



Item 8 - Executive Director's Report

Ryan Meier, 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: June 27, 2024
RE: Executive Director's Report for the July 10, 2024 Meeting

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 included 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.
- Reduce Democracy Dollars startup funding by \$97,790.
- Eliminate \$50,000 used for Measure W candidate education.
- Eliminate \$38,121 in carried forward funds for election services.

In June, PEC staff requested that the City Council restore the cut funding, particularly to Democracy Dollars startup funding and the LPF Program. In addition, PEC staff continued 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.

Councilmembers Bas, Kalb, Fife, and Jenkins have proposed amendments to the Proposed Budget which would restore \$155,000 in LPF funding. Councilmember Bas and Kalb have proposed amendments to restore the cut Democracy Dollars funding and add 1 FTE Ethics Analyst II to assist with the Democracy Dollars Program, beginning in January 2025.

The final Midcycle Budget is expected to be adopted on Friday, June 28.

PEC Charter Amendment Proposal

Councilmember Kalb's narrowed version of the PEC's ballot measure proposal, which was merged with a proposal to transfer mayoral salary-setting to the PEC, was considered by the City Council on June 26. By a 5-3 vote, the Council voted **not** to place the measure on the ballot.

While disappointing, there will likely be opportunities in future election cycles to revisit these policy proposals. Following Los Angeles's model, staff intends to create a new "Policy Proposals" section on the PEC website to highlight the PEC's charter recommendations and draft language.

Commissioner Vacancy

In June, Commissioner Hill indicated that she is resigning from the Commission for personal reasons. We are grateful for Commissioner Hill's dedicated service to the Commission and wish her the best.

Commissioner Hill was a PEC appointee whose term was set to expire January 21, 2025. In July or August, staff anticipates beginning the process of recruiting candidates to apply to fill this partial term vacancy. In prior years, the Commission has created a Commissioner Selection Ad Hoc Committee to review applications and forward the most qualified applicants to the full Commission. Staff anticipates using a similar process for this vacancy.

The PEC presently has two vacancies out of seven board seats. The other vacancy is for a Mayoral appointment.

Measure W

Policy – Staff is reviewing the Measure W legislation for any elements that may require clarification by regulation or amendment prior to the program launch. An analysis with recommendations for Commission discussion is planned for the fall.

Staffing – In June, staff made an offer of employment for the grant-funded limited duration Democracy Dollars Community Engagement Specialist position and anticipates finalizing the hire by the end of June and onboarding the new analyst in July.

Administrative Processes and Technology – The PEC's Resolution for authorization to enter into a contract with MapLight for the development of the Democracy Dollars software platform was rescheduled to the June 28 City Council meeting. If approved, negotiation of the contract will be the major Democracy Dollars staff priority over the coming months.

Staff also held a follow-up meeting with the Alameda County Registrar of Voters (ROV) to continue the discussion of services required for Democracy Dollars program administration, such as regularly updated voter file data and signature verification. Based on the discussions, staff is preparing a formal description of the data requirements in collaboration with IT staff, so that the ROV can prepare an estimate and timeframe. The PEC-IT team is exploring options

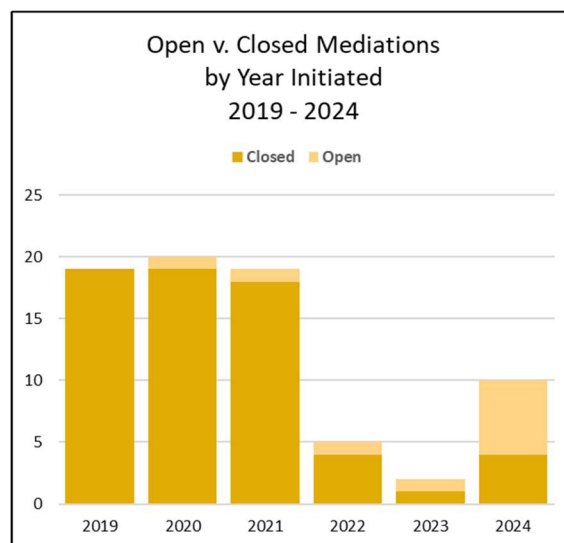
for voucher signature verification and fraud prevention that maximize efficient processing by staff.

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 10 open mediations, down from 14 as of the last Commission meeting. Two new mediations have been opened since the last meeting.

Six 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 Police Department (Case No. M2019-09)*
2. *In the Matter of the Office of the City Administrator (Case No. M2021-19)*
3. *In the Matter of the Planning & Building Department and the Department of Transportation (Case No. M2021-20)*
4. *In the Matter of the Oakland Police Department (Case No. M2022-03)*
5. *In the Matter of the Planning & Building Department (Case No. M2024-01)*
6. *In the Matter of the Oakland Police Department, the City Attorney's Office, the City Administrator, the Mayor's Office, and the Planning and Building Department (Case No. M2024-02)*



Additional Attachment: Commission Programs and Priorities.

Item 8 - Executive Director's Report

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, LPF, 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 |

Item 8 - Executive Director's Report

| 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 |

Item 8 - Executive Director's Report

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

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
Graham Willard, Law Clerk
Jelani Killings, Ethics Analyst
DATE: June 22, 2024
RE: *In the Matter of the Police Department (Case No. M2019-09); Mediation Summary*

I. INTRODUCTION

On May 16, 2019, the Commission received a request for mediation alleging the Police Department was unlawfully delaying responding to public records requests made by the Requester on January 11, 2019, and January 15, 2019. Staff initiated its mediation program on May 21, 2019, pursuant to the Oakland Sunshine Ordinance.

Because the Police Department provided the Requester with the responsive 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 January 11, 2019, the City received the following records request via an emailed Police Department Public Records Request Form:

RE: Request for Public Records Regarding Jan 3, 2018 shooting of Sahleem Tindle
To Whom It May Concern: I request the release of records under the California Public Records Act, Gov't Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I, § 3(b) of the California Constitution. I seek copies of all records in your office's possession, regardless of who created them. Please provide all records from the date of the above-mentioned incident until the date that this request was received. I seek a copy of all records relating to the report, investigation, findings and administrative discipline related to Jan 3, 2018 shooting of Sahleem Tindle. Records include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency.⁶

On January 14, 2019, the Police Department created request 19-230 on NextRequest to track this request. It extended the due date for the request to February 5, 2019, stating: "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 January 15, 2019, the City received the following records request via an emailed Police Department Public Records Request Form:

RE: Request for Public Records Regarding the November 15, 2015 shooting of Richard Perkins Jr.

I request the release of records under the California Public Records Act, Gov't Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I, § 3(b) of the California Constitution. I seek copies of all records in your office's possession, regardless of who created them. Please provide all records from the date of the above-mentioned incident until the date that this request was received. I seek a copy of all records relating to the report, investigation, findings and administrative discipline related to the November 15, 2015 shooting of Richard Perkins Jr.⁷

⁵ Complaint Procedures § IV (C)(5).

⁶ The request text was cut off here in the copy sent to the Commission.

⁷ The request text was cut off here in the copy sent to the Commission.

Item 8 - Executive Director's Report

On January 16, 2019, the Police Department created request 19-281 on NextRequest to track this request. On January 25, 2019, it extended the due date for the request to February 27, 2019, stating:

Our agency is in the process of reviewing your requested records to determine what information can be released in accordance with the California Public Records Act. All records must be reviewed and in some cases redaction may be necessary. Due to the Department's limited staffing resources and the numerous public records requests received, our agency needs additional time to respond to your request. All records that are not exempt will be provided within 30 days. Please contact the undersigned if you need the records sooner or can identify a shorter list of records (for voluminous requests) that can be provided to you. We will do our best to work with you. We appreciate your patience.

On February 27, 2019, the Police Department posted the following message on request 19-230:

The PRR Unit has followed up with the Homicide Division for an update on the status of this request. We will continue to provide you with any updates and/or releasable information as it becomes available.

On March 29, 2019, an agent of the Requester emailed the following letter to the Police Department's record request email:

To Ali Banda, Records Supervisor, Oakland Police Department,

I write to follow up on my outstanding record requests with the Oakland Police Department (OPD) under the California Public Records Act (CPRA). A copy of my requests are attached. Although I submitted my requests on January 15 and 16, 2019, OPD has failed to respond to my request or to produce the relevant records. On February 25, 2019, a representative of the Oakland Police Department stated, in response to my inquiry about my outstanding CPRA requests, that OPD is "probably just backed up."

As you are aware, the CPRA requires OPD to reach a determination on a records request within ten days from receipt of the request, and authorizes the agency to request a single fourteen-day extension to produce the records in "unusual circumstances." See Cal. Gov't Code § 6254(c). Yet OPD never provided me with a determination regarding my original request, nor did it request a fourteen-day extension. Moreover, CPRA requires OPD to "promptly" produce records requested by a member of the public. Cal. Gov't Code § 6253(b). It has now been 72 days since I filed my request. OPD's delay violates its statutory obligations under the CPRA.

OPD's claimed CPRA backlog is not an excuse for its failure to comply with the CPRA. To the contrary, OPD may be liable for systemic violation of CPRA if its backlog is the result of a failure to allocate the necessary resources to satisfy CPRA's requirements.

Item 8 - Executive Director's Report

Accordingly, I am already entitled to bring judicial proceedings against OPD to enforce my right to receive copies of records under the CPRA. Cal. Gov't Code § 6258. Please promptly provide me with the records I have requested to avoid the need for litigation.

On April 17, 2019, the Police Department extended the due date for request 19-281 to May 17, 2019, stating: "We are gathering and reviewing all records and will produce any responsive documents on a rolling basis, subject to applicable exemptions." On April 26, 2019, it again extended the due date for this request to May 31, 2019.

On May 3, 2019, the Police Department posted the following message on request 19-281: "Please see email link below for newly released responsive documents <https://oaklandca.nextrequest.com/requests/19-1146>." That link contained various records disclosed pursuant to SB 1421; it is unclear precisely which records the Police Department was referring to.

On May 6, 2019, the Police Department extended the due date for request 19-230 to May 31, 2019. Regarding that request, it stated on May 15, 2019, that: "A status request has been emailed to the Homicide Division; you will be notified once a response is received."

On May 16, 2019, the Commission received a complaint form from the Requester alleging that the Police Department had unlawfully delayed responding to these requests. Since the Sunshine Ordinance prevents a person from filing a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have participated in the Commission's mediation program,⁸ Staff treated this complaint as a request for mediation. Accordingly, Staff initiated its mediation program and notified the Police Department of the mediation request on May 21, 2019.

The Police Department notified Staff on May 22, 2019, that they had input the emailed requests into NextRequest in January 2019 and provided Staff with the request numbers: 19-230 and 19-281. Staff then notified the Requester on May 24, 2019, that their complaint was being processed as a mediation request and provided those two request numbers. Later that day, Staff followed up with the Police Department to determine the source of the delay and an estimated date that additional records would be released.

On May 31, 2019, the Police Department extended the due date for request 19-281 to June 30, 2019.

On June 21, 2019, it similarly extended the due date for request 19-230 to July 26, 2019. Three days later, it posted the following message on that request: "Request extended: Additional time is required to answer your public records request. The Homicide Division needs to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2))."

On July 17, 2019, the Police Department extended the due date for request 19-281 to August 30, 2019.

⁸ O.M.C. § 2.20.270(F).

Item 8 - Executive Director's Report

On August 13, 2019, Staff contacted the Police Department for a status update. Staff called the Requester the next day to determine how the public records requests were submitted to the Police Department.

