



Item 8 - Executive Director's Report

Ryan Mott, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: May 29, 2024, for the June 12, 2024 meeting
RE: Executive Director's Report

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities not included in other program reports since the last regular meeting. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2023-24 for each program area.

Budget

On May 24, 2024, Mayor Thao released her Proposed Midcycle Budget. The proposed budget makes four reductions to the PEC, which will negatively affect the PEC's programs and services:

- **Eliminate all funding for the Limited Public Financing Program (LPF) for 2024.** This change will cancel the LPF for 2024. If adopted, this would be the first election cycle in two decades in which no public financing was provided to candidates running for District Office. Cancelling the Program will also remove restrictions on maximum campaign expenditures and candidate self-financing that candidates participating in the LPF Program must agree to.
- **Reduces Democracy Dollars startup funding by \$97,790.** This change will reduce the amount of funds the PEC has to build the software platform that is necessary to implement the Democracy Dollars Program, from \$525,000 to \$427,210. PEC staff intends to move forward with the start-up funds available to build a database to distribute and process vouchers; however, staff believes a platform that includes a well-designed, accessible portal for residents and candidates should be available for program launch and is continuing to advocate for restoration of these funds to ensure a robust public portal.
- **Eliminates \$50,000 used for Measure W candidate education.** With this reduction, the Ethics Commission will not have any dedicated funds for candidate education and compliance in an election year when new campaign finance rules adopted by Measure W (2022), including new contribution limits and social media disclosure requirements, will first go into effect.
- **Eliminates \$38,121 in carried forward funds for election services.** In the 2019-2021 Budget, the City Council appropriated \$100,000 to the PEC for election-related expenses, with unexpended funds being carried forward each subsequent budget cycle. The PEC uses this fund to meet urgent election-related Program needs that exceed the PEC's staff capacity or O&M funding, which may include hiring temporary investigators or contracting for an Administrative Law Judge (ALJ). Eliminating this

funding may negatively impact the PEC's ability to investigate and prosecute cases, further contributing to its significant enforcement case backlog.

PEC staff will request that the City Council restore the cut funding, particularly to Democracy Dollars startup funding and the LPF Program. In addition, PEC staff continue to push for the PEC's priorities of adding one Ethics Analyst II to assist with the roll-out of the Democracy Dollars Program and to add enforcement staff to address the Commission's case backlog.

Measure W

Staffing – Fifty-four candidates applied for the grant-funded limited duration Democracy Dollars Community Engagement Specialist position. In May, staff completed interviews and anticipates concluding recruitment by June and onboarding the new analyst in July.

Administrative Processes and Technology – On May 28, 2024, PEC Staff presented before the City Council's Finance Committee a Resolution authorization the City Administrator to enter into a contract with MapLight not to exceed \$700,000 over five years for the development of the software platform necessary to administer the Democracy Dollars Program. The Finance Committee voted 4-0 to advance the Resolution to the full City Council at its June 18, 2024, meeting.

In addition, staff met with the Alameda County Registrar of Voters in May to begin a discussion of services required for Democracy Dollars program administration, such as regularly updated voter file data and signature verification.

PEC Charter Amendment Proposal

On May 30, 2024, Chair Micik and PEC Staff presented before the City Council's Rules Committee a Resolution which would place the PEC's proposed Charter and Oakland Municipal Code amendments on the November 2024 ballot. The Rules Committee voted to have the item return to Rules Committee.

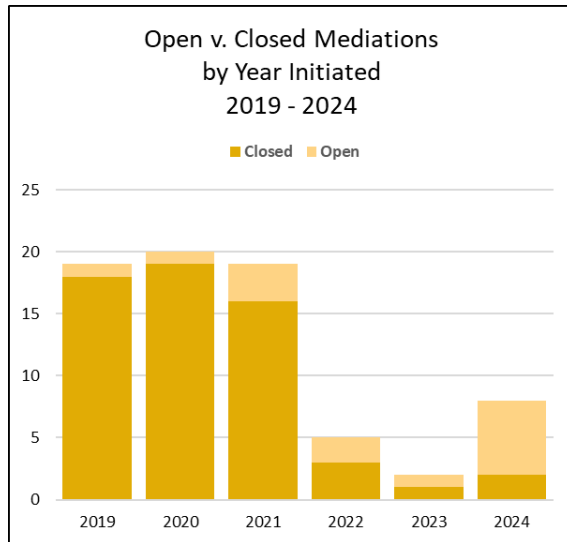
Mediation Program

Pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department's control. The PEC currently has 14 open mediations, down from 16 as of the last Commission meeting.

Seven mediations were conducted by staff and subsequently closed since the last Commission meeting. The following mediation summaries are attached:

1. *In the Matter of the City Administrator's Office, Mayor's Office, Finance Department, and Planning and Building Department (Case Nos. M2020-19 and M2021-05)*

2. *In the Matter of the Planning and Building Department (Case No. M2021-09)*
3. *In the Matter of the City Council, Fire Department, and Planning and Building Department (Case No. M2021-16)*
4. *In the Matter of Oakland Public Works and the City Clerk (Case No. M2023-01)*
5. *In the Matter of the Oakland Police Department (Case No. M2024-03)*
6. *In the Matter of the City Administrator and the Office of the Mayor (Case No. M2024-04)*



Additional Attachment: Commission Programs and Priorities.

