

Item 11b - M2020-03 Mediation Summary



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 19, 2023
RE: *In the Matter of the Workplace & Employment Standards Department (Case No. M2020-03); Mediation Summary*

I. INTRODUCTION

On February 20, 2020, the Commission received a request for mediation alleging the Workplace & Employment Standards Department was unlawfully delaying its response to a public records request made by the Requester on July 11, 2019. On February 26, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the Department represents that it does not hold any responsive records to the request, and both the Economic & Workforce Development Department (EWD) and City Clerk's office represent the same, this mediation request was closed with no further action.

II. SUMMARY OF LAW

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

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

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

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

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 11b - M2020-03 Mediation Summary

III. SUMMARY OF FACTS

On July 11, 2019, the City received the following records request via NextRequest (19-3483):

All Schedule O documents from negotiations for sale of city property, 2100 Telegraph Avenue. All parties to the negotiations for city land are mandated to present a filled and signed Schedule O form to negotiate a DDA or LDDA for city-owned land.

On July 23, 2019, the Public Ethics Commission informed the Requester that they had no responsive records.

On February 20, 2020, the Commission received a mediation request from the Requester alleging that the Workplace & Employment Standards Department was unlawfully delaying release of records in response to their public records request.

On February 26, 2020, Staff initiated its mediation program and notified the Workplace & Employment Standards Department of the mediation request.

On January 24, 2022, Staff contacted Mary Mayberry (public records liaison for the Workplace & Employment Standards Department, Contracts Compliance Unit) to confirm if the Department was able to locate the requested records.

On March 30, 2023, Staff contacted Mayberry to confirm if the Department was able to locate the requested records. Mayberry responded on March 31, 2023, that she would “find the requested documents and forward to you ASAP.”

On April 6, 2023, and April 11, 2023, Staff followed up with Mayberry. Mayberry responded on April 11, 2023, stating:

My apologies for the delay in responding. The staff person who I needed to assist me in this regard was out of the office. Do you have the name of the contractor/vendor? Schedule Os are filed according to contractor.

Staff informed Mayberry that same day that it did not have the name of the contractor or vendor, but that the request was for the sale of property of 2100 Telegraph Avenue. Mayberry responded that same day:

Contract staff informed me that we probably don't have the Schedule O since it's for a sale of property which is not handled as a professional services contract and did not come through DWES for review. EWD may be your best recourse.

Staff contacted the Economic & Workforce Development Department (EWD) to confirm whether they held the requested records. On April 13, 2023, EWD notified Staff they were unable to find the records. The Department provided Staff with a copy of the executed Disposition and Development Agreement. Staff asked EWD if any other department might hold the requested records; they responded, “Not that I'm aware of - usually it would be with the department or contract compliance.”

Item 11b - M2020-03 Mediation Summary

On April 14, 2023, Staff provided Mayberry with the name of the property owner from the executed Disposition and Development Agreement, W/L Telegraph Owner LLC, and asked her to confirm whether the Workplace & Employment Standards Department held any Schedule Os for that contractor. Staff followed up with Mayberry on April 20, 2023.

On April 25, 2023, Staff learned from a public document posted by the Commission that additional entities were involved in the sale of 2100 Telegraph Avenue. Staff therefore asked Mayberry to search for Schedule Os from any of the following entities: W/L Telegraph Owner, LLC, TB2 Retail Complex, LLC, Lane Partners, Walton Street Capital, and Strategic Urban Development Alliance, LLC. Staff followed up with Mayberry on April 27, 2023. On April 28, 2023, Mayberry notified Staff that the Workplace & Employment Standards Department contacted the City Clerk's office, and the City Clerk's office was unable to find Schedule Os for any of these entities.

That same day, Staff asked EWD to search for Schedule Os for the updated list of entities. Staff followed up with EWD on May 3, 2023. On May 4, 2023, EWD notified Staff that it didn't have Schedule Os for any of the listed entities.

Later that day, Staff asked the City Clerk's office to confirm that it did not hold Schedule Os for any of the listed entities. The City Clerk's office responded an hour later, stating that it found a contract but without an attached Schedule O.

On May 4, 2023, Staff reached out to the Requester to determine whether they were satisfied with this response to their request. Staff followed up with the Requester on May 11, 2023, May 15, 2023, and May 18, 2023. On May 18, 2023, the Requester notified Staff that they wished to close this mediation since no responsive records were located. Staff subsequently notified the Requester that their mediation was closed.

IV. RECOMMENDATION

Because the Workplace & Employment Standards Department represented that it did not hold any responsive records, and the other relevant departments represented the same, the mediation has been closed with no further action. However, Staff notes that this request received no response from the Workplace & Employment Standards Department for nearly four years. Only when Staff made multiple attempts to contact Mayberry did the Workplace & Employment Standards Department perform a search for responsive records. Moreover, as of the date of this summary, the Workplace & Employment Standards Department has not closed this request in NextRequest.