



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1<sup>ST</sup> FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission  
Enforcement Unit

(510) 238-3593  
FAX (510) 238-3315  
TDD (510) 238-3254

November 30, 2022

Ralph Kanz

[REDACTED]  
[REDACTED]

Via email: [REDACTED]

**Re: Public Ethics Commission Complaint No. 22-21**

To Ralph Kanz:

On November 8, 2022, the City of Oakland Public Ethics Commission (PEC) received your complaint (#22-21) alleging that on August 10 and September 14, 2022, the PEC violated the Sunshine Act by discussing the issue of agenda subscribers being removed from the PEC's email list, without properly agendaizing the item on either of the agendas for those respective meetings.

As a preliminary matter, pursuant to the PEC's Complaint Procedures concerning complaints against the PEC itself<sup>1</sup>, I am conducting this preliminary review because I was not personally involved in any of the alleged conduct in the complaint. I have not discussed this complaint with any other member of the PEC staff, except for notifying the PEC Executive Director that a complaint had been filed against the PEC and that I had referred it to the City Attorney for a conflict review. As described below, my review of the complaint and documentary evidence indicates that this matter can be dismissed on grounds of mistake of fact, without the need of interviewing any PEC staff as potential witnesses (in which case I would have recused myself from any further involvement, due to my working relationship with the rest of PEC staff and the need to avoid the possibility or perception of bias). Interviews in this matter were not necessary as the allegations involved actions at two public meetings, for which online agendas and KTOP videos were available for my review.

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<sup>1</sup> PEC Complaint Procedures section IV(a)(4), available at <https://cao-94612.s3.amazonaws.com/documents/PEC-Complaint-Procedures-effective-January-3-2020.pdf>.

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PEC Dismissal Letter, 22-21

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I have reviewed the agendas and KTOP video of the August 10 and September 14, 2022, PEC meetings. Regarding the August 10 meeting, the meeting agenda does not mention the matter of meeting agenda subscribers not receiving meeting agendas via email. The matter did come up at the following points during the meeting itself (per meeting video on KTOP):

00:05:55 – 00:07:25: Under Item 2 (Staff and Commission Announcements), PEC Acting Executive Director Suzanne Doran stated that a member of the public had notified PEC staff that they had not been receiving PEC meetings agendas via email since June. Doran said she would be meeting with Digital Services and asked any member of the public watching the meeting who had not received an agenda to notify her. Doran then asked City Attorney Tricia Shafie if any corrective action needed to be taken; Shafie said that under OMC 2.20.090, no corrective action was necessary. No Commissioners spoke.

00:08:30 – 00:11:45: Under Item 2 (Staff and Commission Announcements), Ralph Kanz gave public comment stating that the City Attorney was incorrect and that cure and correct was necessary.

1:43:30 – meeting end: Under Item 16 (Future Meeting Business), Commissioners Upton, Perteet and Micik discussed the need to have the matter of unsent agendas be addressed at a future meeting, including an explanation as to why agendas may not have been emailed previously, as well as a potential explanation by the City Attorney as to why a cure and correct is not necessary. Commissioner Upton said he was requesting the future discussion in response to a public comment made earlier in the meeting by Ralph Kanz. Ralph Kanz gave public comment asking that any opinion from the City Attorney be given in writing.

At the September 14, 2022, PEC meeting, item 9 on the agenda (“Executive Director’s Report”) stated the following:

### **Agenda Subscribers Update**

In July, Staff was notified that an agenda subscriber had not received their email copy of the Commission’s public meeting agenda, notice or attachments for the regular and special meetings in June and August 2022. Staff verified that the subscriber's email was not in the record of email recipients and that the change occurred when the Citywide Communications department transferred the PEC's email subscriber lists to a new customer relations management system in late May. Staff immediately contacted Communications Department

staff about the issue and made sure the subscriber was added back to the list. In addition, all PEC subscribers from the original list were added to the subscriber list on the new system as a precaution. Communications Department staff is researching why the PEC agenda subscriber list was inadvertently altered in the transfer, and a representative from the Communications department will be available to answer questions at the upcoming meeting. Commission staff is comparing the original agenda subscriber list to the records for the affected mailings to determine how many subscribers were affected and will provide an update.

I have attached a copy to this letter for your reference.

At the meeting itself, the matter of PEC agenda subscribers not receiving the agenda via email was discussed during Item 9 (Executive Director's Report), in accordance with the meeting agenda.