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PUBLIC ETHICS COMMISSION

Programs and Priorities 2023/24 (*new additions in bold*)

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity, and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ul style="list-style-type: none"> ○ Lead Measure W implementation ○ Engage in review of laws PEC enforces 	<ul style="list-style-type: none"> ✓ Lobby Registration Act amendment to incorporate new fees and waiver policy ✓ Ordinance for one-time LPF for 2024 elections ○ Voter Guide Pilot – may be delayed ✓ Mayor Salary Setting Guidance ✓ Charter Review Options ○ Policy Review: Lobbyist Registration Act– may be delayed ✓ Ethics Commission Network ✓ Invite Department Presentations on Records Request Responses
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ul style="list-style-type: none"> • Regular ethics training • Information, advice, and technical assistance • Targeted communications to regulated communities • New trainings as needed for diversion 	<ul style="list-style-type: none"> ○ Collaboration with Clerk and HR on process improvements for ethics onboarding/exit and Form 700 compliance ✓ Public Records training
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ul style="list-style-type: none"> • Public Records mediations • Commissioner-led public outreach • Outreach to client groups – targeted training and compliance • PEC social media outreach 	<ul style="list-style-type: none"> ○ Update guides and trainings to reflect OCRA, <u>LPF</u>, and LRA changes ✓ Update public and stakeholders on Democracy Dollar postponement ✓ Update Lobbyist Registration Act educational materials and share with Council ✓ Recruit for PEC vacancy ✓ Publicize Enforcement Needs ○ Publicize PEC campaign finance tools

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Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
				<ul style="list-style-type: none"> ○ Publicize how to file complaints
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ul style="list-style-type: none"> ● Monitor compliance (campaign finance/lobbyist/ticket use) ● Proactive engagement with filers ● Technical assistance ● Assess late fees/refer non-filers for enforcement ● Maintain data assets 	<ul style="list-style-type: none"> ○ Democracy Dollars admin system development/seek authorization to hire a vendor/enter into contract ○ Updates to Ticket Distribution (Form 802) database ✓ Lobbyist App Updates ○ Public Records Performance Dashboard ○ Update Open Disclosure 2024 ✓ Update Show Me The Money ○ Digitize Schedule O Form
Detect/ Deter	<p>PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction.</p>	<p>Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.</p>	<ul style="list-style-type: none"> ● Process and investigate complaints ● Initiate proactive cases ● Collaborate/coordinate with other government law enforcement agencies 	<ul style="list-style-type: none"> ○ Digital complaint form/ mediation request ✓ Improve Enforcement database
Prosecute	<p>Enforcement is swift, fair, consistent, and effective.</p>	<p>Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.</p>	<ul style="list-style-type: none"> ● Prioritize cases ● Conduct legal analyses, assess penalty options ● Negotiate settlements ● Make recommendations to PEC 	<ul style="list-style-type: none"> ○ Resolve 2016 and 2017 case backlog ○ Review/revise policies for release of public information and election-related complaints ○ Develop internal Enforcement staff manual ✓ Expand streamline and diversion program
Administration/ Management	<p>PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.</p>	<p>PEC staff model a culture of accountability, transparency, innovation, and performance management.</p>	<ul style="list-style-type: none"> ● Annual Report ● Budget proposal ● Ongoing professional development and staff reviews ● Fill staff vacancies 	<ul style="list-style-type: none"> ✓ 2023 – 2025 strategic plan preparation/retreat ✓ Develop process for City Attorney and City Auditor Salary Adjustment and adopt resolution for Council ○ Increase enforcement capacity

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Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
			<ul style="list-style-type: none">• Commissioner onboarding	

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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 19, 2024
RE: *In the Matter of the City Administrator's Office, Mayor's Office, Finance Department, and Planning and Building Department (Case Nos. M2020-19 and M2021-05); Mediation Summary*

I. INTRODUCTION

On December 28, 2020, and March 2, 2021, the Commission received requests for mediation alleging the City Administrator's Office, Mayor's Office, Finance Department, and Planning and Building Department were unlawfully delaying responding to public records requests made by the Requester on October 1, 2020, and January 22, 2021. Staff initiated its mediation program on December 28, 2020, and March 10, 2021, pursuant to the Oakland Sunshine Ordinance.

Because the Planning and Building Department provided responsive records on January 15, 2021, and March 27, 2024; the remaining departments stated that they held no responsive records; and the Requester stated that mediation was complete, this mediation was closed with no further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of their request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

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were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

On October 1, 2020, the City received the following records request via NextRequest (20-6811):

Please provide any communications between the City (any department) & any and all telecommunication applicants or their agents regarding compliance to Ordinance 17.128.130 Sections B or C. (Radio Frequency Emission Standards)

On October 21, 2020, the Planning and Building Department posted the following message:

Hello and thank you for your request. If possible can you please narrow your request so we can research and provide you with the most accurate information possible.

