

Item 11c - M2020-15 Mediation Summary



Ryan Micik, Chair
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TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 19, 2023
RE: *In the Matter of the Human Resources Management Department (Case No. M2020-15);*
Mediation Summary

I. INTRODUCTION

On September 21, 2020, the Commission received a request for mediation alleging the Human Resources Management Department (HRM) was unlawfully delaying responding to public records requests made by the Requester on July 3, 2020, and August 2, 2020. Staff initiated its mediation program on September 28, 2020, pursuant to the Oakland Sunshine Ordinance.

Because HRM provided the Requester with one additional record on January 6, 2021, and the Requester is satisfied with that response, this mediation was closed with no further action.

II. SUMMARY OF LAW

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

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

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

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

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

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III. SUMMARY OF FACTS

On July 3, 2020, the City received the following records request via NextRequest (20-3960):

This is a California Public Records Act request for the following records:

1. The complete personnel file and employment records for City of Oakland employee Elias Ferran (employed by the City Attorney's Office), including but not limited to his job application, dates of employment, titles/positions held, and salary/wages/bonuses/overtime earned, pension vested.
2. Copies of any and all complaints, investigations, reviews, audits made about/into Elias Ferran and copies of any documents that describe the corresponding outcomes, including but not limited to any discipline, assignment changes, coordinated retirement, or termination of employment, or any other type of sanctions or remedial action by the city.

On July 14, 2020, HRM extended the deadline to respond to the request until July 28, 2020. It stated:

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 July 15, 2020, HRM posted an internal message on NextRequest stating: "Payroll info requested." One hour later, it released a redacted copy of the employee's employment application.

On August 2, 2020, the City received the following records request via NextRequest (20-4822):

Documentation for the separation of Elias Ferran from City of Oakland employment including any documents of termination, separation documents, or notification of any kind from or to Ferran that his employment at the City of Oakland ended.

On September 17, 2020, the Requester posted the following via NextRequest on request 20-4822:

This record is now over one month overdue and is in violation of Oakland's Sunshine Ordinance. Please release the records as soon as possible.

On September 21, 2020, the Commission received a mediation request from the Requester alleging that HRM had unlawfully delayed responding to these requests. Staff initiated its mediation program on September 28, 2020, and notified HRM of the mediation request.

On October 5, 2020, HRM posted the following on both requests:

Dear Requester,

City staff is in receipt of your request and is currently reviewing Mr. Ferran's employment records in consultation with legal counsel. Additional time is required to fulfill your request. Staff is examining a large number of records (Government Code Section 6253(c)(2)), many of which contain personnel information (Government Code Section 6254(c)) and attorney-client communications (Section 6254(k) of the Public Records Act) which are subject to legal

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review. Staff estimates this review will be completed at the end of October and will provide additional updates as they become available.

On October 26, 2020, the Requester posted the following via NextRequest on request 20-3960:

Please provide documents as they become available, as per California law.

On January 6, 2021, HRM released a 129-page PDF to the Requester on both requests. HRM stated: "The documents you requested have been published. The pages of the documents cite the redactions that were made and which files were withheld." It subsequently closed both requests with a substantially similar message.

On May 4, 2023, Staff reached out to the Requester to determine whether they were satisfied with these responses to their requests. 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. Staff subsequently notified the Requester that their mediation was closed.

IV. RECOMMENDATION

Because HRM provided the Requester with one additional record, satisfying the Requester's mediation request, the mediation has been closed with no further action. However, Staff notes HRM's substantial delay in responding to this request, taking an additional three months after mediation began to provide responsive records.