

Item 11e - M2021-04 Mediation Summary



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TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 23, 2023
RE: *In the Matter of the Police Department (Case No. M2021-04); Mediation Summary*

I. INTRODUCTION

On March 1, 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 5, 2019. Staff initiated its mediation program on March 10, 2021, pursuant to the Oakland Sunshine Ordinance.

The Police Department provided the Requester with two records on June 9, 2021. Despite five attempts to contact the Requester, Staff could not determine whether the Requester was satisfied with this response. However, since the Requester is no longer responsive to Staff attempting to mediate this request, 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 11e - M2021-04 Mediation Summary

III. SUMMARY OF FACTS

On June 5, 2019, the City received the following records request via NextRequest (19-2865):

To Whom It May Concern:

****Note that every response (including all responsive records) you send may be automatically and immediately visible to the general public on the MuckRock.com internet service used to issue this request.****

Pursuant to the California Public Records Act (CPRA), I hereby make the following 5 distinct requests for records from Oakland Police Department ("agency"):

1. Every communication (including without limitation any message on an agency's officers/employees personal email/devices pursuant to City of San Jose v. Superior Court (Smith), S218066) to or from ICE between Jan 1, 2018 until the date of receipt of request (inclusive) that is a public record pursuant to Govt Code 7283.1(c) which reads in relevant part "All records relating to ICE access provided by local law enforcement agencies, including all communication with ICE, shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. Records relating to ICE access include, but are not limited to, data maintained by the local law enforcement agency regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means."
2. The contents of any internal tracking mechanism, database, or log your agency uses to manage or related to "ICE access", "Notification requests", "Hold requests", and/or "Transfer requests" (all as defined under Govt Code 7283) showing all items between Jan 1, 2018 until the date of receipt of request (inclusive), pursuant to Govt Code 7283.1(c)
3. Records showing "whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means" pursuant to Govt Code 7283.1(c), showing all items between Jan 1, 2018 until the date of receipt of request (inclusive)
4. Every inter- or intra-agency memorandum regarding whether or not to comply with an ICE access request of any kind between Jan 1, 2018 until the date of receipt of request (inclusive)
5. Every guideline, policy, ordinance, resolution (incl any 'sanctuary' OR 'non-sanctuary' declarations) that you follow to determine whether or not to comply with an ICE access request of any kind.
6. Every presentation your agency has given to the jurisdiction's governing entity (board of supervisors, council, etc.) or public re: ICE access requests

You have an obligation under CPRA to, for **each** of the 6 requests made, to provide a notice of determination that you: have no responsive records, have disclosed all responsive records, have withheld all responsive records, have disclosed some and withheld some responsive records (incl. redaction), and to provide statutory authority for any records withheld in whole or in part.

I would prefer the request fulfilled electronically, by attachments, if possible.

Item 11e - M2021-04 Mediation Summary

For all electronic copies, you have an obligation to provide electronic records in the original format you hold them.

Therefore, where emails, text messages, chat logs, or similar are provided, we would like them in a format that provides **all** the parts of the record, namely all headers, metadata, attachments, and inline images.

.eml or .msg message formats are best. However, if you convert messages to PDFs or screenshots of iPhone messages, etc. in order to perform redaction, please ensure you include all headers, metadata, attachments, and inline images when converting; the usual From/To/Subject/Sent headers are not enough. If you withhold parts of e-mail or text records (such as headers) without statutory justification, you may be in violation of the CPRA and we may challenge your response.

Please consider your obligations under *City of San Jose v. Superior Court (Smith)*, S218066 to search personal accounts/devices storing public records -- which we do explicitly request. Please send only those records available without any fees - since we have asked for electronic copies, we expect all will be available without fees. Nevertheless, for any records for which you would charge fees, instead of copies, please provide us the (free) statutorily-mandated CPRA determination of what records exist, so we may inspect them in person if we so choose to do so, and notify us of the expected costs if we wished to move forward with copies.

Please provide responsive records on a rolling basis as you approve/redact them for disclosure.

Thank you in advance for your anticipated cooperation in this matter.
I look forward to receiving your response to this request within 10 calendar days, as the statute requires.

Sincerely,
Anonymous Person

On June 24, 2019, the Police Department extended the deadline to respond to this request to July 24, 2019. 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 September 11, 2019, the Police Department extended the deadline to respond to this request to October 14, 2019. On October 19, 2019, it extended the deadline to November 20, 2019. On November 19, 2019, it extended the deadline to December 20, 2019. On December 17, 2019, it extended the deadline to January 31, 2020. The Police Department posted the same message after each extension: "Request extended: Additional time is required to answer your public records request."

On December 17, 2019, the Requester sent the following message to the Police Department via email:

This is a follow up to request number 19-2865:

No, it has been half a year.

Item 11e - M2021-04 Mediation Summary

Please provide immediately all records this far reviewed and redacted.

We reserve our right to file complaints with the Public Ethics Commission and/or suit against the City in Superior Court if you refuse.

Sincerely, Anonymous

On January 24, 2020, the Police Department extended the deadline to respond to this request to February 28, 2020. On February 28, 2020, it extended the deadline to March 26, 2020. The Police Department again posted the same message after both extensions: "Request extended: Additional time is required to answer your public records request."

