

## DEPARTMENT 86 LAW AND MOTION RULINGS

---

**Case Number:** 20STCP00664    **Hearing Date:** May 12, 2021    **Dept:** 86

### **CONSUMER WATCHDOG v. CALIFORNIA DEPARTMENT OF INSURANCE**

Case Number: 20STCP00664

Hearing Date: May 12, 2021

#### **[Tentative] ORDER GRANTING RESPONDENT’S MOTION FOR PROTECTIVE ORDER AND/OR TO QUASH PETITIONER’S DEPOSITION NOTICES**

#### **ORDER GRANTING IN PART AND DENYING IN PART PETITIONER’S MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

---

Respondent, California Department of Insurance (the Department), moves for the issuance of a protective order and/or to quash deposition notices served by Petitioner, Consumer Watchdog. Through the notices Petitioner seeks to depose the Department’s persons most knowledgeable about certain subjects. Petitioner opposes the motion.

Petitioner moves for an order compelling the Department to provide further responses to its request for production of documents and special interrogatories. The Department opposes the motion.

Relief on each motion is granted. The court is not requiring the Department to produce any document it contends is exempt from disclosure. To the extent the Department contends the discovery sought requires such disclosure, to be clear, the court is making no such order.

Respondent’s objections to Exhibits A through C in Petitioner’s request for judicial notice (RJN) are sustained. The court overrules Respondent’s objections to Exhibits D-E and takes judicial notice of the existence and filing of Exhibits D-E only.

The Department’s evidentiary objections (motion) are sustained as follows: Objections 2, 10, 14, 20, 21 and 22. The objection to Exhibit 11 is sustained. The remaining objections (motion) are overruled.

The Department’s evidentiary objections (reply) are sustained as follows: Objections 7 and 8 are sustained. The remaining objections are overruled.

#### **APPLICABLE LAW – *Protective Order/Quash:***

“[A]ny party may obtain discovery [through the deposition of a party or a non-party] regarding any matter,

not privileged, that is relevant to the subject matter involved in the pending action.” (Code Civ. Proc. §§ 2017.010, 2025.010.)

Code of Civil Procedure section 2025.480, subdivision (a) provides:

“[i]f a deponent fails to answer any question or to produce any document, electronically stored information, or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production.”

Code of Civil Procedure section 2025.480, subdivision (b) provides that a motion to compel further answers or production of documents from a deponent “shall be made no later than 60 days after the completion of the record of the deposition.”

Conversely, “a party may also move for an order staying the taking of the deposition and quashing the deposition notice.” (Code Civ. Proc. § 2025.410, subd. (c).)

Similarly, “[b]efore, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order.” (Code Civ. Proc. § 2025.410, subd. (a).) “The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.” (*Id.* at subd. (b).)

#### **APPLICABLE LAW – *Compel Further*:**

A discovery response may be inadequate because it is evasive or incomplete; contains an incomplete statement of compliance; an inadequate, incomplete, or evasive representation of inability to comply; or meritless or overly general objections to a demand.

If a demanding party believes the responding party responded inadequately, the demanding party may move for an order compelling further response. (Code Civ. Proc. §§ 2031.310, subd. (a), 2030.300.)

#### **ANALYSIS**

This action concerns two requests under California’s Public Records Act (CPRA): (1) a June 4, 2019 request as revised on July 23, 2019 (the Revised July 23, 2019 CPRA Request); and 2) a July 19, 2019 Request (the July 19, 2019 CPRA Request). (Pet., ¶¶ 22, 29, 33.)

Through the Revised July 23, 2019 CPRA Request Petitioner seeks appointment calendars and similar records relating to meetings or phone calls between Commissioner Ricardo Lara or his representatives and individuals and entities from January 7, 2019 to the present. (Pet., Ex. 7.)

