

Item 11h - M2021-15 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 Rent Adjustment Program (Case No. M2021-15); Mediation Summary*

I. INTRODUCTION

On July 16, 2021, the Commission received a request for mediation alleging the Rent Adjustment Program was unlawfully delaying responding to a public records request made by the Requester on December 20, 2019. Staff initiated its mediation program on July 16, 2021, pursuant to the Oakland Sunshine Ordinance.

The Rent Adjustment Program provided the Requester with over 100 additional records on July 19, 2021, in response to this mediation request. Though the Requester believes additional records have not been disclosed, they don't believe continuing the mediation process would be productive. Therefore, Staff closed this mediation 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

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).

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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 December 20, 2019, the City received the following records request via NextRequest (19-6239):

I would like copies of the the full text of all legislative history, including notes, minutes, decisions, or other communications that evidence discussion and history of the following ordinance and rules and regulations:

- 1) Oakland Municipal Ordinance 8.22.030 A.5. (Residential Rent Adjustment Program New Construction Exemption);
- 2) Residential Rent Adjustment Program Rules and Regulations 8.22.020 B.2. ("Types of Dwelling Units Exempt- -Newly Constructed Dwelling Units.")
- 3) All documents, communications, minutes, decisions, discussions regarding NEW CONSTRUCTION EXEMPTIONS FROM THE RESIDENTIAL RENT ADJUSTMENT PROGRAM.

Thanks

The Housing & Community Development Department was assigned to this request. On December 23, 2019, the Housing & Community Development Department added the Planning & Building Department to this request.

On January 3, 2020, the Housing & Community Development Department changed the due date to January 17, 2020. It stated:

Staff to review the request has been out of the office. Need additional to time for review/response.

On January 10, 2020, the Planning & Building Department removed itself from this request.

On March 24, 2020, the Housing & Community Development Department changed the due date to April 13, 2020, stating:

Due to the order to shelter in place in Alameda County, City of Oakland non-essential offices are closed effective March 17, 2020. Staff will work on tasks out-of-office as much as possible. Currently, normal business is expected to resume April 7th. Sorry for the inconvenience.

On April 16, 2020, the Housing & Community Development Department changed the due date to April 30, 2020. On May 8, 2020, the Housing & Community Development Department changed the due date to May 18, 2020. On June 4, 2020, the Housing & Community Development Department changed the due date to June 18, 2020. Each due date change stated that staff was continuing to search for responsive records.

⁵ Complaint Procedures § IV (C)(5).

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On September 3, 2020, the Housing & Community Development Department removed itself from the request and added the Rent Adjustment Program in place of it.

On September 17, 2020, the Rent Adjustment Program asked for clarification of the request:

Please provide more details regarding item three (example policy or procedure manual. clarify your request). Thank you.

On October 15, 2020, the Rent Adjustment Program released 10 links to Oakland's City Council tracking website. It subsequently stated:

Item #1 is provided.

And:

Item #2 is provided. Note: some of the ordinances are part of item #1 and #2.

On March 3, 2021, the Rent Adjustment Program asked for clarification from the requester, stating:

We are working to fulfill item #3. There are over 100 case files responsive to this request. Please confirm whether you want entire case files or just hearing and appeal decisions.

On April 13, 2021, the Rent Adjustment Program closed the request, stating:

Requester clarified via email that no case files, hearing decisions or appeal decisions are needed. All of the requested records were released.

On April 30, 2021, the Rent Adjustment Program reopened the request. It released an additional seven PDF records of legislative history. It subsequently stated:

Additional records responsive to this request were located and posted. Staff will continue to search for any other records.

On July 10, 2021, the Requester stated:

I still have not received the requested records.

On July 16, 2021, the Commission received an email from the Requester, alleging that the Rent Adjustment Program had unlawfully delayed responding to this request. The Requester alleged that they had received records responsive to their request by directly contacting the City Clerk's office. The Requester further alleged that they attempted to contact KTOP for responsive videos of City Council meetings, but KTOP did not answer their phone calls. Staff treated this email as a request for mediation.

Later that day, Staff initiated its mediation program and notified the Rent Adjustment Program and KTOP of the mediation request. An hour later, the Rent Adjustment Program told Staff that "According to RAP staff, all responsive documents have been produced."

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The Rent Adjustment Program stated to the Requester on July 19, 2021:

This was visible only to the requester because it was accidentally posted that way, rather than to the public. When you use Next Request the rules require that you log in with the same email you originally used. If you do that, you will have access to all documents provided to requester only.

The Requester subsequently stated:

I found this out last week when I called Cynthia Jay. I have these records already.

Later that day, the Rent Adjustment Program released one link and approximately 180 PDFs to the Requester. It stated:

This is one of the documents produced to us by Nai from the City Clerk's office.

And:

Here are the rest of the documents produced by the City Clerk's office.

It subsequently closed the request, stating:

Please note for the future that the RAP is not the holder of documents related to legislative history; these are kept by the City Clerk. The documents that were posted came from the City Clerk's office.

That same day, the Rent Adjustment Program stated to staff:

I believe the request in question has been handled. It would seem the requester was having a hard time accessing records as she registered with a different email.

On April 26, 2023, Staff reached out to the Requester to see if they were satisfied with this response to their public records request. Staff followed up with the Requester on May 3, 2023, May 10, 2023, May 12, 2023, May 15, 2023, and May 16, 2023. On May 16, 2023, the Requester notified Staff that they believed there were still some legislative history records that were not disclosed in response to their request. The Requester alleged that the City stated these records were not maintained. However, the Requester believed it was unlikely that the mediation process would lead to disclosure of these records, especially because of the length of time that had elapsed since the original request. Since the Requester no longer wanted to continue the mediation process, Staff notified the Requester that this mediation would be closed.

IV. RECOMMENDATION

Because the Requester is no longer interested in pursuing mediation, the mediation has been closed with no further action.

However, this mediation highlights the importance of ensuring the Rent Adjustment Program is complying with public records laws. The Requester noted that they were requesting these records

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on behalf of clients who had hearings before the Rent Adjustment Program. The Requester asserted that they had previous problems requesting records from the Rent Adjustment Program. Under the Public Records Act, there is no need to direct a response to the appropriate department; the City as a whole is tasked with responding to that request.⁶ Staff recommends including the Rent Adjustment Program as part of the Transparency and Public Records Subcommittee’s analysis of Sunshine Ordinance compliance.

⁶ *Kumeta v. City of San Diego*, D037521, 2002 Cal. App. Unpub. LEXIS 6494, at *16 (July 16, 2002) (“Accordingly, when [the] City receives an appropriate request for disclosure of public records, it is [the] City's duty to ensure it provides prompt disclosure of responsive public records regardless of the fact that those responsive public records may be kept or maintained by one or more of its departments, divisions, or other components.”).