

Item 11c - M2022-02; Mediation Summary



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Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: May 18, 2022
RE: *In the Matter of the Human Resources and Oakland Fire Departments (Case No. M2022-02); Mediation Summary*

I. INTRODUCTION

On April 4, 2022, the Commission received a request for mediation alleging that the Human Resources and Fire Departments failed to disclose records in response to a public records request made by the Requester on February 21, 2022. On April 4, 2022, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding departments provided the responsive documents per the request, this mediation request 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 his or her 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 been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

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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 February 21, 2022, the City received, via NextRequest, the following public records request (No. 22-1351):

I wish to request the data on positivity rate of Covid-19 in the City of Oakland from all City employees. I also wish to request a separate audit for Oakland Fire Department as well. Please include the percentage of employees vaccinated and unvaccinated; who has tested positive for Covid-19 in the report.

The audit timeline I wish to see are from:

August 01, 2021 to current

December 13, 2021 to current

The second part of my request is the contact tracing data. With the City actively completing contact tracing, how many notices were sent out to employees of a possible exposures. The audit timeline I wish to see are from:

August 01, 2021 to current

December 13, 2021 to current

I do not wish to have any names or private information disclosed. I wish to have just the City's raw numbers during this time of the pandemic.

On February 22, 2020, the Human Resources Department responded to the Requester via NextRequest stating:

Thank you for submitting a request for public records through the City of Oakland's NextRequest system. Your request will be delivered to the appropriate City Departments or Officials.

The City of Oakland is committed to transparency and to providing you with a full and timely response to your request. If we need to clarify your request in order to provide a complete response, we will contact you directly or post a reply in NextRequest.

If you have any questions, you may contact the department liaison assigned to your request.

In addition, the Human Resources also replied:

The City will not produce records covered by Government Code Section 6254(c), which exempts "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."

⁵ Complaint Procedures § IV (C)(5).

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On, February 22, 2022, the Requester responded stating:

Please let me be clear. I am requesting statistical data of positivity cases on Covid-19 for Oakland employees. Please refer back to the dates and the last part of my email. I am not looking for private information of any employee as what you cited. Government code section 6254(c). Please help me process this request. Should there be any questions, I can be contacted at 707-330-7943. Thank you

On March 11, 2022, after receiving no further correspondence, the Requester followed up stating:

Good morning, I am following up with my records request on the Statistical data of positivity cases for the vaccinated vs unvaccinated of all city employees. The deadline was March 3rd and I haven't gotten a response as of yet.

On April 4, 2022, the Commission received a complaint alleging that the Human Resources and Fire Departments had failed to provide the requested documents in response to public records request No. 22-1351.

On April 4, 2022, Staff initiated its mediation program and notified the Human Resources and Fire Departments of the mediation request.

On April 6, 2022, the Fire Department responded to the Requester via NextRequest stating:

Hello,

Thank you for submitting a request for public records through the City of Oakland's NextRequest system.

Recently, there was a transition in Fire Department responsibility for Public Records Requests, and we apologize for the delay in responding to you.

The City of Oakland is committed to transparency and to providing you with a full and timely response to your request. If we need to clarify your request in order to provide a complete response, we will contact you directly or post a reply in NextRequest.

Thank you very much for your patience.

Respectfully,

OFD

On April 7, 2022, the Fire Department 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)).

We hope to have an update or have the information requested by 4/14/22.

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On April 11, 2022, the Human Resources Department released a 4-page document that included graphs and tables of positive COVID cases by year and City departments stating:

Regarding “data on positivity rates”, Risk Management does not have responsive documents. Similarly, regarding a “separate audit for Oakland Fire Department”, Risk Management does not have responsive documents. Finally, for the last request, “many notices were sent out to employees of a possible exposures”, Risk Management does not have responsive documents. Although we do not have documents responsive to the request, I have included below the positive COVID cases broken out by month.

On April 11, 2022, the Requester responded:

Can you help me clarify what is meant by responsive documents? Risk Management has access to the City Employee Vaccine Portal where all city employees submitted their vaccine status. How many vaccinated employees tested positive vs. unvaccinated employees from August 2021 to current date?

On April 12, 2022, the Fire Department released an excel spreadsheet that included positive COVID cases stating:

OFD has released your first request. The second part of your request is being worked on and we will release as soon as it is complete.

On April 13, 2022, OFD release an additional excel spreadsheet that included the number of contact tracing notifications sent out. In addition, the Fire Department stated:

OFD has released the second part of your request.
OFD has no more records responsive to this request.

On April 14, 2022, the Human Resources closed the public records request stating:

We released all of the requested documents.

On April 29, 2022, Staff followed up with the Requester via email to confirm if they had received all the requested documents and that, if so, staff would be closing the mediation request.

On April 29, 2022, the Requester responded to staff stating:

Thank you for following up. Regarding my public records request of 22-135, the city did provide me with 3 documents. Unfortunately, it was incomplete. One of my main request was for the statistical data of vacc vs unvacc for all the city employees. OFD was the only dept that was able to provide this record info vacc and unvacc stats.

The reason that the city couldn't provide any more info on this topic was because, they didn't have any more "responsive documents."

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1 out of the 3 documents shows an excel sheet of all dept's that tested positive for Covid. Also the City has a vaccine portal which would provide the appropriate vaccine status of all employees of Oakland. But, yet the entire request has been closed. Is there anything we can do to retrieve this remaining info?

On April 29, 2022, Staff reached out to the Human Resources Department to confirm that all requested documents had been provided. Human Resources Staff responded:

Human Resources Management have provided all responsive records for PRR-22-1351. We have no additional records.

You are welcome to contact Andrew Lathrop if you have additional questions.

On May 9, 2022, Staff reached out to Andrew Lathrop, Claims & Risk Manager, to confirm that the City's Vaccination Portal did not provide the level of information that the Requester was seeking.

On May 10, 2022, Mr. Lathrop responded:

Ms. Aaron's response is accurate. The Human Resources Department does not have responsive records beyond that which has already been submitted.

In addition, Mr. Lathrop stated:

The Human Resources Department does not have this information, there are no responsive records to this request. Moreover, it is very unlikely that the City could accurately discover the requested information. But even if such discovery was possible, the City is not required to compile data, gather information, perform research, or otherwise create a record that does not exist or that is not maintained in the normal course of business.

In any case, I want to stress again, the records cannot be produced because they do not exist.

On May 12, 2022, Staff followed up with the Requester to confirm that the Human Resources Department provided all the responsive documents per the request and that Staff would be closing the mediation.

Subsequently, after receiving no response, Staff closed the mediation request.

IV. RECOMMENDATION

Because the Human Resources and Fire Departments provided the responsive documents, Staff closed the mediation request with no further action. Overall, the Human Resources and Fire Departments were responsive to the Requester once Staff began the mediation process.