

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Teleconference
Monday, November 1, 2021
6:30 p.m.



PUBLIC ETHICS COMMISSION (PEC or COMMISSION) MEETING

NOTE: Pursuant to California Government Code section 54953(e), Public Ethics Commission members and staff will participate via phone/video conference, and no physical teleconference locations are required. The following options for public viewing and participation are available:

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland’s KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on “View”
- **Online video teleconference:** Click on the link below to join the webinar: <https://us02web.zoom.us/j/88171471481?pwd=ODIQVFFUeVRsZUtHdFU3YU5XcHVadz09>
Password: 674732
 - To comment by online video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to “Raise Your Hand” is available at: <https://support.zoom.us/hc/en-us/articles/205566129> - Raise-Hand-In-Webinar.
- **Telephone:** Dial (for higher quality, dial a number based on your current location):
US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592
Webinar ID: 881 7147 1481
International numbers available: <https://us02web.zoom.us/j/88171471481>
 - To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing *9 to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to make public comments. After the allotted time, you will then be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663> - Joining-a-meeting-by-phone.

Members of the public may submit written comments to ethicscommission@oaklandca.gov. If you have any questions about how to participate in the meeting, please email ethicscommission@oaklandca.gov before or during the meeting.

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Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Jessica Leavitt, Ryan Micik, Arvon Perteet, and Joseph Tuman

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION MEETING AGENDA

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**

GUEST SPEAKER

- 4. Public Records Response Process in the Department of Planning and Building.** The Commission will hear from William Gilchrist, Director of the Planning and Building Department, and members of his team, regarding the department's process for responding to public records requests. The Commission requested information from the department following several mediations and an investigation that raised questions for Commissioners regarding the department's compliance with public records laws. ([Letter to Director Gilchrist](#); [Department Response](#))

ACTION ITEMS

- 5. Approval of Commission Meeting Draft Minutes.**
 - a) September 2, 2021 Special Meeting Minutes ([Meeting Minutes](#))
 - b) September 17, 2021 Special ([Meeting Minutes](#))
- 6. In the Matter of Annie Campbell Washington for Oakland City Council 2018 (PEC Case No. 19-06).** On May 9, 2019, the Commission's filing officer for campaign statements referred former City Council Member Annie Campbell Washington and her Annie Campbell Washington for Oakland City Council 2018 committee to the PEC Enforcement Unit for failing to file a semi-annual campaign statement for the period of July 1, 2018

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through December 31, 2018. Enforcement staff found that Campbell Washington and her campaign committee, despite multiple warnings, did not electronically file the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act. Staff recommends the Commission approve a stipulation imposing a penalty of \$1,000 on Count 1, and \$1,171 in late fees assessed by the filing officer, for a total of \$2,171. ([Stipulation and Case Summary](#))

7. ***In the matter of East Bay Small Business Council committee, Darrel Carey, Treasurer Kiarra Carey, and Assistant Treasurer Aliyah Carey (PEC Case No. 17-18 and 18-17).*** On March 15, 2018, the Commission's filing officer for campaign statements referred the East Bay Small Business Council committee, Darrel Carey, Treasurer Kiarra Carey, and Assistant Treasurer Aliyah Carey to the PEC Enforcement Unit for failing to file a semi-annual campaign statement, a pre-election report, and an incomplete Termination form between the years 2015-2017. Enforcement staff found that Respondents, despite multiple warnings, did not electronically file the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act. Staff finds probable cause that a violation occurred and recommends that the Commission schedule the matter for a formal hearing before the full Commission. Note: This matter appeared on the agenda at the September 2, 2021, meeting and is being brought to the Commission again to add committee treasurers to the report and finding of probable cause. ([Staff Report](#))

8. ***In the Matter of Matt Hummel for Oakland City Council 4D4 2018, and Donna Smithey (PEC Case No. 19-13).*** In April 2019, the Commission's filing officer for campaign statements referred candidate Matt Hummel and his Matt Hummel 4D4 2018 committee, and Treasurer Donna Smithey, to the PEC Enforcement Unit for failing to file a semi-annual campaign statement for the period of July 1, 2018 through December 31, 2018, failing to file an accurate campaign statement for the period of January 1, 2019 through June 30, 2019, and failing to file a committee termination form. Enforcement staff found that Respondents, despite multiple warnings and offers of assistance, did not electronically file the required campaign filings pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act. Staff finds probable cause that a violation occurred and recommends that the Commission schedule this matter for formal hearing before the full Commission. Note: This matter appeared on the agenda at the September 2, 2021, meeting and is being brought to the Commission again to add committee treasurers to the report and finding of probable cause. ([Staff Report](#))

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DISCUSSION ITEMS

- 9. Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work.

INFORMATION ITEMS

- 10. Disclosure and Engagement.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities. ([Disclosure Report](#))
- 11. Enforcement Program.** Enforcement Chief Kellie Johnson reports on the Commission's enforcement work since the last regular Commission meeting. ([Enforcement Report](#))
- 12. Executive Director's Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Executive Director's Report](#); [M2019-07 Mediation Summary](#))

CLOSED SESSION

- 13. Executive Director Performance.** The Commission will meet in closed session to discuss the Executive Director's performance. This is a personnel-related matter authorized to occur in closed session pursuant to Government Code Section 54957(b).

The meeting will adjourn upon the completion of the Commission's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandca.gov/pec.

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10/22/21

Approved for Distribution

Date



This meeting location is wheelchair accessible. Do you need an ASL, Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email alarafranco@oaklandca.gov or call (510) 238-3593 Or 711 (for Relay Service) five business days in advance.

¿Necesita un intérprete en español, cantonés o mandarín, u otra ayuda para participar? Por favor envíe un correo electrónico a alarafranco@oaklandca.gov o llame al (510) 238-3593 al 711 para servicio de retransmisión (Relay service) por lo menos cinco días antes de la reunión. Gracias.

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議五天前電

郵 alarafranco@oaklandca.gov 或致電 (510) 238-3593 或 711 (電話傳達服務)。

Quý vị cần một thông dịch viên Ngôn ngữ Ký hiệu Mỹ (American Sign Language, ASL), tiếng Quảng Đông, tiếng Quan Thoại hay tiếng Tây Ban Nha hoặc bất kỳ sự hỗ trợ nào khác để tham gia hay không? Xin vui lòng gửi email đến địa chỉ alarafranco@oaklandca.gov hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.

CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • Suite #104 • OAKLAND • CA 94612

Public Ethics Commission

(510) 238-3593

(510) 238-3315 Fax

(510) 238-325 TDD



October 5, 2021

William Gilchrist
Director
Department of Planning and Building
250 Frank H. Ogawa Plaza, Ste. 2114
Oakland, CA 94612

RE: Requested appearance at the Public Ethics Commission’s November 1, 2021, meeting regarding public records requests made to the Department of Planning and Building

Dear Director Gilchrist:

The Public Ethics Commission (PEC or Commission) has requested your presence at its upcoming meeting on Monday, November 1, 2021, at 6:30 p.m. to hear your input on a few items that have come before the Commission this past year, specifically relating to your department’s system of responding to public records requests.

As you likely know, the Commission oversees compliance with the Oakland Sunshine Ordinance and its state equivalent, the California Public Records Act. The Sunshine Ordinance, as a supplement to state law, authorizes the PEC to mediate between requesters seeking public records and City employees responding to their requests. In addition, the PEC may investigate potential violations of the ordinance. Mediations are a relatively small subset of the PEC’s work that also consists of prevention and education activities, campaign finance and lobbyist disclosure, policy development, and investigation and administrative prosecution of the five other ordinances within the PEC’s jurisdiction

So far in 2021, of the nine mediations the Commission has completed, six were with the Planning and Building Department. Each time these mediations came to the Commission, the Commission was presented with a summary of the mediation, including the request made by a member of the public, along with the activities of the responding City staff member. During those discussions, Commissioners began asking questions that were more oriented toward your department’s overall process and why it was that the PEC was experiencing an uptick in such requests for assistance from members of the public trying to access records from your team.

In addition, more recently, the PEC investigated a prior mediation in which documents were not initially produced and where PEC staff determined that the lack of production of records required further investigation. The Commission directed staff to open an investigation (Case # 18-48), and the results of the investigation were brought to the Commission for final action at its September 2,

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2021, meeting. The investigation concluded that some records that existed within the department had not been provided to the requestor, and that a particular record, a “signed Conditions of Approval” that the requester asserted was required to be collected by the department, was not provided, and, according to department staff, did not exist. The Commission was concerned to hear that there may be records that the department should have in its possession but does not, and the resulting impact on the department’s ability to adequately respond to public records requests as required by law. At that meeting, the Commission asked to invite you to its next meeting to hear your input on these questions.

Attached is a copy of the investigation summary for Case # 18-48, as well as the earlier mediation summary for that matter (2016-22). Also attached are copies of the mediation summaries for the six mediations mentioned above.

In addition to these mediations and case from this year, I am also including a copy of a mediation completed in March 2020 that had identified a record that was being sought from your department by a requester but evidently was not being retained and possibly not being collected by your department. In that mediation, the record appears to be a federally-required Radio Emissions Report, that, according to City ordinance, must be submitted along with an application for wireless facilities. The Commission closed the mediation; however, questions regarding whether this record should have been collected and retained by your department remained unanswered and have become part of the larger context in which it appears that some records either are not being provided or are not being properly collected and maintained as suggested in these additional, more recent mediations and investigation. I am including a copy of that 2020 mediation (M2019-17) as an attachment to this letter as well.

The Commission would appreciate your review of these matters so that you can address these questions that arose regarding the retention of records and resulting response to public records requests by your department employees. Specifically, the Commission would appreciate hearing from you regarding the following questions:

1. What is the department’s existing process for responding to public records requests? How do requests typically come to your department and who handles the initial contact, ongoing communications and response to the requester, and who supervises and supports the public records liaison when challenges arise?
2. Roughly how many requests come in to your department each week/month/year?
3. What challenges does your department face in responding to records requests? What changes, if any, have you made to improve retention or response to records requests?
4. Is your department required to collect and maintain copies of Radio Frequency Emissions reports as required to be submitted to the City during the application process for wireless facilities as described in our PEC’s Mediation Summary M-2019-17?
5. Is your department required to collect and maintain a copy of a signed Conditions of Approval between the City and a developer applicant as indicated in our PEC’s investigation of Case #18-48?
6. What training and support do you provide to the various individuals that play a role in the department’s records retention and public records response process?

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7. What steps will you take, or have you already taken, to ensure that the process, policy, and people involved in the department's public records system are operating in a manner that ensures compliance with state and local public records laws?
8. What additional information would you like to share with the Commission on this issue?

Thank you in advance for your cooperation with the Commission's inquiry pursuant to its authority under City Charter section 603(f). Please confirm your planned attendance with me by October 15, 2021, so we can properly prepare this item for the meeting agenda and send you the Zoom meeting details.

I am available to discuss these questions, and the context for the Commission's inquiry, with you as needed. Please feel free to contact me directly at (510) 238-6620 or wbarazoto@oaklandca.gov.

Sincerely,



Whitney Barazoto
Executive Director

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Item #4 -Letter to Director Gilchrist



Michael MacDonald,-Chair
Jerett Yan, Vice-Chair
Avi Klein
Arvon Perteet
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: May 18, 2021
RE: Case No. 18-48 and 16-22M ; In the matter of Oakland Planning and Building Department prepared for the June 7, 2021, Public Ethics Commission Meeting

BACKGROUND:

On September 7, 2016, the Commission received a complaint alleging that the Oakland Planning and Building Department (Department) failed to disclose records in response to a public records request made by the complainant (Complainant) on August 8, 2016. On October 31, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to Complainant's public records request. Commission Staff has completed mediation and made a recommendation to close the mediation because the department reported that they had no other documents in their possession regarding the public records request related to Case No DS 15-0313. The Commission closed the Mediation and referred the matter to the Enforcement Unit for further investigation on whether the Planning and Building Department violated the Public Ethics Act. That investigation has concluded.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

OMC 2.20.190 Release of Documentary Public Information; Release of public records by a local body or by any agency or department, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in any particulars not addressed by this Article. The provisions of Government Code Section 6253.9 are incorporated herein by reference. (Ord. 12483 (part), 2003; Ord. 11957 § 00.19, 1997) added by Stats. 2008, Ch. 63, Sec. 2. Effective January 1, 2009.)

