

# Item 13c - M2019-14 Mediation Summary



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TO: Whitney Barazoto, Executive Director  
FROM: Jelani Killings, Ethics Analyst  
DATE: January 25, 2022  
RE: *In the Matter of the Oakland Police Department (Case No. M2019-14); Mediation Summary*

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## I. INTRODUCTION

On August 2, 2019, the Commission received a request for mediation alleging that the Oakland Police Department failed to disclose records in response to a public records request made by the Requester on July 13, 2019. On August 13, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department provided responsive records per the request, 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.<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 his or her 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 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.<sup>5</sup>

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<sup>1</sup> Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

<sup>2</sup> Government Code § 6253(b).

<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 13, 2019, the Police Department received, via email, the following public records request (No. 19-3541):

Please send me all records recorded from shotspotter for today, July 13, in Oakland

On August 14, 2019, the Police Department changed the due date for the public records request with no detailed explanation. Subsequently, the Police Department changed the due date nearly every month for approximately 20 months.

On April 30, 2021, the Police Department changed the due date a final time stating:

A follow up email has been sent to the Shotspotter Unit. You will be updated once a response is received. We apologize for the delay and thank you for your continued patience.

On May 3, 2021, the Police Department closed the public records request stating:

After a diligent search and reasonable inquiry, OPD does not possess any documents that are responsive to this request.

On August 18, 2021, Staff followed up with the Requester regarding their public records request and informed them that their mediation request would be closed. The requester responded:

Why did it take more than a year and a half to determine there were no records?

They repeatedly told me that they needed more time to respond then came back after all that time and said ShotSpotter only retains the records for a specific limited duration. That is something they should have known right away. It seems like they just ran out the clock until they could say the documents were no longer available.

On September 23, 2021, Staff inquired further with OPD's Public Records Liaison, Alisha Banda, who suggested contacting Trevelyan Jones of OPD's ShotSpotter Unit to provide further information for the delay in responding to the records request as well as ShotSpotter's records retention policy.

On October 5, 2021, Staff received an email from OPD stating:

Good Afternoon Sir.

Regarding PRR 19-3541 we may have found a responsive result.

Please call me regarding this PRR.

On October 15, OPD released a document of Shotspotter records via NextRequest. The Requester responded to the released document stating:

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Hi. This doesn't show me anything about locations. What was redacted? It doesn't show a reason.

On October 18, 2021, OPD uploaded a revised document of the same ShotSpotter data that also included a reason for the redacted information stating:

Good Morning.

I will upload your document shortly. Some records are not being released, or have been redacted pursuant to Gov. Code Sec, 6255(a) as the public interest in nondisclosure clearly outweighs the public interest in disclosure; City of San Jose vs Superior Court (1999) 74 Cal.App.4th 1008.

On October 26, 2021, Staff followed up the Requester to see if their request had been satisfied and to inform them that the mediation case would be closed. Staff also informed the requester that further investigation into the reason for the delay would continue. The Requester replied:

Thanks for checking in. The extreme delay is troubling but I'm also perplexed at why they redacted the information that was released. As far as I can tell, the redacted information was the location of the report. How can that possibly be justified because "public interest in nondisclosure clearly outweighs the public interest in disclosure"?

Someone should have to explain how not disclosing the location of gunshots is in the public interest.

On October 29, 2021, after receiving no response to initial email, Staff reached back out to Trevelyan Jones with the following email:

Hi Trevelyan,

Our office is trying to close out the mediation case for PRR [19-3541](#) and need to speak with you or someone in the department that coordinates with ShotSpotter. There are still some questions that we need answered including:

- When was the Request sent to ShotSpotter?
- What was the reason for the extreme delay?
- What is ShotSpotter's record retention policy, or if none, what are OPD's requirements for retention of records by ShotSpotter? Please provide us with a copy of any relevant policies or agreements between ShotSpotter and OPD.
- What departmental policies are in place to ensure that ShotSpotter public records requests are responded to within the required timeframe?

Would you be able to provide answers to these questions? If not, can you direct us to someone in the department who can?

On October 29, 2021, Trevelyan Jones responded stating:

Please contact Vijay Norfleet regarding this.

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On November 19, 2021, OPD Records Division Manager, Vijay Norfleet, provided the following response to Staff's inquiry:

Good morning-

- When was the Request sent to ShotSpotter?
  - o **The request was sent for responsive data on 7/19/2019**
- What was the reason for the extreme delay?
  - o **Conflicting opinions as to the releasability of requested information**
  - o **Eventually with the overwhelming volume of request this didn't get resolved in a timely manner**
- What is ShotSpotter's record retention policy, or if none, what are OPD's requirements for retention of records by ShotSpotter? Please provide us with a copy of any relevant policies or agreements between ShotSpotter and OPD.
  - o **This is still pending. I'll forward as soon as the information is received.**
- What departmental policies are in place to ensure that ShotSpotter public records requests are responded to within the required timeframe?
  - o **The department is working with the City Attorney's Office to streamline the process for complying with all Public Records Request.**
  - o **In April 2021 we had 4668 pending Public Records Request. Currently we 985 pending.**
  - o **It has been determined that the data in this request is public information therefore subsequent request for the same type of data should not be delayed.**

On November 19, 2021, Staff also spoke with Vijay Norfleet via phone. During this conversation, she explained that when the request initially came, the Ceasefire Unit (OPD unit that oversees ShotSpotter) did not believe that the info was releasable. There was a lot of back and forth with the department and the City Attorney's office about the requested record. Vijay informed Staff that the request just fell through the cracks during that time.

When the request resurfaced, it was determined that it was releasable. They were then informed by ShotSpotter that they only keep data for two years. Subsequently, Vijay had the Records Division team do a search to see if the data had been released in another request. When the specific date was found in another data batch request ([PRR 20-4506](#)), it was released to the Requester. She was not sure why ShotSpotter data was released in another request and not PRR 19-3541. She expressed that it was likely due to the switch in commanding officers during the time of the two requests.

She informed Staff that it is now clear to the department that ShotSpotter data must be released.

On December 8, 2021, Staff followed up with Vijay Norfleet via phone with additional questions about measures that are being taken by the department to ensure that delays in releasing records doesn't occur in the future. During the conversation Staff was informed that there are currently two public records lawsuits against the department that are being settled. The Plaintiff won in both lawsuits which now require that the department adopt policies to streamline their process for responding to public records requests.

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### IV. RECOMMENDATION

Because the Police Department provided a responsive record for the public records request, Staff closed the mediation without further action. However, Staff will continue working with the department's records liaison to ensure that procedures are put in place to avoid this outcome in the future.