The Requester responded the next day:

Please narrow your search to those communications dated December 1, 2019 to current.

On November 18, 2020, the Planning and Building Department posted the following message:

Thank you for providing a date range. Without specific departments or staff names, any responsive records will be specific to Planning and Building department.

The Planning and Building Department posted identical messages on November 30, 2020, and December 7, 2020.

On December 14, 2020, the Planning and Building Department closed the request with the following message:

Requester is no longer interest in obtaining this record.

Later that day, the Requester responded:

I do not recall closing this message. Please provide me with who made and when this request was made. OPEN this record again to provide this information.

About a half hour later, the Planning and Building Department reopened the request and posted the following message:

Hello, thank you for your message. In order to process your request, we need additional information, which we requested on 11/18, 11/30 and 12/7/20. Can you please provide any specific departments or staff names? Please note that without that information, any responsive records will be specific to the Planning and Building Department. I have re-opened your request.

⁵ Complaint Procedures § IV (C)(5).

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The Requester responded about three hours later:

I assumed that I would get all communications that were received or sent from the Planning AND Building Departments, City Administrator and/or Mayor. I do not have specific names of individuals. These communications could be at the lowest staff member all the way up to the City's Mayor. Please provide records since December 1st, 2019. Thanks. Sorry for the confusion.

The Planning and Building Department subsequently added the City Administrator's Office and Mayor's Office to the request, stating: "Please see the requester's message posted today."

On December 28, 2020, the Commission received a mediation request from the Requester alleging that the City Administrator's Office, Mayor's Office, and Planning and Building Department had unlawfully delayed responding to this request. It was assigned number M2020-19. Staff initiated its mediation program that same day and notified the departments of the mediation request.

On January 12, 2021, the Planning and Building Department provided Staff with the following update:

As of 1/8/21, IT has completed the search and CD for EDDR is ready for pick-up

On January 15, 2021, the Planning and Building Department released ten PDFs to the Requester, including seven email threads, two reports, and one copy of a permit approval. The Department stated it did not provide documents covered by attorney-client privilege under Government Code Section 6254(k) and redacted personal information under Government Code Section 6254(c).

On January 19, 2021, the Planning and Building Department provided Staff with the following update:

As of 1/15/21, PBD uploaded all responsive documents from EDDR request (with redactions). Former Citywide Records Manager Deidre Scott advised staff that we can only provide responsive docs related to PBD. PBD has removed themselves from this PRR and reassigned to CAO.

On January 22, 2021, the City received the following records request via NextRequest (21-615):

Please provide proof of contribution (and dollar amount) to the Sinking Fund for the cell antenna project: PLN17029.

The address is 2030 Franklin Street.

If there is no proof of contribution, please write back that no contribution was found to be made for this project. If this location does have a contribution to the Sinking Fund under a different project, please provide this information as well.

On January 26, 2021, the Finance Department posted the following message on request 21-615:

We are working to provide a response to your request. Please provide a direct telephone contact number to allow staff to contact you to clarify your request. Thank you.

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Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2)).

On March 2, 2021, the Commission received a mediation request from the Requester alleging that the City Administrator's Office, Mayor's Office, Finance Department, and Planning and Building Department had unlawfully delayed responding to this request. It was assigned number M2021-05. Staff initiated its mediation program on March 10, 2021, and notified the departments of the mediation request.

On March 17, 2021, the Finance Department posted the following message on request 21-615:

The City stopped collecting permit fees for the removal of telecommunications facilities over a decade ago and there have been no deposits to this fund for many years, including FY 2017-18. All revenues accrued in recent years have resulted from interest earnings on existing deposits. Withdrawals may be requested by the parties that initially made the deposits, or their successors, for the purposes specified in their permit applications, i.e., for removal of specific permitted telecommunications facilities upon their obsolescence.

The City created fund 7460 pursuant to Ordinance No. 11904 C.M.S., which is codified in the City's Planning Code. Chapter 17.128.030 of the Planning Code addresses the removal of telecommunications facilities and provides for the establishment of a sinking fund for this purpose. It may be accessed on-line at the following address:

https://library.municode.com/ca/oakland/codes/planning_code?nodeId=TIT17PL_CH17.128TERE_17.128.030RETEFA

It subsequently closed out the request, stating: "We released all of the requested documents."

On March 22, 2021, the City Administrator's Office stated in an internal message on request 20-6811 that it held no responsive records.

On June 4, 2021, Staff reached out to the Requester to see if they received all responsive records to these requests. The Requester responded on June 6, 2021:

20-6811 - this public record has a document provided which is 12 pages long of which 7 pages are completely redacted. These communications with the telecom are the purpose of my record request. Can there be another set of eyes on this document to confirm that the information is truly worthy of being redacted?

21-615 - I think the answer incongruent to required conditions of approval. You, Planning Dept. ask for this sinking fund contribution but then you tell me that this fund was discontinued in that year. No wonder the applicants are so casual about fulfilling the conditions of approval in other areas. Where is the enforcement of the terms and the Ordinance? It makes it hard to hold applicants accountable when the departments are not consistent in their implementation of the requirements or posing them as conditions of approval. With that said, 21-615 can be closed even though I think the reply is weak.

