

From: [Ralph Kanz](#)
To: [Ethics Public Comment](#)
Subject: Enforcement Complaint #24-17
Date: Sunday, October 6, 2024 7:48:38 PM
Attachments: [PEC 24-17 Notice of Dismissal 06.28.2024.pdf](#)

Attached is the dismissal letter regarding Complaint 24-17. To date the PEC has not been provided a copy of this dismissal letter, only my response which I sent in July of this year. First the City Charter section 603(f)(2) is clear; "Final enforcement action by the Commission on a matter, including but not limited to the imposition of fines or dismissal of a case, shall be made by an affirmative vote of at least four members" Staff does not have the authority to dismiss a complaint. Below is my response the the letter:

The Public Ethics Commission (PEC) staff report argues for dismissal of the complaint due to "insufficient evidence of a violation." This conclusion is based on an incomplete knowledge of the facts and ignores the intent of the Oakland Sunshine Ordinance, the Brown Act and the California Public Records Act.

In April 2004 the Public Ethics Commission (PEC) held a hearing in the matter of the Grinage complaint. I was a member of the PEC at the time. The Grinage complaint resulted from then Mayor Jerry Brown appearing at a City Council Committee hearing and waving around documents to influence the decision of the Committee. Rashida Grinage filed the complaint based upon the materials Jerry Brown presented not being included in the agenda packet for the meeting. After a four hour hearing the PEC determined that a violation of the Sunshine Ordinance had not occurred because the law as written at the time did not apply to the Mayor. As a result then City Attorney John Russo brought forward legislation that the City Council approved amending the Sunshine Ordinance to include materials provided by the Mayor as agenda related and needing to be included in the agenda packet for a meeting.

At the May 14, 2024 Public Safety Committee hearing Michael Hunt stated, "We have ample email correspondence with the California Department of Fish and Wildlife. Those items I'd be happy to bring – any references to those I'd be happy to clarify during the Council presentation." There was a hesitation as he said this because it was clear to me that he did not want the actual emails to be disclosed. I emailed Michael Hunt on May 15, 2024 asking for the California Department of Fish and Wildlife (CDFW) emails related to the Environmental Impact Report (EIR) for the Vegetation Management Plan (VMP) and he did not respond. The email stated "Please send me the correspondence with CDFW regarding the VMP EIR." I emailed Hunt again on May 17, 2024 after the staff report for the City Council meeting had been posted again asking him for the correspondence from CDFW. Hunt did not respond until May 21, 2024 at 3:46 pm, after the City Council

meeting had commenced stating, “Good afternoon, the supplemental report is in the agenda packet.”

On May 17, 2024 I made Records Request #24-5487 to the Fire Department (OFD) asking for “correspondence with the California Department of Fish and Wildlife and the United States Fish and Wildlife Service.” OFD replied on May 22, 2024 stating, “[t]he City has no records responsive to this request.” OFD also closed the request. I emailed in response saying there were responsive records and OFD produced the emails the next day. As these emails show, on May 14 OFD was still communicating with CDFW to see if there were any concerns about the EIR. The records produced also bring into question Mr. Hunt’s claim of “ample email correspondence” with CDFW. The emails contradict staff statements about correspondence with CDFW and therefore were not included with the staff report for the City Council and public to review. Just like Jerry Brown, Michael Hunt was waving around emails to try to influence a decision of the City Council, but not providing them in the agenda packet for everyone to review. Instead he provided his summary of the email correspondence filtered to support approval by the City Council.

Article 1, Section 3 of the California Constitution declares in part:

(b) (1) The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

Further the Public Records Act section 7922.530(a) states in part, “each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person...”

The Oakland Sunshine Ordinance states in section 2.20.010 - *Findings and purpose.*

The Oakland City Council finds and declares:

A. A government's duty is to serve the public and in reaching its decisions to accommodate those who wish to obtain information about or participate in

the process.

B. Commissions, boards, councils, advisory bodies and other agencies of the city exist to conduct the people's business. This chapter is intended to assure that their deliberations and that the city's operations are open to the public.

C. This chapter is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the city of Oakland can be fully informed and thereby retain control over the instruments of local government in their city.

