

Item 09 - Enforcement Report re Complaint Backlog Strategy



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TO: Public Ethics Commission
FROM: Tovah Ackerman, Enforcement Chief
DATE: May 9, 2025
RE: Enforcement Report re: Complaint Backlog Strategy for the May 21, 2025, PEC Meeting

1. Introduction

For several years, the Enforcement Unit of the Oakland Public Ethics Commission (PEC) has been operating under a severe complaint backlog which is straining Commission resources and undermining the Commission's ability to provide timely and effective resolution of the complaints before it. Over the past five years, both the volume and complexity of complaints have risen sharply, while Enforcement's staffing levels have not changed since 2014. As of May 9, 2025, two staff members are responsible for managing one hundred and fifty-two (152) open complaints—an unsustainable 1 : 76 staff-to-complaint ratio—which is over six times the load faced by similar local ethics agencies in San Francisco, Los Angeles, or San Diego.

This report outlines new process improvements and a prioritized complaint closure process that the Enforcement Unit will be implementing over the next six months to restore operational sustainability, reduce backlog, and refocus resources on high-impact investigations. It also details two sets of discretionary criteria PEC staff will apply prospectively and retroactively to ensure that enforcement efforts are both strategic and effective.

Enforcement staff notes that, without the addition of at least two additional investigators and one staff attorney in the FY25-27 budget process, the Enforcement Unit will be forced to close well over half of its open complaints received prior to June 1, 2024 just to maintain basic operations. The proposed FY25-27 budget recommends adding one investigator to the Enforcement Unit—an important improvement, though still short of the three additional staff the PEC believes are needed. Even if full staffing is achieved, the Enforcement Unit will have to close a substantial number of our older complaints to restore functional capacity, but likely less than fifty percent of complaints opened prior to June 1, 2024.

The report is being presented to the Commission as a discussion item only, to apprise the Commission of the next steps Enforcement staff intends to take. As with other law enforcement agencies, the PEC's Enforcement Unit has prosecutorial discretion to prioritize complaints for investigation or closure based on a number of factors, including the seriousness of the violation, the age of the complaint, and the Commission's enforcement resources. In recent years, the Enforcement Unit has sought to review all complaints that have alleged a violation of the law within the Commission's jurisdiction. With current staffing levels, this level of service is not sustainable, and Enforcement Staff will be returning to practices earlier in its history when the Enforcement Unit was significantly stricter in deciding when to devote enforcement resources to a complaint.

No Commission vote is required at this time. However, the Commission will have to vote when, consistent with this strategy, specific investigations are presented for closure at upcoming Commission meetings; Commission support for this approach is therefore necessary for the success of this plan.

2. Background - Authority and Mandate:

The PEC is an independent body composed of Oakland residents, tasked with promoting fairness, transparency, integrity, and accountability in Oakland city government. The Commission is responsible for enforcing the City of Oakland's ethics, campaign finance, transparency, and lobbyist registration laws.

Under Article VI, Charter Section 603(f), the PEC's Enforcement Unit is authorized to investigate violations, issue subpoenas, and impose penalties, remedies, and fines for breaches of applicable laws. Section 603(f)(1) outlines these enforcement powers, while Section 603(f)(2) requires that final enforcement actions, including complaint closures or the imposition of fines, be approved by an affirmative vote of at least four Commission members.

The PEC Mediation and Complaint Procedures further clarifies in Section IV(A)(1) that Commission staff "may dismiss a complaint if the allegations do not warrant further action." (See also Charter Section 603(f)(3)(ii).) Once a case is opened, under Complaint Procedures Section IV(A)(2), Commission staff "may recommend closure of a complaint if it falls within the Commission's jurisdiction but there is reason to support closure."

The Mediation and Complaint Procedures do not specify what reasoning the Enforcement Unit might use to show the “allegations do not warrant further action” or to show the “reason to support closure” of open complaints. However, in recent Enforcement Reports, different Enforcement Chiefs have all cited the same four criteria for closing complaints or determining whether to open new complaints:

1. The extent of Commission authority to issue penalties;
2. the impact of a Commission decision;
3. public interest, timing, and relevance; and
4. Commission resources.

These factors have long formed the rubric used by PEC staff to assess open cases. In recent years, however, staff adopted a more generous posture, opening nearly all plausible and jurisdictional complaints. This level of service is no longer sustainable given current staffing. PEC staff must apply greater discretion going forward, guided by this established rubric. If staffing improves, PEC staff will reassess the level of discretion used in complaint intake.

3. Overview of Current Enforcement Caseload

In 2024, the Division processed approximately one hundred and forty-seven (147) new complaints. From those, approximately forty (40) complaints are still open. This number includes nine (9) Form 700 complaints brought proactively. While the prior practice in Enforcement reports was not to include these as one case in the total case number, these cases require a fair amount of Enforcement resources and therefore PEC staff chose to include them in this complaint count, and to permit consistency in comparison with other jurisdictions.

In 2023, the Division processed approximately one hundred and twenty-nine (129) new complaints, of which approximately forty-four (44) complaints are still open.

Below is a table of the approximate number of complaints that are still open today, organized by year.