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Do not close 20-6811 until the redacted document is reviewed by another set of eyes.

On April 7, 2022, the Mayor's Office stated in an internal message on request 20-6811 that it held no responsive records. It subsequently closed the request, stating that personal information was redacted under Government Code Section 6254(c).

On May 2, 2023, Staff contacted the Planning and Building Department to determine if the City Attorney's Office had reviewed the redacted emails released in request 20-6811. Staff followed up with the Department on May 8, 2023. The Department responded later that day:

The person who handled that request works for a different department now, but they did post the exemption on the NextRequest site. The message posted was:

The City has not provided documents covered by attorney-client privilege pursuant to Section 6254(k) of the Public Records Act which states that "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

We do not always send redactions to the City Attorney's Office for review. We redact based on our training and communications with the City Attorney's Office, and only send them for review when we have specific questions or need guidance.

We are not able to provide any additional context for these two files.

Staff let the Department know that to close out the mediation, the City Attorney's Office would need to review the redactions in the emails. The Department provided Staff with the name of an attorney in the office who the Department usually contacts when they have legal questions. Staff contacted the attorney, who agreed to review the emails; Staff let the Department know that they should send the emails over to the attorney for review.

On May 16, 2023, Staff followed up with the attorney to see if they had a chance to review the emails. The attorney explained later that day that they had not received a copy of the emails. The Planning and Building Department subsequently explained:

Again, I didn't work on this case, but we obtain email communications through the EDDR process with IT. We receive and review the responsive emails, complete redactions, and then release the redacted version. We do not keep the unredacted version.

If the unredacted original is needed we will have to submit a new EDDR to the IT Department. It is currently taking at least two months to receive responsive communications for EDDRs.

That same day, Staff confirmed with the Planning and Building Department that they should submit an EDDR for the unredacted original emails.

On June 21, 2023, Staff followed up with the Planning and Building Department to determine if the EDDR was in progress. Staff did not receive a response.

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On March 5, 2024, Staff followed up on the status of the EDDR with the Planning and Building Department. Staff again followed up with the Department on March 8, 2024, March 14, 2024, and March 15, 2024. In a Microsoft Teams call with a public record liaison for the Department on March 19, 2024, the liaison explained that they had been recovering from an illness. They stated that they had not yet submitted an EDDR for the unredacted original emails because they believed that the City Attorney's Office needed to take certain steps first. Staff explained that was not the case, so the liaison agreed to (1) submit an EDDR for the unredacted emails, and (2) see if the emails could be obtained directly from Department employees to shorten the process.

Staff followed up with the Planning and Building Department on March 25, 2024. Two days later, the Department told Staff: "I haven't received the EDDR response from IT yet. I'll email them again and ask for a status update."

That same day, Staff reached out to an employee of the Planning and Building Department who was included in the email chain released to the Requester. Staff requested that the employee search for the email chain in their account and, if they had copies of it, to forward it to Staff. The employee responded later that day with a copy of the email chain. Staff let the Planning and Building Department know that an unredacted copy of the email chain had been acquired. The Department responded:

I just looked at it and can say it is definitely over-redacted. The emails that are completely redacted are relevant to the discussion and should have only had the email addresses and phone numbers redacted.

If you'd like, and to save time, I can do a proper redaction of the email and submit it for your review

Staff agreed, so the Department re-redacted the email chain. Later that day (March 27, 2024), the Department released this new copy of the email chain to the Requester. It also released an attachment to the email that was not previously disclosed to the Requester.

Staff subsequently emailed the Requester to see if this updated release satisfied their mediation request. The Requester responded on March 29, 2024:

You can close these requests. However, the fulfillment of them exceeded the time limits. I find that four years is an excessive wait time. Unfortunately, I have been unable to take appropriate action due the delays. Hopefully, the next requests will go a bit faster in processing.

As a result, Staff notified the Requester later that day that their mediation was closed.

IV. RECOMMENDATION

Because the Planning and Building Department provided the Requester with records responsive to request 20-6811, the remaining departments stated that they held no responsive records, and the Requester stated that mediation was complete, the mediation has been closed with no further action.

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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 19, 2024
RE: *In the Matter of the Planning and Building Department (Case No. M2021-09); Mediation Summary*

I. INTRODUCTION

On April 9, 2021, the Commission received a request for mediation alleging the Planning and Building Department was unlawfully withholding records responsive to requests made by the Requester on March 2, 2021, and March 5, 2021. Staff initiated its mediation program on April 9, 2021, pursuant to the Oakland Sunshine Ordinance.

Because the Requester is no longer interested in receiving a revised response to these public record requests, this mediation was closed with no further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of their request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

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III. SUMMARY OF FACTS

On March 2, 2021, the City received the following records request via NextRequest (21-1899):

For the Building Department:

In keeping with transparency of planning/building projects, I am requesting an excel spreadsheet of all the addresses of the small wireless facilities in the public right of way on either a light pole or wood pole or other structure in the City of Oakland to date. These sites should be for those already in final sign-off status and those in progress.

