

# Item 9c - City Attorney's 2022 Morris et al Report



CITY OF OAKLAND

## AGENDA REPORT

**TO:** Oakland City Council

**FROM:** Barbara J. Parker  
City Attorney

**SUBJECT:** Informational Report Regarding the Oakland Police Department's Compliance with the Public Records Act Class Settlement In *Scott Morris; Sarah Belle Lin; Brian Krans, Michael Katz and Oakland Privacy v. City of Oakland; Oakland Police Department; Susan Manheimer, in her official capacity; and Ed Reiskin, in his official capacity.*

**DATE:** July 5, 2022

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### **RECOMMENDATION**

**Accept This Informational Report Regarding The Oakland Police Department's Compliance With The Public Records Act Class Settlement In *Scott Morris; Sarah Belle Lin; Brian Krans, Michael Katz and Oakland Privacy v. City of Oakland; Oakland Police Department; Susan Manheimer, in her official capacity; and Ed Reiskin, in his official capacity.***

### **EXECUTIVE SUMMARY**

In March 2022, Judge Roesch of the Alameda County Superior Court ordered entry of a settlement in *Morris et al. v. City of Oakland et al.*, Case No. 20072029, a class action involving requests for public records held by the Oakland Police Department (OPD). Under the settlement, the City must provide reasonable, prompt estimates of when any records responsive to OPD records requests will be produced and must produce records on or before that estimated date at least 80% of the time. The City must also clear a backlog of approximately 457 pending OPD Public Records Act (PRA) requests by August 16, 2022, and a backlog of approximately 124 pending requests for OPD peace officer personnel records disclosable under S.B. 1421<sup>1</sup> by May 16, 2023.

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<sup>1</sup> S.B. 1421, which took effect on January 1, 2019, requires disclosure of records related to officer-involved shootings, uses of force that result in great bodily injury or death, and certain incidents involving a finding of police officer dishonesty or sexual assault. S.B. 16, which took effect January 1, 2022, significantly expands the scope of disclosable police personnel records, which now includes certain records involving unreasonable or excessive force, failure to intervene against another officer's use of clearly unreasonable or excessive force, prejudicial or discriminatory officer conduct, and unlawful arrests and searches. For purposes of this report, the City has grouped requests made after January 1, 2022 seeking records disclosable under S.B. 16 with requests for records disclosable under S.B. 1421. These requests are collectively referred to herein as "S.B. 1421 requests."

Item: \_\_\_\_\_  
City Council  
July 5, 2022

# Item 9c - City Attorney's 2002 Morris et al Report

Oakland City Council

Subject: Informational Report Regarding the Oakland Police Department's Compliance with the Public Records Act Class Settlement In *Morris et al. v. City of Oakland et al.*

Date: July 5, 2022

Page 2

The settlement requires that OPD and the City Attorney present a report to this Council regarding the City's compliance with the terms of the settlement for the first two months after the court's order.

*The City is in substantial compliance with the settlement.* During the first two months of settlement, March 24-May 24, 2022 (the "reporting period"), the City received about 950 new OPD PRA requests, approximately nine of which were S.B. 1421 requests. Within an average of two days from receipt of a request (or approximately two weeks for S.B. 1421 requests), the City responded by either fulfilling a request in full, closing it, or providing an estimated date for production of records. Where the City found responsive, disclosable records, it produced records on or before its estimated production date for 97% of requests—far above the 80% threshold required to secure dismissal of the case.

The City cleared approximately 38% of the non- S.B. 1421 backlog during the reporting period. This number nearly meets the 40% benchmark the parties to the lawsuit set for this period and represents significant progress. With respect to S.B. 1421 requests, the City has satisfied its obligation to produce new records every two weeks and has produced records in response to approximately 20% of its pending requests. The City's current pace should enable it to clear all, or substantially all, of its backlogged OPD PRA requests by the August 16, 2022 and May 16, 2023 deadlines.