On August 16, 2019, the Requester sent the following email to Staff:

I'm sending this email with reference to the August 14, 2019 phone conversation, to follow up with you regarding the ethics complaint that I submitted.

You stated in our conversation that you only received a hard copy, although I had submitted my ethics complaint through email and all correspondence.

I stated the emails that I received from your office were sent by you, stating that your staff was going through a transition and you could not follow up at that time; another correspondence: you were going on vacation and could not respond.

This left me in limbo regarding my request.

This is deeply heartbreaking to know that former Governor Brown has passed a Senate Bill 1421 allowing parents to investigate the history and characteristics of a police officer that has committed a crime and that the reliability of the Ethics Commission regarding due process has not been provided.

Once again, I am requesting due process through the Ethic Commission, be granted.

I will be awaiting for your response

Staff responded to the Requester on August 19, 2019:

Good Morning. Unfortunately, I believe you misunderstood the reason for my call. I was not inquiring about the manner in which you filed the Ethics complaint with my office. I was asking, "how did you file your public records request with the police department?" Did you file the public records request in person? Did you file it by email directly to the Oakland Police Department or did you submit it through the City NextRequest System? Thank you in advance for the answer to these questions.

On August 20, 2019, Staff followed up with the Police Department for a status update. Later that day, the Police Department posted the following message on request 19-230: "A status request has been emailed to the Homicide Division; you will be notified once a response is received." It then extended the due date for that request to August 30, 2019.

On September 5, 2019, the Police Department extended the due date for both requests to October 31, 2019. On November 6, 2019, the Police Department extended the due date for request 19-281 to November 30, 2019. The next day, the Requester's agent posted the following message on request 19-230:

Item 8 - Executive Director's Report

Ms. Banda:

These records were due to be made available a week ago, on October 31st. Please indicate how we can access these records immediately. Thank you.

The Requester's agent then posted the following message on request 19-281:

Ms. Banda:

Please indicate a reason that the due date keeps changing for these records to be made available to us. Thank you.

On November 13, 2019, the Police Department posted the following message on request 19-230: "Your request is in the final review stage. Once we receive the final redacted report from The Homicide Division, we will contact you." It then extended the due date for that request to November 15, 2019. That same day, it posted the following message on request 19-281: "Request extended: We are gathering and reviewing all records and will produce any responsive documents on a rolling basis, subject to applicable exemptions."

On November 27, 2019, the Police Department extended the due date for request 19-281 to December 30, 2019. It then extended the due date for that request on December 30, 2019, to January 30, 2020; and on January 23, 2020, to February 27, 2020.

On February 4, 2020, the Police Department posted the following message on request 19-281: "Please see email link below for newly released responsive documents for 15-0900, Richard Perkins. <https://oaklandca.nextrequest.com/requests/19-1146>." Earlier that day, the Police Department had posted two PDFs (one that was 37 pages, and another that was 457 pages) relating to that incident on that request.

On February 27, 2020, the Police Department extended the due date for request 19-281 to March 26, 2020.

On March 9, 2020, a member of the Police Department records staff followed up internally regarding request 19-230. A different staff member replied the next day, stating: "I'm waiting on Sgt. Cardoza to approved a few things, that Trish had concerns about. Once he gets back with me, I should have the report ready within a couple of days." The Police Department then extended the due date for the request to March 27, 2020, and posted the following message: "Request extended: Additional time is required to answer your public records request. The Homicide Division is reviewing the responsive documents."

On March 26, 2020, the Police Department extended the due date for request 19-281 to April 23, 2020. It again extended the due date for that request on May 8, 2020, to June 5, 2020.

On May 13, 2020, the Requester's agent sent an email to the Police Department:

Item 8 - Executive Director's Report

I am following up regarding our record request #19-230, made January 14, 2019. The last due date on NextRequest was March 27, 2020. It is now May 13, 2020 and, after 16 months, we still have not received any records.

Can you please let us know as soon as possible when these records will be available.

The Police Department replied to the Requester later that day:

No problem. I do not have a timeline. But I do know this report has been redacted by the Admin Assistant for the Homicide Division. It is now in the final review phase by her Lieutenant. I do not know his caseload. I'm hoping by close of May or sooner.

It then extended the due date for request 19-230 to May 29, 2020, and posted the following message:

Hello, we are sorry for the delay. We are waiting on the Homicide Unit to release your records, they are doing the final redactions. This report is quite voluminous.

On May 29, 2020, the Police Department extended the due date for request 19-281 to June 26, 2020.

The Requester's agent followed up with the Police Department regarding request 19-230 on June 4, 2020, June 8, 2020, and June 15, 2020. The Police Department responded on June 15, 2020: "It is still in the final review phase by the Lieutenant in the Homicide Unit. I sent an urgent follow up email today." It then extended the due date for the request to June 26, 2020, and stated: "Request extended: We are awaiting a final approval from The Homicide Unit."

On June 24, 2020, the Police Department extended the due date for request 19-281 to July 24, 2020.

On July 17, 2020, the Police Department extended the due date for request 19-230 to July 31, 2020, stating: "Good Morning, The Homicide Division had to make a few more changes based on our review teams knowledge. Once these changes are complete we will upload your responsive documents."

On July 22, 2020, the Police Department released a 225-page PDF to the Requester on request 19-230. It noted that personal information had been redacted under Government Code Section 6254(c).

Later that day, the Police Department stated on request 19-230: "Staff is currently working on other portions of your request. You should receive more responsive documents between now and July 31, 2020." A member of the Police Department records staff sent an internal email: "The redacted crime report was released this afternoon. You can proceed with the PDRD portion of the request."

On July 24, 2020, the Police Department extended the due date for request 19-281 to August 24, 2020. It subsequently extended the due date on August 24, 2020, to September 24, 2020; on

Item 8 - Executive Director's Report

September 24, 2020, to October 23, 2020; on October 22, 2020, to November 23, 2020; and on November 23, 2020, to December 23, 2020.

On November 23, 2020, Police Department records staff sent an internal follow-up email regarding request 19-230.

On December 23, 2020, the Police Department extended the due date for request 19-281 to January 22, 2021. It subsequently extended the due date on January 22, 2021, to February 22, 2021; on February 24, 2021, to March 22, 2021; on March 23, 2021, to April 26, 2021; and on April 30, 2021, to May 28, 2021. The final two due date extensions were accompanied by the following message: "Additional time is required to answer your Public Records Request. The information you requested falls under SB1421; this information will be reviewed by The City Attorney's Office at an offsite location. We are awaiting responsive results."

On July 20, 2021, Staff emailed the Police Department to determine the status of these two requests. The Police Department responded on July 26, 2021:

Some information has been released regarding PRR 19-281. We are still waiting on additional responses from The City Attorney's office.

The report was released regarding PRR 19-230. We are still waiting on PDRD and CAD Purge from other units.

On July 27, 2021, Police Department records staff sent an internal follow-up email regarding request 19-230, requesting a reply with responsive documents or an estimated date of completion by July 31, 2021.

On August 1, 2021, the Police Department posted the following message on request 19-230:

The Communications Division responded and provided an estimated date of completion of August 30, 2021.

The next day, the Police Department posted the following message on request 19-230:

The Communications Division was unable to process this request. The incident is no longer on file in CAD.

On December 14, 2021, the Police Department posted a notice on both requests regarding the pending settlement agreement in *Morris v. City of Oakland*.

On May 18, 2022, the Police Department posted a message on request 19-281:

Please find responsive SB 1421 records at the following URL:

https://oaklandca.nextrequest.com/documents?folder_filter=15-0900_OIS_Perkins

Item 8 - Executive Director's Report

That link leads to a list of 239 records released on March 25, 2022. It then closed request 19-281, stating: "We released all of the requested documents."

On July 27, 2022, Police Department records staff sent an internal follow-up email regarding request 19-230.

On January 4, 2023, the Police Department posted the following message on request 19-230:

OPD has provided all vital information regarding this report. This incident was an outside agency's (BART) OIS. The PDRD from the incident was already released by Bart PD. OPD arrived on scene after the incident concluded.

The Police Department then closed request 19-230 on January 23, 2023.

On May 1, 2023, Staff reached out to the Requester to see if they were satisfied with these responses to their public records requests. Staff followed up with the Requester on May 8, 2023, notifying the Requester that their mediation request would be closed if Staff did not receive a response by the end of May 22, 2023.

Staff again followed up with the Requester on May 16, 2023. The Requester's agent replied later that day:

Mama Yolanda let me know that she was not satisfied. In her words, "I was not happy with their response, the Oakland Ethics Commission's intention was to prevent me from getting the record in a timely manner. Even after sending several requests."

In response to a request for clarification from Staff, the Requester responded later on May 16, 2023:

I deserve to request a mediation meeting after a long waiting period because of many different reasons under your control.

Myself responded to every email you sent me to no avail. So don't assume that I am satisfied with the conduct of Oakland police Department nor the ethics commission. I ask you how can there be any closure in my case when the Ethics Commission never open a case on my son Sahleem Tindle behalf after 5 years.

Staff responded to the Requester on May 17, 2023, stating that Staff could facilitate a conversation with the Requester about their mediation request. The Requester did not reply.

On June 21, 2023, Staff followed up with the Requester, stating that the mediation would be closed if Staff did not receive a response by the end of June 26, 2023. The Requester did not reply.

Item 8 - Executive Director's Report

On March 14, 2024, Staff followed up with the Requester, stating that the mediation would be closed if Staff did not receive a response by the end of March 29, 2024. Staff followed up with the Requester on March 22, 2024, March 27, 2024, and March 29, 2024.

On March 29, 2024, the Requester responded:

SHALOM Chris Nardi

Just getting your message without a full understanding. I thought a year ago you stated there was nothing that could be done regarding the records of the police officers that was involved with the killing of my son, Sahleem Tindle. you email me stating that you would now close the case. Well the case has never been open you have not given me nor my son due process. if you close this case, it's without my agreement and Justice has not been served.

On March 29, 2024, Staff replied with the following:

Thank you for your response. I realized I might be missing some context here. From my review of the requests, it looked like the Police Department provided you certain records related to your son's killing on July 22, 2020: <https://oaklandca.nextrequest.com/documents/5292128>. It then provided an additional response on January 4, 2023.

OPD has provided all vital information regarding this report. This incident was an outside agency's (BART) OIS. The PDRD from the incident was already released by Bart PD. OPD arrived on scene after the incident concluded.

There was an additional public records request referenced in your mediation request, and it looked like the Police Department provided records there as well: <https://oaklandca.nextrequest.com/requests/19-281>.

It sounds like you believe the Police Department hasn't fully disclosed all the records it has in response to these requests. Can you identify which specific records you believe are missing? We would be able to request that the Police Department disclose additional records if we know what is missing, but without that information, we're unable to follow up with the Police Department. (As a note, it seems like some of the records you're interested in are held by the BART Police Department, and not the Oakland Police Department.)

I'm happy to have a phone call with you if that would be helpful. Just let me know how you'd like to proceed. But without additional information on the specific outcomes you are seeking, we cannot continue this mediation.

I hope you have a great weekend!

Requestor then replied with the following:

Item 8 - Executive Director's Report

Hello Chris,

I just spoke with Yolanda and she let me know that she does not want to end the mediation and feels that most of the information she sought was withheld in the records that were received. Specifically, the information she received was either inaccurate or the records were redacted so she feels that this did not meet her needs.

Please let us know what next steps are.