Under the Sunshine Act, a meeting agenda must contain a brief, general description of each item of business to be transacted or discussed during the meeting. The agenda may refer to explanatory documents, including but not limited to, correspondence or reports, in the agenda-related material.<sup>2</sup>

No action or discussion shall be undertaken on any item not appearing on the agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights, ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities.<sup>3</sup>

Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.<sup>4</sup>

Here, the discussions of the agenda distribution matter at both the August 10 and September 14 meetings met the requirements of the Sunshine Act. At the August 10 meeting, the agenda distribution matter was mentioned by the Acting Executive Director as part of item 2, "Staff and Commission Announcements," and contained no discussion or action by the Commissioners themselves. This falls within the "brief announcement" exception to the

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<sup>2</sup> Oakland Municipal Code (OMC) section 2.20.030(A).

<sup>3</sup> Cal. Govt. Code section 54954.2(a)(3). The Sunshine Act expressly incorporates this section of the Government Code at OMC section 2.20.030(A).

<sup>4</sup> Id.

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agenda requirement. At the end of the meeting, the agenda distribution matter came up again during Item 16, “Future Meeting Business,” for purposes of agendizing a discussion of the matter at a future PEC meeting. This fell within the exception the agenda requirement in which a commissioner may direct staff to place a matter of business on a future agenda. During this discussion, one Commissioner also referred to an earlier public comment (made by yourself) concerning the agenda distribution matter, which also falls within the exception to the agenda requirement for brief responses to public comment.

At the September 14 meeting, the matter was agendized under Item 9, “Executive Director’s Report.” The allegation that this matter was not agendized is therefore factually incorrect.

No cure and correct, or investigation, is necessary. Brief mention or discussion of the agenda distribution matter at the August 10 meeting fell within the permissible exceptions to the agenda requirement. The matter was agendized at the September 14 meeting. I am therefore dismissing this complaint with no further action.

We are required to inform the Public Ethics Commission of the resolution of this matter at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting and update will take place on December 14, 2022, at 6:30 p.m. by teleconference and will be posted on the Commission’s website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have other questions regarding this matter, please feel free to contact me.

Sincerely,

*Simon Russell*

Simon Russell, Enforcement Chief  
City of Oakland, Public Ethics Commission  
(510) 424-3200  
[srussell@oaklandca.gov](mailto:srussell@oaklandca.gov)

## Item 13c - Dismissal Letter 22-21

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Regular Commission Meeting  
Teleconference  
Wednesday Sept 14, 2022  
6:30 p.m.



### PUBLIC ETHICS COMMISSION (PEC or COMMISSION) MEETING

**NOTE: Pursuant to California Government Code section 54953(e), Public Ethics Commission members and staff will participate via phone/video conference, and no physical teleconference locations are required. The following options for public viewing and participation are available:**

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland’s KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on “View”
- **Online video teleconference:** Click on the link below to join the webinar: <https://us02web.zoom.us/j/88171471481>
  - To comment by online video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to “Raise Your Hand” is available at: <https://support.zoom.us/hc/en-us/articles/205566129> - Raise-Hand-In-Webinar.
- **Telephone:** Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592

Webinar ID: 881 7147 1481

International numbers available: <https://us02web.zoom.us/j/88171471481>

- To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing \*9 to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to make public comments. After the allotted time, you will then be re-muted. Instructions on how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663> - Joining-a-meeting-by-phone.

Members of the public may submit written comments to [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov). If you have any questions about how to participate in the meeting, please email [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) before or during the meeting.

## Item 13c - Dismissal Letter 22-21

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Teleconference  
Wednesday Sept 14, 2022  
6:30 p.m.



Commissioners: Arvon Perteet (Chair), Ryan Micik (Vice-Chair), Charlotte Hill, Joseph Tuman and Francis Upton IV.

Commission Staff to attend: Kellie Johnson, Executive Director; Suzanne Doran, Lead Analyst; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

### **PUBLIC ETHICS COMMISSION REGULAR MEETING AGENDA**

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**

### **PRELIMINARY ACTION ITEMS**

- 4. Virtual meetings by the Public Ethics Commission.** The Commission will review and take possible action to renew Resolution 22-01, approved at the January 12, 2022 Regular meeting, establishing certain determinations to justify the ongoing need for virtual meetings following the California State Legislature's adoption and Governor's approval of AB 361 on September 16, 2021 (Chapter 165; Statutes of 2021). ([Resolution 22-01](#))

### **ACTION ITEMS**

- 5. Approval of Commission Meeting Draft Minutes.**
  - August 10, 2022, Regular Meeting Minutes ([Meeting Minutes](#))

### **DISCUSSION ITEMS**

- 6. Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work.
  - Enforcement Subcommittee** (*ad hoc*, created on November 1, 2021) – Arvon Perteet (Chair), Ryan Micik and Joseph Tuman.

