

Item 13b - M2019-08 Mediation Summary



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Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: January 25, 2022
RE: *In the Matter of the City Administrator's Office (Case No. M2019-08); Mediation Summary*

I. INTRODUCTION

On May 14, 2019, the Commission received a request for mediation alleging that Richard Luna (Respondent) failed to disclose records in response to two public records requests made by the Requester on April 24, 2019. On May 22, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the Respondent provided the responsive documents per the requests, Staff closed the mediation without 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 his or her 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 been 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); California Government Code § 6250 et seq.

² Government Code § 6253(b).

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 April 24, 2019, the City received, via web, the following public records request (No. 19-2065):

All documents and emails referencing official city policies and protocols for "community cabins"/Tuff Sheds concerning the following:

--standards around outside temperature fluctuations, seasonal protocols, i.e, specific guidelines for specific recorded outside temperatures

--provisions of shower, with dedicated days for each encampment, frequency

--provision of porta-potty by self-identified gender, or non-gender.

The request covers city encampments at Castro, Northgate, Lake Merritt and Miller sites, and for any planned sites, such as Mandela Pkwy and Jack London Square. These should all be in the possession of Joe Devries.

On April 24, 2019, the City received, via web, the following public records request (No. 19-2066):

Please provide any and all lease agreements; and/or draft lease agreements; and or proposals for lease agreements; and/or addenda or MOUs with Caltrans for the purpose of emergency homeless shelter and/or the city's "community cabins" projects.

Both public records requests (19-2065 and 19-2066) were assigned to the Office of the City Administrator.

On May 9, 2019, the Requester responded to both public records requests stating:

California Public Records Act requires a response to this request within 10 calendar days. It has been over 10 days. Please comply with the law and respond.

On May 13, 2019, the Respondent released two lease agreement documents to the Requester in response to public records request 19-2066. Subsequently, the public records request was closed stating:

We released all of the requested responsive documents.

On May 13, 2019, the Requester responded:

There should be at least one more lease agreement here for the "Castro" encampment. Please re-open and provide it.

On May 13, 2019, the Respondent sent a message to the Requester via NextRequest stating:

Per CAO staff, there were not documents in the City Administrator's Office. Human Services may have the documents related to this request.

On May 14, 2019, Kathy Hicks from the Human Services Department replied:

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We are creating one as we speak per request from Council. We are currently incorporating interventions such as additional blankets, warming gloves, clothing of various kinds, hand warmers, leg warmers, and looking into the feasibility/safety of using warming blankets, however, we will work off of common standardized inclement weather triggers for the protocol itself which is:

1. The temperature is forecast to fall below 40 degrees (39 or lower) the inclement weather protocols will be implemented (40 on the nose means not open).
2. When significant rain is forecast – defined as a greater than 50% chance of showers – the inclement weather protocols will be implemented.
3. If the temperature is expected fall below 39 degrees any time before 5am the inclement weather protocols will be implemented.
4. If a greater than 50% chance of rain is expected any time before 5am the inclement weather protocols will be implemented.
5. On Fridays, the decision to operationalize the inclement weather protocols on the weekend nights (Saturday and Sunday) will be determined and notifications will be made by 4pm on Friday.

--provisions of shower, with dedicated days for each encampment, frequency

They are currently operating at the following sites one day per week:

- Northgate community cabins
- lake Merritt community cabins
- Miller community cabins
- 5th and Webster Way; near our portapottie site in jack London area

--provision of porta-potty by self-identified gender, or non-gender:

This decision has been site specific as requested/agreed by each community. For example, at Miller Community Cabins there is no such designation, but at Lake Merritt there is. Each site has one unit dedicated to staff.

On May 14, 2019, the public records request (19-2065) was closed stating:

We released all of the requested documents.

On May 14, 2019, the Commission received a complaint alleging that the Respondent had failed to provide all the requested documents in response to public records requests Nos. 19-2065 and 19-2066.

On May 22, 2019, Staff initiated its mediation program and notified the Respondent of the mediation request seeking confirmation that all responsive records had been provided for PRR 19-2066 but received no response.

On January 24, 2022, Staff followed up with the Respondent to confirm that all responsive documents had been provided for PRR 19-2066. The Respondent replied:

At the time we processed the request we provided all the responsive documents.

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The Requester sought mediation because he thought there should be an additional document in response to his request pertaining to a homeless encampment. The Requester alleged that there was an additional document, but the Respondent confirmed that the two leases that were released were all the responsive documents that pertained to the request, and these documents had been provided prior to mediation commencing.

On January 25, 2022, Staff followed up with the Requester regarding the Respondent's confirmation that all records were provided per his request and informed the Requester that the mediation would be closed. The Requester acknowledged closure of the mediation and thanked Staff.

IV. RECOMMENDATION

Because the Respondent provided the responsive records for the public records requests, Staff closed the mediation without further action.