Please include:

Application Reference Number

Application date in the building department (open date)

Close Date (final building permit sign-off) and Status of Building Permit

Company/Applicant

Street Number

Street Direction

Street Name

Zip Code

Description of the Project

District within Oakland (if possible)

I am also requesting an excel spreadsheet of all cell antennas placed or to be placed on private property whether that be a monopole (cell tower) or roof-top or side-attached to structure with the same information as above.

Example: Go to this link and look at the list of Small Wireless Facilities which is near the bottom of the page. Please provide my information in a similar format.

<https://www.indy.gov/activity/small-cell-facilities>

The next day, a public records liaison for the Planning and Building Department added the Department of Transportation and Public Works to the request, asking in an internal message "Based off the request, is this something either of the department's might cover?" Public Works responded in an internal message: "OPW does not have any information regarding this request."

On March 4, 2021, the Planning and Building Department released a spreadsheet of building permits to the requester, stating: "Our staff provided the list with a 10 year date range." It then closed the request with the message, "We released all of the requested documents."

On March 5, 2021, the City received another records request from the Requester via NextRequest (21-2063). It was substantially similar to request 21-1899 except it stated: "NEW DATE RANGE: ALL RECORDS PRIOR TO MARCH 9, 2011."

On March 10, 2021, the Department of Transportation released on request 21-1899 a spreadsheet containing locations of cell antennas placed in the city right of way. It stated: "Attached is the information DOT has. Thank you."

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Later that day, the Planning and Building Department released a spreadsheet of building permits on request 21-2063. It closed the request with the message, "We released all of the requested documents."

On April 9, 2021, the Commission received a mediation request from the Requester alleging that there was information missing from the Planning and Building Department's response to these requests. Staff initiated its mediation program that same day and notified the Planning and Building Department of the mediation request.

On May 3, 2021, the Planning and Building Department released on request 21-1899 a spreadsheet of permits for 1720 MacArthur Blvd. It stated:

Planning & Building staff has worked with the Information Technology Department to revise the response and have identified the missing records. We have released the missing documents for 1720 MacArthur Blvd. If there are any additional properties that you believe were missing from the original responsive document, please provide the address(es).

The requester stated in a series of messages on request 21-1899 later that day:

I think the search criteria you employ to provide these public records should be modified so that ALL cell antenna records will be captured and included on the spreadsheet. I don't feel it is the obligation of the public to provide you a list of all the missing addresses especially since I don't know all of what is missing from your report. Public records should be complete. That is the expectation of the public when they ask for public records. Please let me know if you will be able to fulfill my request with all the records. If not, please provide me a explanation of the City's limitations in this regard. Thank you.

While I appreciate the records for 1720 MacArthur Blvd specifically, unfortunately, upon my review of these limited records, this list is missing a Building Permit B1902565 associated with the Application DS190165.

I have found that this permit is inactive but you did include an inactive permit in the report you provided so this one should have been included too since it is associated with a planning application at this property address.

Not sure why this permit was omitted from the list. You can now see why I am concerned about the accuracy and completeness of the public records being provided to the public.

On the DOT spreadsheet, what is the timeframe used for the data provided?

Also, my request was for those sites that are in "final" status (now known as the end of phase IV with DOT signing off on permit) or in progress (now known as after the shot clock ends and DOT has issued permit - end of phase III).

I know that there are missing records from this DOT list. For example, there is a cell antenna on a utility pole just down the street from me that is not on this list.

Thank you.

Note: Phases are from the Small Wireless Facilities Review process dated 8/16/2019.

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On June 4, 2021, Staff followed up with the Requester to see if they received all responsive records from these requests. The Requester replied two days later, stating:

There has been NO contact made with me regarding the issue of INCOMPLETE records provided. I contacted the contact name on the public record and since I had filed a complaint with PEC, she would not talk to me. I know there is missing data and have not received any explanation about this omissions on both public record requests. DO NOT CLOSE until it is determined why I have not received all the data available.

On April 4, 2024, Staff contacted the Planning and Building Department to see if it could provide a revised spreadsheet to the requester. A public record liaison for the Department explained that the spreadsheets were generated by searching for various keywords related to cell phone equipment, but inconsistencies in file names could cause some permits to be omitted without a comprehensive set of keywords. The liaison agreed to conduct a new search with an expanded set of keywords.

The next day, Staff contacted the Department of Transportation to see if it could supplement its previously released spreadsheet of small wireless facilities placed in the public right of way. Staff followed up with the Department of Transportation on April 11, 2024. Staff did not receive a response.

On April 13, 2024, the Requester sent the following email to Staff:

Please close out all the open mediations I have. There is no longer any relevance to the matters into which I was inquiring with public records. Too much time passed for me to take any action.

As a result, Staff notified the Requester on April 15, 2024, that their mediation was closed.

IV. RECOMMENDATION

Because the Requester is no longer interested in receiving a revised response to these requests, the mediation has been closed with no further action.