## Item 13c - Dismissal Letter 22-21

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PUBLIC ETHICS COMMISSION  
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- b. **Outreach Subcommittee** (*ad hoc*, created on June 8, 2022) – Francis Upton IV (Chair), and Charlotte Hill

### INFORMATION ITEMS

7. **Disclosure and Engagement.** Lead Analyst Suzanne Doran provides an overview of education, outreach, disclosure, and data illumination activities for this past month. ([Disclosure Report](#))
8. **Enforcement Program.** Executive Director Kellie Johnson provides a monthly update on the Commission's enforcement work since the last regular Commission meeting. ([Enforcement Report](#))
9. **Executive Director's Report.** Executive Director Kellie Johnson reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Executive Director's Report](#))
10. **Future Meeting Business.** Commissioners and staff may propose topics for action or discussion at future Commission meetings.

The meeting will adjourn upon the completion of the Commission's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at [www.oaklandca.gov/pec](http://www.oaklandca.gov/pec).

A handwritten signature in blue ink that reads "Kellie Johnson".

9/2/2022

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Approved for Distribution

Date



This meeting location is wheelchair accessible. Do you need an ASL, Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email [alarafranco@oaklandca.gov](mailto:alarafranco@oaklandca.gov) or call (510) 238-3593 Or 711 (for Relay Service) five business days

## Item 13c - Dismissal Letter 22-21

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in advance.

¿Necesita un intérprete en español, cantonés o mandarín, u otra ayuda para participar? Por favor envíe un correo electrónico a [alarafranco@oaklandca.gov](mailto:alarafranco@oaklandca.gov) o llame al (510) 238-3593 al 711 para servicio de retransmisión (Relay service) por lo menos cinco días antes de la reunión. Gracias.

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議五天前電

郵 [alarafranco@oaklandca.gov](mailto:alarafranco@oaklandca.gov) 或致電 (510) 238-3593 或711 (電話傳達服務)。

Quý vị cần một thông dịch viên Ngôn ngữ Ký hiệu Mỹ (American Sign Language, ASL), tiếng Quảng Đông, tiếng Quan Thoại hay tiếng Tây Ban Nha hoặc bất kỳ sự hỗ trợ nào khác để tham gia hay không? Xin vui lòng gửi email đến địa chỉ [alarafranco@oaklandca.gov](mailto:alarafranco@oaklandca.gov) hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.





# Item 10 - Executive Director's Report

Arvon Perteet, Chair  
Ryan Micik, Vice Chair  
Charlotte Hill  
Joe Tuman  
Francis Upton IV

Kellie Johnson, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Executive Director  
DATE: August 31, 2022  
RE: Executive Director's Report for the September 14, 2022, PEC Meeting

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This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities this past month that are not otherwise covered by other program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects in 2022 for each program area. (Commission Programs and Priorities Attached)

## **PEC Staffing**

### **Administrative Analyst I**

The Commission received one new position in the 2022-23 FY budget for Administrative Analyst I. This new position will primarily support the Enforcement program. Recruiting for the Administrative Analyst position began on July 1, 2022. Staff has begun the process of arranging interviews of candidates.

### **Enforcement Chief**

With this new vacancy, Commission staff engaged the Department of Human Resources Management to open recruitment to fill the position expeditiously. Staff is working closely with the HR analyst to ensure the job posting will go up very soon so we can begin to accept applications and review potential candidates. My current estimate for making the new appointment is approximately 2 months.

### **Temporary Enforcement Investigator**

Staff has also engaged the Department of Human Resources Management to open recruitment for a temporary/part-time investigator to assist with ethics investigations, utilizing funds from salary savings gained with the selection of a new Executive Director. Staff and our HR analyst are preparing the required class specifications for the new position.

### **Commissioner Trainings: "Formal Hearings"**

Commission staff is preparing a training on conducting "Formal Hearings" for Commissioners. The session will cover hearing procedures, due process for quasi-judicial boards, scheduling procedures, preliminary hearing requirements, credibility determinations, and an overview of findings of facts, penalties, and final orders. Staff will arrange with the Commission the date and way the training will be conducted.

### **Agenda Subscribers Update**

In July, Staff was notified that an agenda subscriber had not received their email copy of the Commission's public meeting agenda, notice or attachments for the regular and special meetings in June and August 2022. Staff verified that the subscriber's email was not in the record of email recipients and that the change occurred when the Citywide Communications department transferred the PEC's email subscriber lists to a new customer relations management system in late May. Staff immediately contacted Communications Department staff about the issue and made sure the subscriber was added back to the list. In addition, all PEC subscribers from the original list were added to the subscriber list on the new system as a precaution. Communications Department staff is researching why the PEC agenda subscriber list was inadvertently altered in the transfer, and a representative from the Communications department will be available to answer questions at the upcoming meeting. Commission staff is comparing the original agenda subscriber list to the records for the affected mailings to determine how many subscribers were affected and will provide an update.

