

# Item 11b - M2020-10 Mediation Summary



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TO: Public Ethics Commission  
FROM: Jelani Killings, Ethics Analyst  
DATE: June 8, 2023  
RE: *In the Matter of the Planning and Building Department (Case No. M2020-10); Mediation Summary*

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## I. INTRODUCTION

On June 15, 2020, the Commission received a request for mediation alleging the Planning and Building Department failed to respond to a public records request made by the Requester on May 28, 2020. Staff initiated its mediation program on June 18, 2020, pursuant to the Oakland Sunshine Ordinance.

Because the Planning and Building Department provided the Requester with the responsive records and the Requester is satisfied, 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.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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<sup>1</sup> Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

<sup>2</sup> Government Code § 7922.530(a).

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

<sup>5</sup> Complaint Procedures § IV (C)(5).

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## III. SUMMARY OF FACTS

On May 28, 2020, the City received the following records request via NextRequest (20-2856):

This is a request under The Public Records Act. Please provide me the exact locations for all pending and installed cell antennas and cell towers within the 94602 zip code that includes my house at 4549 Lincoln Avenue since Jan 1, 2018. For those locations within 1 mile of my home, please provide documentation for each location that includes type of technology employed (4G or 5G), installation or permit approval date, and associated application forms, records, reports, and communications between the City and telecom companies.

Please expedite under the Sunshine Act.

Thank you

That same day, the request was assigned to the Planning and Building Department.

On June 5, 2020, Planning and Building's public record liaison requested an extension 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 June 15, 2020, the Commission received a mediation request from the Requester, stating that the Planning and Building Department did not provide the requested records in a timely manner. Staff initiated its mediation program on June 18, 2020 and notified the department of the mediation request.

On October 8, 2020, a new point of contact was assigned to the public records request in NextRequest. On October 26, 2020, the Information Technology Department was also added to the request.

On November 1, 2020, the public records liaison provided a link to the Requester stating:

Hello and thank you for your request. Please see below the PC agendas/ Report archives. Also, staff have been assigned to do additional research on your request.

<https://www.oaklandca.gov/boards-commissions/planning-commission/meetings>

On November 20, 2020, a new point of contact was assigned to the public records request in NextRequest. That same day, the Planning and Building Department was removed from the request.

On December 10, 2020, the point of contact was changed twice in NextRequest. In addition, an internal message was sent stating:

Public Works does not have any information regarding this request.

On December 23, 2020, the request was closed in NextRequest stating:

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These documents do not exist.

On April 6, 2023, Staff reached out to the Requester to determine whether they were satisfied with the response from the department. On April 10, 2020, Staff spoke with the Requester by phone and was told that they wanted to continue with the mediation process since they had not received any documents in response to their request.

On April 11, 2020, Staff reached out to the Planning and Building Department asking them to review the request again to see if they could locate any responsive records since the Requester was still interested in receiving them and believed that some should exist.

Two hours later, Planning and Building staff responded:

This request was submitted and completed while I was in a different unit within the department. That being said, I would have handled the request differently, as there was no need to add the IT department or Public Works to the request. This is information that the Planning & Building Department has, though not in the exact form requested.

*Sander v. State Bar of California* 58 Cal. 4<sup>th</sup> 300 ruled that, in part, the City is required to produce non-exempt responsive records, but as a matter of law it is not required to create a new record, in this case a list, by changing the substantive content of an existing record or replacing existing data with new data. We can provide a list of permits that were issued for that zip code for the time listed, but the requester will be required to organize and extrapolate the data from those records on their own.

I believe the easiest way to handle this would be for the requester to submit a new request at <https://oaklandca.nextrequest.com/>. I will extract the data available and provide it under the new request.

On April 27, 2023, Staff created a new public records request in NextRequest on behalf of the Requester (23-4030):

Please provide me the exact locations for all pending and installed cell antennas and cell towers within the 94602 zip code that includes my house at 4549 Lincoln Avenue since Jan 1, 2018. For those locations within 1 mile of my home, please provide documentation for each location that includes type of technology employed (4G or 5G), installation or permit approval date, and associated application forms, records, reports, and communications between the City and telecom companies.

On May 1, 2023, the request was closed in NextRequest stating:

While the City is required to produce non-exempt responsive records, as a matter of law it is not required to create a new record, in this case a list, by changing the substantive content of

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an existing record or replacing existing data with new data. Sander v. State Bar of California 58 Cal.4th 300.

While the City can attempt to produce records, the requester will be required to organize and extrapolate the data from those records on their own.

Please use the searchable online database of records at [Oakland Online Portal \(accela.com\)](https://www.accela.com). There you may use search parameters to view records based on different criteria, including location. If after your search you would like additional information, please provide exact addresses or record numbers in a new request.

That same day, Staff followed up with the Planning and Building Department stating:

It looks like you closed this request earlier today, pointing the requester to accel.com. I thought we discussed that the Planning & Building Department could produce a list to the requester for the specified zip code (that they would then have to filter down on their own). Did I misunderstand your email below? Thank you!

Within the hour, Planning and Building staff responded:

Thank you for your email. The response provided was the standard response when someone is requesting a large amount of data that is available by using our publicly available online search. As I was responding to outstanding requests I didn't catch that this is the one we had previously discussed. I apologize for the oversight. I ran a report for telecom cases for the dates indicated and have released it via the NextRequest portal.

Subsequently, the request was re-opened in NextRequest and an excel file was released. The request was then closed again stating:

The Excel file uploaded contains all Telecom cases for the time frame requested. You may sort by zip code in column G.

Staff reached out to the Requester on May 8, 2023, and May 16, 2023, to determine whether they were satisfied with response from the department. The requester responded on May 16, 2023, stating:

Unfortunately, I've been unable to enlarge the document so that I can read it, it is incredibly small. Do you have a program to adjust it or can it be sent to me in a different way? I have an older Mac.

The next day, Staff uploaded the spreadsheet to Excel online and provided the link to the requester along with a PDF version of the spreadsheet.

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On June 7, 2023, Staff followed up with the Requester informing them that the mediation would be closed. Within the hour, the Requester responded that he was provided the records that he needed and that he appreciated the help.

### **IV. RECOMMENDATION**

Because the Planning and Building Department provided the Requester with the responsive records, satisfying the Requester's mediation request, the mediation has been closed with no further action.