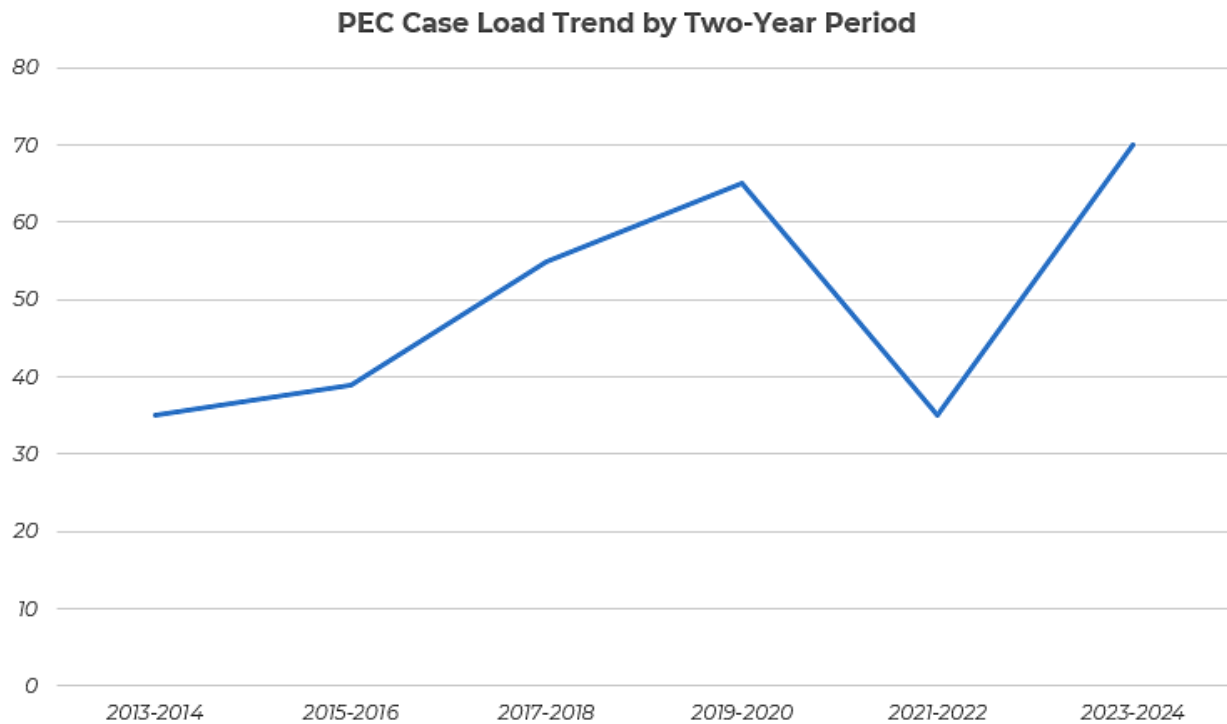
Year	Approximate Number of Open Complaints
2025	18
2024	40
2023	44
2022	28
2021	7

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2020	8
2019	2
2018	3
2017	1
2016	1
TOTAL	152

Over the last twelve months, the Division has had an approximate average of one hundred and twelve (112) investigations open at any given time. While caseloads are unpredictable and regularly in flux, the number of complaints received tends to increase during elections, such as the 2024 regular election and the April 2025 special election.

The following visualization shows new complaints escalated to an official PEC matter – meaning it was assigned a case number – by the PEC Enforcement Unit from 2013 through 2024, over two-year periods to include an election and non-election year (i.e., 2013-2014, 2015-2016, etc. through 2023-2024). It excludes informal complaints that were rejected at the Intake phase. It also treats cases with multiple sub-cases as one case. For example, the PEC’s dozens of Form 700 non-filer investigations in 2024 are treated as one complaint in this visualization.



The visualization shows that caseloads increased for the PEC from thirty-five (35) in 2013-2014 to a peak of sixty-five (65) in 2019–2020. This represents a nearly twofold rise over six (6) years. Then, after a COVID-19-related drop occurred during 2021-2022, complaint counts surged to a new peak of seventy (70) for 2023-2024, surpassing prior levels. Meanwhile,

number of staff in the Enforcement Unit has remained at two employees – presently one Enforcement Chief and one Investigator, for the duration of this period.

In addition to the increasing volume of PEC cases, their complexity has also grown, demanding greater investigatory and enforcement resources. For example, while the PEC handled just one (1) active bribery complaint in 2015–2016, there are currently eight (8) open bribery cases in 2025. These cases are especially challenging, as they often lack independent verification and hinge on conflicting accounts, such as the recent *In Re Dabney* matter, requiring significantly more investigatory resources and for staff to navigate complex credibility assessments in order to substantiate the allegations.

One of the guiding principles for Enforcement, included in its Enforcement Penalty Guidelines is “timeliness.” The guidelines state: “For all violations, timeliness brings accountability. Public confidence in government and the deterrence effect of enforcement is reduced when enforcement is delayed. Compliance should be timely to provide the public with required disclosures, and to mitigate harm caused by a violation(s).” At the time of the presentation of this report, approximately thirty-five percent (35%) of our complaints will be more than two years old.

As discussed above, we currently have approximately one hundred and fifty-two (152) open complaints. New complaints continue to arrive daily, from both the public and, to a lesser degree, from proactive enforcement. With two (2) Enforcement staff members, that equates to about a 1 : 76 open complaint ratio per staff member. This ratio is unsustainable from an enforcement standpoint and far exceeds the staffing to complaint ratios of peer jurisdictions. In comparison, below is a table of staff to open complaint ratios among different jurisdictions in the state as of a March 2025 analysis:

Jurisdiction	Approximate Number of Open Complaints	Number of Staff, Including Enforcement Chief	Approximate Staff to Complaint Ratio, including Enforcement Chief
Oakland	152	2	1:76
San Francisco	53	6	1:9
San Diego	14	1	1:14
Los Angeles	105	12	1:9

The FPPC has a different structure than the city ethics commissions and so the ratio of staff to open cases is not as direct as these other jurisdictions, however as of the beginning of April, FPPC Enforcement had a total of 879 cases. They also have a total of forty-one (41) staff members, including fourteen (14) attorneys and ten (10) investigators. Their open complaint load is less than six (6) times the number of cases we have here in Oakland, even though the

FPPC serves nearly one hundred (100) times more people and has over twenty (20) times the staff.