Best, Annie

On April 1, 2024, Staff replied with the following:

Hi Annie,

Thank you for the clarification. I will contact the Police Department to let them know, but it would be helpful to have some additional information. Specifically:

- Are both requests at issue here? (PRR 19-230 relates to Sahleem Tindle; PRR 19-281 relates to Richard Perkins.) Or is only one request relevant?
- What redactions are being challenged here? The record released under PRR 19-230 is mostly unredacted save for certain personally identifying information. I haven't looked through PRR 19-281 since several hundred records were released there. It would be helpful to have an example of what information should not have been redacted so that I can point the Police Department to that.
- What records were withheld? For instance, I notice that body camera footage was not released under PRR 19-230, though the Police Department claimed that BART held all relevant footage. Is this inaccurate? Are there any other types of records that are missing?

As to whether the records contain accurate information, that is unfortunately something that we cannot address. We are limited to seeking disclosure of pre-existing records; we cannot ask the Police Department to modify their records.

Please let me know the answers to these questions and I'll plan to contact the Police Department as soon as possible. Thank you!

On April 4, 2024 and April 11, 2024, Staff followed up to seek answers to the above questions.

On April 11, 2024, the Requester asked for a meeting with Oakland Public Ethics Commission staff.

On April 18, 2024, Staff said they would be open to a meeting, either in-person or via Microsoft Teams. Staff attempted to set up a meeting on April 11, 2024, April 18, 2024, April 25, 2024, May 1, 2024, and May 10, 2024.

Item 8 - Executive Director's Report

On May 22, 2024, Staff followed up to seek answers to the questions originally asked on April 1.

On May 29, 2024, Staff informed the Requester that based on their review of the mediation, there was nothing additional that the Public Ethics Commission could help with. Staff asked the Requester to inform the PEC if the Requester believed otherwise. Staff never received a response from the Requester. As a result, Staff subsequently notified the Requester that their mediation was closed.

IV. RECOMMENDATION

Because the Police Department provided the Requester with responsive records to both requests, and the Requester has not expressed any concerns that additional mediation could address, 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
Graham Willard, Law Clerk
Jelani Killings, Ethics Analyst
DATE: June 23, 2024
RE: *In the Matter of the Office of the City Administrator (Case No. M2021-19); Mediation Summary*

I. INTRODUCTION

On September 15, 2021, the Commission received a request for mediation alleging the City Administrator's Office was unlawfully delaying responding to public records requests made by the Requestor on August 18, 2021 and August 20, 2021. Staff initiated its mediation program on September 16, 2021, pursuant to the Oakland Sunshine Ordinance.

Because the City Administrator's Office reports that they have released all responsive documents, this 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

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

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

III. SUMMARY OF FACTS

On August 18, 2021, the City received the following records request via an emailed Public Records Request Form: (21-7191)

- 1) "financial plan"
- 2) "ht" or "howard terminal"
- 3) "a's" or "athletics"
- 4) "development agreement"
- 5) "community"

The date period requested for these emails is June 20, 2021 to current date, 8/18/2021.

On August 18, 2021, the requestor assigned the request to the City Administrator (21-7191).

On August 20, 2021, the City received the following records request via an emailed Public Records Request Form: (21-7245)

There is a meeting for 4/27/2018 at 10am scheduled between City employees and non-city employees scheduled in an email contained in this public document. The meeting was held at A's Executive Offices - 55 Harrison, 3rd FL, Oakland, CA 94607. City employee Winnie Woo is stated as an invited employee, Betsy Lake is stated as an optional invitee. The scheduling of the meeting is found in the following public document:

<https://oaklandca.nextrequest.com/documents/8374205/download>

Please provide:

- 1) all documents presented at the meeting by city of Oakland employees
- 2) any and all notes and/or summaries and/or outcome/to do documents produced from the meeting
- 3) Purpose of the meeting as stated to city staff members
- 4) documents given to City of Oakland employees.

On August 20, 2021, the requestor assigned the Request to the Office of the City Administrator. (21-7245)

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

On August 20, 2021, the City received the following records request via an emailed Public Records Request Form: (21-7247)

In a public record found at <https://oaklandca.nextrequest.com/documents/8374628>, a letter dated April 28, 2021 from Deputy City Administrator Betsy Lake to David Kaval states the following:

"As you know, the City previously provided feedback to your financial proposal, and we have been waiting for some time for a reply from the A's."

- 1) Please provide the "feedback" mentioned in this statement, including date and manner the feedback was conveyed, i.e., email or letter, or stand alone document.
- 2) Please provide the specific "financial proposal" mentioned in this statement. This is not a request for subsequent publicly provided proposals from the A's or Kaval, but for the specific proposal Lake refers to and says the City has responded to.
- 3) Please provide the entire letter, email or document in which the "financial proposal" was conveyed to the City of Oakland.

On August 20, 2021, the requestor assigned the request to the City Administrator (21-7247).

On August 23, 2021, the City Administrator provided the following message to the requestor: (21-7191)

Dear Requester, The City's obligation to produce records for inspection is triggered by a request that "reasonably describes an identifiable record." Gov't Code § 6235(b). For this reason, "[t]he request to the agency must itself be focused and specific." *Rogers v. Superior Court* (1993) 19 Cal. App. 4th 469, 481. Your request is overbroad as it includes overly common terms and is not focused or specific to a particular project or subject matter. Please revise your request to reasonably identify the records requested.

On August 23, 2021, the requestor replied to the City Administrator: (21-7191)

The only issue I can discern here that may be confusing is subject, which should be "subject line" of the email. Is this the issue?

On September 2, 2021, the requestor asked if the City Administrator was going to respond. The City Administrator never followed up with the requestor: (21-7191)

Are you going to respond to this, as it was upon your request and claim that this was overbroad that I posted an answer.

On September 21, 2021, the Office of the City Administrator signaled they had no relevant records and closed the request (21-7245).

In September 2021, the Office of the City Administrator informed the Public Ethics Commission that they were waiting for responsive records from outside counsel in the other two cases (21-7247 and 21-7191).

Item 8 - Executive Director's Report

On October 8, 2021, the Office of the City Administrator posted the following response and closed the request: (21-7247)

A review of records was conducted and no responsive records were identified; the City has no records responsive to this request. To the extent the requester is asking for documentation to be created, a public entity does not have a duty to create a new record that a requester has described that does not already exist at the time of request. (*Sander v. State Bar of California* (2018) 26 CA5th 651, 665-666.)

On October 8, 2021, the requestor posted the following message: (21-7247)

Please re-open this request. It is for a record documented in another publicly released record, and thus should exist. Lake referred to a specific document or set of documents as "feedback" and also replied that the target of her communication should know about the existence of the document(s) and have responded to them. As there is doubt in the mind of the records liaison about what the record would entail and Lake is apparently unable to help in the endeavor, please provide all communications and correspondence from Betsy Lake to David Kaval between November 1, 2020 and April 28, 2021.

On October 8, 2021, the Office of the City Administrator posted the following response: (21-7247)

Per City staff and attorney, referenced "feedback" was conveyed verbally, there are no responsive records. Please submit your new request separately in the NextRequest system to allow for appropriate tracking and response by the City.

On April 26, 2023, PEC staff followed up with the Office of the City Administrator regarding the remaining two requests (21-7247 and 21-7191):

Good morning Rose,

I'm assigned to process public records mediations for the Public Ethics Commission. I'm currently working on M2021-19, which relates to three PRRs assigned to the City Administrator's Office: [21-7245](#), [21-7191](#), and [21-7247](#). It appears that the latter two are still at issue in this mediation. My colleague Jelani Killings let me know that you informed him in September 2021 that you were waiting for responsive records from staff and outside counsel.

Regarding [21-7191](#), has ITD processed the email search yet? What is the status of providing these emails to the requester?

Regarding [21-7247](#), it appears that you provided a response to part 1 of the request but not part 2 or 3. Were you able to locate the financial proposal and the record that conveyed it to the City?

Item 8 - Executive Director's Report

Thank you for your help!

Sincerely,

Chris

On April 26, 2023, the Office of the City Administrator responded to the PEC:

Hi Chris,

Thanks for reaching out, I'm copying Winnie who is the new/current PRR liaison for CAO and Asst. City Administrator Betsy Lake who is the lead for Howard Terminal. For all PRRs received by the City pertaining to the Howard Terminal project, I provided the results from all ITD searches to an attorney with Meyers Nave (outside counsel) who was supporting the City's project team. The attorney would review and identify responsive records, redact as needed, and then provided those files to me to upload to the request online.

In the case of 21-7191, I followed up with the team to clarify that the requester was seeking records with those specific terms in the subject line (attached), I did not receive a reply.

Regarding 21-7247, I was advised by the attorney that there were no responsive records to this request and to close it (see attached). In response, the requester then submitted 21-8604. I ran an email search through ITD for this request and provided those files to the attorney, she first told me the City did not have responsive records, then wanted to cross check their records to confirm they'd produced all responsive items, and that she would provide me with a written response for the request (see attached).

I can coordinate with Betsy and the project team to try and close out these requests, but wanted to share this background info to provide a bit more context. Please let me know if you have questions or if there are other steps we need to take.

Thanks,
Rose

On April 27, 2023, the PEC sent the following information to the Office of the City Administrator:

Thanks, Betsy and Rose!

So, to summarize my understanding of the state of these requests (with next steps underlined):

- [21-7247](#): the City holds no responsive records to part 1 because the feedback was verbal. Molly mentioned there was a written proposal that the A's provided on 4/23/21 – was this disclosed to the requester as responsive to part 2?

Item 8 - Executive Director's Report

- [21-7191](#): No search for responsive emails has been conducted. The CAO needs to request that ITD perform a search for the responsive emails.
- [21-8604](#): ITD performed the search, Shaye reviewed and determined there were no responsive emails. However, Rose clarified the scope of the request for all emails between Betsy and David, unrelated to subject matter. Shaye needs to re-review to determine responsiveness and redactions, if necessary.

Please let me know if I misunderstood the progress of any of these requests or the necessary next steps.

Thanks all!

Best,

Chris

On April 28, 2023, outside counsel provided the following message to the PEC:

Chris,

With regard to 21-7247, I am not sure what was disclosed to the requester, but in the event you need it, attached is the A's written proposal of 4/23/21.

Thank you,
Molly

On May 4, 2023, PEC staff asked about the process for releasing documents to the requestor.

On May 5, 2023, The Office of the City Administrator confirmed to the PEC that the documents for 21-7247 would be released.

On May 5, 2023, the Office of the City Administrator reopened the request, added two new documents, and then subsequently closed the request. (21-7247) This left 21-7191 as the only open request.

No additional work was completed on 21-7191 during the remainder of 2023.

On March 12, 2024, PEC staff checked with the Office of the City Administrator to determine the status of the EDDR on 21-7191.

On April 11, 2024, the Office of the City Administrator asked outside counsel for help with reviewing responsive records concerning 21-7191.

Item 8 - Executive Director's Report

On April 22, 2024 and April 26, 2024, PEC staff followed up with outside counsel to ask about how long it would take to review requests.

On May 2, 2024, the Office of the City Administrator asked whether they could upload documents so outside counsel could review the documents.

On June 5, 2024, upon prompting by the PEC, the Office of the City Administrator followed up with outside counsel about whether outside counsel had identified any responsive documents.

On June 9, 2024, the PEC followed up with outside counsel, asking whether outside counsel had identified any responsive documents.

On June 10, 2024, outside counsel responded with the following message;

All,

We are coordinating to figure out if this request/review had already been conducted in some fashion. I will be following up shortly on status. I apologize for any delay and confusion.

