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TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
Kyle McLean, Mediation Coordinator
DATE: May 20, 2019
RE: *In the Matter of the City Clerk (Case No. M2019-03); Mediation Summary*

I. INTRODUCTION

On February 19, 2019, the Commission received a request for mediation alleging that Krystal Sams (Legislative Recorder for the City Clerk) failed to disclose records in response to a public records request made by the Requester on February 2, 2019. On April 19, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Requester stated that the City had produced all responsive records after the mediation request had been filed.

Because the Requester notified Staff that they received all of the originally requested records, Staff recommends that the Commission close 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

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).

efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

On February 2, 2019, the City received, via NextRequest, the following public records request (No. 19-590):

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain an electronic copy of the following records and to review and papers records, which I understand to be held by your agency, including any reports, memoranda, communications, or any other writings, as defined in section 6252(e) of the California Government Code, pursuant to the California Public Records Act (Cal. Gov't Code §§ 6250 et seq.).

Mayor Libby Schaaf's November 2018 ballot argument in favor of Measure Y, along with all the signature pages.

Please note that previous requesters have asked for this and these documents have still not been uploaded. If you determine that any or all of the information qualifies for an exemption from disclosure, I ask you to note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

On February 19, 2019, the Requester stated the following via NextRequest: "Please note that this request is overdue and Krystal Sams is in violation of the California Public Records Act. A complaint has been filed with the Public Ethics Commission."

Also on February 19, 2019, the Commission received a complaint alleging that Krystal Sams had failed to disclose records in response to public records request No. 18-2066. At the time that the Commission received the Complaint, no responsive records had been produced by the City.

On February 26, 2019, Krystal Sams uploaded one responsive record.

On February 27, 2019, Krystal Sams closed the record request and stated the following: "We released all of the requested documents"

On April 19, 2019, Staff commenced mediation proceedings and asked the Requester if there were any outstanding issues with the response to the request. On April 23, 2019, the Requester confirmed that the City had produced all responsive records but stated they were not satisfied with the timeliness of

⁵ Complaint Procedures § IV (C)(5).

the response because it exceeded the statutory 10-day response requirement of the Sunshine Ordinance.

IV. RECOMMENDATION

Because the Requester received the requested records, Staff recommends that the Commission close the mediation without further action.