they were not communications that were sent to, or received by, the Governor’s Office.

The Court rejected the Governor’s argument that because the calendar entries were generated (via Microsoft Outlook) as a result of sending or receiving electronic invitations to schedule a meeting, the calendar entries, themselves constitute “correspondence.” Accepting that proposition would convert any writing in the Governor’s Office that resulted from an exchange of communications into “correspondence” and would convert a narrowly crafted exemption into a blanket exclusion of all documents in the Governor’s Office from the Public Records Act.

The Outcome

Having rejected both statutory grounds invoked by the Governor’s Office as the basis for his withholding the public records at issue, the Court ordered the Governor to disclose to Petitioners all of Ms. Patterson’s calendar entries for March 2023 showing any meeting(s) she had with any representatives of PG&E (after redacting any information identifying the PG&E representatives, as counsel had conceded at oral argument that information was not being sought).

Subsequent to the Court’s ruling, Governor Newsom provided ABC10 three additional calendar entries (beyond the one his office had previously disclosed) showing meetings between Ms. Patterson and PG&E representatives in May 2023. The Governor indicated he will not appeal Judge Chang’s ruling.

Steve Zansberg of Zansberg Beylkin LLC in Denver represented Brandon Rittiman and KXTV-TV/ABC10. Keith L Wurster of the California Office of Attorney General represented Governor Gavin Newsom.

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