Thanks
Shaye

On June 17, 2024, outside counsel wrote to the PEC and the Office of the City Administrator:

Rose,

We cross-checked the set you set us against prior productions, and there is a small set that was produced before and is ready to go. They can be found here:

Download link: [link]

The emails total more than 18,000 records. We are continuing to figure out ways to reduce these numbers and get some other sets out to you, in a rolling production.

Thanks
Shaye

The same day, outside counsel provided a subsequent message to the PEC and the Office of the City Administrator:

Graham,

Yes, we were able to expedite the 90 items because they had already been reviewed and produced. To be honest, I thought there would have been much more of an overlap from

Item 8 - Executive Director's Report

the prior productions, so I was expecting to be able to produce a larger initial set. I was disappointed to learn it was only 90 records.

However, we are still working out ways to expedite some other sets from the rest of the 18,000 records to try to get more sets out this week. We believe a good portion will be privileged communications (as was the case for similar requests in the past) and we will be able to omit those from review. We have also identified a large segment of outlook calendar invites, which we should be able to review and produced quickly. I am hopeful what will be left can be reviewed quickly.

The problem is the original request is overbroad. When we looked back through our past communications with respect to this request, we had originally advised the City to send the request back to the requestor to narrow the PRA, because the search terms were so broad. We do not believe that was ever done, so we need to figure out how to cull it down for reasonable review and production.

Best,
Shaye

On June 18, 2024, the Office of the City Administrator informed outside counsel how they could narrow the 18,000 responsive documents search:

Good morning All,

The requester was asked to narrow his search and provided a response/follow-up question (attached), I believe this is where the communication left-off.

I'll post the 90 items to NextRequest by end of day. Thanks,

That same day, outside counsel informed the PEC and the Office of the City Administrator that the attachment would drastically speed up the process of identifying responsive records.

On June 18, 2024, the Office of the City Administrator published 93 additional documents from the first batch. (21-7191)

On June 24, 2024, PEC staff emailed the Office of the City Administrator and outside counsel regarding the progress on the requested records.

That same day, outside counsel confirmed that they would be releasing the rest of the documents relevant to this request by June 25.

On June 25, 2024, outside counsel submitted 234 remaining responsive documents, which were posted to NextRequest.

Item 8 - Executive Director's Report

IV. RECOMMENDATION

Because the Office of the City Administrator has produced all responsive documents, the mediation has been closed with no further action.

Staff appreciates the work of the Office of the City Administrator and outside counsel in reviewing a very broad request (at one point, over 18,000 documents). However, Staff notes that it took 2.5 years to get this Public Records Request complete. While communication was very good when Staff was involved, there was almost no work done on this request when the Public Ethics Commission wasn't actively pushing (e.g. June-December 2023).

Staff suggests that the Public Ethics Commission consider issuing letters to city agencies that have not resolved years-old mediation requests. The letter would remind them of the importance of transparency and responding to Oakland residents expeditiously.

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: June 23, 2024
RE: *In the Matter of the Planning & Building Department and the Department of Transportation (Case No. M2021-20); Mediation Summary*

I. INTRODUCTION

On October 6, 2021, the Commission received a request for mediation alleging the Mayor's Office, the Department of Transportation, the Planning Commission, and a City Planner were unlawfully delaying responding to public records requests made by the Requester on August 4, 2021 and September 30, 2021. Staff initiated its mediation program on October 11, 2021, pursuant to the Oakland Sunshine Ordinance.

Because the responsive departments have released all responsive documents, this mediation has been closed.

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

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

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

III. SUMMARY OF FACTS

On August 4, 2021, the City received the following records request via an emailed Public Records Request Form: (21-6751)

My request is for detailed verification of the Oakland Department of Transportation's authority over foot paths between private residences in the Oakland hills.

I cannot understand why the Department of Transportation would have authority over foot paths.

Thank you,

JK

On August 4, 2021, the City received the following records request via an emailed Police Department Public Records Request Form: (21-6749)

My request is for a complete copy of all records concerning the plans of developers, Robert Wirth and Helen Yu, to secure permission from the City Department of Transportation to use a city foot path (originally designated as an equestrian path) on Woodhaven Way, as a construction road and staging site for the construction of a residence on the vacant lot located between 6326 and 6344 Thornhill Drive in Oakland. The vacant lot's owner is Helen Yu, and Robert Wirth is the developer. The Yu property is parcel number 048F-7379-006-00. The case file number for the Wirth-Yu project is PLN15152 (CP15012).

The equestrian path is a strip of land 12 ft wide, located between the lot on Thornhill and my property on Woodhaven.

Thank you,

JK

On August 4, 2021, the Requester added the Department of Transportation to both requests.

On August 11, 2021, the Department of Transportation provided the following information to the Requester and closed the request (21-6749).

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

Hello Mr. Kessler,

Per Construction Inspector Sup (Field):

"This project is still in the planning phase, DOT have not received any applications yet for this property."

On August 12, 2021, the Department of Transportation reopened the request and added Public Works to the request (21-6749).

On August 23, 2021, the Planning & Building Department was added to the request (21-6751).

On August 23, 2021, Planning & Building asked the Requester to narrow his request to a specific address (21-6751)

On August 23, 2021, the Requester provided the following information: (21-6751)

the path i am particularly concerned with is located on woodhaven way, oakland 94611. it leaves woodhaven way between 1742 and 1734 woodhaven, the path loops behind 5 homes (among them mine at 1714 woodhaven, where i have lived for 21 years), and then the path returns to woodhaven way between 1700 and 1688 woodhaven. the path is 12 feet wide, and is designated as an equestrian path, though i have never seen any horses on it. it is a beautiful and secluded urban path, used by many in the neighborhood and their children for walks, etc. the efficient cause for my concern and my request for information about jurisdiction over this path is that the developer of a potential project on thornhill drive has expressed his intention to turn the path into a construction road for heavy equipment in order to stage a major excavation from the top of his property, which also abuts the path from below. no vehicles of any kind have ever been used on the part of the path the developer hopes to try into a construction road to stage his project. thank you, jk

On August 31, 2021, Public Works removed itself from the request and added Economic & Workforce Development (21-6749)

On September 3, 2021, Planning & Building provided the Requester with the following information: (21-6751)

Hello,

Please see the information below related to the following question:

My request is for detailed verification of the Oakland Department of Transportation's authority over foot paths between private residences in the Oakland hills.

Item 8 - Executive Director's Report

The 10' path behind 1680 and 1688 Woodhaven Way and the 12' path behind 1700 to 1734 Woodhaven Way were dedicated under the Forestland Subdivision.

All other documents and maps will be provided by the Department of Transportation.

On September 3, 2021, Planning & Building removed themselves from the request (21-6751)

On September 30, 2021, the Requester submitted a third public records request (21-8406) that was a duplicate of the previous one (21-6749). He assigned this request to the Department of Transportation.

On October 10, 2021, the Requester provided the following information to the 21-6749 request:

dear holders of the public records for the city of oakland, i have filed numerous public records requests in regard to the planning dept's pln15152 and the woodhaven path. i have been seeking info about communications between the developer, robert wirth, and his lawyer, peter smith, on the one hand and the mayor's office, the city department of transportation, and the planning department on the other hand. shockingly little real information has been given over to me. i did receive a voice message on thursday, october 7th, from a woman who said she was working on my requests, but that she does not find email addresses for robert wirth or peter smith in the city staffing directory. this is because they are not city employees. the woman who left the message said she would follow up with an email that i could reply to -- but no such email has arrived. so: the info she requested is below: the emails i have for them are: robert wirth: robertcwirthjr@gmail.com and peter smith: psmith@smithllpgroup.com thank you, jeffrey kessler510--339-1701

On October 11, 2021, the Department of Transportation added Planning & Building to the newest request (21-8406). Planning & Building subsequently removed themselves from this request because it was a duplicate of 21-6749.

On October 11, 2021, the Department of Transportation sent the Requester the following information (21-6749):

Hello Mr. Kessler,

Follow emails were sent and an IT search has been submitted for the information request. Apologies for the delay and thank you for your patience.

The Department of Transportation

On January 18, 2022, Economic & Workforce Development removed themselves from the request (21-6749).

Item 8 - Executive Director's Report

Between September 3, 2021 and May 2024, the Department of Transportation provided no additional information to 21-6751.

Between October 11, 2021 and May 2024, the Department of Transportation provided no additional information to 21-6749 or 21-8406.

On May 23, 2024, Staff emailed the Requester concerning 21-6749, 21-6751, and 21-8406

Hi Mr. Kessler,

Three years ago, you filed a mediation with the Public Ethics Commission, asking for help seeking documents in PRR 21-8406, 21-6751, and 21-6749. Did you ever receive these documents? I have been asked to review older mediations, and wanted to know if you are still interested in documents. If so, i'd be happy to help.

On May 23, 2024, the Requester sent the following email to PEC staff concerning 21-6749, 21-6751, and 21-8406:

hello graham,

what a surprise to hear from you about this.

and yes, i am still interested in the docs -- so let's talk.

On May 24, 2024, the Requester spoke with PEC staff. PEC staff followed up on May 31, 2024 to discuss a plan of action.

On May 2024, PEC staff emailed the Department of Transportation:

Hi Erika,

I'm trying to clear out some old Public Ethics Commission mediation requests. We have a mediation open from all the way back in 2021 concerning:

<https://oaklandca.nextrequest.com/requests/21-8406>

<https://oaklandca.nextrequest.com/requests/21-6749>

<https://oaklandca.nextrequest.com/requests/21-6751>

As you are likely aware, departments are required to respond to the public within 10 days of receiving the request if they have any responsive documents, and within 3 days for certain

Item 8 - Executive Director's Report

records, pursuant to the Oakland Sunshine Ordinance. All responsive documents must be provided to the requester unless a legal exemption is provided.

It looks like DOT never responded regarding 21-8406 and 21-6751 and left the requester hanging regarding 21-6749.

Can you please let me know if DOT has any responsive records to this request? I realize that there is a lot going on in the city right now, and these requests take some time. However, the city has now been in violation of the statute for 3 years and Mr. Kessler is frustrated that nobody ever got back to him. Can you please prioritize getting this situation addressed next week? If this request ends up producing a lot of documents and you need more time, please let me know.

On May 29, 2024, PEC staff followed up with the Department of Transportation.

On May 30, 2024, the Department of Transportation responded and said they were looking into this request.

On June 6, 2024, PEC staff followed up with the Department of Transportation.

On June 10, 2024, the Department of Transportation uploaded documents to the Requester. The Department of Transportation then closed both requests and informed PEC staff all requests were complete.

On June 10, 2024, PEC staff sent the following email to the Requester: (21-6749, 21-6751, and 21-8406)

Hello Mr. Kessler,

The Department of Transportation has released additional documents to you. I am sorry it took several years to get these to you, but you have them, at last. They have told me that there is nothing additional that relates to your requests.

Please let me know if you have any followups.

On June 10, 2024, the Requester expressed his frustration with the Public Ethics Commission's mediation process and the Records Request process more broadly:

all i can say is that this is an ill-time and, it would seem, pointless transmission of info. not sure if you know, but the reason wanted these docs/records was that i had an upcoming appeal with the planning commission. now, as i say, the transmission of whatever info you've sent me does not serve my citizen's requestion.

believe me i am not a trump person -- but this kind of bureaucratic inefficiency (worthy of a

Item 8 - Executive Director's Report

kafkaesque story -- we're talking about 3? years after the hearing) is why the crazy/alt right hates the gov*t and wants to destroy the 'deep state'

just to be clear, graham, i am not attributing anything at all negative to you

merci,
Jeffrey

On June 10, 2024, PEC staff acknowledged the Requester's concerns and subsequently closed the mediation.