California Public Records Act § 6253:

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or their designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.

FACTUAL SUMMARY:

In 2015, the complainant made two public records requests to the City of Oakland Planning and Building Department. The first was in-person at the Zoning counter, where the complainant requested e-mails pertaining to the 5150 Redwood matter. On that day, the Department employee on duty recalled going back to his computer and printing out a “big stack” of records and then giving that stack, directly to the complainant. The Complainant later that month, submitted an electronic records request [the one at issue in this case]. The following reflects the substance of the public records request that the complainant made on electronically.

On August 8, 2016, the City received, via RecordTrac, the following public records request: “All records in any way related to Case File no. DS15-0313 regarding the development at 5150 Redwood Road.”

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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 August 18, 2016, the Department stated the following on RecordTrac: "Request extended: Additional time is required to answer your public records request. We need to consult with another agency before we are able to deliver your record (Government Code Section 6253(c)(3))."

Also on August 18, 2016, Complainant stated the following on RecordTrac: "This response does not appear to fulfill the requirements of Government Code section 6253(c)(3) in that you have not stated "the estimated date and time when the records will be made available." Given that the entire project has taken place in Planning and Building what outside agency has records concerning this project?"

Also on August 18, 2016, the Department stated the following on RecordTrac: "Dear Requester, this was not a response, but a request for additional time as the Planning and Building Department does need to consult with another department in the production of the records. Documents will be uploaded on or before September 1st."

On August 26, 2016, the Department provided the following statement, 420 pages of documents, and closed the request: "Dear Records Requester, I have just scanned and uploaded 410 pages of documents which staff from the City of Oakland's Department of Planning and Building believe to be responsive to your request. Having made all responsive materials available to you, the City of Oakland will consider your request closed. Thank you,"

On September 7, 2016, the Commission received a complaint alleging that the Department failed to disclose records in response to public records request (PRR) No. 16745 made by Complainant.

On October 31, 2016, Commission Staff started its mediation process by reaching out to the Department and giving them the opportunity to review the complaint and submit a response. On November 18, 2016, the Department provided Commission Staff with a detailed memorandum outlining communications the Department had with Complainant preceding the filing of the complaint, the Department's response to PRR No. 16745, as well as one page of additional records that were not provided in the Department's response to the public records request on Recordtrac.

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On December 14, 2016, Commission Staff shared the Department's memorandum with Complainant, including the one page of additional records. Complainant responded to Commission Staff on the same day, asserting that Complainant found the response inadequate because it did not contain a copy of the Conditions of Approval for Case File No. DS15-0313 signed by both the City and the applicant.

Commission Staff continued to communicate with Complainant in January 2017, during which Complainant alleged that the Department continued to purposefully withhold records. On January 10, 2017, Commission Staff asked what evidence Complainant had supporting this allegation. Complainant replied that the fact the Department did not provide "the signed [Conditions of Approval] is evidence that they are withholding records." Complainant alleged that the lack of a signed Conditions of Approval was in violation of Department policy.

In response, Commission Staff requested confirmation from the Department that it did not have a copy of the signed Conditions of Approval. On February 2, 2017, the Department confirmed that it did not have a signed Conditions of Approval, or any additional records in response to PRR No. 16745. The Department explained to Commission Staff that it approved the application and moved forward with the project without receiving a Conditions of Approval signed by the applicant. The Department had verbally informed the applicant of the Conditions of Approval and had confirmed that the applicant was adhering to the Conditions of Approval by visual inspection approximately two weeks later. Commission Staff relayed this information to Complainant, but Complainant continued his allegation that the Department was withholding a signed Conditions of Approval and/or communications between the Department and the applicant.

In response, Commission Staff informed Complainant that further mediation was unlikely to resolve his concerns, and that the violation of Department Policy that he alleged was outside the scope of the mediation process and the Oakland Sunshine Ordinance as it relates to public records.

When the Commission referred this matter back to the Enforcement unit for evaluation in May 2020, the Commission investigator conducted a related document search through the City IT department and recovered additional documents, specifically email communications between the developer and the City Planning and Building Department, including emails between the developer and the City regarding the Conditions of Approval. The Complainant had requested a copy of these emails in 2015 but was told they did not exist. The PEC forwarded those documents, described above, to the complainant.

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The Complainant also had requested a copy of the signed agreement between the developer and the city regarding compliance with safety and preservation standards for small project design approval. It is a Planning and Building Department policy that a signed copy of the Conditions of Approval be submitted to the Department before a project could begin. The Department eventually provided a copy of an unsigned agreement to the Complainant, but not a signed copy. The Department did not produce a copy of the Conditions of Approval that was signed by both the City and the developer, and no such signed document was found in the PEC staff's investigation and IT search. It is very likely that the developer did not provide a signed copy of the form to the City.

When asked why the City did not disclose the emails between the developer and the City, City Planner Aubrey Rose said he did not know why the emails were not turned over when the Complainant made the request.

ANALYSIS:

The City of Oakland's Sunshine Act incorporates the requirements of the California Public Records Requests Act. Both Acts give the public the right to inspect and copy most records retained by governmental agencies in the course of business, subject to certain privileged information or statutory exemptions.

The PRA expressly provides that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The purpose is to give the public access to information that enables them to monitor the functioning of their government. See, Gov. Code, § 6250.

Neither the Oakland Sunshine Act nor the California Public Records Act provide the Public Ethics Commission the authority to impose penalties against a City department or agency that fails to comply with the provisions of either Act. The Commission or a Complainant has the option of filing a civil action in the Superior Court of California for violations to the CPRA. The burden is on the requester to go to court to fight for the documents. While the agency may have to pick up the requester's legal bills, there is no penalty for agencies that willfully, knowingly, and without any good reason violate the law.

Here, the Complainant made a request for documents from the City Planning and Building Department. The documents were records retained by the Planning and Building Department in its regular course of business. The Department provided some documents to the

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Complainant but failed to provide others. The Commission Staff were able to recover additional responsive documents that the Department failed to provide to the Complainant. It is not clear whether the Department, willfully, knowingly or negligently withheld documents from the Complainant. The Department representative Aubrey Rose was without any good reason to explain why all responsive documents were not provided to the Complainant.

VIOLATIONS:

For the reasons stated above, the Department failed to provide responsive documents to the Complainant, however, the Commission is without state statutory or municipal authority to impose a penalty on the Department.

RECOMMENDATION:

Pursuant to the Public Ethics Commission Complaint Procedures, the Commission could write an advisory letter to the Department with recommendations, invite the Department to make a presentation to the Commission on its public records request policies and practices, and make further inquiries. Again, the Commission has no authority to impose penalties for Sunshine Ordinance violations.

CITY OF OAKLAND
Public Ethics Commission



Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E.T. Jackson
Gail Kong
Krisida Nishioka

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
Kyle McLean, Law Clerk
DATE: October 26, 2018
RE: *In the Matter of the Oakland Planning and Building Department (Case No. 16-22M)*; Mediation Summary

I. INTRODUCTION

On September 7, 2016, the Commission received a complaint alleging that the Oakland Planning and Building Department (Department) failed to disclose records in response to a public records request made by the complainant (Complainant) on August 8, 2016. On October 31, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to Complainant's public records request. Commission Staff has completed mediation and recommends that the Commission close this matter 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 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 efforts

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).

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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 August 8, 2016, the City received, via RecordTrac, the following public records request: “All records in any way related to Case File no. DS15-0313 regarding the development at 5150 Redwood Road.”

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 August 18, 2016, the Department stated the following on RecordTrac: “Request extended: Additional time is required to answer your public records request. We need to consult with another agency before we are able to deliver your record (Government Code Section 6253(c)(3)).”

Also on August 18, 2016, Complainant stated the following on RecordTrac: “This response does not appear to fulfill the requirements of Government Code section 6253(c)(3) in that you have not stated "the estimated date and time when the records will be made available." Given that the entire project has taken place in Planning and Building what outside agency has records concerning this project?”

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On October 31, 2016, Commission Staff started its mediation process by reaching out to the Department and giving them the opportunity to review the complaint and submit a response. On November 18, 2016, the Department provided Commission Staff with a detailed memorandum outlining communications the Department had with Complainant preceding the filing of the complaint, the Department’s response to PRR No. 16745, as well as one page of additional records that were not provided in the Department’s response to the public records request on Recordtrac.

⁵ Complaint Procedures § IV (C)(5).

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On December 14, 2016, Commission Staff shared the Department's memorandum with Complainant, including the one page of additional records. Complainant responded to Commission Staff on the same day, asserting that Complainant found the response inadequate because it did not contain a copy of the Conditions of Approval for Case File No. DS15-0313 signed by both the City and the applicant.

Commission Staff continued to communicate with Complainant in January 2017, during which Complainant alleged that the Department continued to purposefully withhold records. On January 10, 2017, Commission Staff asked what evidence Complainant had supporting this allegation. Complainant replied that the fact the Department did not provide "the signed [Conditions of Approval] is evidence that they are withholding records." Complainant alleged that the lack of a signed Conditions of Approval was in violation of Department policy.

In response, Commission Staff requested confirmation from the Department that it did not have a copy of the signed Conditions of Approval. On February 2, 2017, the Department confirmed that it did not have a signed Conditions of Approval, or any additional records in response to PRR No. 16745. The Department explained to Commission Staff that it approved the application and moved forward with the project without receiving a Conditions of Approval signed by the applicant. The Department had verbally informed the applicant of the Conditions of Approval and had confirmed that the applicant was adhering to the Conditions of Approval by visual inspection approximately two weeks later. Commission Staff relayed this information to Complainant, but Complainant continued his allegation that the Department was withholding a signed Conditions of Approval and/or communications between the Department and the applicant.

In response, Commission Staff informed Complainant that further mediation was unlikely to resolve his concerns, and that the violation of Department Policy that he alleged was outside the scope of the mediation process and the Oakland Sunshine Ordinance as it relates to public records.

IV. RECOMMENDATION

Since the Department disclosed additional records responsive to Complainant's public records request and explained that the specific record Complaint seeks has never existed, Commission Staff recommends that the Commission close this matter without further action.

Once the Commission closes this matter, Respondent will have the right, pursuant to the Oakland Sunshine Ordinance, to request that the Commission investigate whether the Department's response to PRR No. 16745 was in violation of the Oakland Sunshine Ordinance.

Item #4 -Letter to Director Gilchrist

Item #4 -Letter to Director Gilchrist



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: May 25, 2021
RE: *In the Matter of the Planning and Building Department (Case Nos. M2020-01 and M2020-08);* Mediation Summary

I. INTRODUCTION

On January 7, 2020, the Commission received a request for mediation alleging that the Oakland Planning and Building Department failed to disclose records in response to a public records request made by the Requester on November 6, 2019. On January 10, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department has provided all responsive documents per the requests, 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.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 efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

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).

⁵ Complaint Procedures § IV (C)(5).

III. SUMMARY OF FACTS

On November 6, 2019, the City received, via NextRequest, the following public records request (No. 19--5463):

All documents, files, communications between the City and others related to the cell antenna wireless facility projects near/at **399 Grand Avenue and 401 Grand Avenue by November 15, 2019.**

This documentation should include communications between all parties (City, applicants, subcontractors), application information, specifications, and testing reports associated with 399 Grand Avenue:

PLN17183
B1704854
E1703974
ENM18193
OB1902560
OB1902613
OB1902671
OB1902698
OB1902790
OB1902837
OB1902880
OB1902905
401 Grand Avenue:
PLN16023
DS180187
B1803527
B1602124

This public record request is politely requesting fulfillment by Friday, November 15, 2019. Thank you.