The current ratio that the Oakland Enforcement Unit faces is untenable. No amount of dedication or hard work will allow two staff members—the Enforcement Chief and the single investigator—to address the overwhelming caseload. *Additional staffing is necessary immediately to handle the PEC's incoming caseload and begin to meaningfully address its complaint backlog. However, even if the Enforcement Unit secured funding for the three additional staff long identified as necessary, the ratio of staff to open complaints would be approximately 1 : 30, still over double our neighboring jurisdictions.*

In sum, increasing staffing is necessary but not sufficient to resolve the PEC's complaint backlog. Even with additional staff, the Enforcement Unit will still need to close a substantial number of open complaints; however, the extent of those closures will depend directly on staffing levels achieved in the FY25-27 budget. The FY25-27 budget proposes adding one additional investigator—an improvement, though still short of the three total investigators and one attorney the PEC believes are needed. If the Enforcement Unit receives all additional personnel it needs, staff may be able to close *less than half* of the complaints opened before June 1, 2024. Without sufficient additional staff, PEC anticipates needing to close *well over half* of those pre-June 2024 complaints in order to restore operational capacity. (The June 1, 2024 cutoff was selected so that, by the end of 2025, the most recent 18 months of complaints will remain fully active and generally will be resolved on their merits.)

4. Background on Recent Staffing, Enforcement Practices, and Caseload Limitations

The Enforcement Unit's critical understaffing is not news to the Commission or the City. Former Enforcement Chief Simon Russell and Executive Director Nicolas Heidorn have consistently raised the alarm that the Enforcement Unit needs a minimum of two additional investigators and one staff attorney to operate effectively. Chief Russell noted the inadequate staffing of the Enforcement Unit in the January 2023 year-end report for 2022. He wrote, "...the stark reality is that the Enforcement Unit has insufficient staffing to address all of the matters on its caseload in a timely manner... Experience has shown that two full-time staffers is insufficient to handle Enforcement's caseload as it has grown over the years." (Enforcement Program Monthly and Year-End Report for the January 11, 2023, PEC Meeting)

The PEC's understaffing problem has been further exacerbated by the fact that, whenever there are Enforcement staff transitions, the Enforcement Unit may go months without any investigative staff. For example, in August 2022, Enforcement staff was reduced to solely the Enforcement Chief, who managed the entire caseload singlehandedly at all stages. This severe understaffing continued into 2023 when, for most of the year, the Enforcement Unit had no full-time, permanent investigators, and only intermittent support from contract staff. For

these reasons Chief Russell made the decision to put over half of the open complaints "on hold," effectively freezing those complaints for the foreseeable future in order to free up capacity for other complaints deemed to be more serious. It was not until December 2023 that a new, permanent investigator was hired.

During Chief Russell's tenure, the Commission deliberately prioritized major, complex complaints that demanded significant PEC resources. As a result, he successfully brought several high-profile matters before the Commission. However, this focus on serious complaints led to a backlog of less urgent matters, as the Commission lacked the staffing to address all complaints at once.

In September 2024, Chief Russell resigned as Enforcement Chief, citing the City's continued refusal to allocate additional staffing resources, despite his repeated warnings about a growing staffing crisis. In his resignation letter, Chief Russell wrote, "I can only conclude that this failure is largely deliberate, even despite (or perhaps because of) the considerable public interest in our complaints that have been brought partially to light." Chief Russell correctly (though I believe only partially correctly) stated that the problem would not improve unless the Enforcement Unit received more funding for staffing.

From September 2024 to January 2025 the Enforcement Unit had no Chief. During that time, Executive Director Nicolas Heidorn brought former Executive Director Whitney Barazoto on as a consultant to provide part-time help with the Enforcement caseload as a new Enforcement Chief was recruited and selected.

I began my tenure as Enforcement Chief at the end of January 2025, with a single investigator on my staff. The work overload and understaffing that led to Simon Russell's resignation has not changed between his resignation and my hiring. In fact, considering it took a number of months to hire and onboard me, the backlog has only grown since Chief Russell's departure. While we've managed to close more complaints than we've opened in 2025, the overall volume of open cases remains high and continues to strain our capacity.

Chief Russell's decision to put over half of the complaints on hold may have been necessary, but it was temporary. Putting complaints on hold indefinitely merely postpones complaint processing to a later, unspecified date; it does not solve the backlog problem.

5. Process Improvements in Enforcement Practices

Put simply, the Enforcement Unit is investigating too many complaints with too few resources, and our caseload has been growing unsustainably for years. Given current staffing, PEC staff is unable to provide the Oakland public with the timely, thorough, and consistent level of enforcement that they deserve. If the Enforcement Unit does not significantly reduce its backlog, staff will be unable to turn to new complaints in a timely manner, and the overall

caseload will continue to balloon. This creates not just operational delays—it also undermines deterrence and public trust in the Commission’s ability to ensure accountability.