IV. RECOMMENDATION

Because the Planning and Building Department, and the Department of Transportation produced all responsive documents, the PEC closed this mediation 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
Graham Willard, Law Clerk
Jelani Killings, Ethics Analyst
DATE: June 25, 2024
RE: *In the Matter of the Oakland Police Department (Case No. M2022-03); Mediation Summary*

I. INTRODUCTION

On April 11, 2022, the Commission received a request for mediation alleging the Oakland Police Department was unlawfully delaying responding to public records requests made by the Requestor on November 16, 2021. Staff initiated its mediation program on April 11, 2022, pursuant to the Oakland Sunshine Ordinance.

The Oakland Police Department reports that they have released all responsive documents, so 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

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

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

III. SUMMARY OF FACTS

On November 16, 2021, the City received the following records request via an emailed Public Records Request Form:

November 8, 2021

This is a request for records under the California Public Records Act. Please provide the following records in electronic format where available:

1) All agreements and plans in effect on September 13, 2021 and information regarding the effective agreements and plans between the City of Oakland including the Oakland Police Department with any Federal U.S. Law Enforcement Agencies (including but not limited to: Homeland Security, FBI, U.S. Marshal).

a) The purpose of this request is to understand the relationship between Oakland and Federal Law Enforcement Agents as it relates to law enforcement in the City of Oakland.

2) Any internal communications, including text messages, including any of the following individuals as a sender or recipient: Mayor Libby Schaff, City Administrator Ed Reiskin, Oakland Police Chief LeRonne Armstrong during the timeframe of September 10, 2021 to September 16, 2021 on the following search terms/topics:

a) "Task Force"

b) "FBI"

c) "Raid"

d) "Project Clean Sweep"

e) "Public Safety"

f) "Cortez"

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

3) Records reflecting the number and identity of Oakland Police Officers deputized by the FBI in August and September 2021.

4) September 13, 2021 Video Footage from Store where the FBI Raid and Killing of Jonathan Cortez (2500 block of Fruitvale Avenue).

5) Warrants for the arrest of Jonathan Cortez for September 13, 2021.

6) Any disclosable information under Cal. Gov. Code Section 6254(f)(1) regarding the arrest of Jonathan Cortez.

On November 16, 2021, the request was assigned to Oakland Police Department (OPD) Information Technology and the Contracts Unit.

On November 16, 2021, OPD sent the following message to the requestor:

For questions 3, 4, 5, and 6 the information is being withheld pursuant to GC 6254(f). Please see the full response below:

After a diligent search and reasonable inquiry, OPD has located the following materials that are responsive to your request: A Report, Video Footage, Statements, and Photos. At this time, however, OPD has determined that the disclosure of these materials would endanger the successful completion of OPD's investigation because OPD still has key interviews to conduct for involved parties. To release any of the material gathered thus far potentially would enable involved parties and/or witnesses to tailor their testimony to this released material. Accordingly, this material is being withheld pursuant to GC 6254(f).

We will continue to work on gathering information regarding questions 1 and 2.

We have launched an email search to help answer question 2.

On November 27, 2021, the requestor sent the following message to OPD:

Regarding the records related to questions 1 and 2: when is the estimated date of production completion?

Regarding the records related to questions 3, 5, and 6: please reconsider your denial to disclose records. Specifically:

On question 3: It seems unreasonable to assert that disclosing the number of officers present would jeopardize an ongoing investigation. Additionally, refusal to disclose the badge numbers of officers deputized during that period of time not jeopardizing ongoing investigations. If so, can you respond with the total number of officers deputized during that time period?

Item 8 - Executive Director's Report

On question 5: please explain why disclosure of the warrants which led to Jonathan Cortez' death might jeopardize future ongoing investigations or reconsider responding with partially redacted or full warrants.

On question 6: please clarify- is the OPD's position that any and all disclosures would endanger the successful completion of an ongoing OPD investigation regarding the arrest of Jonathan Cortez under Cal. Gov. Code Section 6254(f)(1)?

If OPD determines that it must maintain its refusal to disclose records related to questions 3, 4, 5, and 6: please provide an estimated date of completion for the key interviews that might become jeopardized as a result of the record request. Which is to say, please provide an estimated date of when the 6254(f)(1) exception is no longer applicable.

Regarding the records related to questions 1 and 2: when is the estimated date of production? Regarding the records related to questions 3, 4, 5, and 6: please reconsider your denial to disclose records. If OPD determines that it must maintain its refusal to disclose records related to questions 3, 4, 5, and 6: please provide an estimated date of completion for the key interviews that might become jeopardized as a result of the record request. Which is to say, please provide an estimated date of when the 6254(f)(1) exception is no longer applicable. On question 3: it does not seem reasonable to assert that disclosing the number of officers present would jeopardize an ongoing investigation. Refusal to disclose the badge numbers of officers deputized is likewise unreasonable. On question 5: please explain why disclosure of the warrants which led to Jonathan Cortez' death might jeopardize future ongoing investigations. On question 6: please clarify- is OPD's position that any and all disclosures would endanger the successful completion of an ongoing OPD investigation regarding the arrest of Jonathan Cortez under Cal. Gov. Code Section 6254(f)(1)?

On December 21, 2021, OPD staff released a notice of Class Action Settlement which they said “might affect the requestor’s rights” regarding OPD records.

On February 1, 2022 the requestor posted the following response:

We are reviewing the Class Action with our internal team and additionally have reached out to the Oakland City Attorney team. However, we still have not received an estimated date of production or update for the in progress search regarding request #1 and 2 since November 16, 2020.

Additionally, there has been no response to our November 27, 2020 request to reconsidering request #3,5,6 or to clarify why releasing that information would “**substantially interfere** with an active investigation.”

For the request #4 and additionally if clarified on #3,5,6 - we have not received a response to our November 27, 2020 request requesting an estimated day of completion of key interviews or when 6254(f)(1) exception is expected to be no longer applicable as PRA requests can only be withheld up to 45 days unless “substantially interferes with an active investigation.”

Item 8 - Executive Director's Report

Additionally for request #5 & #6. Jonathan Cortez is not being charged with anything as he has been killed by the FBI during a raid. Therefore warrants of his arrest and disclosable arrest information should be made available. Particularly given additional language under the Oakland Sunshine Act: "The Oakland Police Services Agency shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the District Attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first."

On February 3, 2022, OPD responded with the following information:

Good Morning.

Question 1. I sent a follow up email to The contracts and policy unit today.

Question 2. Due to staffing and the exuberant number of email request we have, we can not provide an estimated date of completion. We can provide you the following information regarding your email search results: There is 106.14 MB of data to review.

Given the DA is not seeking to bring charges against Jonathan Cortez, it seems the warrant and disclosable arrest information can be released.

On February 9, 2022, the requestor responded with the following information:

Thank you for an update on Request 1 & 2.

A few key areas we are requesting for more clarification:

No response yet to reconsidering request #3,5,6 or to clarify why releasing that information would “**substantially interfere** with an active investigation.”

If #3,5,6 are considered answered via 6254(f)(1) active investigation exception, then we are resubmitting the request as post investigation record request and looking for the estimated day of completion of the key interviews or no longer applicable.

However, regarding #5 & #6, it seems that because Jonathan Cortez is not being charged as he was killed. Therefore warrants of his arrest and disclosable arrest information should be made available and not held up as there is no active arrest/investigation against Jonathan. Particularly given additional language under the Oakland Sunshine Act: "The Oakland Police Services Agency shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or

Item 8 - Executive Director's Report

other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the District Attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first."

Given the DA is not seeking to bring charges against Jonathan Cortez, it seems the warrant and disclosable arrest information can be released.

Thank you in advance for additional considerations and updates

On February 11, 2022, OPD stated that they will follow up with the Criminal Investigative Unit, regarding 3, 4, 5, and 6.

On February 25, 2022, the requestor checked in to ask whether there were any updates on any of the requests. OPD informed the requestor that the Criminal Investigations Unit would reach out to the FBI to ensure we check all safety records and that OPD's estimated date of response was 03/04/2022.

On April 1, 2022, the requestor responded:

Good morning. As per your previous update, we await a response regarding the disclosure of previously requested records. Regardless of the FBI's stance, you are now almost one month behind your estimated date of production, and this is for a request that began in november of the past year. The OPD has a duty to disclose records related to its public service under the kland sunshine ordinance and the california public record statute. Please proceed with document production promptly.

On April 2, 2022, OPD released one EDDR request form to the requestor.

On April 13, 2022, the requestor informed OPD that they had requested mediation before the Public Ethics Commission.

On April 15, 2022, OPD informed the requestor of the following:

As disclosure of these materials continues to endanger the successful completion of this investigation, they are being withheld and this request is closed.

On April 16, 2024, Staff reached back out to OPD:

Hello Alisha,

I hope you're doing well. I'm assigned to process public records mediations for the Public Ethics Commission. I'm currently working on M2022-03, which involves [PRR 21-9706](#) assigned to the Police Department.

Item 8 - Executive Director's Report

It appears the requester sought a variety of documents related to OPD/federal law enforcement cooperation and the September 13, 2021, shooting of Jonathan Cortez. The Police Department denied the request in full, stating that disclosure of any of the records would endanger the successful completion of the investigation.

Could you please review the request and let me know answers to the following questions:

- Is the investigation is still ongoing? If so, what is the scope of that investigation?
- Have local or federal prosecutors determined if charges will be brought against any individual in connection with the shooting?
- If the investigation is still ongoing, would release of any of the identified records would be possible? In particular, please consider parts (1)-(3) of the request since they do not appear to directly relate to the Cortez shooting, but please also consider the remainder of the request.
- Has the City Attorney has been consulted on this request? If so, when, and what did it state?

On April 16, 2024, OPD sent the following message to Staff:

Good morning-

This request was closed 2 years ago. The dynamics of the case may be different at this point.

Does the requester wish to open a new request?

The questions you are posing I no longer have the answers to, as the answers I have are too outdated.

If the requester would like to open a new request, I can ensure we research with all the proper channels.

The last time we also had to have OPD reach out to The FBI, because it was their warrant issued out of Hayward which led to the incident.

Please advise.

On April 16, 2024, Staff followed up with OPD stating that the requestor was still interested in receiving the requested information.

On April 23, 2024, Staff asked for an update on the status of the shooting investigation. OPD responded the same day, saying they were awaiting a message from the Email IT team. OPD also wrote the following message:

I just spoke with OCA the emails and not responsive. I am now obtaining the contracts between OPD and Federal agencies.

OPD later clarified that OCA believed it was appropriate to continue withholding the emails.

Item 8 - Executive Director's Report

On April 30, 2024, Staff followed up with OPD to see if there was any update regarding responsive contracts. OPD immediately responded, saying that the Fiscal Division would need 10 business days to gather more details.

On May 7 and May 10, 2024, and May 23, 2024, Staff asked if there were any updates.

On May 24, OPD sent the following message to Staff:

Good morning-

Great News! Our Fiscal Division has identified at least 20 responsive documents. I will need another week or so, to review them and start uploading them.

On May 31, 2024, OPD informed Staff that they would need additional time to post the documents.

On June 11, 2024, June 13, 2024, and June 25, 2024, OPD posted responsive documents to this request.

IV. RECOMMENDATION

Because the Oakland Police Department has produced all responsive documents, Staff closed this mediation 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: June 22, 2024
RE: *In the Matter of the Planning & Building Department (Case No. M2024-01); Mediation Summary*

I. INTRODUCTION

On June 22, 2024, the Commission received a request for mediation alleging the Planning & Building Department and the Housing & Community Development Department were unlawfully delaying responding to public records requests made by the Requester on January 1, 2024. Staff initiated its mediation program on February 1, 2024, pursuant to the Oakland Sunshine Ordinance.