On November 15, 2019 the Planning and Building Department released a total of five responsive documents to the requester.

On December 6, 2019, the City received, via NextRequest, the following public records request (No. 19-6003):

Please provide me the PDF maps, KMZ (Google Earth) map and Excel spreadsheet referenced in email to Aubrey Rose and Scott Miller from Matt Yergovich on August 18, 2015 at 10:27AM regarding 78 downtown wireless facilities.

In same email, CEQA implications were mentioned and ATT Overlapping Deployment for the downtown area. Please provide me with any subsequent communications and attachments between the City and Matt Yergovich or any otehr ExteNet Systems agent doing business in Oakland.

Item #4 -Letter to Director Gilchrist

In this email, Matt mentions evaluating both "ATT and Verizon's proposals as a whole." Please provide any subsequent communications, records and documents relevant to this discussion between the any City employee and any employee or agent of ATT and Verizon.

On January 7, 2020, the Commission received a complaint alleging that the Planning and Building Department had failed to provide all the requested documents in response to public records requests Nos. 19-5463 and 19-6003.

On January 10, 2020, Staff initiated its mediation program and notified the Planning and Building Department of the mediation request.

On March 11, 2020, the Planning and Building Department released an additional six documents to the Requester in response to public records request 19-5463.

On March 26, 2020, the Planning and Building Department released two additional documents to the Requester in response to public records request 19-5463. Subsequently, the Planning and Building Department closed request 19-5463 stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On April 27, 2020, the Commission received an additional complaint alleging that the Planning and Building Department had failed to provide all the requested documents in response to public records requests No. 19-5463.

On April 30, 2020, Staff notified the Planning and Building Department of the mediation request.

On October 27, 2020, 10 documents were released to the Requester in response to public records request 19-6003.

On November 4, 2020, an additional 117 documents were released to the Requester in response to public records request 19-6003.

On November 6, 2020, an additional 11 documents were released to the Requester in response to public records request 19-6003.

On January 7, 2021, an additional seven documents were released to the Requester in response to public records request 19-6003.

On January 8, 2021, an additional 23 documents were released to the Requester in response to public records request 19-6003.

On January 11, 2021, an additional 47 documents were released to the Requester in response to public records request 19-6003. Subsequently, the Planning and Building Department closed public records request 19-6003 stating:

Item #4 -Letter to Director Gilchrist

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On May 11, 2021, Staff followed up with the Requester to see if they had received all the responsive documents to their public records requests (19-5463 and 19-6003). The Requester notified Staff that there were two additional documents that they did not receive.

On May 11, Staff followed up with the Planning and Building Department regarding the two additional documents that had not been released to the Requester in which they responded:

Thank you for bringing this to my attention. I am copying Brian Fujihara and Sophia Uwadiale who will look into this.

On May 19, 2021 the Planning and Building Department released an additional two documents to the Requester in response to public records request 19-5463.

On May 22, the Requester notified Staff that they had received both missing attachments. Subsequently, Staff notified the Requester that the mediation cases would be closed.

IV. RECOMMENDATION

Because the Planning and Building Department provided the responsive records for the public records requests, and because the Requester indicated that she had received all the responsive documents, Staff closed the mediation without further action.

Item #4 -Letter to Director Gilchrist



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: April 20, 2021
RE: *In the Matter of the Planning and Building Department (Case No. M2020-07);* Mediation Summary

I. INTRODUCTION

On March 5, 2020, the Commission received a request for mediation alleging that the Oakland Planning and Building Department failed to disclose records in response to three public records requests made by the Requester on January 9, 2020, January 24, 2020, and February 13, 2020, respectively. On March 5, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department has provided all responsive documents per the requests, 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.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 efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

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).

⁵ Complaint Procedures § IV (C)(5).

Item #4 -Letter to Director Gilchrist

III. SUMMARY OF FACTS

On January 9, 2020, the City received, via NextRequest, the following public records request (No. 20-142):

All documents related to the application DRX 200056 for 4511 Lincoln Avenue.

Including complete application, communications (between city and applicants or others) and all submitted attachments and reports.

On January 24, the City received, via NextRequest, an additional public records request from the Requester (20-411):

Please provide by February 17, 2020 the following documents from the Planning and Building Department.

For all the Verizon, AT&T AND T-Mobile cell antenna projects at 5650 Balmoral.

All file contents including planning department application documents, RF emission report, written communications between applicant and the City, and planning commission approval letter.

All file contents including building department application, documents, attachments, RF emission reports, written communications between applicant and the City, final building permit sign-off.

These files include but are limited to:

PLN19244 - Verizon (application documents and to-date written communications only)

DS190341 - T Mobile

B1903761 - T Mobile

DS180223 - ATT

B1803798 - ATT

DS170351 - Verizon

B1704009 - Verizon

DS160109

B1602185

DS150412

B1504583

CMDV10257

B1400614 - ATT

E1102562 - ATT

B1100941 - ATT

B1003670 - T Mobile

E1100467 - T Mobile

Thank you. Please remit documents as they become available.

Item #4 -Letter to Director Gilchrist

On February 13, 2020, the City received, via NextRequest, a third public records request from the Requester (20-801):

Please provide all planning and building documents, RF Emission reports and communications between interested parties regarding the roof-top cell antenna installations at 1425 Leimert Blvd. Thank you.

On March 5, 2020, the Commission received a mediation request seeking the following:

My public records requests 20-142, 20-411, 20-801 have gone unfulfilled and missed their deadlines.

Subsequently, on March 5, 2020, Staff initiated its mediation program and notified the Planning and Building Department (PBD) of the mediation request.

On March 24, 2020, the Planning and Building Department released responsive documents to the requester for request 20-142. Subsequently, the PBD closed the request stating:

We released all of the requested documents.

On April 20, 2020, the Planning and Building Department released responsive documents to the requester for request 20-411. Subsequently, the PBD closed the request stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On April 20, the Planning and Building Department closed request 20-801 stating that:

The requested documents do not exist.

On April 16, 2021, Staff followed up with the Requester and inquired if she had received all the responsive documents to her public record requests and, if so, notified her that the PEC would be closing the mediation. The Requester responded:

Yes, you can close M2020-07.

IV. RECOMMENDATION

Because the Planning and Building Department provided the responsive records for the public records requests, and because the Requester indicated that she had received all of the responsive documents, Staff closed the mediation without further action.

Item #4 -Letter to Director Gilchrist

Item #4 -Letter to Director Gilchrist



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: June 22, 2021
RE: *In the Matter of the Planning and Building Department (Case No. M2020-12); Mediation Summary*

I. INTRODUCTION

On August 28, 2020, the Commission received a request for mediation alleging that the Oakland Planning and Building Department failed to disclose records in response to five public records requests made by the Requester on December 16, 2019, May 18, 2020, June 3, 2020, June 12, 2020, and June 26, 2020, respectively. On September 2, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department has provided all responsive documents per the requests, 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.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 efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

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).

⁵ Complaint Procedures § IV (C)(5).

III. SUMMARY OF FACTS

On December 16, 2019, the City received, via NextRequest, the following public records request (No. 19-6003):

Please provide me the PDF maps, KMZ (Google Earth) map and Excel spreadsheet referenced in email to Aubrey Rose and Scott Miller from Matt Yergovich on August 18, 2015 at 10:27AM regarding 78 downtown wireless facilities.

In same email, CEQA implications were mentioned and ATT Overlapping Deployment for the downtown area. Please provide me with any subsequent communications and attachments between the City and Matt Yergovich or any other ExteNet Systems agent doing business in Oakland.

In this email, Matt mentions evaluating both "ATT and Verizon's proposals as a whole." Please provide any subsequent communications, records and documents relevant to this discussion between the any City employee and any employee or agent of ATT and Verizon.

On May 18, 2020, the City received, via NextRequest, an additional public records request from the Requester (20-2601):

Please provide all documents, reports, plans/drawings and communications between residents, City or telecom regarding the cell antenna projects located at 6387 Fairlane and 6391 Fairlane. Also, include planning commission documents that were made available to the public and to the commissioners. If any RF Emission reports are available created at the time of installation or since then, please include them.

Please include all documentation related to inactive, expired or issued applications in planning and building department related to these addresses as well.

Thank you.

On June 3, 2020, the City received, via NextRequest, a third public records request from the Requester (20-3004):

Please provide all information related to Record ID FDV19-22181 for APN 029A133003000.

Please provide all EME or RF reports (part of application and prior to building permit sign-off) for DS180340 and B1803917

Please include the approval or decision letters and related communications/attachments between applicant and the City for DS180340 and B1803917

On June 4, 2020, the Planning and Building Department released seven responsive documents to the requester for request 20-3004.

Item #4 -Letter to Director Gilchrist

On June 12, 2020, the City received, via NextRequest, a fourth public records request from the Requester (20-3268):

Please provide all documents and communications (including emails and attachments) regarding the Appeal APL19009.

Thank you.

On June 18, 2020, the Planning and Building Department released an additional three documents to the requester in response to public records request 20-3004.

On June 26, 2020, the City received, via NextRequest, a fifth public records request from the Requester (20-3688):

I am interested in knowing what telecommunications companies currently have Master License Agreements with the City of Oakland.

Can you please provide me a copy of these agreements as well letting me know when they became effective and if they have an expiration date?

On, July 8, 2020, the Planning and Building Department released three responsive documents to the requester for request 20-3268.

On, July 14, 2020, the Planning and Building Department released seven responsive documents to the requester for request 20-2601.

On August 28, 2020, the Commission received a mediation request seeking the following:

Not fulfilling public records requests in a timely manner. Some of these have been partially completed.

On September 2, 2020, Staff initiated its mediation program and notified the Planning and Building Department (PBD) of the mediation request.

On, September 27, 2020, the Planning and Building Department released an additional three documents to the requester for request 20-3268. Subsequently, the Planning and Building Department closed the request stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On, September 28, 2020, the Planning and Building Department released an additional document to the requester for request 20-3268.

On, September 29, 2020, the Planning and Building Department released an additional two documents to the requester for request 20-3268.

Item #4 -Letter to Director Gilchrist

On, October 7, 2020, the Planning and Building Department released an additional document to the requester for request 20-3004.

On, October 27, 2020, the Planning and Building Department released ten responsive documents to the requester for request 19-6003.

On, November 3, 2020, the Planning and Building Department released an additional 18 documents to the requester for request 20-2601. Subsequently, the Planning and Building Department closed the request stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On, November 4, 2020, the Planning and Building Department released an additional 117 documents to the requester for request 19-6003.

On, November 6, 2020, the Planning and Building Department released an additional 11 documents to the requester for request 19-6003.

On, January 7, 2021, the Planning and Building Department released an additional four documents to the requester for request 20-3688. Subsequently, the Planning and Building Department closed the request stating:

We released all of the requested documents.

On, January 7, 2021, the Planning and Building Department released an additional seven documents to the requester for 19-6003.

On, January 8, 2021, the Planning and Building Department released an additional 23 documents to the requester for 19-6003.

On, January 11, 2021, the Planning and Building Department released an additional 47 documents to the requester for 19-6003. Subsequently, the Planning and Building Department closed the request stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On, January 29, 2021, the Planning and Building Department released an additional document to the requester for 20-3004. Subsequently, the Planning and Building Department closed the request stating:

We released all of the requested documents.

Item #4 -Letter to Director Gilchrist

On April 16, 2021, Staff followed up with the Requester and inquired if she had received all the responsive documents to her public record requests and, if so, notified her that the PEC would be closing the mediation. The Requester responded:

Yes, you can close M2020-12.

IV. RECOMMENDATION

Because the Planning and Building Department provided the responsive records for the public records requests, and because the Requester indicated that she had received all of the responsive documents, Staff closed the mediation without further action.

