

# Item 11i - M2022-04 Mediation Summary



Ryan Micik, Chair  
Charlotte Hill, Vice Chair  
Alea Gage  
Arvon Perteet  
Vincent Steele  
Francis Upton IV

Suzanne Doran, Acting Executive Director

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TO: Public Ethics Commission  
FROM: Chris Nardi, Law Clerk  
Jelani Killings, Ethics Analyst  
DATE: May 11, 2023  
RE: *In the Matter of the Finance and Human Resources Management Departments (Case No. M2022-04); Mediation Summary*

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## I. INTRODUCTION

On September 27, 2022, the Commission received a request for mediation alleging the Finance Department and Human Resources Management Department (HRM) were unlawfully delaying their responses to a public records request made by the Requester on July 29, 2022. Staff initiated its mediation program on September 27, 2022, pursuant to the Oakland Sunshine Ordinance.

Because the Finance Department provided the Requester with three responsive records on September 29, 2022, HRM notified the Requester it had no responsive records, and the Requester is satisfied with these responses, 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.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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<sup>1</sup> Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

<sup>2</sup> Government Code § 7922.530(a).

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

<sup>5</sup> Complaint Procedures § IV (C)(5).

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## III. SUMMARY OF FACTS

On July 29, 2022, the City received the following records request via NextRequest (22-5804):

Records indicating the date(s) of hire, promotion or demotion, termination of Manuel Escamilla (aka Manny Escamilla) who may be employed by the Planning Department  
Records of timesheets or timecards or other records indicating days and hours worked by Manuel Escamilla  
Records of disbursements made or compensation paid to Manuel Escamilla  
The resume of Manuel Escamilla, submitted by Mr. Escamilla in order to obtain employment with the City of Oakland

That same day, the request was assigned to HRM.

On August 18, 2022, HRM's public record liaison stated on NextRequest:

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."

On August 24, 2022, the Requester stated:

Please provide an update on this request, #22-5804, submitted on July 29, 2022.

Requester understands that per Government Code Section 6254(c), you will not produce records which would "constitute an unwarranted invasion of privacy."

None of the records requested should be exempt under GC §6254(c), though some of the records may contain information which are segregable and should be rightly redacted, such as home address, home phone, Social Security number, or bank information, etc. Requester does not seek such information.

Dates of hire, promotion or demotion, or termination may constitute the employee's contract with the public agency, and therefore is explicitly public under statute. (See Braun v. City of Taft, 154 Cal. App. 3d 332, citing Cal Gov Code § 6254.8.)

Records of compensation similarly do not constitute an unwarranted invasion of privacy. "To the extent that some public employees may expect their salaries to remain a private matter, that expectation is not a reasonable one." (International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court (2007) 42 Cal.4th 319.) California courts have routinely found that salary information should be publicly disclosed.

Similarly, records indicating days and hours worked should be publicly disclosed. Such records shed light on the workings of a public agency. To the extent that salaries or compensation are based on time worked by a public employee, timesheets form the basis on which compensation is determined, and is essentially a budgetary matter, not a private personal matter.

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Finally, California courts have recognized that information “as to the education, training, experience, awards, previous positions and publications of the auditor” is routinely presented in both professional and social settings, is relatively innocuous and implicates no applicable privacy or public policy exemption. (§§ 6254, subd. (c), 6255.)” (Eskaton Monterey Hospital v. Myers, 134 Cal. App. 3d 788.)

Accordingly, Requester looks forward to disclosure of the requested records at your earliest possible convenience.

On September 1, 2022, the Finance Department was added to the request on NextRequest.

On September 27, 2022, the Commission received a mediation request from the Requester, alleging that the Finance Department and HRM had unlawfully delayed responding to this request. Staff initiated its mediation program that same day and notified both departments of the mediation request.

Later that day, the public records liaison for HRM stated on NextRequest:

Verified that there is no responsive record of “resume” in the official personnel file on, Wednesday, September 14, 2022.

The public records liaison for HRM notified Staff that same day:

PRR 22-5804 includes four requests. HRM has responded to #4 and email and in the Next Request system.

On 9/27/2022, I forwarded #1-#3 requests to Central Payroll (see attached) outside of the Next Request system. I also attached the Mediation request.

On September 29, 2022, the Finance Department released three records to the Requester. It then closed the request, stating that personal information had been redacted pursuant to Government Code Section 6254(c). That same day, the public records liaison for the Finance Department notified Staff it had fulfilled and closed the request.

On April 26, 2023, Staff reached out to the Requester to determine whether they were satisfied with these responses to their request. Staff followed up with the Requester on May 3, 2023. Later that day, the Requester notified Staff that they were satisfied with these responses. They also expressed appreciation for the mediation program. Staff subsequently notified the Requester that their mediation was closed.

#### **IV. RECOMMENDATION**

Because the Finance Department provided the Requester with three records, and HRM notified the Requester it had no responsive records, satisfying the Requester’s mediation request, the mediation has been closed with no further action.