The Housing & Community Development Department stated that they provided all responsive documents to the request. However, the Planning & Building Department on several occasions did not respond in a timely fashion to Staff or the requestor. Because the requestor grew tired of waiting for the Planning & Building Department to engage in a constructive manner, they have asked that the mediation be closed. The requestor has informed Staff that they are considering alternative avenues to obtain the records, including filing a formal complaint.

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

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).

Item 8 - Executive Director's Report

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

III. SUMMARY OF FACTS

On January 1, 2024, the City received the following records request via NextRequest:

To Whom It May Concern:

I hereby request the following records

Pursuant to the California Public Records Act, THIS IS A CALIFORNIA PUBLIC RECORDS ACTS REQUEST

This request is driven by concerns regarding the handling of my housing situation, specifically relating to a severe mold infestation, numerous habitability violations and subsequent loss of housing, and violation of my right to Procedural Due Process in my interactions with City Officials and others inside of (but not limited to) the Oakland Housing and Community Development

"... It is my understanding that there is another letter coming shortly closing this case any day now after my discussions and continued cooperation with the city of Oakland. Both the code compliance department and the relocation department. ..."

The quote above is a part of an email correspondence where my former landlord, Anthony De Maio, informed me that I am to expect a final ruling on my application for the Code Compliance Relocation Payment Program. This was stated before my actual appeal have been submitted.

Mr. De Maio also claimed that he had already been found innocent by the City when responding to a 3rd party mediation service. No released documents by City of Oakland regard this matter or the property located at 918-920 Oak St. Indicate any communications, and appear to show no communication has in fact occurred, as there is no Owner Response or indications that violations have been abated according to city records.

Records Requested:

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

- All communications, internal or external, that contributed to or were part of the decision-making process related to;

- Documents related to any deals, determinations, decisions, or contracts made in relation to my case

THE INITIAL DETERMINATION OF ELIGIBILITY FOR THE CCRPP
FOR CHRISTIAN JAY REETZ DATED 12/11/23 BY KELLY HOFFMAN

Period of Records Requested:

- Documents created after June 1, 2023, until current (time of retrieval)

Specific Records Requested:

Housing and Community Development Program

Program Manager Kelly Hoffman

Housing Specialist Corean Todd

Pertaining to the following following:

o Building and Planning Department, Code Enforcement:

Inspector Christopher Scyphers,

Inspector Travis Ha,

Supervisor Inspector David Miles.

o Oakland Housing Authority:

Risk Management Director Cha Yang.

o Private Individuals/Housing Providers:

Anthony De Maio,

Antoinette 'Peggy' Ramirez De Maio,

Juan Santiago,

Amanda J. Beren,

A De Maio Properties,

and related email addresses.

Item 8 - Executive Director's Report

Specific properties:

920 Oak, 918-920 Oak,

331 Hanover,

570 Grand,

1600 4th,

1507 5th,

185 5th,

555 S. 2nd / 555 S SECOND (and similar combinations).

- Any documents referring to mold (including Stachybotrys, Aspergillus, Penicillium), encompassing inspections, complaints, remediation efforts, and health impacts.
- Records related to relocation processes, especially concerning the Code Compliance Relocation Payment Program and any related correspondence or assistance offers.
- Details about specific units (Apt/Unit #9, #11, #12), roof conditions, interactions with Bay Area Mold Pros, remediation efforts, relocation challenges, Lake View/Encampment issues, habitability assessments, escrow details, appeals, abatement actions, and any reference to Code Compliance Relocation Payment Program.

I'm requesting records from personal email accounts used by city officials, in addition to their official email addresses. This request stems from an instance where Corean Todd provided me with a personal Gmail account for Kelly Hoffman when providing me with contact details regarding my appeal process, therefore the scope of my request encompasses a query into the use of alternate email addresses being used for official City Business such as my appeal.

THIS INCLUDES EMAIL ADDRESSES FOR ALL ABOVE NAMED CITY OFFICIALS THAT APPEAR FIRST INITIAL + LAST NAME = GMAIL.COM

(Example; KHoffman@gmail.com)

Given the serious nature of these issues, including the violations of my right to procedural due process, I request expedited processing of this public records request. These matters not only impact me personally but could also have broader implications for public interest and community trust in Oakland's housing and development governance. I will be contacting Public Ethics Commission about this matter for procedural oversight to work as diligently as I can to ensure the evidence of both parties is weighed impartially and ethically in a manner that adheres to established City protocol

Item 8 - Executive Director's Report

Most importantly I am compelled to emphasize this matter due to the direct and severe health implications that the buildings infestation can have on the current residents, as we exit yet another storm and more opportunities for water damage arise. My unit is the second unit that has had to uproot due to the habitability issues present at the site.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief. In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 calendar days, as the statute requires. Thank you for your attention to this matter. Happy New Years, please stay safe and dry- I look forward to your prompt response and the provision of the requested records.

Sincerely,

Christian J. Reetz

[this email has also been sent to housingassistance@oaklandca.gov]

On January 1, 2024, the requestor added the Department of Housing & Community Development (HCD) to the request.

On January 5, 2024, HCD added Planning & Building Department (PBD) to the request.

On January 11, 2024, HCD uploaded 58 documents and said they had no remaining responsive documents.

On January 12, 2024, HCD closed the request.

On January 29, 2024, the Public Ethics Commission (PEC) received the request for mediation.

On February 1, 2024, PEC staff emailed PBD to inform them about the mediation.

On February 2, 2024, the Planning & Building Department responded:

Regarding Mr. Reetz's original request, I've found the following:

1. Public Records Request number 24-2 was submitted to the NextRequest portal on 1/1/2024. <https://oaklandca.nextrequest.com/requests/24-2>
2. Mr. Reetz submitted the request to the Housing and Community Development Department (HCD).

Item 8 - Executive Director's Report

3. HCD released records in three separate postings on Jan 11, with a total of 58 documents released.
4. On Jan 12, the HCD Department closed the request.

Mr. Reetz's request asked (in part) for:

“Records Requested:

- All communications, internal or external, that contributed to or were part of the decision-making process related to;
- Documents related to any deals, determinations, decisions, or contracts made in relation to my case

THE INITIAL DETERMINATION OF ELIGIBILITY FOR THE CCRPP
FOR CHRISTIAN JAY REETZ DATED 12/11/23 BY KELLY HOFFMAN

Period of Records Requested:

- Documents created after June 1, 2023, until current (time of retrieval)

Specific Records Requested:

Housing and Community Development Program
Program Manager Kelly Hoffman
Housing Specialist Corean Todd”

Mr. Reetz has not at any time posted a message to the NextRequest portal stating that he believes the release to be unsatisfactory and/or incomplete. In addition, he has not opened any of the emails the NextRequest portal has sent advising of the release of documents or the closure of the request. Below is a screenshot of the email statuses for the request.

Regarding page four of the attached pdf for Mediation Request M2024-01 (“What records are you seeking...”)

5. “I request full .pst threads...” HCD released the emails requested under request number 24-2. Per direction from the City Attorney's Office, as a matter of law the City is not required to create a new record by changing the substantive content of an existing record or replacing existing data with new data. *Sander v. State Bar of California* 58 Cal.4th 300.
6. “I request all communications...” This information was released by HCD under request number 24-2.

Item 8 - Executive Director's Report

7. "Subject: Public Records Request..." This information was provided under a previous public records Request, number 23-8721. The document release date was Sep 22, 2023, for Planning & Building Records. In addition, the Fire department also released records on the same request on Oct 10, 2023.
8. "Subject: Inquiry on Habitability..." This is asking for interpretation of policy/procedures and is not a request for records. Mr. Reetz can contact HCD and request to speak to someone who can explain the criteria used for any decisions that were made.
9. "5. Can the City..." Code inspections are complaint based. If Mr. Reetz believes the building to be unsafe, he should contact Code Enforcement to make a report.
10. "6. Please provide the NOV's..." NOVs as of Sep 22, 2023, were released via request number 23-8721. Mr. Reetz is welcome to submit a new public records request and we can provide any additional NOVs that were issued after Sep 22, 2023.

On March 14, 2024, PEC staff followed up with the Requester, providing the content of the February 2024 email.

On March 18, 2024, the Requester confirmed that they had received the PEC's email from March 14th.

On March 19, 2024, the Requester sent the PEC the following email:

Dear Mr. Willard,

I hope this message finds you well. I am reaching out to request a review of my records mediation request submitted earlier this year, due to a clerical error where the request number was mistakenly written as "1-29-23" instead of the correct "1-19-24". This oversight may have inadvertently affected the mediation process, for which I apologize.

Before moving forward, I would like to ensure this correction is acknowledged. Could you please confirm if this email suffices for that purpose or if any additional steps are required on my part?

Furthermore, I have identified several discrepancies and potential omissions in the files provided in the requests that are cited by HCD and Code Enforcement. I have access to these and they were released with no prior indication of redactions. Additionally, the day before their release, the primary address of an LLC that my rent payments were being sent to in Los Gatos. to was changed to one in San Jose, this address was named in my records request. This raises concerns about the completeness and integrity of the information shared.

.PST email threads offer a comprehensive and unaltered view of email exchanges, which is crucial for a transparent review of my case in light of the above and more. **They also fully meet to criteria indicated by the city attorneys office- these are original**

Item 8 - Executive Director's Report

documents which can not be altered or changed after creation, and unless the files were deleted, do not need to be created, they already exist as a part of how Outlook stores its messages internally.

I am prepared to escalate this matter through a formal complaint if necessary, but my preference is to explore all available resolution avenues first. I am committed to resolving these issues amicably and in accordance with the proper procedures, particularly given the ongoing environmental health and safety concerns at 920 Oak St.

Could you please advise on the appropriate point of contact for these matters and the choices I have in front of me for proceeding, or should I continue to direct my correspondence to you?

Thank you for your attention to these concerns and for your guidance on the best path forward. Your assistance is greatly appreciated.

Warm Regards,

Chris

On March 19, 2024, the PEC sent the requestor the following email:

Hello Mr. Reetz,

Can you please clarify where you see the request number mistakenly written? I went through all of the docs on my end, and I did not see the date 1-29-23 listed.

Two other comments:

Furthermore, I have identified several discrepancies and potential omissions in the files provided in the requests that are cited by HCD and Code Enforcement. I have access to these and they were released with no prior indication of redactions. Additionally, the day before their release, the primary address of an LLC that my rent payments were being sent to in Los Gatos. to was changed to one in San Jose, this address was named in my records request.

This raises concerns about the completeness and integrity of the information shared.

I am a little bit confused about what is going on here. You are saying that you have access to the documents separately, but they weren't released on NextRequest, and you are wondering why not? If you could please specify what documents we are talking about, I can determine what the next steps are.

Item 8 - Executive Director's Report

.PST email threads offer a comprehensive and unaltered view of email exchanges, which is crucial for a transparent review of my case in light of the above and more. **They also fully meet to criteria indicated by the city attorneys office- these are original documents which can not be altered or changed after creation, and unless the files were deleted, do not need to be created, they already exist as a part of how Outlook stores its messages internally.**

I am inquiring as to next steps and hope to be back in touch on this soon!

Thanks,

Graham

On March 20, 2024, the requestor sent the PEC the following email:

Graham,

1. Date Mix-up: I accidentally used the wrong year in my request, writing 1-29-2023 instead of 1-29-2024. My mistake was due to the recent change to the new year.