In response to the CPRA request, the Department produced non-exempt records to Petitioner on August 31, 2019 and again on September 4, 2019 (by CD format and PDF format respectively), which included calendar entries of meetings involving the Commissioner. (De Guzman Decl., ¶¶ 16, 18; Dept.’s Index of

Exhibits in Supp. of Mot. for Protective Order and/or to Quash Depo. Notices (Index), Exs. F, pp. 62-65, G, pp. 67-68; Pet., Ex. 18.) The Department included several records relating to the Commissioner's meetings with the individuals and/or entities identified in the requests, including from Ms. Roberta Potter. (Pet., Ex. 18.)

The July 19, 2019 CPRA sought emails or any other communications between Commissioner Lara or his representatives and the same individuals and entities as identified in the Revised July 23, 2019 CPRA request. (Pet., Ex. 9.) The Department responded to the request and produced non-exempt records to Petitioner on September 16, 2019 in a PDF format. (De Guzman Decl., ¶¶ 17, 18; Pet., Ex. 10.)

In response to the July 19, 2019 CPRA request, the Department withheld approximately 100 records. The records withheld relate to the Form A application, the multi-state examination, an annual review of the California Insurance Company (CIC) by the Department that occurred between January and March of 2019, and the declaration of a dividend by CIC. (Index, Ex. A, pp. 04-06; Lor Decl., ¶ 6.)

The Department<sup>[1]</sup> claims that the information contained in or related to the records at issue here are subject to insurance regulation, and that the information is confidential and absolutely protected from disclosure under Government Code section 6254, subdivision (d). (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1044 [Gov. Code § 6254, subd. (d), is a “specific statutory exemption[] from disclosure”]; Gov. Code § 6254, subd. (d) [exempting, among other items, records “contained in or related” to examinations conducted by state agencies, applications filed by insurers, and any information received in confidence by the agency].) The Department also asserts the records at issue are exempt from disclosure under Insurance Code sections 735.5, 1215.8, 12919 and Evidence Code section 1040, subdivision (b), which are made applicable to the CPRA through Government Code section 6254, subdivision (k).

Petitioner initiated its action on February 18, 2020. Petitioner seeks a writ of mandate commanding the Department to produce copies of "all non-privileged, non exempted public records," the Department withheld in response to its two CPRA requests including Commissioner Lara's calendar in its native format. (Pet., Prayer for Relief, ¶ 1.)

In the lawsuit Petitioner specifically alleged the Department had not produced a number of responsive, disclosable records and should be required to search for and produce them. (See Pet., ¶ 9 [“the production was grossly inadequate and failed to uphold [Respondents’] duties under the PRA”]; Pet., ¶ 10 [“Based on the records that were turned over . . . it appears that many additional communications between Commissioner Lara and insurance company representatives have been withheld”]; Pet., ¶ 46 [“The records . . . produced, when viewed in conjunction with other publicly available information, give rise to a number of concerning issues that bolster Consumer Watchdog’s assertions that the withheld documents and records are of significant public interest”]; Pet., ¶ 51 [Respondent produced no responsive emails and only a single text message from Commissioner Lara]; Pet., ¶ 61 [alleging Respondents have a duty “to promptly search for and produce all nonprivileged, non-exempted public records requested” in the CPRA Requests].)

As a preliminary matter, while discovery is available in actions brought under the CPRA, “the right to discovery nonetheless ‘remains subject to the trial court’s authority to manage [and limit] discovery’ as

required. [Citations.]” (*City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272, 288, 291.) The “narrow issue” to resolved in a CPRA case is “whether a public agency has an obligation to disclose the records that the petitioner has requested.” (*Id.* at 285.)

While “many CPRA cases are likely to involve questions of law based on undisputed facts (including, for example, whether a particular type of record is subject to a disclosure exemption), other cases will require the court to make factual findings based on conflicting evidence.” (*Id.* at 289.) “In some such cases, discovery may be necessary to test the agency’s assertion that it does not have an obligation to disclose the records at issue.” (*Ibid.*) When a party seeks to compel discovery, the “trial court must determine whether the discovery sought is necessary to resolve whether the agency has a duty to disclose, and to additionally consider whether the request is justified given the need for an expeditious resolution.” (*Ibid.*)

The court also “has discretion to consider whether the petitioner has made an adequate showing that the discovery is likely to aid in the resolution of the particular issues presented in the hearing.” (*Id.* at 290.)

