

Item 11c - M2021-13 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 26, 2023
RE: *In the Matter of the Police Department (Case No. M2021-13); Mediation Summary*

I. INTRODUCTION

On June 21, 2021, the Commission received a request for mediation alleging the Police Department had unlawfully failed to respond to a public records request made by the Requester on June 9, 2021. Staff initiated its mediation program on June 21, 2021, pursuant to the Oakland Sunshine Ordinance.

The Police Department provided the Requester with records on July 16, 2021, August 12, 2021, and May 23, 2023. Additionally, the Police Department committed to resume proactive disclosure of the requested records. Because 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 June 9, 2021, the City received the following records request via NextRequest (21-5120):

Replace missing Daily Patrol Logs

****Immediate Disclosure Request****

OPD has published daily "patrol logs" for major (UCR Part I) crimes via a [resource available on Box.com](https://app.box.com/folder/8881131962) since 2016. There have been no PDFs of the patrol logs posted since Oct 14, 2020.

Bruce Stoffmacher, <BStoffmacher@oaklandca.gov> said in email to me in November 2020: "we are in process of transitioning from box.com to a new system so there may be a delay with patrol log updates." No new system has been announced, more than six months later.

Previous attempts

I have contacted Bruce Stoffmacher <BStoffmacher@oaklandca.gov> and Mr. Peterson (Oakland CIO) <APeterson@Oaklandca.gov> regarding this drop of data.

Data request

I seek a republishing of all patrol logs regarding incidents since October 1, 2020.

"Immediate" request

The fact that this data was previously published means that this PRR seeks "public records which have been previously distributed to the public," and therefore subject to **immediate request** as specified in Section 2.20.230.C of [Oakland's Sunshine Ordinance](https://library.municode.com/ca/oakland/codes/code_of_ordinances), requiring a response within **three days**. A sample form as was available from Sept 2020 is attached.

Machine-readable format

Please make this data in computer-readable format, such as those provided by Oakland's own `data.oaklandca.gov` resource (eg. CSV, JSON) and **not** only as PDF documents.

On June 10, 2021, a public records liaison for the Police Department emailed Bruce Stoffmacher to determine whether he held responsive records. The public records liaison requested a response by June 14, 2021.

On June 16, 2021, a public records liaison for the Police Department emailed the Policy and Publication Unit to determine whether they held responsive records. The public records liaison requested a response by June 21, 2021. An employee of the Policy and Publication Unit responded later that day:

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I don't know that the Police Department still publishes a daily log. Regardless, the Policy and Publication Unit does not have access to archives nor are we involved with the archiving or publishing of these logs.

On June 21, 2021, the Commission received a mediation request from the Requester alleging that the Police Department had unlawfully failed to respond to their public records request. Staff initiated its mediation program that same day and notified the Police Department of the mediation request.

Later that day, a public records liaison followed up with Bruce Stoffmacher. A different public records liaison for the Police Department contacted the PAB Watch Commander requesting information and responsive records because an employee of the PIO's office indicated, "the Patrol Unit keeps the log stored on the computer at the patrol desk." The Police Department subsequently posted the following messages on NextRequest:

We have forwarded your request to the Research and Planning department. You will be updated as soon as we receive a response.

The Policy and Publication unit has replied and has no responsive documents for this request.

We have forwarded your request to the Watch Commander. You will be updated as soon as we receive a response.

Later that day, a public records liaison for the Police Department emailed Staff:

We are working diligently to find the stored Patrol logs from 10/1/20 to 06/09/21.

We are awaiting a response from the Watch Commander. We have also updated the requester. We will update the requester once we have responsive documents to disclose.

On June 22, 2021, a public records liaison for the Police Department followed up with the PAB Watch Commander.

On June 25, 2021, the Police Department posted the following message on NextRequest:

Your request is in the final review phase. We appreciate your patience.

On July 26, 2021, the Police Department released 70 PDFs to the Requester. It subsequently stated:

We uploaded some of the responsive results. We will upload more next week.

On July 27, 2021, the Requester posted the following message on NextRequest:

Your release yesterday, of only 70 RANDOM days of the approx 280 missing days from Oct 2020 until the present day, is obviously very incomplete. The fact that it took six weeks to produce these does not make me optimistic for how long it will take you to produce the missing days.

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But much worse is this FORMAT for their release: as presented on the NextRequest webpage they seem to require MANUAL clicking on each link for download!? This is in contrast to their previous publication via Box.com that allowed orderly retrieval of ALL documents as part of a single download.

Also: The NextRequest interface does not allow me to enter these comments as a reply?! See attached screen shot.

On August 12, 2021, the Police Department uploaded a ZIP file containing patrol logs from October, November, and December of 2020. It then stated:

We uploaded Oct 2020 through Jun 2021 Daily Logs.

It subsequently closed out the request, stating: “We released all of the requested documents.”

On April 26, 2023, Staff reached out to the Requester to determine whether they were satisfied with this response to their request. The Requester responded later that day, indicating that they were still missing records that were responsive to their request. Moreover, the Requester asserted that the Police Department had not yet resumed proactively posting the patrol logs to their website.

Staff contacted a public records liaison for the Police Department later that day regarding the missing records and discontinued proactive disclosure of the patrol logs. The public records liaison notified Staff the next day that they were working on the request and should have an informed response by the next week.

Staff followed up with that public records liaison on May 5, 2023, inquiring whether a separate public records request that housed years of patrol logs was intended as a replacement for the Box.com folder. The public records liaison responded 15 minutes later, indicating it was not a replacement for the Box.com folder.

Staff followed up with that public records liaison on May 10, 2023. They responded 4 hours later, stating that the Records Division had accidentally missed uploading some files to NextRequest in 2021. They indicated that the missing files would be uploaded by May 15, 2023. They also stated that they had escalated the matter of proactive disclosure up the chain of command.

Staff followed up with that public records liaison on May 18, 2023, and May 22, 2023. They responded later on May 22, 2023, indicating that they had accidentally missed the previous emails. They explained:

I will be training 2 new people on different functions every 6 weeks, for the next 5 to 6 months.

I am also The Acting Records manager until we find a replacement.

The public records liaison indicated that they would provide an update the next day.

On May 23, 2023, the Police Department released 252 PDFs to the Requester. Some of these PDFs had already been released to the Requester. However, with this release of additional PDFs, the Police

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Department released to the Requester all requested patrol logs. The Police Department subsequently posted on NextRequest:

NEW OPD Daily Log page:

<https://www.oaklandca.gov/resources/opd-daily-log>

The next day, a public records liaison for the Police Department notified Staff:

Yes, we uploaded the missing data yesterday.

OPD has resumed uploading the documents at the below link; I sent the link to the requester as well.

OPD Daily Log page:

<https://www.oaklandca.gov/resources/opd-daily-log>

Later that day, Staff reached out to the Requester to determine whether they were satisfied with this response to their request. On May 25, 2023, the Requester notified Staff that they were interested in receiving additional patrol logs. Staff told the Requester that they should open a new public records request for these additional patrol logs. Staff subsequently notified the Requester that their mediation was closed.

IV. RECOMMENDATION

Because the Police Department provided the Requester with all responsive records and resumed proactive disclosure of those records, satisfying the Requester's mediation request, the mediation has been closed with no further action.