The Enforcement Unit currently lacks the staffing and infrastructure needed to resolve both the existing backlog and the steady flow of new complaints within a reasonable timeframe. To manage incoming complaints and begin making meaningful progress on serious, long-standing matters, two additional investigators and one staff attorney are required. However, as discussed above, even with added personnel, the Enforcement Unit will not be able to fully eliminate the backlog—particularly if limited resources are diverted to low-level or outdated complaints. The Enforcement Unit must review and close a large number of older complaints to reach a sustainable caseload. However, if new staff is added to the Enforcement Unit as a result of the FY 2025-2027 budget, as proposed, the number of cases staff need to close will be reduced. With full staffing of three additional staff members, the number of cases necessary to close may be less than fifty percent.

PEC staff's proposed plan addresses two aspects of Enforcement’s current caseload: how to process new complaints without adding to an overwhelming case volume, and how to resolve as many old complaints as possible in a timely way. Much of this plan is merely a return to prior Enforcement practices of applying greater prosecutorial discretion in opening cases (for which PEC staff already has the authority), applied prospectively and retroactively.

A. Looking Forward

The following outlines my intentions and proposed framework, moving forward, to prevent additional backlog.

- i. I plan to refer all incoming PRA complaints to the FPPC for the foreseeable future, unless the Oakland PEC has a significant interest in keeping them in-house

The FPPC has a great deal more resources than the Oakland PEC. They have more robust staffing, which includes both investigators and staff attorneys. They are better suited to handle a large number of complaints than the Oakland PEC. For these reasons, I plan to refer most PRA complaints to the FPPC, including complaints that may allege a secondary OCRA violation, unless the PEC has a significant reason for retaining the complaint. For example, if the “impact of a[n Oakland] Commission decision” (one of the items of the proposed rubric, below) is greater than the impact would be from the FPPC—that is, a decision by the PEC would merit more attention or gravity for the Oakland public than a ruling by the FPPC—we may decide to retain a PRA complaint for internal investigation. Referred complaints will remain open but in an inactive status in our complaint database under a new category that does not count toward our active complaint total, allowing the PEC to decide whether to take further action if and when the matter is returned to us. Automatically referring such

complaints to the FPPC, moving the complaint to an inactive status, and recategorizing them while the FPPC investigates will keep our number of open complaints from expanding. It will also save staff resources as the PEC may decide appropriate next steps, which may include closing or re-opening an investigation, after benefitting from the FPPC's investigation.

If staffing or PEC resources change in the future, this policy will be reevaluated.

- ii. I plan to use more prosecutorial discretion when deciding whether to open new investigations

Over the past five years, the number of complaints submitted to the PEC—as well as the complexity of those complaints—has increased significantly. Meanwhile, the number of Enforcement Unit staff has remained unchanged. During this time, Enforcement staff have consistently opened investigations into nearly all complaints that presented a potential violation within the PEC's jurisdiction, regardless of the severity of the alleged conduct. At the preliminary review stage, staff have generally applied a “motion to dismiss” standard: if the facts alleged, taken as true, would constitute a violation of law, the complaint was advanced to a formal complaint. This approach reflects the Commission's strong commitment to transparency and public accountability.

However, maintaining this level of service in the face of rising demand and static staffing levels is no longer sustainable. This is not a reflection of mismanagement or poor prioritization, but rather a response to structural limitations in staffing that have outpaced the existing model of enforcement.

Unless or until additional staffing is secured, Enforcement staff must direct their limited resources toward high priority matters and more serious alleged violations. This necessarily means initiating fewer investigations into lower-level complaints—for example, one-time violations involving minor reporting or filing issues—except when enforcement is important for reasons of deterrence. This shift is consistent with the Commission's Penalty Guidelines, which emphasize proportionality and strategic enforcement:

The focus of the PEC's work—both in terms of resources spent as well as the level of penalty imposed—should reflect the seriousness of each violation so that penalties urge compliance, while preserving PEC resources for major violations that may occur. (Public Ethics Commission Enforcement Penalty Guidelines pp. 1-2)

In earlier years, PEC staff regularly exercised broader discretion in determining whether to open an investigation, especially in response to informal complaints. The Mediation and Complaint Procedures explicitly permit staff to dismiss complaints for a range of reasons, stating that: The Mediation and Complaint Procedures say that “Commission staff may dismiss a complaint if the allegations do not warrant further action for reasons *that may include, but*

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are not limited to, the following.” (Emphasis added). The guidelines then enumerate a number of reasons to dismiss a complaint.

Enforcement staff have always had the authority to exercise prosecutorial discretion, and that authority has become essential today, given current staffing levels and the increasing demands on the Unit. That is, we must now necessarily return to a more selective approach. Moving forward, PEC staff will be more selective in deciding whether to open investigations, with the goal of focusing resources on cases that have the greatest potential for public impact and accountability.

To avoid losing deterrent value, PEC staff will not overly specify the precise thresholds that determine whether a complaint is opened. The exercise of discretion must retain flexibility to account for the unique facts of each complaint. Enforcement’s exercise of prosecutorial discretion in deciding whether to open an investigation will use the same criteria that have historically guided these determinations:

1. The extent of Commission authority to issue penalties;
2. the impact of a Commission decision;
3. public interest, timing, and relevance; and
4. Commission resources.

Retroactive decisions will apply a more granular rubric, as outlined in the next section.