Accordingly, the issue before the court on these discovery motions—in terms of relevance—is whether the discovery sought by Petitioner will aid in determining whether the Respondent legitimately redacted and/or withheld records from disclosure under the CPRA.

#### **Motion for a Protective Order:**

The Department’s motion for protective order addresses three deposition notices:

(1) Petitioner’s Notice of Deposition of Persons Most Knowledgeable served on October 20, 2020 (First PMK Notice), (2) Notice of Deposition of Persons Most Knowledgeable served on February 11, 2021 (Second PMK Notice), and (3) Notice of Deposition of Roberta Potter<sup>[2]</sup> served on February 11, 2021 (Third PMK Notice).

Given the court’s authority to manage discovery considering the narrow issues involved in a CPRA case, the court finds a protective order is warranted here.

The court finds the discussion in *Liberty Mutual Ins. Co. v. Superior Court* (1992) 10 Cal.App.4th 1282 instructive here even though the case focuses upon “apex” depositions. Petitioner’s decision to seek the depositions of the Department personnel—even of a PMK—before less intrusive discovery has been conducted raises a “tremendous potential for discovery abuse and harassment.” (*Liberty Mutual Ins. Co. v. Superior Court, supra*, 10 Cal.App.4th at 1287.)

Further, the court briefly address the substance of the PMK Notices.

The First PMK Notice requests the Department produce a PMK to testify about 13 matters: the Department’s response to Consumer Watchdog’s written discovery (No. 1); the Department’s practices and policies relating to CPRA requests (Nos. 2, 3); internal and external email systems (No. 4) and paper and electronic document systems used by the Department and its employees (No. 5); the Department’s records search (No. 6); the Department’s external communications concerning the two CPRA requests (No. 7); how the Department maintains and keeps the Commissioner’s calendar (No. 8); the Master Calendar (Nos. 9, 10); the Department’s response to the CPRA requests (Nos. 11, 12); and the

Department's internal communication relating to the CPRA requests (No. 13). (Index, Ex. C, pp. 39-45.)

The Second PMK Notice requests the Department produce a PMK to testify about 4 matters: "communications and documents" related to meetings between Commissioner Lara (Nos. 1, 3) or any Department personnel (Nos. 2, 4) and 30 individuals and entities identified by Petitioner, 17 of whom are also identified by Petitioner in its two CPRA requests.

Petitioner directed the Third PMK Notice to Roberta Potter. (Index, Ex. E.)

The court notes many of the deposition topics may be resolved or clarified by less intrusive and less burdensome discovery means, including the document demands and interrogatories at issue in Petitioner's motion to compel further. Nearly all of the topics are or can be the subject to written discovery. The necessity of the depositions at this point in the litigation is not entirely clear based on other outstanding discovery. Additionally, some of the topics appear not necessary to resolve the issue of whether Respondent has an obligation to disclose certain documents.

The court finds the deposition notices are premature. The court finds quashing the notices without prejudice to renewed notices to the extent necessary based on written discovery responses is appropriate. Thus, while the court does not permit the depositions to go forward at this time, depositions of person most knowledgeable may be appropriate after Respondent has made a fulsome response to other less intrusive discovery.

**Motion to Compel Further Responses:**

[The court requests the Department verify the total number of documents it withheld is as described in the Declaration of Chao Lor. It appears the universe of withheld documents consists of "attachments from an exit meeting between Department personnel and CIC concerning [the multi-state examination]" plus 66 other documents related to the examination, two records related to the annual examination of CIC, 30 records related to CIC Form A, and four records related to CIC's dividend declaration.]

Petitioner seeks to compel further responses to Request for Production of Documents (Set One) Nos. 3, 10, 11 and Special Interrogatories (Set One) Nos. 1-6, 10-12.