2. Documents I Mentioned: I have gathered a lot of documents, including payment records, that are public. They show:

All Oakland Addresses Anthony De Maio purchased at by the end of 2022
All sharing a principal address at Skyview Terrace in Los Gatos.

555 S 2ND ST., LLC: This San Jose property also had Skyview Terrace listed as its main address and has a lien from an Oregon bank

Payments:

- I've made payments to 920 Oak St. LLC through checks and money orders.
- My e-payment records show payments to different LLCs through AppFolio, but I can't control where the money goes once I send it.
- My bank statement shows payments to "ADEMAIOPROPERTIES," and I've also used CashApp and PayPal, marked as "555 S 2nd" and "APP*555 S SECOND."

My Request: I asked for any info on Amanda Beren (linked to Mr. De Maio) and 555 S 2nd St in early January. Right before the documents were released, the address changed from Skyview Terrace to "1648 Husted."

Release never mentioned redactions were made, however I find Kelly Hoffmans response to my 12/19/23 Hearinga Unit email extremely suspect, and I believe there is enough face value evidence or LACK of evidence to validate a closer look. I believe this email was copied

Item 8 - Executive Director's Report

and pasted into the body of the email and manually sent to Kelly Hoffmans email by herself or another employee (within an hour of its being sent) because I raised concerns about their conduct and the providing of a Gmail that was very similar to the standard "OAKLANDCA.GOV".

Should my observation and conclusion about this be wrong it can pretty much only be dispelled by looking at a PST format record because MSG can be modified to match what I received.

Finally I am requesting up until 1/29/2024 because Mr. David Miles provided me with a screenshot of the draft of an NOV that Mr. Scyphers was preparing dated for October 5.

I hope this makes things clearer and helps us figure out the next steps.

please let me know what of this information you would like me to send you as I have all of it I just don't want to muddy up your inbox with a whole bunch of files should you not even want them, available upon request thank you very much.

Best,
Chris

On March 26, 2024, PEC staff informed the requestor that the date issue was not significant and noted that the requestor had not opened the documents released as part of Request 24-2. PEC staff asked the requestor to view those records and then determine what else was missing.

On March 27, 2024, the requestor noted it was difficult to wade through what was provided on NextRequest. The requestor said that they were interested in an additional reply to Anthony DeMaio that occurred at 5:26pm, after the released message was sent. The requestor also said that they had not seen Mariano Rojo's analysis of my results.

On April 2, 2024, the PEC asked for clarification about what attachment the reply to Anthon DeMaio should be in and what Marianno Rojo's analysis of results meant.

On April 3, 2024, the requestor sent the following email to the PEC:

Hi Graham,

Thank you for your patience.

Regarding the attachment with the reply to Anthony DeMaio, I have attached to this email what I see on my end. The settings that are active on the person who exports the messages in Outlook—in this case, Todd—have their settings toggled to have a notification at the header that they have replied to an email in the past. In the attachment, you can see that there is a reply on 12/21 at 5:26 PM. I do not see that record

Item 8 - Executive Director's Report

released and am unable to find a document with a direct response in the records provided.

The naming of the files released is unruly, and I am not able to rename all of these in my own drive at present. The content is deeply troubling, and I am struggling enormously to contend with the files as they are and in identifying where I see holes. I have attached for quick access screenshots of the exact sections I am referencing.

Concerning Mariano Rojo's analysis, from the documents I reviewed, there's no explicit analysis by Mariano Rojo. However, there was a request for his help in interpreting mold report results sent to 920 Oak Street, unit 9, which suggests he was expected to provide some insights. This also aligns with what I was told by Corean Todd, which was that a supervisory inspector would be looking at these results. That would make at least three emails that Mariano has received regarding my case, namely:

1. Corean Todd's email about my test results, with Inspector Scyphers replying instead.
2. An email with mine was forwarded to Mariano, the content of which was an "FYI" that was sent to Mariano Rojo, Christopher Scyphers, and David Miles.
3. Another FYI forwarded email, this time a call to action from Kelly Hoffman to Rojo, Scyphers, Todd, and Miles regarding preparing their evidence.

This last point of HCD and CE collaborating to gather their evidence to dispute my case is something I would like clarity on. I'm not really clear what process I'm engaging in when HCD and Code Enforcement are partnering on my case like this.

The Emails provided that feature Mr. De Maio contain nothing that actually show my concerns as wrong or factually incorrect. From the perspective of a Tenant engaging with this process i dont really see where my experience with Anthony De Maio ends and CCRP begins. I say that having taken the time to learn about Code Enforcement work since this ordeal began and finding myself having a enormous respect for the growing role they play in cities and municipalities across the country.

Best regards,

Chris Reetz

On April 3, 2024, the PEC followed up with PBD by sending the following email to PBD's PRR liaison:

Dear Jonathan,

The Public Ethics Commission has been handling a mediation pertaining to Public Records Request 24-2. It is my understanding that you were involved in communicating with the PEC regarding this request in early February 2024 (Before I got involved).

Item 8 - Executive Director's Report

Mr. Reetz (the requestor) has been provided all the documents and he says he has reviewed them. However, he says there are still documents missing - those pertaining to Anthony DeMaio and those pertaining to Mariano Rojo. Please see the emails below (especially the most recent one).

I have reopened the 24-2 request since we have an ongoing mediation. Are you able to review Mr. Reetz's requests?

If there are additional documents, can you provide them on NextRequest? If there are no additional documents, can you post a message on NextRequest advising that your department was not able to find anything relevant?

Please feel free to reach out if you have questions or wish to discuss this further.

Thanks,

Graham

On April 3, 2024, the PEC informed the requestor that he had reached out to PBD to understand what additional documents might be able to be produced.

On April 4, 2024, the PEC reopened the request on NextRequest.

On April 8, 2024, the requestor sent the PEC the following email:

Graham,

going over the emails I realize that the comment made by Mr. DeMaio and the email thread released by Corean todd actually indicates that there's some unreleased documents- Mr. DeMaio mentions that he is aware of a lawyer that did not or would not pick up my case because of it's merits. Every single lawyer I have spoken to regarding this matter has told me that it is not due to its merits except one. That lawyer was CCed on an email thread to Code Enforcement.

Mr. De Maio was either provided this lawyers name or comments made by this lawyer, or has fabricated them.

How Mr. De Maio came into this information however is not shown clearly in the released records.

2nd is the issue of 555 S. Second St. and its primary address change with the secretary of state business filings.

Item 8 - Executive Director's Report

There is no mention of this address or its correlation to 920 Oak St.

However CA secretary of State Business filings indicate that the Primary Address for 555 S. 2ND ST. LLC which had been the same Skyview address in Los Gatos as his oakland Addresses, changed to 1648 Husted, in San Jose. This primary address change happened 2 days before the records were released.

i am pretty upset by what I've found as This is a massive breach in my sense of safety with interacting with this program as it had already been damaged- now I am left wondering how much other information was provided to Mr. De Maio via HCD or CE?

I will provide in a follow-up email all parties that I had sent this email to which include Mariana Rojo and all documents. I just wanted to get this to you now and let you know that that's what's going on because it's pertinent to this back-and-forth we're having and it's directly correlated to my safety.

Any additional information you would like to follow up please reply to this I'll be shorted include it.

my goal send this by end of day.

On April 9, 2024, the PEC informed the requestor that they had received the April 8, 2024 email.

On April 9, 2024, the PEC followed up with Planning & Building to determine when they would be providing an update.

On April 11, 2024, the requestor sent the PEC the following email:

Attachment 1 is the initial contact with Code Enforcement on June 26, where I reported a leak from my ceiling. This was the start of me consistently pointing out the issue.

Attachment 2 is **crucial** because it's the only email where I shared James Arrasmiths contact information.

specifically excluding Garvey Vincent, the recipients were David Miles, Travis Ha, Christopher Scyphers, and Mariana Rojo, none of whom responded to my requests for assistance. Given this, and the misdirection ive received and the omissions in my reports, it's plausible one of them might have shared Arrasmiths details with Anthony De Maio, which could explain De Maio confidence in misappropriating my security deposit, ignoring the mold issue, or threatening evictions. whenever I find out regarding my following up with Arrasmiths camp, I will let you know. Reaching out to the Bar shortly.

Item 8 - Executive Director's Report

In attachment 3, dated August 21, 2023, I sent mold test results to Christopher Cyphers and Miles David, yet there was still no acknowledgment or action on their part and Christopher Scyphers makes no mention of having previously received it.

Attachment 4, highlighting an urgent need for re-inspection, detailed the escalating mold problem and unauthorized repairs. Sent on September 11, 2023, it marked three months of requesting help.

On April 12, 2024, PBD sent the following email to PEC staff. This represented the only time the PBD even attempted to engage in the mediation after early February:

Hello Graham,

I've received your email and it is in my queue for processing. I have two City Attorney cases that I must prioritize and one other PEC request that came in before this one. I will do my best to have more information to you by the end of next week.

Thanks,

Jonathan

On April 12, 2024, PEC staff provided all of the requestor's newest emails to PBD.

On April 18, 2024, PEC staff informed the requestor about PBD's response from April 12, 2024.

On April 18, 2024, PBD staff Bobbie Rogers closed the NextRequest despite the fact that the mediation remained open.

On April 22, 2024, the requestor informed PEC staff that they had submitted two separate requests to DPW and EBMUD, and asked if they should be forwarded to PEC staff.

On April 24, 2024, a week and a half after last hearing from PBD, PEC staff sent the following email to PBD:

Hello Jonathan,

I wanted to check in and see how what the status of this request is. If you need more time, can you give me an estimate of when you will get to it?

Thanks,

Graham

Item 8 - Executive Director's Report

On April 29, 2024, after still hearing nothing from PBD, PEC staff sent an email to a different PRR point-of-contact within PBD:

Hi Bobbie,

I see you closed Next Request 24-2. There is an active ongoing mediation through the Public Ethics Commission regarding this request. Did you review all of the materials I sent over (to Jonathan Arnold and Albert Merid) and conclude that there was nothing else relevant?

Please advise so I can let the requestor know.

Thanks,

Graham

On May 2, 2024, PEC staff sent a followup email to ask about the status of the requestor's requests and received no response.

On May 3, 2024, the requestor noted that he was very fatigued, and asked to call PEC staff to discuss remaining concerns. The requestor stated he was preparing a "where we are" document and wanted to request info on a referral regarding housing.

On May 3, 2024, PEC staff informed the requestor that they could arrange a call for Monday May 6th.

On May 6, 2024, the requestor provided an agenda for the call:

Discussion Items

1. **.PST File Request**
2. **.Communications Regarding 920 Oak St.**
3. **.Digital Photography and Metadata Integrity**
 - Importance of original, unaltered photographic documents.
 - Request for inspection day photographs from Demetrius Brown and Christopher Cyphers.
4. **.Habitability and Tenant Status Determinations**
 - Request for documentation on tenant status determination.
5. **.Building Safety and Health Standards**
 - Inquiry into proactive safety measures.
 - Request for information on code inspections.

Item 8 - Executive Director's Report

6. ****Mold Test Results Analysis by Mariano Rojo****
 - Verification if Mariano Rojo reviewed the mold tests.
 - Discussion on the handling and disclosure of mold test results.
7. ****Sharing of Information****
 - Concerns about the timing of property address changes and record alterations.
 - Analysis of document handling and transparency post-request submission.
8. ***Property Transactions***
 - Discussion on rapid property sales following significant reports (e.g., mold).