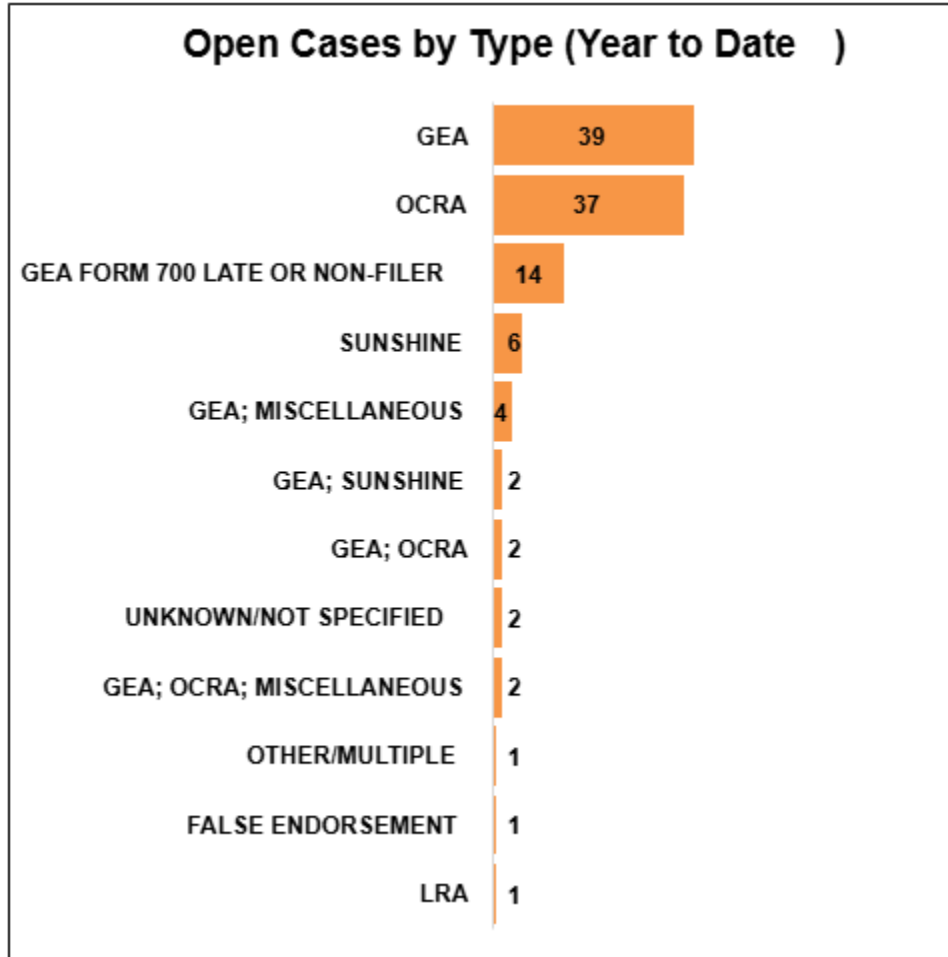
With these factors in place to help guide and focus enforcement resources, the Unit will plan to allocate resources accordingly toward the most pressing and significant matters, with an eye to long-term sustainability. If staffing or PEC resources change in the future, this policy will be reevaluated.

B. Looking Backward:

The following outlines my intentions and proposed framework, looking backward, to shed our overwhelming backlog.

- i. Refer Most PRA Cases to the FPPC Unless Retention is Justified by Local Oversight Priorities:

In the Enforcement Report for this meeting, we included a graph showing open cases by type in the year to date. That graph is recreated here.



This graph illustrates that a substantial number of our open complaints involve OCRA violations. As part of my retroactive plan, I propose a comprehensive review of our complaint log to identify all PRA-related allegations—including serious ones—for referral to the FPPC. This approach would also apply to cases involving PRA allegations paired with low to moderate OCRA violations.

Due to limited resources, these cases will be referred to the FPPC—unless compelling local oversight concerns justify retention—and categorized as “Referred, inactive” in our database. These “Referred” cases would then be excluded from the active caseload unless and until they are returned. When a case is returned, PEC staff will apply the same evaluation rubric outlined below to assess whether continued pursuit of the OCRA violation is appropriate, taking into account the FPPC’s findings and resolution. Because the FPPC will have already completed its investigation, many of these returned cases can likely be resolved more efficiently—either through minimal additional investigation, closure, or dismissal, or by proceeding toward a settlement with the respondent.

If staffing or PEC resources change in the future, this FPPC referral policy will be reevaluated.

- ii. Close all relatively minor to moderate cases in which the Respondent is no longer an employee of the City of Oakland

The stated goals of the PEC—that public officials and decision-making processes operate impartially, that government activities are transparent, and that public trust in the local political system is strengthened—are best served by focusing our attention mainly on respondents who are still working for the City of Oakland. While there are a few, major cases in which the respondent is no longer (or never was) an employee of the City which should remain open, PEC staff may close out a number of cases if the respondent is no longer employed by the City, provided that the offense alleged is relatively minor to moderate in severity. Staff will likely retain cases involving former City employees if the allegations involve high-level officials, even if the allegations are less severe. (Status of employment would only be a factor in a backwards-looking analysis. Moving forward, Enforcement staff will investigate city employees as well as former city employees and others, so long as the allegations are relatively serious.) In addition, as part of its severity analysis, staff will also consider whether the alleged violation was likely due to inadvertence/negligence, or willful.

If staffing or PEC resources change in the future, this policy will be reevaluated.

- iii. Review all remaining cases for relative severity, with the goal of closing a substantial number of cases opened prior to June 1, 2024.

