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TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
Kyle McLean, Mediation Coordinator
DATE: May 16, 2019
RE: *In the Matter of City of Oakland (Case No. 18-02M); Mediation Summary*

I. INTRODUCTION

On January 22, 2018, the Commission received a request for mediation alleging that the Mayor's Office and the Oakland Police Department (OPD) failed to respond to a public records request made by the Requester on November 15, 2017. On July 26, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. After making the Requester wait several months for responsive records, the Mayor's Office produced two responsive records and the OPD Records Division produced eleven responsive records.

Because the Requester received all of the originally requested records, and because the Requester notified Staff that they were satisfied with the response and wished to end mediation efforts, Staff recommends that the Commission close the mediation.

II. SUMMARY OF LAW

One of the primary purposes of the Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records are 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 he or she has 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); 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 November 15, 2017, the City received, via RecordTrac, the following records request (RT-24085): “Please provide all communication records and documents related to the 2016 COPS grant and all communications and documents between the DOJ and the City of Oakland, the Mayor or the Police Chief.”

At the time, RecordTrac was the City’s online portal for sharing public records. It allowed members of the public to make requests, receive responses from the City, and search past requests and responses.

On December 8, 2017, Requester stated the following via RecordTrac: “Please advise when you will be responding to this request.”

On December 15, 2017, Requester stated the following via RecordTrac: “It's been a month now. Where are the documents?”

On January 2, 2018, the Requester emailed Amber Todd (public record request liaison for the Finance Department) and asked for an update on the response to their request. The Requester did not receive an answer.

On January 19, 2018, approximately two months after the request had been received by the City Administrator, Alex Katz (Chief of Staff at the City Attorney’s Office) stated the following via RecordTrac: “Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2)).”

On January 22, 2018, the Requester filed a request for mediation with the Commission; the City had produced no responsive records at the time.

On March 16, 2018, the City relocated its online portal for public records requests from RecordTrac to NextRequest.

On July 26, 2018, Staff initiated mediation efforts. Mediation did not commence sooner due to limited staffing and many simultaneous ongoing investigations.

Staff noted that the records request had been received by the City Administrator instead of the Mayor’s Office or OPD. It is unclear whether the Requester mistakenly directed the records request to the City Administrator when making the request, or if the request was erroneously forwarded to the City Administrator when the City relocated its online portal for public records requests from RecordTrac to NextRequest. Richard Luna (public record request liaison for the City Administrator) confirmed on July 31, 2018 that the City Administrator’s Office was unaware of this records request before Staff commenced mediation proceedings.

⁵ Complaint Procedures § IV (C)(5).

The Requester indicated that they were unsatisfied with the response to this records request because no records had been produced in eight months. Despite extending the request response time in January 2018 due to the need to examine a large number of records, the City Attorney's Office posted no responsive records to the request.

On August 3, 2018, Selina Jones (Police Records Specialist for the OPD Records Division) released eleven records and stated the following via NextRequest: "The Oakland Police Department has provided responsive records in our possession to the requester and this signifies the completion of our portion of this request. The other departments within the City will respond separately."

On September 12, 2018, Joanne Karchmer (Deputy Chief of Staff for the Mayor's Office) confirmed to Staff via email that the Mayor's Office had possible responsive records in its possession.

On September 19, 2018, Michael Sze (Special Assistant to the Mayor) released two records and stated the following via NextRequest: "The Mayor's Office has provided responsive documents to the request."

Also on September 19, 2018, Richard Luna of the City Administrator's Office closed the request and stated the following via RecordTrac: "We released all of the requested documents."

Also on September 19, 2018, the Requester informed Staff they had no outstanding issues or concerns regarding the records produced in response to the request and asked that Staff close the mediation. The Requester reiterated concerns about the timeliness of the City's response and noted that the final responsive records were released ten months after the City received the request.

IV. RECOMMENDATION

Because additional documents were produced in response to the mediation, and because Requester has no issues with the response to the request, Staff recommends that the Commission close the mediation without further action.