Item 8 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 19, 2024
RE: *In the Matter of the City Council, Fire Department, and Planning and Building Department (Case No. M2021-16); Mediation Summary*

I. INTRODUCTION

On July 23, 2021, the Commission received a request for mediation alleging the City Council, Fire Department, and Planning and Building Department were unlawfully delaying responding to public records requests made by the Requester on May 12, 2021, and May 19, 2021. Staff initiated its mediation program on July 26, 2021, pursuant to the Oakland Sunshine Ordinance.

Because Councilmember Gallo's office, the Fire Department, and the Planning and Building Department provided the Requester with responsive records on July 27, 2021, July 29, 2021, August 5, 2021, and August 16, 2021, and the Requester is no longer interested in receiving additional records, this mediation was closed with no further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of their request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

Item 8 - Executive Director's Report

were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

On May 12, 2021, the City received the following records request via NextRequest (21-4274):

Please provide all communications, documents and correspondence between any members of the City staff and councilmembers (and their staff), telecom applicants, property owners/property management/property residents and the public regarding the cell antenna applications and building permits or any other related projects at 1720 MacArthur Boulevard (The Altenheim) from April 21, 2021 to current date.

On May 17, 2021, the Planning and Building Department released an inspection log to the Requester. The next day, Councilmember Bas' office removed itself from the request, and Councilmember Thao's office stated in an internal message that it had no responsive records.

On May 19, 2021, the City received the following records request via NextRequest (21-4491):

Please provide all fire inspection reports for 1720 MacArthur Boulevard.

Please include any communications and documents to/from/between the City, the property owner/management, contractors working on the property, fire department as well as the public.

Later that day, the City received another records request via NextRequest (21-4493):

Please provide any documents or communications relevant to 1720 MacArthur Boulevard regarding the protection of this landmarked location from fire or other threats. If there are any procedural manuals or inspection reports to insure compliance to codes and fire safety, please include that information. If the owner of the building or property manager has to submit these documents to the City as part of their landmarked status on a regular basis, please provide those as well from 2000 to current.

On May 24, 2021, the Fire Department posted the following message on request 21-4491:

Thank you for submitting a request for public records through the City of Oakland's NextRequest system. Your request will be delivered to the appropriate City Departments or Officials.

The City of Oakland is committed to transparency and to providing you with a full and timely response to your request. If we need to clarify your request in order to provide a complete response, we will contact you directly or post a reply in NextRequest.

Your request has been forwarded to the Fire Prevention Bureau and any documents will be released as available.

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

If you have any questions, you may contact the department liaison assigned to your request.

Later that day, Councilmember Fife's office stated in an internal message that it had no responsive records to request 21-4274. Two days later, Councilmember Kaplan's office stated the same in a message to the Requester. Councilmember Kaplan's office subsequently removed itself from the request.

On May 27, 2021, the Housing and Community Development Department reassigned request 21-4493 to the Planning and Building Department. It stated in an internal message: "Sorry I am just sending this request to PB. I have been on vacation." The next day, the Planning and Building Department added the Fire Department to the request.

On June 1, 2021, the Planning and Building Department posted the following message on request 21-4493:

Planning & Building is working with our off-site vendor to retrieve the specified records related to your request. We will provide responsive documents on a rolling basis as they are identified. Thank you.

On June 8, 2021, Councilmember Taylor's office posted a message on request 21-4274 that it had no responsive records.

On July 23, 2021, the Commission received a mediation request from the Requester alleging that that the City Council, Fire Department, and Planning and Building Department had unlawfully delayed responding to these requests. Staff initiated its mediation program and notified the councilmembers and departments of the mediation request on July 26, 2021.

Later that day, the Planning and Building Department emailed staff, stating that they were "currently gathering the responsive documents for this request." The Department subsequently posted the following message on request 21-4493:

Staff has located responsive documents at our off-site facility. An update will be provided once the documents have been delivered.

The next day, Councilmember Gallo's office released 10 documents to the Requester on request 21-4274. It subsequently stated that it released all records related to the request and removed itself from the request.

On July 29, 2021, the Fire Department released a 62-page PDF of inspection reports to the Requester on request 21-4491. It subsequently closed out the request, stating "We released all of the requested documents."

On August 2, 2021, the Planning and Building Department posted the following message on request 21-4493:

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Staff has received the box of documents from our off-site facility. They will need to review/sort through the box to locate the responsive documents to your request. Once complete, we will upload your documents to this request.

The next day, the Fire Department had a phone call with the Requester regarding request 21-4493. In an internal message, the Fire Department reported that the Requester sought "all fire inspections, and fire reports for alarm calls and fire/electrical."

On August 5, 2021, the Planning and Building Department released 7 PDFs to the Requester on request 21-4493. It stated:

Hello, Planning & Building has provided some documents responsive to your request. Staff is still compiling documents responsive to the request.

Later that day, Councilmember Reid's office posted a message on request 21-4274 that it had no responsive records and removed itself from the request.

On August 16, 2021, the Planning and Building Department released another PDF to the Requester on request 21-4493. It subsequently stated: "Planning & Building has released all of the requested documents."

On December 6, 2021, the Fire Department closed request 21-4493. It stated:

These documents do not exist.