## **BACKGROUND / LEGISLATIVE HISTORY**

The Public Records Act, Gov. Code § 6250 et seq., requires the City to respond to requests for public records within ten days, with the possibility of taking an additional 14 days in limited circumstances. Within that time frame, the City must search for records and make a determination stating whether responsive records exist and whether responsive records will be withheld. It must produce the responsive records, with any appropriate redactions, "promptly" thereafter.

This settlement stems from a suit, *Morris et al. v. City of Oakland et al.*, brought in August 2020 by a group of journalists who alleged the City was violating its obligation to timely provide records determinations in response to OPD PRA requests and its obligation to "promptly" produce responsive records. They alleged that, when the lawsuit was filed in August 2020, there were more than 5,000 open OPD public records requests. They also alleged that the City routinely issued "boilerplate" responses to OPD records requests and extended the time to make a records determination well beyond what the Public Records Act permits.

Following substantial discovery in the first half of 2021, the parties engaged in months-long settlement negotiations and ultimately agreed to a proposed settlement approved by City Council in November 2021 through Resolution 88886. The Court preliminarily approved the settlement in December 2021. The City then notified class members of the settlement. No class member objected and only a few opted out. The judge gave final approval and certified the class on March 24, 2022.

Item: \_\_\_\_\_  
City Council  
July 5, 2022

# Item 9c - City Attorney's 2002 Morris et al Report

Oakland City Council

Subject: Informational Report Regarding the Oakland Police Department's Compliance with the Public Records Act Class Settlement In *Morris et al. v. City of Oakland et al.*

Date: July 5, 2022

Page 3

The most relevant terms of the settlement, for purposes of this report, are as follows:

1. Timely Records Determination

The City will send an initial records determination to requestors within 10 days of receiving a request for OPD public records (or invoke a 14-day extension within those initial 10 days for statutorily approved reasons). That initial records determination will indicate whether the request seeks disclosable public records, describe the divisions or departments contacted in the search, provide a rough quantity and description of records located, state a basis for withholding any responsive records, and provide an estimated date for producing any responsive records.

2. Prompt Records Production

The City will provide estimated dates for producing responsive OPD public records that are "prompt" within the meaning of Government Code § 6253(b). For certain categories of records, the City will set the estimated date of production as follows: (a) Crime reports (aside from homicide reports) within 15 days of receipt of the PRA request; (b) tow reports within 10 days of receipt of the PRA request; (c) CAD purges for a single incident within 20 days of receipt of the PRA request; and (d) calls for service at a single address within 20 days of the PRA request. The City must actually produce records within the time it estimates at least 80% of the time in order for the case to be dismissed.

3. Backlog Clearance.

The City will fulfill backlogged OPD PRA requests (defined as requests pending for more than 20 days prior to March 24, 2022) by August 16, 2022, except that it will fulfill backlogged requests for OPD peace officer personnel records under S.B. 1421 by May 16, 2023.

## **ANALYSIS AND POLICY ALTERNATIVES**

During the reporting period, the City provided a records determination and/or responded to an OPD PRA request in full in an average of two days. Where it provided responsive records, it did so on or before its estimated production date for approximately 97% of requests. With respect to the backlog, the City has made significant progress and is on pace to clear all, or substantially all, of its backlogged OPD public records requests by the deadlines of August 16, 2022 for non- S.B. 1421 requests and May 16, 2023 for S.B. 1421 requests. *The City is therefore in substantial compliance with the settlement.*

### **Timely Records Determination**

*The City is meeting this requirement for both S.B. 1421 and non- S.B. 1421 OPD records requests.* The City received approximately 950 OPD public records requests during the first two months of the settlement (March 24-May 24, 2022) and either (a) provided a records

Item: \_\_\_\_\_  
City Council  
July 5, 2022

## Item 9c - City Attorney's 2002 Morris et al Report

Oakland City Council

Subject: Informational Report Regarding the Oakland Police Department's Compliance with the Public Records Act Class Settlement In *Morris et al. v. City of Oakland et al.*

Date: July 5, 2022

Page 4

determination or (b) produced responsive records (or both) within 10 days in approximately 99% of them.<sup>2</sup>