On May 6, 2024, PEC staff sent the following, based on the May 6 phone call:

Hello Mr. Reetz,

Thank you for taking the time to talk with me just now. Here is a summary of what you asked for in the original 24-2 mediation. Please put your follow-up responses/questions below each original request. If you can rank order your responses/questions within each request in terms of what you think is most important, please do that.

CR = you

GW = me

PB = Planning & Building response

REQUEST 1

CR = I request full .PST threads of emails, not single correspondences within the thread be released regarding discussion on the merit of my eligibility. This is in line with my original request, it will also retain the original format and time of correspondence to ensure data integrity.

PB = CD released the emails requested under request number 24-2. Per direction from the City Attorney's Office, as a matter of law the City is not required to create a new record by changing the substantive content of an existing record or replacing existing data with new data. *Sander v. State Bar of California* 58 Cal.4th 300.

GW = You can ask for this again, but based on the PB response, I don't think they are going to be able to release full .PST threads.

REQUEST 2

CR = I request all communications, including emails with attachments, regarding the following incidents related to my case and the condition of my residence at 920 Oak St. #9.

Item 8 - Executive Director's Report

Ceiling leak reported on 6/20/23, Incident on 9/10/23 involving water damage from the unit above, third-party mold tests dated 8/4/23 and 9/15/23 indicating mold infestation. Please include any related discussions or valuations by city officials or inspectors.

PB = This information was released by HCD under request number 24-2.

REQUEST 3

CR = Public Records Request; Original Inspection Photos from 7/3/23

PB = This information was provided under a previous public records Request, number 23-8721. The document release date was Sep 22, 2023, for Planning & Building Records. In addition, the Fire department also released records on the same request on Oct 10, 2023.

REQUEST 4

CR = Subject: Inquiry on Habitability and Tenant Status Determinations

PB = This is asking for interpretation of policy/procedures and is not a request for records. Mr. Reetz can contact HCD and request to speak to someone who can explain the criteria used for any decisions that were made.

GW = I would rephrase this request to say "I request all documents regarding who determined the habitability of my residence and how/why they came to their decision." Please tell me if you approve of my phrasing.

REQUEST 5

CR = Can the City of Oakland provide evidence that the building is safe and not hazardous to health and safety?

PB = Code inspections are complaint based. If Mr. Reetz believes the building to be unsafe, he should contact Code Enforcement to make a report.

GW = I know you said you found this insulting. Can you rephrase this request to mention specific documents that you want? Do you have a copy of the code inspection for the property?

REQUEST 6

CR = Please provide the NOV's issued for the property at 920 Oak St. by both fire department beginning with the Site visit on 9/12/23 and its report, until the present to 1/29/23.

PB = NOV's as of Sep 22, 2023, were released via request number 23-8721. Mr. Reetz is welcome to submit a new public records request and we can provide any additional NOV's that were issued after Sep 22, 2023.

Item 8 - Executive Director's Report

GW = We will not have any followups regarding this request. Please file a new NextRequest, add Planning & Building, and list specific dates you want NOV's for.

Thanks,

Graham

On May 16, 2024, PEC staff asked the requestor whether he had any followups to the May 6th note from PEC staff.

On May 17, 2024, the requestor sent the following email to PEC staff:

I actually have been working on it a lot however I've been balancing the fact that like like because of the financial circumstances I'm dealing with due to the constructive eviction and everything that we've talked about all of my Rent ability healthcare my job my relationship my families various moving around and my mothers you know medical procedures and an unrelated consumer reporting screwup where Nexus Lexus reported my car thefts that you're aware of as accidents and lost my ability to drive for a month left me very behind.

Would you like to see the Excel book that I have so far with things that are going on consolidated I can share it with you if that something that is appropriate for the mediator /Requester Dynamic.

On May 17, 2024, PEC staff informed the requestor that the requestor could share whatever he wanted with the PEC, but the PEC couldn't contact city agencies until the requestor had provided a list of specific questions that were relevant to the original request.

On May 28, 2024, the requestor informed PEC staff that he had been experiencing some significant and disruptive life events, related to the documents he was seeking for PBD. The requestor said that PBD's inability to respond to the mediation made him believe that they were trying to suppress evidence, obstruct pleas for assistance and obstruct requests for clear records, and that he did not find the mediation process useful. He explained that he was ready to close this mediation request.

IV. RECOMMENDATION

The requestor has asked that the mediation be closed. Because the requestor has made this ask, Staff closed the mediation. Furthermore, Staff notes that after the first communication, PBD did not respond to Staff in a timely manner on this mediation request.

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
DATE: April 25, 2024
RE: *In the Matter of the Oakland Police Department, the City Attorney's Office, the City Administrator, the Mayor's Office, and the Planning and Building Department (Mediation Case No. M2024-02; Mediation Summary)*

I. INTRODUCTION

On February 27, 2024, the Commission received a request for mediation alleging that the City failed to respond to public records requests made by the Requestor on January 15, 2024 and January 27, 2024. Staff initiated its mediation program on March 19, 2024, pursuant to the Oakland Sunshine Ordinance.

Because the relevant departments provided the Requestor with the responsive 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 January 15, 2024, the City received the following records request via NextRequest (24-449):

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

1. Measure Z annual evaluations from 2019 through the present;
2. All annual independent audits performed related to Measure Z pursuant to Government Code Section 50075.1 and 50075.3, from the time Measure Z was approved and through the present.
3. All documents, including emails, text messages and other correspondence from or City employees, officers and agents regarding proposed renewal or modifications to Measure Z, from 2022 through the time this request is responded to.

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

Between January 16 and January 18, 2024, the City Administrator released all pertinent documents related to the request and informed the Requestor they had no additional documents. The City Administrator's office also assigned the Mayor's Office, Department of Violence Prevention to the request. The Mayor's Office provided one document in response to the request.

On January 19th, the requestor responded, noting that she did not see audits and reports for specified years.

On January 24th, the requestor followed up asking when she would receive this information and added that she wanted to receive a summary of the discussions of an ad hoc citizens committee to the office of the new mayor from January 2023.

On January 25th, the Mayor's Office, Department of Violence Prevention provided additional documents and closed the request. The Mayor's Office, Department of Violence Prevention explained that they had not received certain annual program evaluation reports from The Urban institute.

On January 25th, the requestor complained that the request had been closed prematurely. She asked that the request be reopened so the Mayor's Office could provide additional pertinent documents relevant to Measure Z.

On January 27, 2024, the City received the following records request via NextRequest (24-909):

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

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

- All documents, including but not limited to emails and text messages, referring or relating to a street mural painted in front of the Federal building reading, "Biden complicit in Genocide – No Bombs...."
- All documents, including but not limited to emails and text messages, referring or relating to any efforts to obtain a permit to paint the street mural referenced above.
- All documents, including but not limited to emails and text messages, referring or relating to any enforcement efforts to stop the painting of the street mural referenced above or arrest the perpetrators for vandalism.

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

On January 29th, the Mayor's Office released additional pertinent documents related to PRR 24-449.

On January 30th, the City Administrator added the Oakland Police Department and the Department of Transportation to the request (24-909) and removed the City Administrator.

On January 31st and February 15th, the requestor followed up, asking when additional documents would be coming for PRR 24-449 but received no response.

On February 6th, the Planning & Building Department was added to request (24-909) and the Department of Transportation was removed.

On February 15th, the requestor noted that responsive documents were due on February 6th, and no government agency had acknowledged the request or provided information about when documents would be posted (24-909).

On February 27th, the Oakland Police Department stated that the Police Department did not have any responsive documents (24-909) to the first two bullet points. The Oakland Police Department asked for the date, time, and location of the arrest as it relates to third bullet point.

On March 6th, the Oakland Police Department decided to close the request (24-909) since they had received no additional information from the requestor.

On March 6th, the requestor quickly replied, saying that they wanted the request (24-909) reopened and kept open until the mediation with the Public Ethics Commission was completed.

On March 19th, the Public Ethics Commission exchanged emails with the requestor. The requestor confirmed that she had not received a single document related to the request (24-909). The requestor shared an email exchange with the City Attorney's office, where the requestor said she thought it was "inconceivable that the people in City Hall and OPD did are not aware of what is going on."

Item 8 - Executive Director's Report

On March 20th, the Mayor's Office informed the requestor that they had no additional pertinent documents to PRR 24-449.

On March 20th, PEC staff communicated with the requestor who said that "the city is claiming that no communications between Oakland officials and others regarding renewal of Measure Z exist. This is clearly not true."

On March 21st, PEC staff added the City Attorney to the request (24-449).

The City Attorney released additional documents for PRR 24-449 on March 21st and announced that they had released all non-exempt requested documents.

On March 21st, the requestor said that she was still not in receipt of all documents pertinent to her request (24-449).

On March 21st and March 22nd, the City Attorney's office released additional documents pertinent to the request (24-449).

On March 21st, the requestor informed the PEC that she had what she needed from this request (24-449).

That same day, the requestor confirmed to the Public Ethics Commission that the protest/mural occurred on January 26th at the Ronald V. Dellums Federal Building and Courthouse.

On March 20th, and March 21, the Public Ethics Commission exchanged emails with the Oakland Police Department to determine why they needed information about specific arrests to fulfill the records request (24-909). The Public Ethics Commission said that they read the request as asking for records related to:

- information on any enforcement for the Jan 26 event (such as OPD presence at the protest/mural)
- information on whether OPD tried to stop the painting of the street mural on January 26
- Information on whether OPD arrested anyone in relation to this event and if so, please provide the relevant information on the specific arrests made

On March 21st, the Public Ethics Commission reopened the request (24-909) on NextRequest.

On March 21st, the Public Ethics Commission informed the requestor that the Commission had reached out to OPD to determine whether OPD had any additional information on Bullet Point 3. That same day, the Oakland Police Department added a document pertaining to the protest that occurred on January 26, 2024.

On April 2, the Public Ethics Commission reached out to the requestor to ask if they had reviewed the document added on March 21st.

Item 8 - Executive Director's Report

On April 2, the requestor emailed the Public Ethics Commission and said that they wanted to know which department was responsible for permits for street protests or murals.

On April 2, the Public Ethics Commission informed the requestor that the City Administrator might be able to answer that question.

On April 2, Planning & Building confirmed that they had no records responsive to this request (24-909).

On April 2, the Public Ethics Commission added the City Administrator to the request (24-909). The Public Ethics Commission emailed the City Administrator's Office to ask them to determine whether they had any records relevant to the request.

On April 9, the City Administrator confirmed that they had no records related to this request (24-909).

On April 16th, the Public Ethics Commission asked the requestor if they were satisfied with the information provided.

On April 16th, the requestor wrote to the Public Ethics Commission that:

So is the City saying that no responsive records exist? It is the obligation of the City as a whole (not individual departments) to advise the requestor whether responsive documents exist, and if so, to produce them. I have no idea which other departments or individuals might have responsive documents. If the City is willing to certify that it has thoroughly searched for all responsive documents and none exist, then that's fine.

I want to emphasize, the Public Records Act requires the City as a whole to provide all responsive documents in a timely manner. If one department says it has produced all documents that it has, that is not enough, from a legal perspective. It is the job of the City as a whole to ensure that it has produced all documents that it has. Only then should the mediation and the request (on NextRequest) be closed.

On April 16, the Public Ethics Commission asked OPD whether any additional documents remained outstanding.

On April 17, the Oakland Police Department confirmed that they had no further documents to disclose. After posting this message, the Oakland Police Department closed the request (24-909).

IV. RECOMMENDATION

Because the responsive departments provided the Requestor with responsive documents, the mediation has been closed with no further action.