On December 27, 2021, the Requester posted the following message on request 21-4493:

I did not see the reply that Fire Department did not have any relevant documents. I would expect they would have documents based on my phone conversation with some fire personnel over the last few months.

Please open this request and check again. Thanks.

On February 4, 2022, Councilmember Taylor's office posted a message on request 21-4274 that it had no responsive records. It had already posted such a message on June 8, 2021.

On November 23, 2022, Councilmember Kalb's office posted a message on request 21-4274 that it had no responsive records. It subsequently removed itself from the request.

On April 11, 2024, Staff emailed the Requester to determine the status of this mediation. The next day, Staff emailed the Fire Department to determine whether it held records responsive to request 21-4493, as per the Requester's last message on that request. Later that day, the Fire Department informed Staff that they spoke with the Requester and the Requester was no longer interested in receiving these records. The following day, the Requester emailed a similar message to Staff:

Please close out all the open mediations I have. There is no longer any relevance to the matters into which I was inquiring with public records. Too much time passed for me to take any action.

Item 8 - Executive Director's Report

As a result, Staff notified the Requester on April 15, 2024, that their mediation was closed.

IV. RECOMMENDATION

Because Councilmember Gallo's office, the Fire Department, and the Planning and Building Department provided the Requester with responsive records to the three requests, and the Requester is no longer interested in receiving additional records, the mediation has been closed with no further action.

Item 8 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Graham Willard, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 25, 2024
RE: *In the Matter of Oakland Public Works and the City Clerk (Case No. M2023-01); Mediation Summary*

I. INTRODUCTION

On January 17, 2023, the Commission received a request for mediation alleging that the City failed to respond to public records requests made by the Requestor on December 8, 2022 (22-9369) and January 6, 2023 (23-179). Staff initiated its mediation program on January 18, 2023, pursuant to the Oakland Sunshine Ordinance.

Because Oakland Public Works (OPW) and the City Clerk provided the Requestor with the responsive documents and the Requestor considers the mediation resolved, the mediation has been closed with no further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of their request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

Item 8 - Executive Director's Report

were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

On December 8, 2022, the City received the following records request via NextRequest (22-9369):

This is a formal request for records pursuant to the California Public Records Act. I am seeking the following documents:

Surveillance video footage for 3p.m. to 5 p.m. from outside the City Clerk's office from the following dates:

- August 11, 2022
- August 15, 2022
- September 7, 2022
- September 12, 2022
- October 5, 2022
- October 9, 2022

Surveillance video footage for 3p.m. to 5 p.m. from outside City Hall from the following dates:

- August 11, 2022
- August 15, 2022
- September 7, 2022
- September 12, 2022
- October 5, 2022
- October 9, 2022

That same day, public records request 22-9369 was assigned to OPW and the City Attorney.

On December 9, 2022, OPW provided the relevant video footage for outside City Hall.

On January 6, 2024, the City received the following records request via NextRequest (23-179):

This is a formal request for records pursuant to the California Public Records Act. I am requesting the following records:

1. All communications and other documents between the City Clerk's office and other Oakland officials and representatives of Alameda County, and/or between themselves, referring or relating to the number of choices voters would have in RCV for the November 2022 election.
2. All documents referring or relating to whether voting equipment could accommodate five or more choices in RCV.
3. All documents referring or relating to how the decision to limit the number of choices to five in the November 2022 election,

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

4. all documents referring or relating to determining the number of votes voters would have for the November 2022 election.

That same day, public records request 23-179 was assigned to the City Clerk.

On January 10, 2023, the City Clerk released two responsive documents including a Rank Choice Voting MOU and a November 2020 Sample Ballot. Subsequently, the City Clerk closed public records request 23-179 stating:

We released all of the requested documents.

On January 17, 2023, the Commission received a mediation request from the Requestor seeking assistance with obtaining records from Oakland Public Works and the City Clerk.

On January 18, 2023, OPW informed the Requestor that additional time would be necessary to answer the public records request because they needed to search for, collect, or examine a large number of documents.

On January 19, 2023, OPW informed the Requestor that no video footage is available from the cameras outside of the City Clerk's office that is responsive to this request. OPW also informed the Requestor that the upload of video footage from outside City Hall was not successful because of a technical difficulty.

On January 26, 2023, OPW informed the Requestor that staff was attempting to download video files onto a memory stick. Once that was successful, OPW would arrange a date and time for pick up.

On January 27, 2023, OPW staff informed the Requestor that they had turned over a 1 GB memory stick with the video files they previously attempted to post to Next Request.

On January 30, 2023, OPW staff provided a OneDrive link with the video footage.

On February 2, 2023, the City Clerk re-opened public records request 23-179.

On May 15, 2023, the City Clerk released an additional responsive document to public records request 23-179. Subsequently, the City Clerk closed the request stating:

We released all of the requested documents.

On November 6, 2023, OPW staff closed public records request 22-9369.

On April 22, 2024, the Requestor informed the Public Ethics Commission that they considered the mediation resolved.

IV. RECOMMENDATION

Because Oakland Public Works and the City Clerk provided the Requestor with the responsive documents and the Requestor considers the mediation resolved, the mediation has been closed with no further action.