Item #4 -Letter to Director Gilchrist

Item #4 -Letter to Director Gilchrist



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: May 14, 2021
RE: *In the Matter of the Planning and Building Department (Case Nos. M2020-13 and M2021-08);* Mediation Summary

I. INTRODUCTION

On September 10, 2020, and September 11, 2020, the Commission received requests for mediation alleging that the Oakland Planning and Building Department failed to disclose records in response to a public records request made by the Requester on August 22, 2020. On September 14, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department has provided all responsive documents per the requests, 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.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 efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

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).

⁵ Complaint Procedures § IV (C)(5).

Item #4 -Letter to Director Gilchrist

III. SUMMARY OF FACTS

On August 22, 2020, the City received, via web, the following public records request (No. 20-5567):

Please provide me with a full and color PDF document in its original form of the Site Safe Report (compliance) submitted with the application DS190327 (Site ID: 815199 for 1720 MacArthur Blvd). Thank you.

On September 1, 2020 the Planning and Building Department extended the due date for the public records request by seven days from 9/1/2020 to 9/8/2020 stating:

Requester information is still being researched.

On September 8, 2020, the Requester sent a message to the Planning and Building Department via NextRequest stating:

This record was NOT fulfilled by new deadline. Please let me know status. Thank You!

On September 10, 2020, the Commission received a complaint alleging that the Planning and Building Department had failed to respond to a public records request in a timely manner (20-5567).

On September 11, 2020, the Planning and Building Department released the Site Safe Report in response to public records request 20-5567. Subsequently, the Planning and Building Department closed the public records request stating:

We released all of the requested documents.

On September 11, 2020, the Commission received an additional complaint from the Requester regarding the same public records request (20-5567) stating:

I asked for a color copy of the document and instead received a black and white copy which I already had... The public records request was not completed as requested.

On September 14, 2020, Staff initiated its mediation program and notified the Planning and Building Department of the mediation request.

On January 25, 2021, the Planning and Building Department reopened the public records request.

On February 16, 2021, the Planning and Building Department closed the public records request stating:

Hello,

We received the original file for DS190327. You requested for a color copy of the EME/RF report, however all of the documents submitted by the applicant are in black-and-white.

Thank you

Item #4 -Letter to Director Gilchrist

On April 16, 2021, Staff followed up with the Requester and inquired if she had received all the responsive documents to her public records request and, if so, notified her that the PEC would be closing the mediation. The Requester responded:

Yes, you can close M2020-13.

Yes, you can close M2021-08.

IV. RECOMMENDATION

Because the Planning and Building Department provided the responsive record for the public records requests, and because the Requester indicated that she had received all the responsive documents, Staff closed the mediation without further action.

Item #4 -Letter to Director Gilchrist

Item #4 -Letter to Director Gilchrist

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 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 May 11, 2019 and August 25, 2019, the Requester made a request via the City's NextRequest system for the following (Both records requests were assigned to the Planning and Building Department):

1. May 11, 2019, Request No. 19-2426.

"On Attachment B: Standard Conditions for many telecom applications/decision letters, Item #14 - Radio Frequency Emissions is a category. "Prior to the final building permit sign-off. The applicant shall submit a certified RF emissions report stating the facility is operating within the acceptable standards established by the regulatory FCC."

I am requesting copies of the certified RF emissions reports for all telecom facilities installed in Oakland since 1996. I would like to have the reports be sorted by (1) zip code, (2) facility location address, (3) date installed and date of report, (4) facility description and (5) include the Planning and Building Departments case file identifying code and the telecom company who applied for this facility. "

On July 2, 2019, Guillory released Permit History Telecoms covering 1996-2019 and on July 31, 2019, he closed the public records request 19-2426.

2. August 25, 2019, Request No. 19-4253.

"Please provide all complete RF (Radio Frequency) Emission reports provided to the City in compliance with Ordinance 17.128.130 (b) for the period of time from 01/01/1996 to 08/20/2019."

Staff received a request for mediation on October 8, 2019.

Staff contacted Guillory with the Planning Department on October 21, 2019, and November 12, 2019.

On November 13, 2019, Guillory wrote a note to NextRequest regarding No. 19-4253 that informed the Requester of the following:

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item #4 -Letter to Director Gilchrist

“The requested documents do not exist.”

The request was closed on November 13, 2019.

Staff contacted Guillory on November 15, 2019. Guillory confirmed that the department received guidance from its Oakland City Attorney representative that the Requester should contact the Federal Communications Commission (FCC) to get copies of any related Radio Frequency Emissions reports.

The Requester contacted the FCC to obtain a copy of the reports and was informed that the RF Emissions reports they were seeking are not maintained by the FCC, but by the respective City government.

The Planning department re-opened the request on November 18, 2019 and uploaded some responsive documents.

On December 2, 2019, Staff contacted Alexandria McBride the City of Oakland Chief Resilience Officer.

Staff contacted the requester to seek additional information about the public records request and what specific documents he believed were missing. The Requester believed the post Radio Frequency Emissions reports, per City policy, regarding tests conducted after the telecom poles were installed in specific neighborhoods were documents that were not disclosed in the public records request.

The City of Oakland Planning and Building department is subject to Oakland ordinance on Telecommunications Regulations 17.128.130 (c), which provides that:

17.128.130 - Radio frequency emissions standards.

“The applicant for all wireless facilities, including requests for modifications to existing facilities, shall submit the following verifications:

- a. With the initial application, a RF emissions report, prepared by a licensed professional engineer or other expert, indicating that the proposed site will operate within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.
- b. Prior to commencement of construction, a RF emissions report indicating the baseline RF emissions condition at the proposed site.
- c. Prior to final building permit sign off, an RF emissions report indicating that the site is actually operating within the acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.

The Requester asked that Staff assist in obtaining a copy of any and all RF emissions reports as described in section (c) of the Radio Frequency Emissions Standards ordinance.

Staff contacted Issam Shahrouri the Deputy Director of the Building department to request a department search for any and all post installation Radio Frequency Emission reports. The Deputy Director confirmed

Item #4 -Letter to Director Gilchrist

that his department does not and have not collected or maintained any post Radio Frequency Emission reports.

The request was closed again on March 11, 2020 with a note that the requested documents do not exist.

The Requester wants the PEC to be aware of the enormous amount of time consumed and the frustration that resulted in attempting to get responsive documents to their public records request.

IV. RECOMMENDATION

The requester received all responsive reports that the Planning and Building department maintains on Radio Frequency Emissions, Staff recommends that the Commission close the mediation without further action.

Item #4 - Department Response

The Commission would appreciate hearing from you regarding the following questions:

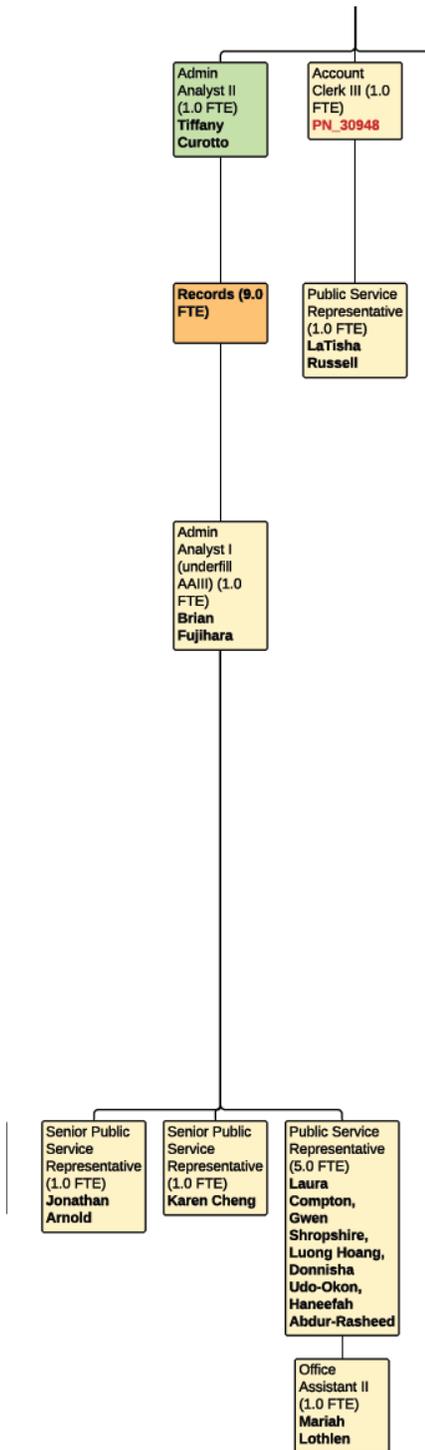
1. What is the department's existing process for responding to public records requests? How do requests typically come to your department and who handles the initial contact, ongoing communications and response to the requester, and who supervises and supports the public records liaison when challenges arise?

As of January 2020, Tiffany Curotto, Administrative Analyst II supervises the Records Unit. Currently, the team is made up of nine (9) staff: one Administrative Analyst I (Brian Fujihara), two (2) Senior Public Service Representatives (Jonathan Arnold and Karen Cheng), five (5) Public Service Representatives (Donnisha Udoon, Laura Compton, Luong Hoang, Gwen Shropshire, and Haneefah Abdur-Rasheed), and one Office Assistant II (Mariah Lothlen). Each Senior Public Service Representative is responsible for separate Records Unit areas—Records Management and Public Records Requests. As of September 20, 2021, Karen Cheng holds the role of Senior (Sr.) Public Service Representative (PSR) and is responsible for monitoring NextRequest for Public Records Requests (PRRs) and assigning them to the PSRs to research responsive records. Once responsive records are identified, the PSR saves them into a folder on the Shared Drive and notifies the Sr. PSR who then reviews the documents for responsiveness and redaction and then uploads to the requester. Sometimes, Electronic Data Requests (EDDR) are required and these are processed by the Information Technology Department. The receipt of results for EDDR results can vary. The Sr. PSR is responsible for maintaining a PRR Log that outlines the status of every PRR and who it is assigned to, and they are responsible for reaching out to the City Attorney's Office should any questions arise about a certain request. The Administrative Analyst and supervisor support the Sr. PSR for complex requests.

Prior to Curotto, the former Assistant Director, Katie Dignan supervised the Unit (and prior to Dignan, it was Civil Principal Engineer, David Harlan). Prior to July 2020, former Sr. Public Service Representative David Guillory provided lead direction for the Records Unit. Sophia Uwadiale took on this role upon Guillory's departure, and Donnisha Udoon acted as Sr. PSR prior to Karen Cheng's hire.

Here is a screenshot of the current Organization Chart:

Item #4 - Department Response



2. Roughly how many requests come in to your department each week/month/year?

PBD receives a large number of requests annually. This year (2021), PBD has received approximately 2,114 (two-thousand-one-hundred and fourteen) PRRs. This is projected to approximately 52% more than last year (in 2020, PBD received approximately 1,785 requests). On average, in 2021, PBD has received approximately two-hundred and twenty-seven (227) PRRs per month and 52 per week. Here are annual figures based on data pulled from NextRequest:

Item #4 - Department Response

	2018	2019	2020	2021*
Opened	815	1259	1785	2114
Closed	815	1259	1784	2064
Average # of Days	31.32	37.16	25.28	8.3
Yr to Yr Growth Requests		54.48%	41.78%	52.61%**

*Year to date as of 10/11/21

**2021 percentage based on projected # of PRRs received

3. What challenges does your department face in responding to records requests? What changes, if any, have you made to improve retention or response to records requests?