The June 1, 2024 cutoff was selected to ensure that, by the time this retroactive plan is fully implemented at the end of December 2025, the most recent eighteen (18) months of cases will remain unaffected. Preserving these newer cases allows the Enforcement Unit to maintain continuity in addressing current misconduct and ensures that timely complaints receive appropriate attention.

For pre-June 2024 complaints, PEC staff plan to apply a more detailed rubric than the prospective rubric detailed above in order to determine which legacy cases to close. In deciding whether to close an older complaint or open an investigation, staff will consider the following non-exhaustive factors:

1. Severity of the alleged violation
2. Impact of a Commission decision
3. Timing of alleged misconduct
4. Availability of a meaningful remedy
5. Level of investigative resources needed to substantiate a violation
6. Probability of substantiating allegations

7. Availability of enforcement resources

This rubric is adapted from the policy used by the San Francisco Ethics Commission in August 2019 in response to its inability to resolve all open complaints in a timely manner (Performance Audit for the Ethics Commission, August 10, 2020).

By **“severity of the alleged violation,”** I mean that the Enforcement Unit would evaluate the type and scale of the alleged misconduct. In general, those matters involving allegations of public corruption, misuse of position by public officials, self-dealing, conflicts of interest, whistleblower retaliation, and other breaches of the public trust will be assigned a higher relative prioritization by Enforcement Staff than, for example, complaints involving solely reporting or recordkeeping omissions or deficiencies. Similarly, cases where the respondent is alleged to have intentionally violated the law, as opposed to doing so inadvertently or negligently, will be prioritized for enforcement to deter future violations.

By **“impact of a Commission decision,”** I mean that the Enforcement Unit may evaluate the scope of the alleged misconduct (that is to say, not only as to a given respondent but more broadly across the regulated community), the probable deterrent value of a public resolution, and the public interest in securing an enforcement outcome.

“Timing of alleged misconduct” simply means how old and possibly stale an open complaint may be, which would be indicative of how much value there is in resolving it with sanctions.

“Availability of a Meaningful Remedy” refers to the likelihood that, if a violation is confirmed, an enforceable and impactful outcome can be achieved through the investigative and enforcement process. This includes the potential to impose sanctions, require corrective actions, or deter future misconduct. A complaint is more likely to be kept open when a meaningful remedy exists—i.e., when enforcement action could lead to a tangible improvement in compliance, accountability, or public trust.

“Level of investigative resources needed to substantiate a violation” refers principally to the amount of enforcement staff time that is necessary to substantiate a violation, but in some complaints may also include other resources, for example the cost to the PEC’s budget to hire investigators or process servers to locate difficult-to-find respondents. This measure, in conjunction with the other measurements, helps prioritize the cost-benefit of pursuing a particular investigation.

“Probability of Substantiating Allegations” refers to the likelihood that sufficient evidence can be gathered to support and prove the alleged violation through investigation (e.g. if witnesses can still be found and how stale and unreliable their memories may be). This measure helps prioritize complaints where there is a realistic chance of reaching a fact-based conclusion, rather than expending limited resources on matters unlikely to be proven.

“Availability of Enforcement Resources” will always, by necessity, need to be included in the rubric, but the weight of this rubric measure will vary depending on the instant caseloads, the instant staffing, and the pace of incoming complaints.

The retroactive and prospective rubrics are intentionally different because evaluating a newly submitted complaint requires a different approach than assessing an older complaint that has remained unresolved for years. For example, a complaint opened six years ago might now warrant closure due to its age and diminished value in resolution, even though the same complaint—if received today—could merit opening an investigation. Additionally, applying a more detailed rubric to legacy cases does not undermine the deterrent effect of enforcement moving forward, as these closures represent a one-time corrective measure. Importantly, each complaint will continue to be evaluated individually, based on its specific facts and circumstances.

In applying this rubric retroactively, PEC staff will need to review the full record for each case—this includes the staff chronology, internal memos, intake forms, and any investigative steps taken to date—in order to recreate the facts and evaluate the complaint against the rubric. This is a resource-intensive process, but it is necessary to ensure fair and consistent decision-making.

Given limited PEC resources to address a backlog, the final rubric measure, **“Availability of Enforcement Resources,”** will be given a fair amount of weight in this retroactive analysis. The final three rubric measures—'Level of investigative resources needed to substantiate a violation,' 'Probability of substantiating allegations,' and 'Availability of enforcement resources'—may not be publicly discussed during Commission meetings. This is because disclosing these internal assessments in some circumstances could inadvertently reveal PEC staff's investigative strategies, limitations, or thresholds for complaint viability, potentially undermining the effectiveness of future investigations or enabling strategic non-compliance by regulated parties.

PEC staff will present groups of complaints—primarily those deemed low to moderate in severity—for closure during the Commission’s September and November meetings, and potentially at Special Meetings convened in between.

As a general illustration, a five-year-old campaign reporting violation may be a candidate for dismissal under the retroactive rubric, whereas a bribery allegation from the same period would more likely remain open. As always, these determinations will be made on a case-by-case basis, grounded in the specific facts and context of each complaint. PEC staff will also be less inclined to close complaints that have reached the “Legal Analysis” or “Seeking Settlement” stages, as substantial resources will have already been invested in investigating and advancing those complaints to that point in the process.

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Many of these complaints will still be in the Preliminary Review phase, since Enforcement staff has been unable to spend the time and resources necessary to move many complaints forward. Consistent with past PEC practice, staff may dismiss complaints that have not progressed to the investigation stage at their own discretion and present those complaints to the Commission at the next meeting for the Commissioners' information only.