On March 12, 2020, a public records liaison for the Police Department sent emails to four Police Department employees seeking information and records. This public records liaison also submitted an EDDR request to the IT Department for responsive emails. The Police Department subsequently posted the following message on NextRequest:

We are sorry for the delay.

Your request has been delivered to the appropriate City Departments to review and provide responsive documents.

We have also submitted an email inquiry to our IT team.

The City of Oakland is committed to transparency and to providing you with the appropriate responsive documents.

On March 27, 2020, the Police Department extended the request deadline to April 24, 2020. On April 30, 2020, it extended the deadline to May 28, 2020. On June 25, 2020, it extended the deadline to July 24, 2020. On July 27, 2020, it extended the deadline to August 24, 2020. On August 24, 2020, it extended the deadline to September 24, 2020. On September 24, 2020, it extended the deadline to October 23, 2020. The Police Department again posted the same message after each extension: "Request extended: Additional time is required to answer your public records request."

On October 5, 2020, a public records liaison for the Police Department checked with the IT Department on the status of the EDDR request. On October 7, 2020, a public records liaison for the Police Department followed up with two Police Department employees regarding the request.

On October 8, 2020, the IT Department notified this public records liaison that the EDDR request was in progress with 1125 names. The Police Department subsequently posted the following messages on NextRequest: "The IT team is still working on the email search portion of your request," and "I sent a follow up email to The Training Unit and The Policies and Publication Unit."

On January 25, 2021, the Police Department extended the request deadline to February 25, 2021. On February 26, 2021, it extended the deadline to March 25, 2021. The Police Department again posted the same message after both extensions: "Request extended: Additional time is required to answer your public records request."

Item 11e - M2021-04 Mediation Summary

On March 1, 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 on March 10, 2021, and notified the Police Department of the mediation request.

Later that day, a public records liaison for the Police Department followed up with the IT Department on the status of the EDDR request. The Police Department subsequently posted the following message:

Good Morning, we sent a follow up to The IT team regarding the requested email search. We will give you an update, once they respond.

Another Police Department public records liaison followed up with two Police Department employees regarding whether they had responsive documents. The Police Department subsequently posted the following message:

Good Morning, we sent a follow up to The Training Unit and The Policies and Publications Unit regarding the requested information. We will give you an update, once they respond.

One of the Police Department employees notified the public records liaison that same day that they didn't have knowledge of any responsive records since the Department is prohibited from cooperating with ICE by ordinance.

The Police Department notified Staff on March 11, 2021, that they were waiting on responsive documents from the Research and Planning Section, the Training Division, and the IT Department.

On March 15, 2021, a public records liaison for the Police Department sent an email to the Executive Assistant to the Chief of Police inquiring if the Office of the Chief of Police was aware of any responsive records. The email set a deadline of March 22, 2021, to respond to the Records Division.

On March 19, 2021, the executive assistant to the Chief of Police forwarded the email to the Chief of Staff of the Office of Chief of Police.

On April 9, 2021, Staff followed up with the Police Department regarding this request. On April 12, 2021, a public records liaison for the Police Department followed up with the Chief of Staff of the Office of Chief of Police. The Police Department subsequently posted on NextRequest:

Good Morning. We sent a follow up email today. We are awaiting responsive documents.

A public records liaison for the Police Department subsequently emailed Staff:

We have not received the requested information as of today. We sent a follow-up email today. We also left a message for the requester on the NextRequest Portal, in regards to the status. The Records being requested are not housed within The Records Division.

The Chief of Staff responded to the public records liaison approximately an hour later, stating: "I will work on an ETA."

Item 11e - M2021-04 Mediation Summary

On April 30, 2021, the Police Department posted on NextRequest: “We sent a follow up email today. We are awaiting responsive documents.”

On May 12, 2021, a public records liaison for the Police Department followed up with the Chief of Staff regarding this request. The email set May 22, 2021, as a deadline to provide responsive documents or a date of completion.

On June 7, 2021, a public records liaison for the Police Department sent an email to several Police Department employees stating: “I am following up on this request.”

On June 9, 2021, the Police Department posted on NextRequest, “Your request is in the final review phase.” It subsequently posted a copy of Oakland’s sanctuary city ordinance and a copy of the Police Department’s immigration policy. It also posted the following message:

From Jan 2018 to date, the Oakland Police Department has not engaged in any operations with Immigration and Customs Enforcement “ICE”. The Oakland Police Department does not engage in any operations with ICE per the City of Oakland Resolution.

The Police Department subsequently closed the request, stating, “We released all of the requested documents.”

On July 13, 2021, Staff reached out to the Requester to determine whether they were satisfied with this response to their request.

On May 1, 2023, Staff again reached out to the Requester to determine whether they were satisfied with this response to their request. Staff notified the Requester on May 8, 2023, that this mediation would be closed if Staff received no further communications by May 22, 2023. Staff followed up with the Requester on May 16, 2023, and May 18, 2023. Since Staff did not receive any communications from the Requester, Staff notified the Requester that this mediation was closed on May 23, 2023.

IV. RECOMMENDATION

Because the Police Department provided the Requester with two additional records, and the Requester has not contacted Staff after five requests for information, the mediation has been closed with no further action.