Item 8 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Graham Willard, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 19, 2024
RE: *In the Matter of the Oakland Police Department (Case No. M2024-03); Mediation Summary*

I. INTRODUCTION

On March 6, 2024, the Commission received a request for mediation alleging that the City failed to respond to a public records request made by the Requestor on February 15, 2024 (24-1751). Staff initiated its mediation program on March 20, 2024, pursuant to the Oakland Sunshine Ordinance.

Because the requested document(s) are not something that the Public Ethics Commission can assist with obtaining, the mediation was closed with no further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of their request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

Item 8 - Executive Director's Report

were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

On February 15, 2024, the City received the following records request via NextRequest (24-1751):

Request to access Police Report #23-031525

That same day, the request was assigned to the Oakland Police Department (OPD).

On February 23, 2024, OPD informed the requestor that they could not provide the report, because juvenile suspect and arrestee information is only provided through an order from the Court. OPD informed the requestor what documents would be needed should they wish to go through the Court.

On March 6, 2024, the Commission received a mediation request from the requestor seeking assistance in obtaining a copy of the police report.

On April 4, 2024, the PEC informed the Requestor that they could not help obtain this document because a Court order was required. The PEC shared the same information about how to go about obtaining a Court order. Subsequently, Staff informed the Requestor that the mediation would be closed.

IV. RECOMMENDATION

Because the requested document can only be obtained by an order from the Court, the mediation has been closed with no further action.

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Graham Willard, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 30, 2024
RE: *In the Matter of the City Administrator and the Office of the Mayor (Case No. M2024-04);*
Mediation Summary

I. INTRODUCTION

On April 19, 2024, the Commission received a request for mediation alleging that the City failed to respond to a public records request made by the Requestor on February 21, 2024 (24-2037). Staff initiated its mediation program on April 23, 2024, pursuant to the Oakland Sunshine Ordinance.

Because there are no responsive documents to this request, the mediation was closed with no further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of their request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

III. SUMMARY OF FACTS

On February 21, 2024, the City received the following records request via NextRequest (24-2037):

This is a formal request for public records pursuant to the California Public Records Act. I am seeking the following records:

1. All contracts for services with KANO Special Services and/or Shedrick Henry for security services from 2015 through the present.
2. All documentation showing what effort the City made to conduct bidding/informal solicitation for the services provided by KANO/Shedrick Henry.
3. All documentation showing the total amount of money paid by the City of Oakland to KANO and/or Shedrick Henry since 2015, including but not limited to invoices from the company and check ledgers showing when the City paid the invoices.
4. All correspondence to/from employees/officials for the City of Oakland regarding hiring KANO/Shedrick Henry.
5. All documentation regarding KANO's/Shedrick Henry's qualifications to provide security services.

That same day, the request was assigned to the City Administrator.

On February 21, and 22, 2024, the following Departments were added: Public Works, Finance Department – Controller & Purchasing, Oakland Police Department, and the Department of Violence Prevention. Over the next month, all of the Departments were removed, without comment, except for the Oakland Police Department.

On April 19, 2024, the Commission received a mediation request from the Requestor alleging that that the City had failed to timely respond to a public records request.

On April 22, 2024, the Oakland Police Department told the Requestor that the Policy and Publications Unit does not have any records associated with the mentioned vendor. The Oakland Police Department further explained that an update from the Fiscal Division would be coming soon.

On April 24, 2024, the Requestor informed Staff that they had received no documents related to the request.

On April 29, 2024, the Oakland Police Department informed the Requestor that the Fiscal Division did not have any contracts or invoices from the vendor. The Oakland Police Department then closed the request.

On April 29, 2024, the Requestor emailed Staff:

Hi Graham - I see OPD has closed the records request. I believe that there are still responsive documents that have not been provided. As you can see from this article (see below) KANO and members of this pseudo-security company were providing security for Sheng Thao on the date of this incident in February. This was an official city event (a press conference) and clearly, somebody inside of City Hall asked for "KANO" to show up and provide security services. Therefore, I am entitled to all documentation regarding how they happened to show up. Has the Mayor's office provided responsive documents?

Item 8 - Executive Director's Report

On April 29, 2024, Staff reopened the request and added the City Administrator and the Office of the Mayor to the request.

On April 29, 2024, the City Administrator informed the Requestor that the office did not have any records related to this request.

On April 29, 2024, the Office of the Mayor informed the Requestor that they have no responsive records. The Office of the Mayor said that Mayor Thao had no private security, and she is provided a detail from OPD. The Mayor's office also provided the following additional context:

Providing additional context -- members of Oakland City staff saw the security guards in question were attending a separate press conference in front of city hall 30 minutes before our own event on Broadway. These individuals witnessed us setting up our own event and came over after theirs to watch ours. They also had counterprotestors at their event which followed them over to ours which was held in a public plaza.

On April 30, 2024, the Requestor informed Staff that she assumed that the city had no responsive documents and the mediation could be closed.

IV. RECOMMENDATION

Because the City has no responsive documents and the Requestor stated that she views the mediation as complete, this Mediation has been closed with no further action.