Complaints that have entered into the investigation stage will be presented to the Commission for approval of closure. In presenting these cases, PEC staff would present the analysis based on the above rubric and a brief description of the case to the Commission. This approach will necessarily require the Commission's trust in the professional judgment of PEC staff, who are uniquely positioned to assess each case within the broader context of its full caseload. Only staff have the comprehensive understanding needed to evaluate factors such as relative severity, investigative feasibility, and potential impact. Importantly, this is not a departure from past practice—it is a retrospective application of the same discretion previous PEC staff have had to exercise to maintain a manageable caseload. As always, closure letters to all Complainants will include the date and time their case is scheduled to be presented to the Commission for closure. Complainants are able to attend the meeting and, if they choose, speak during public comment to oppose the closure.

While closing out a substantial number of cases is a significant step, I believe it is necessary. An Enforcement Unit that is buried under its backlog is one that can no longer advance the Commission's goals. We have a singular opportunity to reset expectations, restore operational focus, and expand public trust in our work. If we attempt to reduce the backlog incrementally by closing out cases without resolution over the course of several years, we risk sending the message that complaint resolution is inconsistent and uncertain. That approach would undermine confidence in the Commission's ability to deliver timely and fair outcomes. To move forward with integrity and transparency, this complaint reduction must be decisive and unified—a strategic reset—so we can realign resources and better fulfill our mandate to the people of Oakland.

Here are some relevant figures: As of this writing, the Enforcement Unit has one hundred and twenty (120) open complaints that were initiated before June 1, 2024. As an example, if we close approximately fifty percent of these—based on their relatively minor to moderate severity—we would still have around 60 open complaints total.

Including more recent complaints, our active docket as it stands currently would then total roughly ninety-two (92). With only two staff members, this results in a ratio of 1 : 46—a still unsustainable caseload that significantly exceeds staffing levels seen in comparable jurisdictions.

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To bring this ratio down to a more manageable level, we must either:

- Close well over half of all open complaints, or
- Increase staffing within the Division.

If the Enforcement Unit receives adequate staffing through the FY2025–2027 budget, PEC staff may be able to close less than half of all complaints opened before June 1, 2024. Again, as an example, a fifty percent reduction of pre-June 1, 2024, complaints would reduce the current docket to approximately ninety-two (92) open complaints. With one additional investigator, that would result in a staff-to-case ratio of roughly 1 : 31; with two, the ratio improves to 1 : 23. Hiring three additional staff members—which the PEC has consistently identified as necessary—would bring the ratio closer to 1 : 18. While even that figure remains higher than ratios in most comparable jurisdictions, it would significantly enhance the Division’s capacity to allocate appropriate resources to each case. (Of course, new complaints will continue to arrive during this process, meaning actual caseloads will be higher by the end of 2025.)

Following the conclusion of the City’s budget process, PEC staff will reassess this plan to determine the number of closures required to maintain operational capacity.

Ultimately, the addition of at least two investigators and one staff attorney remains essential to ensuring the Division’s long-term sustainability and effectiveness. Without this investment in staff, the PEC will be forced to close well over half of its caseload prior to June 1, 2024 simply to remain functional. With full PEC staffing, the Enforcement Unit may be able to limit that number to less than fifty percent.

6. Proposed Plan:

Based on the plan outlined above, PEC staff present the following general framework. PEC staff adapted these guidelines from January 2023 Policy Directives implemented by the FPPC as well as a December 2020 SFEC Enforcement Unit Case Closure Plan.

1. PEC staff will take all appropriate actions within their discretion to reduce a majority of open complaints originating before June 1, 2024 as quickly as possible, and in no event later than December 31, 2025. The closure of complaints will take due consideration of the factors enumerated above, and will take into account PEC

Enforcement staff resources, including any changes to Enforcement Staffing that may result from the FY25-27 Budget process.

2. Beginning in September 2025, PEC Staff will make progress reports to the Commission on achieving the goals stated in this section, as well as any observations/recommendations staff may have concerning the need for additional strategies/resources to achieve those goals.
3. On a monthly basis, the PEC staff will identify matters opened at least 18 months prior and examine the relative significance of that matter compared to other allegations on caseload docket and evaluate, in light of the evidence gathered to date, the probability of substantiating the allegations.
4. Based on evaluation of complaint status, relative significance, and potential resolution prospects, PEC staff will determine whether to prioritize the matter by focusing investigative efforts there to resolve it within two years or otherwise to close the matter on the basis of the Commission's discretionary factors.

7. Precedents from Other Jurisdictions:

Other California jurisdictions provide context on our caseload but also provide established best practices useful for designing the recommendations outlined in this report. Almost all recommendations in the report have precedent in the policies and procedures of peer agencies, including the California Fair Political Practices Commission^[i], the San Francisco Ethics Commission^[ii], and the Los Angeles Ethics Commission^[iii]. The proposals in this report reflect tested approaches that have proven effective in similarly situated jurisdictions. Adopting them in Oakland would not only align us with regional standards but also strengthen the Commission's ability to manage its caseload effectively and uphold public trust.

All three jurisdictions have used discretionary authority to close investigative matters or to only open investigations based on more serious allegations because of conditions of investigative backlog, under-resourcing, or legal constraint. Where such efforts have been successful, agencies have engaged in the practice through the following: a time-based closure policy (as in San Francisco and with the FPPC), severity of allegations cutoffs (as in Los Angeles), or explicit staff triage procedures (as in San Francisco). This success has depended on clearly articulated closure criteria and structured public reporting.