*1. Request for Production of Documents (RFP): [3]*

**RFP No. 3:** ALL COMMUNICATIONS between YOU and any PERSON CONCERNING the PRA REQUESTS.

This request is relevant and sufficiently unambiguous for Respondent to provide a response. The court agrees the Department's objections appear to be boilerplate. To the extent the Department contends these objections apply such that no documents can be produced, the court is inclined to require a privilege log be prepared containing adequate information to justify the Department's use of the privilege. Moreover, the court disagrees with the Department's position it does not have to state whether it has any responsive documents for the request. The Department has raised objections presumably based on

documents it has—if it has no responsive documents than the Department’s objections to production would be disingenuous. That is, to raise an attorney-client privilege objection when no such documents exist would be entirely meritless leading to a waste of judicial resources to resolve a non-existent dispute.

The court orders a further response to this demand.

**RFP NO. 10:** ALL CDI COMMUNICATIONS from January 7, 2019 to the present discussing how to respond to requests for information CONCERNING Ricardo Lara’s agenda or calendar.

Petitioner argues this request is relevant as to whether the Department undertook an adequate search for responsive documents because it explains how the Department processed Petitioner’s CPRA request. In response the Department argues Petitioner does not challenge the Department’s search for records in its writ petition, so this discovery is irrelevant and should be disallowed. (See generally, Pet., ¶¶ 1- 65.) Even if such a challenge was not specifically raised by the Petitioner, the court nonetheless finds the discovery request falls within the scope of relevant CPRA discovery and is therefore relevant. The discovery relates to the manner in which the agency processed its CPRA request.

Petitioner also asserts Request No. 10 is relevant because it “may” identify “critical witnesses within the Department.” While the Department suggests that such discovery is not relevant because—as stated in response to Request No. 13—no witnesses instructed or advised the Department on how to respond to the CPRA, the Department cannot conclude—and expect Petitioner to accept—it has not been influenced and therefore no documents related to this request are relevant.

The court orders a further response to this demand.

**RFP No. 11:** All CDI COMMUNICATIONS from January 7, 2019 to the present discussing how to respond to requests for information CONCERNING Ricardo Lara’s internal or external communications with other PERSONS.

The court finds the demand overbroad as it does not specifically pertain to Petitioner’s CPRA requests. Thus, a response to the request would likely include irrelevant information.

*1. Special Interrogatories:*

**Interrogatory No. 1:** IDENTIFY ALL records identified by YOU as responsive to the PRA REQUESTS.

**Interrogatory No. 2:** For each record listed in response to Interrogatory No. 1 that YOU contend is not a public record subject to disclosure, is exempt from disclosure, or may be redacted, list ALL privileges or California Public Records Act exemptions which YOU contend are applicable to the record.

**Interrogatory No. 3:** For each record listed in response to Interrogatory No. 2, list all facts on which YOU base YOUR contention.

**Interrogatory No. 4:** For each record listed in response to Interrogatory No. 2, IDENTIFY the author of the record.

**Interrogatory No. 5:** For each record listed in response to Interrogatory No. 2, IDENTIFY any PERSON outside of CDI to whom that record has been disclosed.

In addition to objecting to the interrogatories, the Department responded that did not locate any responsive documents that were not public records, although some records were either exempt from disclosure, privileged, or subject to redaction. The Department then continued by identifying the documents withheld and the things redacted.

Petitioner argues Special Interrogatories Nos. 1-5 seek to identify the legal and factual basis for withholding or redacting records responsive to Petitioner's CPRA requests, as well as other information about the records. That is, these interrogatories seek information equivalent to what would be provided in a privilege log.

The Department argues these interrogatories are outside the scope of permissible CPRA discovery. Moreover, the Department notes that there are limits to what may be disclosed in an index. (See *Labor & Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12, 17 [explaining in CPRA case trial court erred "in requiring disclosure of matters protected by the deliberative process and attorney work product privileges"].)