**PUBLIC ETHICS COMMISSION  
Programs and Priorities 2022**

Program	Goal	Desired Outcome	Key Projects for 2022
<b>Lead/ Collaborate (Policy, Systems, Culture)</b>	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> <li>1. City Ticket Policy Ordinance</li> <li>2. Limited Public Financing Act Amendment</li> <li>3. Campaign Public Finance Redesign</li> <li>4. Public Records Performance Tool</li> </ol>
<b>Educate/ Advise</b>	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> <li>1. Ethics onboarding/exit process improvement</li> <li>2. Ethics training and advice: a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants</li> <li>3. Campaign Finance Training</li> <li>4. Limited Public Financing Act Training and Program Implementation</li> <li>5. Sunshine training – Open meetings; public records</li> <li>6. New trainings as needed for diversion</li> </ol>
<b>Outreach/ Engage</b>	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> <li>1. Public Records mediations</li> <li>2. PEC Outreach – Commissioner-led public outreach</li> <li>3. Communications/outreach to client groups – targeted and training and compliance</li> <li>4. PEC social media outreach – focused on sharing ethics-related data and PEC services and outcomes</li> <li>5. Website – PEC dashboards for enforcement cases and mediations</li> </ol>
<b>Disclose/ Illuminate</b>	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> <li>1. Filing Officer/Compliance – assess, follow-up, and refer</li> <li>2. Government Integrity E-Data Project – Lobbyist Registration, Form 700, Form 803, Show Me the Money App, Behested Payments</li> <li>3. Open Disclosure – continue coordination and development</li> <li>4. Campaign Finance Data – focus on pushing out data using Socrata, City Open Data Portal, and PEC dashboards where possible for the 2022 Election</li> </ol>

## Item 10 - Executive Disincentive Report

<b>Detect/ Deter</b>	PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction.	Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.	<ol style="list-style-type: none"> <li>1. Investigations</li> <li>2. Collaborate with other government law enforcement agencies</li> </ol>
<b>Prosecute</b>	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> <li>1. Conduct legal analyses, assess penalty options, negotiate settlements, make recommendations to PEC</li> <li>2. Case priority: 1) the extent of Commission authority to issue penalties, 2) the impact of a Commission decision, 3) public interest, timing, and relevancy, and 4) Commission resources.</li> <li>3. Resolve all 2016 and 2017 cases</li> <li>4. Enforcement Subcommittee – discussion of process improvements</li> </ol>
<b>Administration/ Management</b>	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> <li>1. Annual Report</li> <li>2. PEC Retreat</li> <li>3. Budget – new Administrative Analyst position</li> <li>4. Enforcement database upgrade</li> <li>5. Review data to adjust activities throughout the year</li> <li>6. Ongoing: professional development and staff reviews</li> </ol>



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1<sup>ST</sup> FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission  
Enforcement Unit

(510) 238-3593  
FAX (510) 238-3315  
TDD (510) 238-3254

December 2, 2022

Ralph Kanz

[REDACTED]  
[REDACTED]

Via email: [REDACTED]

**Re: Optional Referral and/or Civil Action, Complaint No. 22-21**

To Ralph Kanz:

Pursuant to PEC Complaint Procedures section IV(A)(4) (“Complaints Against the Public Ethics Commission”), I am informing you of the following options in regard to your Public Ethics Commission (PEC) complaint #22-21 alleging violations of the Sunshine Act against the Public Ethics Commission.

You have the option of submitting your complaint (either in its original form, or in a different form) to the following agencies, which have concurrent jurisdiction over Oakland Sunshine Act and/or Brown Act violations:

Office of the City Attorney  
1 Frank H. Ogawa Plaza, 6th Floor  
Oakland, CA 94612  
Attn: Ryan Richardson, [rrichardson@oaklandcityattorney.org](mailto:rrichardson@oaklandcityattorney.org), (510) 238-6523  
Attn: Maria Bee, [mbee@oaklandcityattorney.org](mailto:mbee@oaklandcityattorney.org), (510) 238-3814  
Attn: Barbara Parker, [bparker@oaklandcityattorney.org](mailto:bparker@oaklandcityattorney.org), (510) 238-3815

Office of the District Attorney  
1225 Fallon Street, Ninth Floor  
Oakland CA 94612  
Attn: Eileen McAndrew, [Eileen.McAndrew@acgov.org](mailto:Eileen.McAndrew@acgov.org), (510) 272-6222

If you wish the Public Ethics Commission to forward your original complaint to the City Attorney and/or District Attorney on your behalf, please let me know and I will do so.

## Item 13c - Dismissal Letter 22-21

You may also file a civil action in regard to your complaint. The PEC cannot advise on your options for doing so, but a private attorney may be able to help. The PEC cannot make referrals for a private attorney.

Thank you for bringing this matter to our attention. If you have other questions regarding this matter, please feel free to contact me.

Sincerely,

*Simon Russell*

Simon Russell, Enforcement Chief  
City of Oakland, Public Ethics Commission  
(510) 424-3200  
[srussell@oaklandca.gov](mailto:srussell@oaklandca.gov)