The main challenge that the Records Unit has faced is with respect to personnel. The Unit has experienced a high level of transition within the past two (2) years. Between the lack of consistent supervision, and the loss of key staff (and with them key institutional knowledge), the Unit has had to work together, and often overtime, to handle the amount of PRRs on top of the other services overseen by the Records Unit (re-roofing/insulation certification, 3-R Reports, etc.). Prior to January 2020, there were no documented standard operating procedures (SOPs) and with the building closure in response to the local shelter-in-place declaration and the initiative to digitize application services, SOPs became a priority. COVID-19 also posed a challenge to the team with respect to training. Six (6) staff joined the team during the building closure (four of which were new to PBD, one of which was entirely new to the City). Another shift that occurred last year was the reorganization of the unit. PBD also had to release key part-time staff that supported the Records Unit. A Sr. PSR was reassigned to the Records Unit. An Administrative Analyst II position was added and a Sr. PSR position transitioned to full-time. That Sr. PSR then left the department and a PSR acted in the position until we filled it permanently. The Administrative Analyst II position was underfilled with an Administrative Analyst I to provide for the opportunity to grow and promote to the higher-level position via flexible staffing (as of 10/11/21, this process is in motion) and each Sr. PSR position was given a particular role within the unit (Records Management and Public Records Requests respectively). The outcome to PRRs has been that there is an improved chain of command that allows staff to work on specific tasks and for higher-level staff to review the work before it is released to the public. As the table in #2 shows, the average number of days between receiving a request and closing it is under the mandated ten (10) days.

Another big change that the Records Unit made has been to the PBD webpage on the City's website. A new Records Unit page was created that provides the public with information on the various services for which the Unit is responsible and provides digital forms and links. There is a Frequently Asked Questions section as well. This will hopefully result in a more transparent and efficient way for the public to get the information that they are looking for. This is also another resource for staff—within the Records Unit and outside of it—to appropriately direct customers.

4. Is your department required to collect and maintain copies of Radio Frequency Emissions reports as required to be submitted to the City during the application process for wireless facilities as described in our PEC's Mediation Summary M-2019-17?

The City maintains three (3) copies of the Radio Frequency Emissions report. The initial report is collected with the Planning Bureau and is maintained with their case file. The other two (2) reports are filed with the Building Bureau: one at the beginning of the project and the second at the end and saved in Accela (the City's land-use management software).

At the time of the request in 2019, the Building Bureau did not require a separate Radio Frequency Emissions report prior to final since it was our understanding at that time that the applicants submitted the

Item #4 - Department Response

Radio Frequency Emissions report directly to the Federal Communications Commission. Since that request, the Building Bureau has been collecting the Radio Frequency Emissions Report.

5. Is your department required to collect and maintain a copy of a signed Conditions of Approval between the City and a developer applicant as indicated in our PEC's investigation of Case #18-48?

One of the standard Conditions of Approval states the following: "*A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.*" In conformance with this provision, the project applicant is to submit the signed Condition of Approval. As part of a permit plan submittal, the signed Conditions of Approval would be maintained with the project record. Even if the project applicant were to fail to sign the Conditions of Approval, compliance with them would still be required. The department has historically been inconsistent in confirming the project applicant's submittal of a signed record. The department is working towards more consistent project applicant adherence with this provision of the Conditions of Approval to ensure that the project applicant submits a signed copy, which is consistently maintained. It is also important to note that there are instances where Planning cases do not receive Conditions of Approval: ministerial cases such as Design Review Exemptions (which is how most telecom facilities are now processed due to changes in Federal regulations) are not issued Conditions of Approval.

6. What training and support do you provide to the various individuals that play a role in the department's records retention and public records response process?

Each task that the Records Unit is responsible for has a SOP. Since the creation of the SOPs in early 2020, we have implemented a mid-year review to ensure that the SOPs are updated (if needed). Trainings have been held for all staff within the Unit to provide refresher training on key tasks. Citywide training has been assigned to staff in Excel, email communication, and Outlook. The Administrative Analyst I also holds trainings as-needed when it comes to our attention that staff may not be comfortable with a certain assignment. A bi-monthly Team meeting was instituted to allow for a secured time to discuss new items or issues that staff may be experiencing. One-on-one meetings with each staff and their supervisor have also been instituted. The Unit also regularly consults with the City Attorney's Office to review any responses or records if there are questions.

7. What steps will you take, or have you already taken, to ensure that the process, policy, and people involved in the department's public records system are operating in a manner that ensures compliance with state and local public records laws?

A combination of steps has been taken to ensure that the process, policy, and people involved in PRRs are operating in a manner that ensures compliance with state and local records laws. From the creation and regular review of SOPs to the reorganization of the unit to provide for more efficient chain of command—the Records Unit is committing to providing staff with the proper training and resources to provide excellent and responsive customer service.

8. What additional information would you like to share with the Commission on this issue?

We would like to thank the Commission for taking the time to provide us with the opportunity to share the improvements that we have made and are continuing to make to the Records Unit. We would also like to highlight the number of digital transformations that we have made—outside of the website, we have created digital forms using OpenForms to further streamline the process for customers to submit requests and to make clear the distinction between the various requests (i.e., what necessitates a PRR). We would like to reiterate that we have made many improvements to the Records Unit since the time of these

Item #4 - Department Response

requests and are working with staff to make sure that they are confident in understanding requests and know when to reach out to the customer to clarify the scope and how to work with the City Attorney's Office to ensure that timely responses and accurate projections are made for providing documents for voluminous requests.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Teleconference
Thursday, September 2, 2021
6:30 p.m.



DRAFT

Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Ryan Micik, Arvon Perteet, and Joseph Tuman

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION SPECIAL MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 6:31 p.m.

Members present: MacDonald, Yan, Klein, Micik and Perteet, Tuman was absent

Staff present: Whitney Barazoto, Suzanne Doran, Kellie Johnson, Ana Lara-Franco and Simon Russell.

City Attorney Staff: Trish Shafie.

2. Staff and Commission Announcements.

There were no announcements.

3. Open Forum.

There were no public speakers.

ACTION ITEMS

4.
 - a. June 7, 2021 Regular Meeting Minutes
 - b. June 30, 2021 Special Meeting Minutes

There were no public speakers.

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Micik moved, and Klein seconded to adopt both the June 7, 2021 Regular Meeting and June 30, 2021 Special Meeting Minutes.

Ayes: MacDonald, Yan, Klein, Micik and Perteet.

Noes: None

Tuman was absent

Vote: Passed 5-0

5. *In the Matter of The City of Oakland Planning and Building Department (Case No. 18-48 and 16-22M).*

Kellie Johnson, Enforcement Chief, provided an informational report to the Commission regarding the findings of the investigation, the additional documents that were provided to the Complainant, and the scope of the Commission's authority under the Sunshine Ordinance.

Ralph Kanz, the complainant, spoke on the matter.

Commissioners asked questions and discussed the matter.

There were two public speakers.

Perteet moved, and Yan seconded to adopt staff recommendation to close the matter.

Ayes: Perteet and Yan.

Noes: MacDonald, Klein, and Micik.

Tuman was absent

Vote: Failed 2-3

Commissioners continued discussing the matter and asked additional questions.

MacDonald moved to adopt staff recommendation to close the matter and refer to the City Auditor's Office.

Item #5a - Meeting Minutes

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Klein made a substitution motion to direct staff to find out if PEC staff can conduct electronic files search. Micik made a friendly amendment to continue matter and refer to City Auditor and determine whether PEC Staff to conduct electronic search.

Klein moved and Micik seconded to continue matter and refer to City Auditor and determine whether PEC Staff to conduct electronic search.

Ayes: Klein and Micik.

Noes: MacDonald, Perteet, and Yan.

Tuman was absent

Vote: Failed 2-3

MacDonald moved and Perteet seconded to close enforcement case and send a referral letter to the City Auditor and request a response.

Ayes: Klein and Micik.

Noes: MacDonald, Perteet, and Yan.

Tuman was absent

Vote: Failed 2-3

Commissioners continued to discuss and ask questions.

MacDonald moved, and Klein seconded to close enforcement case and send a referral letter to City Auditor and to request the department director to appear before the Commission at the next meeting.

Ayes: MacDonald, Yan, Klein, and Micik.

Noes: Perteet.

Tuman was absent

Vote: Passed 4-1.

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6. **Non-Filer Cases Referred by PEC Filing Officer for the 2018 Election.**

Ms. Johnson provided a report for each committee showing probable cause that one or more violations exist in the following cases and requested approval from the Commission to schedule the cases for an administrative hearing in each case.

There were no public speakers.

a. **PEC Case No. 17-18 and 18-17; In the Matter of Darrel Carey and the East Bay Small Business Council**

Yan moved and Perteet seconded to schedule the case for an administrative hearing.

Ayes: MacDonald, Yan, Klein, Micik, and Perteet.

Noes: None

Tuman was absent

Vote: Passed 5-0.

b. **PEC Case No. 19-06; In the Matter of Annie Campbell Washington for Oakland City Council 2018**

MacDonald moved, and Yan seconded to schedule the case for an administrative hearing.

Ayes: MacDonald, Yan, Klein, Micik, and Perteet.

Noes: None

Tuman was absent

Vote: Passed 5-0

c. **PEC Case No. 19-13; In the Matter of Matt Hummel for Oakland City Council**

Perteet moved and Micik seconded to schedule the case for an administrative hearing.

Ayes: MacDonald, Yan, Klein, Micik, and Perteet.

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Noes: None

Tuman was absent

Vote: Passed 5-0.

DISCUSSION ITEMS

7. Reports on Subcommittees and Commissioner Assignments.

MacDonald shared there were no updates as there are currently no subcommittees. He reported that he will create an *ad-hoc* Enforcement Subcommittee and an *ad-hoc* Recruitment Subcommittee.

There were no public speakers.

INFORMATION ITEMS

8. Disclosure and Engagement.

Suzanne Doran, Lead Analyst, provided a report of recent education, outreach, disclosure and data illumination activities.

There were no public speakers.

9. Enforcement Program.

Ms. Johnson reported on the Commission's enforcement work since the last regular Commission meeting.

There were no public speakers.

10. Executive Director's Report.

Whitney Barazoto, Executive Director, reported on overall projects, priorities, and significant activities since the Commission's last meeting.

There were no public speakers.

Item #5a - Meeting Minutes

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The meeting adjourned at 9:05 p.m.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
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Teleconference
Friday, September 17, 2021
6:30 p.m.



DRAFT

Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Jessica Leavitt, Ryan Micik, Arvon Perteet, and Joseph Tuman

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION SPECIAL MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 6:31 p.m.

Members present: MacDonald, Yan, Micik, Perteet, Tuman

Klein and Leavitt were absent

Staff present: Whitney Barazoto, Suzanne Doran, Kellie Johnson, Ana Lara-Franco and Simon Russell.

City Attorney Staff: Trish Shafie.

2. Staff and Commission Announcements.

MacDonald announced the appointment of Commissioner Leavitt. Leavitt was appointed by the City Attorney. Her term ends January 2024.

3. Open Forum.

There were no public speakers.

ACTION ITEMS

4. *In the Matter of Thomas Espinosa (Case No. 16-14)*

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DRAFT

Whitney Barazoto, Executive Director, explained that this item was continued from the Commission's June 7 and June 30, 2021, meetings in which penalties were discussed following an administrative hearing on April 27, 2021. Ms. Barazoto provided an overview of the procedural history of the matter of Thomas Espinosa, including notice requirements and procedural obligations of staff and the Commission, as well as a history of communications with Espinosa. Ms. Barazoto also provided copies, included with the agenda, of a supplemental report from the Hearing Officer and a memorandum from the City Attorney's office providing legal advice to the Commission as to its options in response to Espinosa's claims of a mental impairment.

Commissioners discussed and asked questions.

MacDonald asked if the respondent, Thomas Espinosa, was in attendance at this meeting. He was not.

Commissioners discussed penalties for each count.

At 10:52 p.m. MacDonald called for public speakers.

There were no public speakers.

MacDonald moved and Tuman seconded to adopt the findings of fact from the hearing officer's recommendation.

Ayes: MacDonald, Yan, Klein, Micik and Perteet.

Noes: None

Absent: Klein and Leavitt

Vote: Passed 5-0

On Counts 30-33, the Commission reached different conclusions from the Hearing Officer.