The court finds the Department failed to provide an adequate response to these interrogatories. Moreover, these interrogatories do not seek information that would necessarily violate any of the protections within the privileges or exemptions. Responses and/or redactions could be crafted to avoid any disclosure of privileged information.

Petitioner is entitled to discovery to determine whether the Department's assertion of privileges and exemptions is proper. The information sought will assist Petitioner in preparing the case for trial and addresses whether Respondent properly withheld documents or made redactions.

The court orders a further response to this interrogatory.

**Interrogatory No. 6:** IDENTIFY ALL COMMUNICATIONS between YOU and any PERSON REGARDING the PRA REQUESTS.

The Department argues this interrogatory does not seek CPRA relevant information, is overbroad, and subject to privilege and exemptions. The court finds this information is relevant to the CPRA petition as it is tied directly to Petitioner's CPRA requests. To the extent the Department believes privilege and exemptions apply, the Department shall identify the communications that are subject to these protections.

The court orders a further response to this demand.

**Interrogatory No. 10:** IDENTIFY everything that YOU did to search for records responsive to the PRA REQUESTS.

**Interrogatory No. 11:** IDENTIFY everything that YOU did to review records responsive to the PRA REQUESTS.

These interrogatories request the Department describe everything it did to "search for" and "review

records responsive to” the CPRA Requests.

In response to the interrogatories, the Department stated:

“Upon receipt of Petitioner’s PRA Requests and after working with Petitioner to narrow some of the requests, legal analysts in the Government Law Bureau forwarded a copy of the requests to Department staff in various branches or offices most likely to have responsive records or have access to responsive records based on the subject matters of the requests. Department staff were asked to conduct a search of their records and forward all responsive records to the legal analysts for review. A legal analyst also worked with the Department’s Information Technology (“IT”) office to conduct a search of all electronically stored information (“ESI”) that may be responsive to the requests. The legal analyst provided IT staff with a list of department staff names in various branches or offices and a list of ESI search terms to use when conducting the searches.”

Petitioner argues the department was required to provide the search terms used—which was critical to Petitioner’s case. Based on these omissions, the court finds a further response by the Department to be warranted. The information provides is not “everything” done to search. The information will assist Petitioner in understanding the nature of the Department’s search in the context of Petitioner’s CPRA requests.

**Interrogatory No. 12:** IDENTIFY and describe the system, protocol, or procedures used by YOU to maintain Commissioner Ricardo Lara’s agenda or calendar in the ordinary course of business.

The Department response to the interrogatory provides a general overview of how matters are placed and maintained on Commissioner Lara’s official calendar.

Petitioner argues “[i]nformation about how Respondents determined which calendar entries to summarize in the ‘master calendar’ is relevant to determining whether Respondents have identified all responsive records. Additional information about the ‘protocol or procedures’ Respondents employ to track and record items in calendars will shed light on whether the search for responsive records was adequate both in terms of search terms used and the search protocol.” (Sep. Statement)

The court finds the Department’s response adequate. Petitioner’s good cause justification exceeds the scope of the interrogatory as drafted. Petitioner’s request for a further response is denied.

## **CONCLUSION**

The motion for protective order is granted. The notices are quashed. Renewal of any deposition notices shall be after written discovery is sufficiently completed such that the necessity of such depositions is apparent.

The motion to compel further is granted in part. Further responses shall be provided within 21 days.

**IT IS SO ORDERED.**

May 12, 2020

---

Hon. Mitchell Beckloff  
Judge of the Superior Court

---

[1] The Department is charged with regulating the business of insurance through, among other things, multi-state or annual examinations, restricting the acquisition or control of domestic insurers, and receipt of notice of a declaration of dividends. (Ins. Code, §§ 730, 1215.2, 1215.4, subd. (f).)

[2] Petitioner argues that testimony from Scheduling Director Roberta Potter is necessary to establish Respondents' search for responsive records was inadequate, that meetings not yet identified occurred, and that records relating to meetings which have been identified were not disclosed.

[3] The discovery's references to "CDI" refers to the Department.

---