- For the approximately 940 non- S.B. 1421 requests, the average and median number of days after the request was opened that the City sent a records determination or responded to the request in full were approximately 2 days (average) and 1 day (median).<sup>3</sup> Under the law, the City has up to 10 days to make this determination, and up to 24 in certain circumstances.
- For the approximately 9 S.B. 1421 requests, the average and median number of days after the request was opened that the City sent a records determination were approximately 16 days (average) and 20 days (median).<sup>4</sup> For every records determination that exceeded 10 days, the City invoked a statutory extension under Gov. Code § 6253(c), which permits up to 24 days for a response in enumerated circumstances, including when requests require an agency to “search for, collect, and appropriately examine a

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<sup>2</sup> Following the court's final approval order in this case, the City began using a customizable records determination form for OPD PRA requests to facilitate compliance with the settlement terms and the City's reporting obligations. This records determination form was uploaded in approximately 465 of the requests received during this reporting period. For the requests in which a form was uploaded, the records determination was made within 10 days in over 99% of cases. For the requests in which a form was not uploaded, in nearly 99% of cases the City produced all responsive records, or communicated that the request would be closed for other reasons (e.g., because the request sought records held by another agency or because the requestor was no longer interested in the records), within 10 days. Since approximately May 1, 2022, the City has adopted a practice of providing records determination forms whenever a request seeks potentially disclosable records, even when those records are produced and the request is fulfilled in fewer than 10 days.

<sup>3</sup> The above data excludes the approximately six out of 940 requests for which no records determination, production, or closure decision was provided within 10 days from the end of the reporting period (i.e., by June 3). Of those requests, two were routed to OPD in error and have since been closed. Over 99% of requests either received a records determination or were responded to in full and closed by June 3.

<sup>4</sup> The data above excludes two requests that were closed based on offline communications with the requestor, a media organization with whom the City has been working to produce an exceptionally large number of OPD public records. The closed requests duplicated requests for which the media organization has opted out of this settlement. Separately, the data includes a request made by Scott Morris, a named Petitioner in the *Morris* lawsuit, seeking every disclosable peace officer personnel record under S.B. 1421 and S.B. 16 for thirteen different officers. For this request, the City promptly asked Mr. Morris to prioritize the officers and/or years he desired the City to search for first. The City then sent an initial records determination for the prioritized officers within the 24-day extended deadline, and sent additional records determinations for the remaining officers on a rolling basis through June 9, 2022. This report uses the date of the first records determination to calculate the overall average and median time for records determinations in S.B. 1421 requests. If the most recent records determination date of June 9, 2022 is used instead, the overall average rises to approximately 22 days, and the median remains 20 days.

Item: \_\_\_\_\_  
City Council  
July 5, 2022

# Item 9c - City Attorney's 2002 Morris et al Report

Oakland City Council

Subject: Informational Report Regarding the Oakland Police Department's Compliance with the Public Records Act Class Settlement In *Morris et al. v. City of Oakland et al.*

Date: July 5, 2022

Page 5

voluminous amount of separate and distinct records.” The City made a records determination within the extended response deadline for every S.B. 1421 request received.

## **Estimated Time To Produce Records**

*The City is meeting this requirement for both S.B. 1421 and non- S.B. 1421 requests.* The City has produced responsive records on or before the estimated production date approximately 97% of the time for non- S.B. 1421 OPD public records requests and approximately 80% of the time for S.B. 1421 requests.

