

Item 11d - M2022-05 Mediation Summary



Ryan Micik, Chair
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TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 26, 2023
RE: *In the Matter of the City Clerk and Public Works Department (Case No. M2022-05);*
Mediation Summary

I. INTRODUCTION

On October 20, 2022, the Commission received a request for mediation alleging the City Clerk and Public Works Department were unlawfully delaying responding to public records requests made by the Requester on September 19, 2022, and October 7, 2022. Staff initiated its mediation program on October 20, 2022, pursuant to the Oakland Sunshine Ordinance.

Because the City Clerk and City Attorney provided the Requester with 9 PDF files and City Hall camera footage from October 21–31, 2022, and the Requester is satisfied with these releases, 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).

Item 11d - M2022-05 Mediation Summary

III. SUMMARY OF FACTS

On September 19, 2022, the City received the following records request via NextRequest (22-6909):

Hello,

I would like to file a Public Record request for all the footage of cameras covering Frank Ogawa Plaza and City Hall entrances and exits, as well as adjacent street parking outside City Hall for the date of Friday August 12th, 2022 for the hours of 3pm-7pm. I would also like to file a Request for all keycards for City Employees for this entire day as well. I would also like to file a request for the timestamp of the final application for Mayor that day as well from City Councilmember Sheng Thao.

This date, at 5pm is the final filing deadline for Oakland Mayoral Candidates. I have one eye witness account that City Councilmember Sheng Theo did not make it into City Hall before the hard stop at 5pm. There were other candidates who were turned away from City Hall and not allowed to file for the same reason. This is unfair to these candidates and Oakland voters that a City Employee can let themselves into the building and knowingly file late for the election.

As this election is in less than 70 days, it is important for the integrity of the election process that this request be honored expeditiously.

Many thanks for your attention to this matter.

On September 29, 2022, the City Clerk's office provided the Requester with 4 PDF documents, including election documents submitted by Sheng Thao and emails mentioning her name.

On October 3, 2022, the Public Works Department provided the Requester with 2 PDF documents of key card access logs.

On October 7, 2022, the City received the following records request via NextRequest (22-7692):

This is a formal request for public records pursuant to the California Public Records Act. I am seeking the following documents/records:

1. All documents/records that relate to concerns that the time stamp machine in the City Clerk's office was defective, broken or otherwise not operating in an accurate or reliable manner on August 12, 2022, including, but not limited to all documents of any type that were stamped with that machine on August 12, 2022.
2. All documents/records that relate to concerns that the time stamp machine in the City Clerk's office was defective, broken or otherwise not operating in an accurate or reliable manner from July - August 11, 2022, including but not limited to emails or other correspondence with City employees/officials that the time stamping machine was having issues and orders for repair or replacement of the time stamping machine [I am not requesting all documents stamped by the machine during this time period].
3. All documents/records that relate to concerns that the time stamp machine in the City Clerk's office was defective, broken or otherwise not operating in an accurate or reliable manner after August 12, 2022, including but not limited to emails or other

Item 11d - M2022-05 Mediation Summary

correspondence with City employees/officials that the time stamping machine was having issues and orders for repair or replacement of the time stamping machine [I am not requesting all documents stamped by the machine during this time period].

On October 19, 2022, the City Attorney's office stated the following on request 22-6909:

We have identified video footage responsive to this request but have been unable to upload the files in their original format. We are working with an outside vendor to convert the files and will upload them upon receipt. We hope to be able to upload the files by Friday, October 21, 2022. We will provide another update if that date changes.

Later that day, the City Clerk's office released two documents to the Requester on request 22-7692.

On October 20, 2022, the Commission received a mediation request from the Requester, alleging that the City Clerk's office and Public Works Department had unlawfully delayed responding to these requests. Later that day, Staff initiated its mediation program and notified both departments of the mediation request.

On October 21, 2022, the City Clerk's office released four PDF packets of various forms submitted by mayoral candidates to the Requester on request 22-7692. That same day, it released one of the packets related to Sheng Thao to the Requester on request 22-6909.

On October 24, 2022, the City Clerk's office released five additional PDF packets of forms submitted by mayoral candidates to the Requester on request 22-7692.

On October 31, 2022, the City Attorney's office released a Sharepoint folder of City Hall camera footage to the Requester on request 22-6909.

On December 15, 2022, the City Clerk's office closed both requests. It noted that all responsive documents had been provided on request 22-6909. On request 22-7692, it noted that personal information had been redacted under Government Code Section 6254(c).

On May 1, 2023, Staff reached out to the Requester to see if they were satisfied with these responses to their public records requests. The Requester replied later that day, saying that they were unable to view the video footage because it required proprietary software to view.

Staff subsequently reached out to the City Attorney's office and followed up on May 5, 2023. The City Attorney's office responded to Staff on May 9, 2023, stating that they had provided the viewer software to the Requester. However, the Sharepoint link provided by the City Attorney's office no longer worked, so the City Attorney's office committed to re-upload the files.

The Requester asked Staff for an update on May 15, 2023. Staff contacted the City Attorney's office for an update. Later that day, the City Attorney's office released a ZIP file containing the videos and viewer software on request 22-6909. Staff then contacted the Requester to confirm that they were now able to download the viewer software and view the videos.

Item 11d - M2022-05 Mediation Summary

Staff followed up with the requester on May 18, 2023, and May 25, 2023. On May 25, 2023, the Requester notified Staff that they were having technical problems downloading the files and running the video player. Staff provided technical assistance to the Requester. The Requester notified Staff on May 26, 2023, that they were successfully able to view the videos. Staff subsequently notified the Requester that their mediation was closed.

IV. RECOMMENDATION

Because the City Clerk and City Attorney's offices provided the Requester with several additional records, satisfying the Requester's mediation request, the mediation has been closed with no further action.