The Brown Act, the Public Records Act (PRA), and the Sunshine Ordinance must be construed liberally in favor of openness in conducting public business. The California Constitution guarantees “public access to the meetings of public bodies.” The Brown Act promotes that guarantee by establishing minimum standards of public access at the local level. Under the Constitution, each of those standards “shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” Mr. Hunt was happy to bring those items and just like Jerry Brown wave them in front of the Committee, but not produce them for the public to inspect. I asked him for copies of those emails repeatedly, and despite the CPRA requirement that the agency, “shall make the records promptly available” the records were not produced until after the meeting in question. “[T]he Brown Act “sunshine law” is construed liberally in favor of openness in conducting public business.” (98 Cal.Ops.Atty.Gen.41 (2015).)

The politics of this complaint are clear. PEC staff has been lobbying the City Council for additional funds to staff the Commission. The EIR that is the subject of the complaint was rushed through the process because the City needs a certified EIR to place a measure on the ballot for a Wildfire Prevention Zone Special Tax. The City Council approved the tax measure at the June 26, 2024 meeting.

For political reasons the PEC staff does not want to upset the City Council by finding a violation of the Sunshine Ordinance. Violations of the Sunshine Ordinance, the Brown Act and the Public Records Act occurred in this matter. The only solution is for the City Council to cure and correct the violation.

Not only is this a violation of the Brown Act, it is also a violation of the PRA by failing to make the emails promptly available, which is proven by the less than 24 hour response to the records request I made.

Based upon the facts and the law this complaint should not be dismissed. The City Council must cure and correct this issue. Without a cure and correct the PEC should hold a hearing on this matter.

Ralph Kanz



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June 28, 2024

Ralph Kanz
[REDACTED]
[REDACTED]

Via email: [REDACTED]

Re: Notice of City of Oakland Public Ethics Commission Complaint no. 24-17

To Ralph Kanz:

The City of Oakland Public Ethics Commission (PEC) received your complaint (# 24-17) alleging that Michael Hunt and/or the Oakland Fire Department (OFD) violated the City's Sunshine Ordinance when it failed to include copies of emails from the California Department of Fish and Wildlife (CDFW) in the agenda related materials for the May 21, 2024 City Council meeting

After reviewing your complaint and the available evidence, we are dismissing your complaint for insufficient evidence of a violation.

The Law

The Sunshine Ordinance requires that for a meeting of the City Council or any of its standing committees, the agenda must be posted in advance of the meeting (ten days for a regular meeting, two days for a special meeting), among other requirements not relevant here.¹

The agenda may refer to explanatory documents, including but not limited to, correspondence or reports, in the agenda-related material.² "Agenda-related materials" means (among other things not relevant here) the agenda, all reports, and correspondence or other document prepared and forwarded by staff to any local body which provide

¹ OMC § 2.20.070(A)(1) (special meeting), 2.20.080(A)(1) (regular meeting).

² OMC § 2.20.030(A).

background information or recommendations concerning the subject matter of any agenda item.³

For a regular meeting, a posted agenda may be supplemented no later than seventy-two hours before the meeting to (among other things not relevant here) provide additional information to supplement the agenda-related material provided that the additional information was not known to staff or considered to be relevant at the time the agenda-related materials were filed. Examples of supplemental material permitted here are reports responding to questions or requests raised by members of the Council after posting and filing of the agenda and materials.⁴

The Facts

Here, your complaint refers a supplemental report from OFD staff to the City Council dated May 16, 2024 (accompanying item S10 of the May 21, 2024, City Council agenda), which states in relevant part:

This information is provided in response to a May 14, 2024, request from the Public Safety Committee for additional information on whether the City engaged with State agencies, specifically the California Department of Fish and Wildlife (CDFW) during development of the Vegetation Management Plan.

- Notice of Preparation (NOP) of an Environmental Impact Report (EIR) was sent to CDFW by the State Clearinghouse on 11/1/2019. No comments were submitted on the NOP by CDFW.
- CDFW received a copy of the Draft EIR from the State Clearinghouse (11/25/20) and submitted no comments.
- CDFW received a copy of the Recirculated Draft EIR from the State Clearinghouse (9/20/23) and submitted a comment letter on 10/31/23 with requested revisions to VMP mitigation measures relating to impacts on special-status plant and wildlife species.

³ OMC § 2.20.030(B).

⁴ OMC § 2.20.090(B)(3).

- Many of the requested revisions from CDFW were incorporated into the text and comments were responded to in the Final EIR (5/3/24).
- Responses to comments were provided to CDFW, and CDFW provided additional recommendations regarding Mitigation Measure BIO-8 relating to western pond turtle and California red-legged frog.