- For the approximately 940 non-S.B. 1421 requests, the City provided an estimated date of production of approximately 15 days from receipt of the request, on average, with a median of approximately 12 days.<sup>5</sup>
- The City produced records in response to approximately 555 OPD PRA requests during the reporting period. (The remainder were determined to have no responsive records, or were referred to another agency, or were closed for other reasons; approximately 35 are still open awaiting production of responsive records.) Of these 555 requests, the City produced responsive documents on or before the estimated date of production 97% of the time.
- For the S.B. 1421 requests, the City provided an estimated date of production of 45 days from receipt of the request for every request it received, excluding two cases it closed based on prior conversations with the requestor (see footnote 4).
- The City has produced all responsive records in response to 80% (four out of five) of the S.B. 1421 requests received during the reporting period that were (a) determined to have responsive records and (b) due for production during the reporting period. For the fifth request—Mr. Morris’s request for records of 13 officers—OPD completed production for nine of the officers within the 45-day estimate for production. Production of records responsive to the 4 remaining officers is ongoing.
- Overall, including both S.B. 1421 and non-S.B. 1421 requests, the City produced records within the estimated timeframe for 97% of requests.

## **Backlog Clearance**

*The City substantially met its benchmark for clearing the backlog during this reporting period and is in a solid position to clear all, or substantially all, of the backlog by the settlement deadlines.*

- There were approximately 457 non- S.B. 1421 requests in the backlog as of March 24, 2022. As of May 24, the City had approximately 282 remaining requests, representing a

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<sup>5</sup> This estimated production date was provided on the records determination form where available (see footnote 2), or otherwise by the “due date” set on NextRequest, the City’s platform for receiving and processing PRA requests.

Item: \_\_\_\_\_  
City Council  
July 5, 2022

# Item 9c - City Attorney's 2002 Morris et al Report

Oakland City Council

Subject: Informational Report Regarding the Oakland Police Department's Compliance with the Public Records Act Class Settlement In *Morris et al. v. City of Oakland et al.*

Date: July 5, 2022

Page 6

clearance of approximately 38% of its backlog during this period and nearly meeting the 40% benchmark set by the parties.

- There were approximately 124 S.B. 1421 requests in the backlog as of March 24, 2022, many of which involve requests for records pertaining to many different officers and incidents. During this period the City produced approximately 521 distinct records totaling thousands of pages and approximately 52 gigabytes of audio and video material, all of which went through careful review for disclosability and redactions due to the sensitive nature of the records. The City has produced records in approximately 20% of all pending requests. The City has consistently produced new S.B. 1421 records on a bi-weekly basis.

## **FISCAL IMPACT**

The City agreed to pay \$127,500 to opposing counsel in attorneys' fees in the *Morris* case. The City has also paid approximately \$80,000 in outside counsel fees to represent the City in the litigation. The City has also engaged outside counsel and devoted significant internal resources in both the City Attorney's Office and OPD to meet the court's deadlines for fulfilling pending PRA requests and to place the City in the best position to ensure compliance with the settlement moving forward.

## **PUBLIC OUTREACH / INTEREST**

On November 2, 2021 the Council passed a resolution approving settlement of this case at an open public meeting. Affected class members were notified of their rights via the NextRequest platform, email, phone call, or direct mail in December 2021 and January 2022. No member of the public objected to the settlement, and only a handful of class members opted out of the settlement. The settlement contemplates public oversight of OPD's ongoing compliance via periodic reports to the court, and this report to Council.

## **COORDINATION**

This report was developed through coordination between the City Attorney's Office and the Oakland Police Department, and using data from NextRequest.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** There are no economic opportunities associated with this report.

***Environmental:*** There are no environmental opportunities associated with this report.

***Race & Equity:*** There are no race and equity opportunities associated with this report.

Item: \_\_\_\_\_  
City Council  
July 5, 2022

## Item 9c - City Attorney's 2002 Morris et al Report

Oakland City Council

Subject: Informational Report Regarding the Oakland Police Department's Compliance with the Public Records Act Class Settlement In *Morris et al. v. City of Oakland et al.*

Date: July 5, 2022

Page 7

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### **ACTION REQUESTED OF THE CITY COUNCIL**

There is no action requested of the City Council associated with this report. Please contact Deputy City Attorney Cynthia Stein if you have questions.

Respectfully submitted,



BARBARA J. PARKER  
City Attorney

Attorney Assigned:  
Cynthia Stein

Item: \_\_\_\_\_  
City Council  
July 5, 2022