Perteet moved and MacDonald seconded to find that the Respondent did violate the conflict of interest on count 30, conflict of interest on count 31, conflict to interest on count 32, and conflict of interest on count 33.

Ayes: MacDonald, Yan, Klein, Micik and Perteet

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Noes: None

Absent: Klein and Leavitt

Vote: Passed 5-0

Perteet moved, and Tuman seconded to adopt each of the following amounts for each respective count, imposing a total penalty total of \$309,600:

Count	Proposed Amount
1	5,000.00
2	5,000.00
3	18,000.00
4	5,000.00
5	5,000.00
6	5,000.00
7	18,000.00
8	5,000.00
9	5,000.00
10	5,000.00
11	5,000.00
12	5,000.00
13	5,000.00
14	5,000.00
15	5,000.00
16	5,000.00
17	5,000.00
18	5,000.00
19	5,000.00
20	5,000.00
21	5,000.00
22	5,000.00
23	5,000.00
24	5,000.00
25	5,000.00
26	5,000.00
27	5,000.00
28	29,100.00

CITY OF OAKLAND
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DRAFT

29	5,000.00
30	7,500.00
31	7,500.00
32	7,500.00
33	7,500.00
34	8,625.00
35	8,625.00
36	8,625.00
37	8,625.00
38	5,000.00
39	5,000.00
40	5,000.00
41	5,000.00
42	5,000.00
43	5,000.00
44	5,000.00
45	5,000.00
46	5,000.00
47	5,000.00

Ayes: MacDonald, Yan, Klein, Micik and Perteet.

Noes: None

Absent: Klein and Leavitt

Vote: Passed 5-0

The meeting adjourned at 11:16 p.m.

Item #6 - Stipulation and Case Summary

1 Kellie F. Johnson
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7 Petitioner

8 BEFORE THE CITY OF OAKLAND

9 PUBLIC ETHICS COMMISSION

10 In the Matter of

) Case No.: 19-06

) **STIPULATION AND EXHIBIT**

11
12 ANNIE CAMPBELL WASHINGTON FOR
13 OAKLAND CITY COUNCIL 2018

) **Date:** 10/20/2021

14 Respondent.

) **Place:** 1 Ogawa Plaza, Hearing Rm. 1
Oakland, CA 94612

15
16
17 **STIPULATION**

18 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and Respondent
19 Annie Campbell Washington, agree as follows:

- 20
21 1. This Stipulation will be submitted for consideration by the City of Oakland Public Ethics
22 Commission (Commission) at its next regularly scheduled meeting;
- 23 2. This Stipulation resolves all factual and legal issues raised in this matter and represents the
24 final resolution to this matter without the necessity of holding an administrative hearing to
25 determine the liability of Respondents;
- 26 3. Respondent knowingly and voluntarily waive all procedural rights under the Oakland City
27 Charter, Oakland Municipal Code, and Public Ethics Commission Complaint Procedures,
28 including, but not limited to, the right to personally appear at an administrative hearing

Item #6 - Stipulation and Case Summary

1 held in this matter, to be represented by an attorney at his own expense, to confront all
2 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to
3 have the matter judicially reviewed;

4 4. This Stipulation is not binding on any other law enforcement agency, and does not preclude
5 the Commission or its staff from referring the matter to, cooperating with, or assisting any
6 other government agency with regard to this matter, or any other matter related to it;

7 5. In 2018, Respondent, a candidate for Oakland City Council, violated the Oakland Campaign
8 Reform Act by failing to file a Semi-Annual Campaign Statement for the period of July 1,
9 2018 through December 31, 2018, as required by section 3.12.340 (A) of the Oakland
10 Campaign Reform Act.

11 6. The attached exhibit (Exhibit) is a true and accurate summary of the facts in this matter and
12 is incorporated by reference into this Stipulation;

13 7. The Commission will impose upon Respondent a total administrative penalty in the amount
14 of \$2,171 (\$1,000 penalty, +\$1,171 late fees = \$2,171);

15 8. A cashier's check from Respondent, in said amount, made payable to the "City of Oakland,"
16 is submitted with this Stipulation as full payment of the administrative penalty, to be held
17 by the Commission until the Commission issues its decision and order regarding this matter;

18 9. In the event the Commission refuses to accept this Stipulation, it shall become null and
19 void, and within fifteen business days after the Commission meeting at which the
20 Stipulation is rejected, all payments tendered by Respondents in connection with this
21 Stipulation will be reimbursed to them; and

22 10. In the event the Commission rejects the Stipulation and a full evidentiary hearing before the
23 Commission becomes necessary, neither any member of the Commission, nor the Executive
24 Director, shall be disqualified because of prior consideration of this Stipulation.

Item #6 - Stipulation and Case Summary

1 Dated: _____

2 _____
Kellie F. Johnson, Enforcement Chief of the City of Oakland
Public Ethics Commission, Petitioner

3
4 Dated: _____

5 _____
Annie Campbell Washington, Respondent

6 7 8 9 10 **DECISION AND ORDER**

11 The foregoing Stipulation of the parties to “In the Matter of Annie Campbell Washington for
12 Oakland City Council 2018,” PEC Case No. 19-06, including all attached exhibits, is hereby accepted
13 as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon
14 execution below by the Chair.

15
16
17 Dated: _____

18 _____
Michael MacDonald, Chair
City of Oakland Public Ethics Commission

Item #6 - Stipulation and Case Summary

Item #6 - Stipulation and Case Summary
EXHIBIT
In the Matter of Annie Campbell-Washington
PEC 19-06 Case Summary

INTRODUCTION

On January 3, 2019, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer Suzanne Doran emailed to former City Council Member Annie Campbell Washington the first warning “Notice of Non-filer Non-compliance” for failure to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018. On May 9, 2019, for Annie Campbell Washington for Oakland City Council 2018, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. After investigating the Respondent’s campaign filings, PEC staff determined that Campbell-Washington and her campaign committee, despite multiple warnings, did not electronically file the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA). Staff recommends that the Commission approve a stipulation that Annie Campbell Washington for Oakland City Council 2018 violated the Oakland Campaign Reform Act for a penalty of \$1,000 on Count 1, and \$1,171 in late fees, totaling \$2,171 in fines and penalties.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

O.M.C. § 3.12.340 (A) OCRA requires that any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission.

TIMELINE OF EVENTS:

1/03/2019	PEC Filing Officer emailed a warning notice of Non-compliance to the Respondent.
2/19/2019	PEC Filing Officer sent a formal letter and notice of Non-compliance to the Respondent.
3/05/2019	PEC Filing Officer contacted the Respondent and spoke to her by telephone regarding the Non-compliance.

Item #6 - Stipulation and Case Summary

EXHIBIT

In the Matter of Annie Campbell-Washington PEC 19-06 Case Summary

1 3/27/2019 PEC Filing Officer sent a formal letter and notice of Non-compliance to the
2 Respondent.

3 4/01/2019 PEC Filing Officer emailed a notice of Non-compliance to the Respondent.

4 5/09/2019 PEC Enforcement notified Respondent via formal letter that a Non-compliance report
5 was submitted for formal Enforcement.

6 6/06/2019 PEC Enforcement via formal letter offered to the Respondent an early resolution
7 settlement offer.

8 9 **FACTUAL SUMMARY AND ANALYSIS:**

10 In 2018, the Respondent was a candidate for Oakland City Council District 4 and established a
11 committee for “Annie Campbell Washington for Oakland City Council 2018.” The Respondent had
12 been an elected member of the Oakland City Council and had previously filed required campaign
13 forms with the City since 2015. In 2018, the Respondent abruptly ended her campaign for City
14 Council. After ending her campaign, she failed to file a Semi-Annual Campaign Statement for the
15 period of July 1, 2018, through December 31, 2018. The PEC Filing Officer made numerous attempts to
16 gain the Respondent’s compliance, including warning the Respondent that she was subject to daily
17 late filer fees for failing to timely file her Semi-Annual Campaign Statement. Despite PEC staff best
18 efforts to gain the Respondent’s compliance, she did not submit the required campaign filing.

19
20 In May 2019, the Filing Officer referred the matter pursuant to PEC Enforcement. Enforcement
21 notified the Respondent by formal letter that a Non-compliance complaint was submitted for formal
22 investigation. Shortly thereafter, on June 6, 2019, PEC staff proposed that the Respondent agree to
23 an early resolution of her matter with a small fine. The Respondent did not respond to Enforcement.

24 **VIOLATION(S):**

25 Annie Campbell Washington violated the following Oakland Municipal Code sections:

26 **Count 1: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter**

Item #6 - Stipulation and Case Summary

EXHIBIT

In the Matter of Annie Campbell-Washington PEC 19-06 Case Summary

1 On or about February 1, 2019, Respondent, Annie Campbell Washington, violated O.M.C. 3.12.340 (A)
2 of the Oakland Campaign Reform Act when she failed to file a Semi-Annual Campaign Statement for
3 the period of July 1, 2018 through December 31, 2018.

PENALTIES:

4
5
6 Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative
7 penalties of up to \$5,000, or three times the amount not properly reported (whichever is greater),
8 per violation of the Oakland Campaign Reform Act. The Base Level penalty for this violation is \$1,000
9 plus 1% of all financial activity not timely reported.

10
11 The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation
12 when deciding on a penalty, including, but not limited to, the following factors:

- 13 1. The seriousness of the violation, including, but not limited to, the extent of the public impact
14 or harm;
- 15 2. The presence or absence of any intention to conceal, deceive, or mislead;
- 16 3. Whether the violation was deliberate, negligent, or inadvertent;
- 17 4. Whether the violation was isolated or part of a pattern;
- 18 5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of
19 the rule or requirement at issue;
- 20 6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure
21 the violation (either independently or after contact from the PEC);
- 22 7. The degree to which the respondent cooperated with the PEC's enforcement activity in a
23 timely manner;
- 24 8. The relative experience of the respondent.

25
26 The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based
27 on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a
28

Item #6 - Stipulation and Case Summary

EXHIBIT

In the Matter of Annie Campbell-Washington PEC 19-06 Case Summary

1 sampling of factors that could be considered. There is no requirement or intention that each factor –
2 or any specific number of factors - be present in an enforcement action when determining a penalty.
3 As such, the ability or inability to prove or disprove any factor or group of factors shall in no way
4 restrict the PEC's power to bring an enforcement action or impose a penalty

Aggravating Factors

5
6
7 Here, the circumstances of the Respondent's conduct establish aggravating factors that should
8 increase the severity of the penalty:

- 9 1. The Respondent was an experienced City Council Member.
- 10 2. The Respondent has demonstrated knowledge of the rule and was aware of the filing
11 obligations.

Mitigating Factors

- 14 1. Respondent submitted the outstanding campaign filing forms.

PROPOSED RESOLUTION

15
16
17 Staff recommends the Commission approve the Stipulation and impose a \$1,000 penalty for a
18 violation of OCRA plus \$1,171 in late fees, for a total of \$2,171.



Michael MacDonald, -Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: October 20, 2021
RE: Case Analysis for PEC Complaint No(s). 17-18 & 18-17; In the matter of East Bay Small Business Council committee, Darrel Carey, and Treasurer Kiarra Carey and Assistant Treasurer Aliyah Carey, prepared for the November 1, 2021, Public Ethics Commission Meeting

BACKGROUND

On August 28, 2017, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer Suzanne Doran emailed to Darrel Carey, the principal officer of East Bay Small Business Council Committee, the first warning “Notice of Non-filer Non-compliance” for failure to file a Semi-Annual Campaign Statement, a Pre-election Report, and an incomplete Termination form between the years 2015-2017. On March 15, 2018, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. After investigating the Respondent’s campaign filings, PEC staff determined that the East Bay Small Business Council committee, Darrel Carey, his Treasurer Kiarra Carey and Assistant Treasurer Aliyah Carey, despite multiple warnings, did not electronically file the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA).