Comment from California Department of Fish and Wildlife:

“CDFW recommends consulting with U.S. Fish and Wildlife Service to determine proper permitting for relocation of an ESA-listed species and including language to contact CDFW if project activities will result in the need to relocate California red-legged frog or western pond turtle.”

The Public Safety Committee meeting referenced above took place on May 14.⁵ The following is what took place during that meeting concerning the disclosure of correspondence between OFD and CDFW:

The vegetation management plan was Item 5 on the agenda. The item was presented by Michael Hunt (spokesperson for OFD).

At (1:01:00) you gave public comment to the effect that City staff are required under CEQA to consult with CDFW on a draft EIR; and that in a response to a letter you sent staff, staff admitted they had not consulted with CDFW.

At (1:24:30) CM Fife asked about the issue of communicating with CDFW, saying in part, “Is there any information that Fire Department has from California Fish and Wildlife that could support this item or the direction that staff is recommending that could be shared with the Council – the committee?” Hunt confirmed that staff had email correspondence with CDFW, stating in part: “We have ample email correspondence with the California Department of Fish and Wildlife. Those items I’d be happy to bring – any references to those I’d be happy to clarify during the Council presentation.”

At (1:25:50) CM Kaplan asked staff if they will have enough time to “gather the requested follow-up information” to which they respond in the affirmative.

⁵ Video available at https://oakland.granicus.com/player/clip/6123?view_id=2&redirect=true

At (1:26:30) CM Kaplan prepared a resolution for vote to place the item on the Council’s non-consent agenda “with the supplemental information described.”

At (1:27:00) the committee voted (4-0) to bring to bring the item to the full Council with the following relevant language: “Staff’s going to provide the supplemental information regarding the communication with the named state agencies.”

Analysis

The Council meeting of May 21, 2024, was a special meeting. Therefore we must apply the Sunshine Ordinance rules concerning the agenda for a special meeting (§ 2.20.070), which do not include the rule concerning supplementation of an agenda you cited as being violated (§ 2.20.080(B)(3)). There is nothing to indicate that the meeting was not properly noticed two days in advance, and the supplemental report is dated May 16, which is five days before the meeting.

Your allegation is that the agenda-related materials were deficient in that they did not include OFD’s raw correspondence with CDFW. However, the requirement in the definition of “agenda-related materials” regarding correspondence refers to staff correspondence with *the local body* (here, the Council) describing or explaining the agenda item in a manner analogous to, or in lieu of, a staff report -- not ordinary correspondence with outside parties such as CDFW. There is therefore no legal requirement in the Sunshine Ordinance that OFD include its raw correspondence with CDFW in the agenda-related materials. The supplemental report submitted by OFD summarized its correspondence with CDFW, which is permissible.

Even if we were to apply the rules concerning regular meetings to the May 21 Council meeting, there would still not be a violation. § 2.20.080(B)(3) is a rule concerning the time-period allowed for supplementing an existing agenda item or report after the initial posting date. It is not concerned with the alleged accuracy or completeness of the supplementary materials, which is the allegation you are making. It is therefore inapplicable to your complaint.

Moreover, there is nothing in the record of the May 14 Public Safety Committee meeting to indicate that OFD was directed to provide its raw correspondence with CDFW to the Council. The direction given by the committee was for “information” concerning their correspondence with DFW, not the raw correspondence itself:

At (1:24:30) CM Fife asks about the issue of communicating with DFW, saying part, “Is there **any information** that Fire Department has from California Fish and Wildlife that could support this item or the direction that staff is recommending that could be shared with the Council – the committee?” Hunt confirms that staff had email correspondence with DFW, stating in part: “We have ample email correspondence with the California Department of Fish and Wildlife. Those items I’d be happy to bring – any references to those I’d be happy to clarify during the Council presentation.”
(emphasis added)

At (1:25:50) CM Kaplan asks staff if they will have enough time to “gather the requested **follow-up information**” to which they respond in the affirmative.
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At (1:26:30) CM Kaplan prepares a resolution for vote to place the item on the Council’s non-consent agenda “with the **supplemental information** described.”
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At (1:27:00) the committee voted (4-0) to bring to bring the item to the full Council with the following relevant language: “Staff’s going to provide the **supplemental information regarding the communication** with the named state agencies.”
(emphasis added)

In its supplemental report of May 16, OFD provided a summary of its correspondence with DFW, which satisfies the committee’s request for “information” concerning that correspondence.

As there was no violation of the Sunshine Ordinance under these facts, we are dismissing your complaint.

Respectfully,



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