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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
Kyle McLean, Mediation Coordinator  
DATE: May 24, 2019  
RE: *In the Matter of the City Clerk (Case No. M2019-05); Mediation Summary*

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## I. INTRODUCTION

On March 14, 2019, the Commission received a request for mediation alleging that Councilmember Kalb's office and Councilmember Gallo's office failed to disclose records in response to public records requests made by the Requester on February 10, 2019: 19-724 and 19-725. On April 19, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, both offices released additional records and the Requester stated that all responsive records had been released.

Because the Requester received all responsive 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.<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).

### III. SUMMARY OF FACTS

19-724

On February 10, 2019, the City received, via NextRequest, the following public records request (No. 19-724):

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.).

**All documents, including staff all notes and emails, documenting the eviction of any tenant or any reported rent increase, that have been communicated with your office [Dan Kalb], including ALL information by Centro Legal de la Raza since 2016. Please indicate which information provided by Centro Legal de la Raza has formed the rational basis of your proposals you have presented to the council to withdraw the exemption from owner-occupied duplexes and triplexes from Just Cause, the Rent Adjustment and the Tenant Protection Ordinances.**

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 March 12, 2019, the Requester stated the following via NextRequest: “Please note that you are officially in violation of the California Public Records Request and that I will be filing an ethics complaint.”

On March 14, 2019, the Commission received a mediation request alleging that Councilmember Kalb’s office had failed to disclose records in response to public records request No. 19-724. At the time that the Commission received the Complaint, no responsive records had been produced by the City.

On April 19, 2019, Staff commenced mediation proceedings and contacted Oliver Luby (public records request liaison for Councilmember Kalb’s office) for an estimated completion date and explanation for the delayed response. Luby stated on April 22, 2019, that the office had received a substantial increase in the number of requests received, but that the work necessary to fulfill the request had almost finished and expected to release all responsive records by April 24, 2019.

On April 26, 2019, Oliver Luby uploaded eighty-six pages of responsive records, closed the request, and stated the following via NextRequest: “We have redacted personal information, pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).”

On May 23, 2019, the Requester confirmed to Staff that mediation should be closed as the City had provided all responsive records.

19-725

On February 10, 2019, the City received, via NextRequest, the following public records request (No. 19-725):

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.).

**All documents, including staff all notes and emails, documenting the eviction of any tenant or any reported rent increase, that have been communicated with your office [Noel Gallo], including ALL information by Centro Legal de la Raza since 2016. Please indicate which information provided by Centro Legal de la Raza has formed the rational basis of your proposals you have presented to the council to withdraw the exemption from owner-occupied duplexes and triplexes from Just Cause, the Rent Adjustment and the Tenant Protection Ordinances.**

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 March 14, 2019, the Requester stated the following via NextRequest: "Please note that you are in violation of the California Public Records Act and a Public Ethics Complaint has been filed."

Also on March 14, 2019, the Commission received a mediation request alleging that Councilmember Gallo's office had failed to disclose records in response to public records request No. 19-725. At the time that the Commission received the Complaint, no responsive records had been produced by the City.

On March 15, 2019, Mayra Chavez (public records request liaison for Councilmember Gallo's office) stated the following via NextRequest: "The City is searching for records responsive to your request and will provide an update by Friday, March 22nd"

On March 26, 2019, Mayra Chavez stated the following via NextRequest: "Dear requestor, there is a need to compile data, write a computer program, or construct a report to extract data. (Government Code Section 6253(c))."

On March 29, 2019, Mayra Chavez stated the following via NextRequest: “Dear requestor, we have received the data from IT Department and will be posting documents next week.”

Also on March 29, 2019, the Requester stated the following via NextRequest: “Excellent. Thank you for the response.”

On April 12, 2019, Rosa Velasquez (special assistant for Councilmember Gallo’s office) released over one thousand pages of records and stated via NextRequest: “Dear requestor, attached are CM Gallo records. Personal information has been redacted.”

On April 14, 2019, Mayra Chavez stated the following via NextRequest: “Dear requestor, this is the first batch of the responsive records. More to come.”

On April 19, 2019, Staff commenced mediation proceedings and contacted Mayra Chavez for an estimated completion date. Chavez stated that another batch of records would be released the same day and estimated completion by May 10, 2019. That same day Chavez released two hundred and eighty-three pages of records and stated the following via NextRequest: “Dear requestor, some files have been redacted covered by Government Code Section 6254(c), which exempts ‘Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.’”

On May 3, 2019, Mayra Chavez released over five hundred pages of responsive records and stated the following via NextRequest: “We have redacted personal information, pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).”

On May 14, 2019, Mayra Chavez released sixty-two pages of records, closed the request, and stated the following via NextRequest: “Dear requestor: this is the last of the documents for this request.”

On May 23, 2019, the Requester confirmed to Staff that mediation should be closed as the City had provided all responsive records.

#### **IV. RECOMMENDATION**

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