After close consideration of all the facts and the law, and the reasons explained in this memorandum, Staff finds probable cause that a violation occurred and recommends that the Commission schedule the matter for a formal hearing.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

O.M.C. § 3.12.340 (A) OCRA requires that any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission.

O.M.C. 3.12.270 (C) reads as follows:

Administrative Penalties. Any person who violates any provision of this Act, who causes any other person to violate any provision of this Act, or who aids and abets any other person in the violation of any provision of this Act, shall be liable in an administrative proceeding before the Public Ethics Commission held pursuant to the Public Ethics Commission's Complaint Procedures. The Public Ethics Commission may impose administrative penalties in an amount up to five thousand dollars (\$5,000.00) per violation, or up to three (3) times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. In addition to administrative penalties, the Public Ethics Commission may issue warnings or require other remedial measures.

1. If two (2) or more persons are responsible for any violation, they shall be jointly and severally liable.

TIMELINE OF EVENTS:

08/25/2017	PEC Filing Officer spoke with the Respondent in person and gave a warning notice of Non-filer Non-compliance to the Respondent.
08/28/2017	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
09/11/2017	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
09/13/2017	PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
09/15/2017	PEC Filing Officer spoke with the Respondent and notice of Non-filer Non-compliance to the Respondent.
01/05/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
02/06/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
02/13/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
02/15/2018	PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
02/16/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent and emailed notice of Non-filer Non-compliance.

- 02/26/2018 PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
- 07/24/19 PEC Enforcement via formal letter notified the Respondent that the matter was referred for pursuant to Enforcement Procedure and offered to the Respondent an early resolution settlement offer.
- 10/30/2020 PEC Enforcement notified Respondent and his Treasurer via formal letter in the absence of a response the matter will be referred to the Commission pursuant to formal Enforcement Procedures.

FACTUAL SUMMARY AND ANALYSIS:

Between 2015-2018, the Respondent was the principal officer for the East Bay Small Business Council Committee. Around 2018, the Committee stopped its election activities. After the Committee ceased activities it failed to file a Semi-Annual campaign finance statement(s) for the following periods:

1. June 11, 2015 through December 31, 2015;
2. January 11, 2016 through June 30, 2016;
3. October 23, 2016 through December 31, 2016;
4. January 11, 2017 through June 30, 2017; and

In addition, the Committee failed to file a Pre-election campaign finance statements between the following dates:

1. July 1, 2016 through September 24, 2016;
2. September 25, 2016 through October 22, 2016.

The Committee also failed to properly file a Termination 410 form on or between July 1, 2017 and September 13, 2017. Despite PEC best efforts to gain the Respondent's compliance, neither the Respondent candidate nor his Treasurer Kiarra Carey or Assistant Treasurer Aliyah Carey submitted the required campaign filing.

On March 15, 2018, the Filing Officer referred the matter pursuant to PEC Enforcement Procedures. Enforcement notified the Respondent, his Treasurer and Assistant Treasurer by formal letter that a Non-filer Non-compliance complaint was submitted for formal investigation. Neither the Respondent nor his Treasurer or Assistant Treasurer responded to Enforcement letters.¹

Contact Efforts

Pursuant to California State and Local candidacy filing requirements, it is the responsibility/obligation of a candidate for State or Local Office to provide correct contact information including a current mailing address and any available electronic mail address at which the candidate could be reached or receive correspondence relating to the candidate's campaign.

¹ Copy of front page of the Early Resolution Letter sent to the Respondent. The Respondent, his Treasurer nor Assistant Treasurer provided an update of an address or telephone number where they could be contacted.

Item #7 - Staff Report

Despite the candidate's requirement to provide current contact information, the PEC Staff used its best efforts to locate any and all alternative addresses and email addresses for the Respondent. The PEC investigator conducted a locate search for the Respondent's address and found that the Respondent moved from the original address that was provided on his required Committee filings. The Staff mailed a certified notice of Non-filer letter to the address identified by the locate search. The Staff mailed several email notices to the Respondent but received no response. Staff confirmed that the email address that the Filing Officer used to communicate with the Respondent on prior occasions, was the same email address that Staff used to forward copies of the Non-filer Non-compliance notice.

Staff was able to contact Treasurer Kiarra Carey by telephone. She reported that she had not had contact with the Respondent, her uncle, for some time and did not know how to contact him. She informed the PEC investigator that she believed she was going to be evicted so she refused to confirm her current address and terminated the telephone call. Staff has made several attempts to reach Kiarra Carey by telephone, but have not received an answer.

Staff attempted to contact Assistant Treasurer Aliyah Carey at her last known address and telephone number, without success. The PEC investigator conducted a locate search for the Respondent's address and the search did not yield a current location for Aliyah Carey.

VIOLATION(S):

The Respondents, including the East Bay Small Business Council Committee, Darrel Carey, Treasurer Kiarra Carey, and Assistant Treasurer Aliyah Carey violated the following Oakland Municipal Code:

Count 1: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about February 1, 2019, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Semi-Annual Campaign Statement for the period of June 1, 2015- December 31, 2015.

Count 2: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about August 1, 2016, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Semi-Annual Campaign Statement for the period of January 1, 2016- June 30, 2016.

Count 3: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about September 29, 2016, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a First Pre-Election Report for the period of July 1, 2016- September 24, 2016.

Count 4: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about October 27, 2016, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Second Pre-Election Report for the period of September 25, 2016- October 22, 2016.

Count 5: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about January 31, 2017, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Semi-Annual Campaign Statement for the period of October 23, 2016-December 31, 2016.

Count 6: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about July 31, 2017, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Semi-Annual Campaign Statement for the period of January 1, 2017-June 30, 2017.

Count 7: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about January 31, 2018, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Semi-Annual Campaign Statement or Termination.

PENALTIES:

The Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported (whichever is greater), per violation of the Oakland Campaign Reform Act. The Base Level penalty for this violation is \$1,000 plus 1% of all financial activity not timely reported.

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor –

or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty.

Aggravating Factors

1. After multiple warnings, neither the Respondent candidate, his Treasurer, or his Assistant Treasurer submitted the outstanding campaign reports.

Mitigating Factors

1. Neither Respondent candidate, his Treasurer, or Assistant Treasurer have prior Public Ethics Commission Violations.

RECOMMENDATION:

The information in this memorandum establishes probable cause that a violation occurred; therefore, PEC Staff recommends the Commission schedule the matter for a formal hearing before the full Commission.

Item #8 - Staff Report



Michael MacDonald, -Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: October 6, 2021
RE: Case Analysis for PEC Complaint No. 19-13; In the matter of Matt Hummel 4D4 2018 Committee, Matt Hummel (Candidate) and Donna Smithey (Treasurer), prepared for the November 1, 2021, Public Ethics Commission Meeting

BACKGROUND:

On September 27, 2018, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer, Suzanne Doran called the Respondent candidate Matt Hummel to warn that he would receive a “Notice of Non-filer Non-compliance” for his Matt Hummel 4D4 2018, committee’s failure to file a Semi-Annual Campaign Statement, failure to file an accurate Campaign Statement and Failure to file Termination. On November 11, 2018, Staff emailed the first in a series of communications that the Respondents, including the committee, candidate Matt Hummel, and Treasurer Donna Smithey, were in violation of the Campaign Reform Act. In April 2019, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. After investigating the Respondent’s campaign filings, PEC staff determined that the Respondents, despite multiple warnings and offers of assistance, did not electronically file the required campaign filings pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA).

After close consideration of all the facts and the law, and the reasons explained in this memorandum, Staff finds probable cause that a violation occurred and recommends that the Commission schedule this matter for formal hearing before the full Commission.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

O.M.C. § 3.12.340 (A) OCRA requires that any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission.

O.M.C. § 3.12.320 OCRA provides:

A. *Liability*: In addition to a committee itself, persons who qualify under the California Political Reform Act as principal officers of the committee are jointly and severally liable for violations by the committee. For committees controlled by a candidate, the candidate and the committee's treasurers are deemed to be principal officers.

B. In addition to a person whose conduct is required or prohibited under this Act, an agent acting on behalf of that person is jointly and severally liable for a violation that arises out of the agent's actions. There is a rebuttable presumption that the following persons are agents of a committee:

1. A current or former officer of the committee;
2. An employee of the committee;
3. A person who has received compensation or reimbursement from the committee; and
4. A person who holds or has held a position within the committee organization that reasonably appears to be able to authorize expenditures for committee activities.

C. This Section does not limit potential liability for persons who cause another person to violate this Act or who aids and abets another person in a violation.

TIMELINE OF EVENTS:

9/27/2018	PEC Filing Officer contacted the Respondent with a warning notice of Non-filer Non-compliance.
10/02/2018	PEC Filing Officer telephoned the Respondent and gave him notice of Non-filer Non-compliance.
10/26/2018	PEC Filing Officer telephoned the Respondent regarding his Non-filer Non-compliance status.
11/07/2018	PEC Filing Officer emailed a notice of Non-filer Non-compliance to the Respondent.
2/19/2019	PEC Filing Officer emailed a notice of Non-filer Non-compliance to the Respondent.
2/21/2019	PEC Filing Officer telephoned the Respondent regarding his Non-filer Non-compliance status.

Item #8 - Staff Report

- 2/27/2019 PEC Filing Officer emailed an amended Non-filer Non-compliance letter to Respondent.
- 3/04/2019 PEC Filing Officer emailed letter to Respondent detailing potential fines.
- 3/05/2019 PEC Filing Officer telephoned the Respondent's Treasurer, Donna Smithey.
- 3/27/2019 PEC Filing Officer emailed a 10-day notice to the Respondent that the matter of the Non-filer Non-compliance report would be submitted for formal Enforcement Procedures.
- 4/19/2019 Respondent contacted the Filing Officer and acknowledge receipt of the Non-filer Non-compliance notice.
- 4/23/2019 PEC Filing Officer spoke with Treasurer, Donna Smithey regarding the amendments that were required in the Respondent's filings.
- 4/25/2019 PEC Filing Officer contacted the Respondent to reiterate that the filings must be amended and the remining forms must be submitted electronically.
- 4/30/2019 PEC Filing Officer emailed the Respondent expressing continued concern about his non-responsiveness.
- 5/09/2019 PEC Filing Officer provided technical assistance to the Respondent and notified him that the campaign could not Terminate with a remaining balance.
- 7/24/2019 PEC Enforcement via formal letter offered to the Respondent an early resolution settlement offer.
- 9/17/2019 PEC Enforcement notified Respondent and his Treasurer Donna Smithy via formal engagement letter and warned that in the absence of a response the matter will be referred to the Commission pursuant to formal Enforcement Procedures. Mailed certified mail.
- 11/16/19 PEC received a signed copy of the certificate of receipt from the USPS verifying the letter was received and signed confirmation.

FACTUAL SUMMARY AND ANALYSIS:

In 2018, Matt Hummel was a candidate for Oakland City Council District 4 and established a committee for "Matt Hummel 4D4 2018." Donna Smithey was the campaign Treasurer. The Hummel had run a previous campaign for City Council in 2016 and Smithey was also the Treasurer for that campaign. In 2018, the Respondent candidate's campaign for City Council was unsuccessful. After the conclusion of the election season, the committee, Hummel, and Smithey failed to file the following:

Item #8 - Staff Report

1. Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018;
2. (Accurate) Campaign Statement for the period of January 1, 2019 through June 30, 2019; and
3. Termination Form

The PEC Filing Officer made multiple attempts to gain the Respondent's compliance, including imposing daily late fees (\$280). Despite PEC best efforts to gain the Respondent's compliance, neither the candidate nor his campaign treasurer submitted the required campaign filings.

In July 2019, the Filing Officer referred the matter pursuant to PEC Enforcement Procedures. Enforcement notified the Respondent and Treasurer Donna Smithey by formal letter that a Non-filer Non-compliance complaint was submitted for formal investigation. The Respondent candidate did not respond to Enforcement.