8. Conclusion:

If no new staff are added, the PEC will need to close well over fifty percent of all open complaints prior to June 1, 2024 just to maintain basic functionality.

If three additional staff members are hired—as has long been recommended—the number of necessary complaint closures prior to June 1, 2024, may drop to less than fifty percent. This would allow PEC staff to retain a greater number of significant complaints and make meaningful progress on long-pending matters.

While even this adjusted model is not ideal, it would represent a critical stabilization point—one that allows for more strategic, timely, and fair enforcement. The planned complaint closures would be a one-time corrective action, with a target of completing them by the end of 2025.

To guide these decisions, staff will apply two standardized rubrics to existing and new complaints, helping determine which complaints should be closed and which should proceed to investigation. This approach is both retroactive and forward-looking, designed not only to address the current backlog but also to prevent a similar complaint closure process from being necessary in the future.

Commission support is essential to the success of this plan. While Enforcement staff retain discretion to implement most aspects of the strategy, the Commission will play a key role in approving case closures at future meetings. Their continued engagement and confidence in staff's process are therefore critical. Public support from the Commission will also lend legitimacy to the approach, reinforce public trust in the Enforcement Unit's work, and promote consistent application of discretion across the caseload. Alignment between staff and Commissioners will help manage expectations and ensure a transparent, unified reset of our enforcement operations.

ii The FPPC has undertaken the most direct and structured precedent to these proposals in recent years for discretionary Enforcement complaint closures under resourcing constraints. In late 2022, FPPC’s Enforcement Unit assessed it didn’t have the capacity to resolve a ballooning volume of older cases with existing staff resources and in turn proposed summarily closing all Enforcement matters more than three years old (provided cases impacted had not yet reached the probable cause stage) citing “insufficient resources and the age of the alleged violations.” (Bridgette Castillo et al., *Enforcement Attorney Input re: The Chair’s Recent Enforcement Policy Goals Proposal*, December 12, 2022.)

The proposal wasn’t publicly adopted in its entirety, but it sparked formal Commission action. Specifically, in early 2023, the FPPC adopted a comprehensive set of Enforcement “Policy Directives” aimed at reducing the FPPC’s complaint backlog. Among these was a directive empowering the Enforcement Chief to take all necessary actions within their discretion to reduce (by seventy-five percent (75%)) FPPC cases opened prior to January 1, 2023, by the end of 2024. Enforcement staff were instructed to prioritize complaint closures based on severity, evidentiary sufficiency, and enforcement viability. (Fair Political Practices Commission. (2023, January 26). *Policy Directives – Enforcement*. <https://www.fppc.ca.gov/enforcement/policy-directives.html>)

The FPPC implemented this policy in its operations through several measures and reported progress to the Commission on a quarterly basis. By the end of 2024, the Commission had reduced pre-2023 cases by more than 80%. Justification for this approach included limited staffing and the need to prioritize active and high-impact Enforcement matters. (Fair Political Practices Commission. The Commission also aimed to decrease the annual carryover caseload to no more than 625 cases. (Fair Political Practices Commission. (2024, January 18). *Executive staff reports: January 18, 2024, Commission hearing*. State of California.)

iii SFEC is probably the closest example to the PEC for local precedent around using the discretionary closure of backlogs under fiscal/staffing constraints. Similar to the FPPC, in 2019 San Francisco undertook a reassessment of its complaint backlog, resulting in the decisive closure of numerous open matters. To do so, the Enforcement Division implemented a standardized rubric to evaluate each complaint individually. Based on these assessments, the Director of Enforcement closed complaints deemed appropriate for dismissal. By the end of 2020, most cases considered low-level or unlikely to lead to prosecution had been closed.

Then, the Commission adopted a formal “Case Closure Plan” for FY 2021. The plan set out a policy requiring that all Enforcement matters be resolved within 24 months of initiation, with special attention to matters already exceeding two years in age.

In practice, the Complaint Closure Plan introduced a two-tiered review structure. First, all investigations exceeding 18 months in duration were subjected to a monthly analysis of priority to assess evidentiary sufficiency, seriousness of the violation, and resource demands. Second, a quarterly full-docket review process, titled the “Enforcement Round Table,” was formed to categorize each complaint for either priority resolution or discretionary closure.

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The plan specifically authorized Enforcement staff to close matters based on discretionary criteria, such as limited agency bandwidth, competing Enforcement priorities, and the improbability of substantiating the violation given available evidence. Over several years, beginning in December 2020/January 2021, the Enforcement Division implemented and actively used this two-tiered review structure to prioritize and close Enforcement cases based on documented criteria. By October 2023, a San Francisco Enforcement Report declared: “At this time, the Enforcement Division has achieved the goals of the Case Closure Plan.”

ⁱⁱⁱ In Los Angeles, it appears, based on recent settlements and commission meeting minutes, that the current practice is to only open investigations into relatively serious allegations. A 2017 LA “Overview of Enforcement Practices” states: “If a complaint provides sufficient detail and alleges violations within the Ethics Commission’s jurisdiction, the Senior Investigator assigns the complaint to an investigator for further review. The assigned investigator seeks to assess the accuracy of the facts alleged in the complaint and determine the likelihood that those facts constitute a violation. This initial review can lead to a full investigation, a referral to another agency, or no action...*The Director of Enforcement determines how to proceed with each complaint.*” In practice, it appears that the discretion given to the Enforcement Chief in LA has meant that only serious allegations have triggered an investigation.