Contact Efforts

Pursuant to California State and Local candidacy filing requirements, it is the responsibility/obligation of a candidate for State or Local Office to provide correct contact information including a current mailing address and any available electronic mail address at which the candidate could be reached or receive correspondence relating to the candidate's campaign.

Despite the candidate's requirement to provide current contact information, the PEC Staff used its best efforts to locate any and all alternative addresses and email addresses for the Respondent. The PEC investigator conducted a locate search for the Respondent's address and confirmed that the address the PEC used to mail the Non-filer notice was the same as that associated with the Respondent. Staff also forwarded an additional copy of the Non-filer Non-compliance notice, certified mail. The USPS returned proof of delivery and a signed copy of the certification card. The PEC sent several email notices and the Filing Officer spoke to the Respondent and his Treasurer multiple times in an attempt to assist Hummel in submitting his required filings. The Respondent acknowledged to Staff that he had received the Non-filer notices. He failed to file the outstanding forms or amend the incorrect forms he had filed with the PEC.

In September 2021, Treasurer Donna Smithey responded to Staff and affirmed that she received the PEC early resolution letter.

VIOLATION(S):

The Respondent and his Campaign Treasurer violated the following Oakland Municipal Code sections:

Count 1: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about February 1, 2019, Respondent, Matt Hummel and his Campaign Treasurer, Donna Smithey, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he/she failed to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018.

Count 2: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about August 1, 2019, Respondent, Matt Hummel and his Campaign Treasurer, Donna Smithey I, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he/she failed to file an accurate Annual Campaign Statement for the period of 01/01/2019 through June 30, 2019.

Count 3: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

Around September 30, 2019, Respondent, Matt Hummel and his Campaign Treasurer, Donna Smithey, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he/she failed to file a campaign Termination form.

PENALTIES:

Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported (whichever is greater), per violation of the Oakland Campaign Reform Act. The Base Level penalty for this violation is \$1,000 plus 1% of all financial activity not timely reported.

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty

Aggravating Factors

Here, the circumstances of the Respondents' conduct establish aggravating factors that should increase the severity of the penalty:

Item #8 - Staff Report

1. The Respondent candidate and his Campaign Treasurer had experience with a campaign for elected office.
2. The Respondent candidate and his Campaign Treasurer has demonstrated knowledge of the rule and was aware of the filing obligations.

Mitigating Factors

1. Neither Respondent candidate nor his Treasurer have prior Public Ethics Commission Violations.

RECOMMENDATION:

The information in this memorandum establishes probable cause that a violation occurred; therefore, PEC Staff recommends that the Commission schedule this matter for formal hearing before the full Commission.

Item #10 - Disclosure Report



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon J. Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: October 22, 2021
RE: Disclosure and Engagement Report for November 1, 2021 meeting

This memorandum provides a summary of major accomplishments in the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program activities since the last monthly meeting. Commission staff disclosure activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting data analysis for PEC projects and programs as needed. Engagement activities include training and resources provided to the regulated community, as well as general outreach to Oakland residents to raise awareness of the Commission's role and services and to provide opportunities for dialogue between the Commission and community members.

Filing Officer – Compliance

Campaign Finance Disclosure – In non-election years, campaign committees must file two semi-annual campaign statements ([FPPC Form 460](#)). August 2 was the deadline for semi-annual campaign statements covering the period from January 1 through July 31, 2021. All active campaign committees registered with the City of Oakland must file. Staff outreach efforts resulted in three delinquent filers coming into compliance without need for enforcement action. Commission staff assessed \$4,001 in late fees against 16 delinquent filers in 2021. After completing surface review, staff required amendments for 12 statements. The most frequent issues requiring amendments were statements that omitted to list a candidate's other controlled committees and statements with incorrect reporting periods resulting in incomplete activity for the reporting period. Commission staff will highlight these issues in the next advisory to campaign filers.

Campaign statements are available to view and download at the PEC's [Public Portal for Campaign Finance Disclosure](#).

Lobbyist Registration and Reporting Program – The Oakland Lobbyist Registration Act (LRA) requires any person that qualifies as a lobbyist to register annually with the Public Ethics Commission before conducting any lobbying activity. It also requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. To date, there are 66 individuals registered to lobby the City of Oakland representing 111 clients. An up-to-date list of registered lobbyists with links to their client lists is available at the PEC's [Lobbyist Dashboard and Data](#) webpage.

Item #10 - Disclosure Report

All registered lobbyists have filed their second quarter reports. Lobbyists reported 69 clients with reportable activity (contacts with public officials to influence government decisions) and client payments totaling \$339,146 during the second quarter. No political contributions solicited by lobbyists were reported. The next reporting deadline is October 30 for activity in the third quarter of 2021. To view lobbyist activity reports, visit the PEC's [Lobbyist Dashboard and Data](#) webpage.

Behested Payments (FPPC Form 803) – California law requires Oakland elected officials to file an FPPC Form 803 report any time they fundraise or otherwise solicit payments for a legislative, governmental, or charitable purpose that total \$5,000 or more in a calendar year from a single source (one individual or organization) to be given to another individual or organization.

To date, 33 behested payments totaling \$4,859,000 have been reported for 2021. Payments supported the Assist Hub Fund, the Oakland Closing the Digital Divide Fund, the Vietnamese American Community Center of the East Bay, Teachers Rooted in Oakland, the City of Oakland Fund, the Reimagining Public Safety Task Force, the Chinatown Ambassadors program, and youth football.

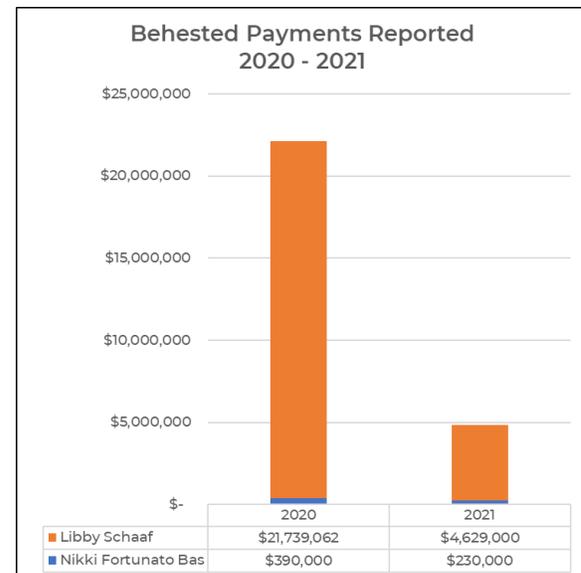
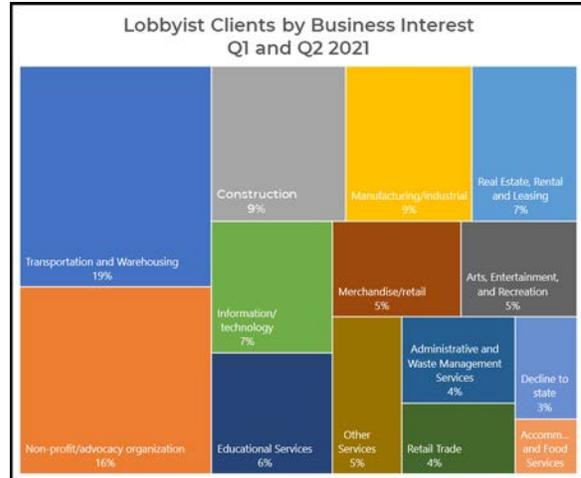
To learn more about behested payment rules and view an interactive chart of payments visit, the PEC's [behested payments webpage](#). To access data from Oakland behested payment reports, visit Oakland's [open data portal](#).

Advice and Engagement

Advice and Technical Assistance – In September and October, Commission staff responded to 32 requests for information, advice or assistance regarding campaign finance, ethics, lobbyist registration or public records issues, for a total of 217 requests fulfilled in 2021 to date.

New Employee Orientation – Staff continues to make presentations at the City's monthly New Employee Orientation (NEO) providing employees with an introduction to the PEC and overview of the City's Government Ethics Act. Since the PEC's last monthly meeting, Staff has presented at two New Employee Orientations (September 15 and October 20), training a total of 73 new employees on GEA provisions.

Supervisory Academy – On September 23, staff facilitated an ethics discussion for the City's quarterly Supervisory Academy. The discussions are intended to allow for more meaningful dialogue concerning ethical values in decision making with a focus on identifying ethical dilemmas that City staff face in



Item #10 - Disclosure Report

carrying out their daily duties. Staff provided an overview of the Government Ethics Act including conflicts of interests, gift restrictions, and post-employment restrictions.

Form 700 Filer Training – On September 28, PEC staff conducted a live Government Ethics Training for Form 700 Filers via Zoom. The training was hosted by the Department of Human Resources (HR) and served as an alternative for employees that have not completed the PEC’s online training. A total of 20 employees attended the training.

Sunshine Open Meetings Training – On October 1, Staff began the roll-out of the PEC’s new Sunshine training covering open meetings. The on-demand training was emailed to all City staff board liaisons to inform them of the new training and to solicit feedback before the training is made available to all City board/commission members.

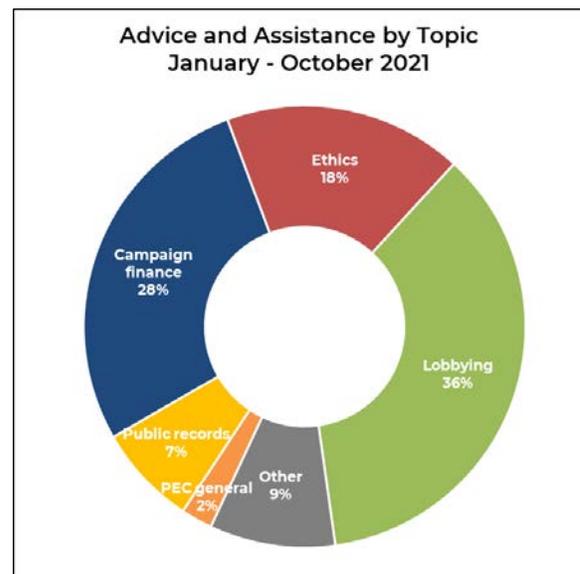
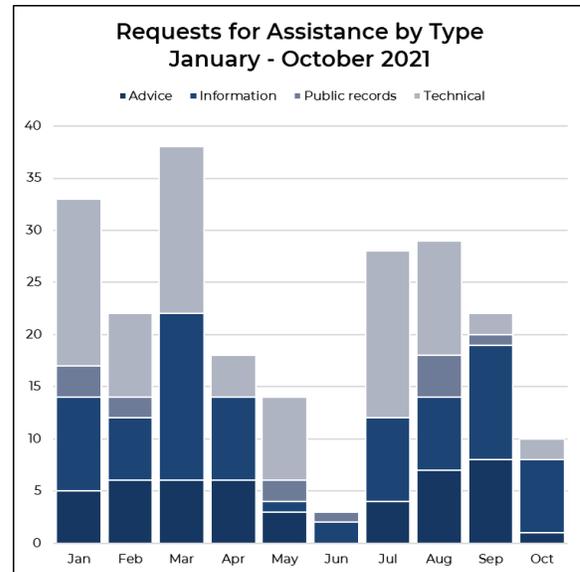
The on-demand training can be accessed on the PEC’s website. Topics covered include, what constitutes a meeting, agenda publishing and noticing requirements, open meeting rules, and enforcement. The recording is available on demand and will be used as an online resource for City staff and members of local bodies.

Performance

Staff revised the [Enforcement Program webpage](#) and added three new pages of interactive charts and tables displaying PEC enforcement and mediation outcomes to the Commission website this month. The interactive tables allow website users to search, sort and download summaries of [closed enforcement cases](#) and [completed mediations](#). In addition, staff published a [Case Results webpage](#) to provide an up-to-date and easy to access overview of enforcement activities.

General Outreach

Social Media – Communications in September and October focused on the Commission’s recent enforcement actions, publicizing disclosure tools and data, and Commissioner recruitment.



Item #11 - Enforcement Report



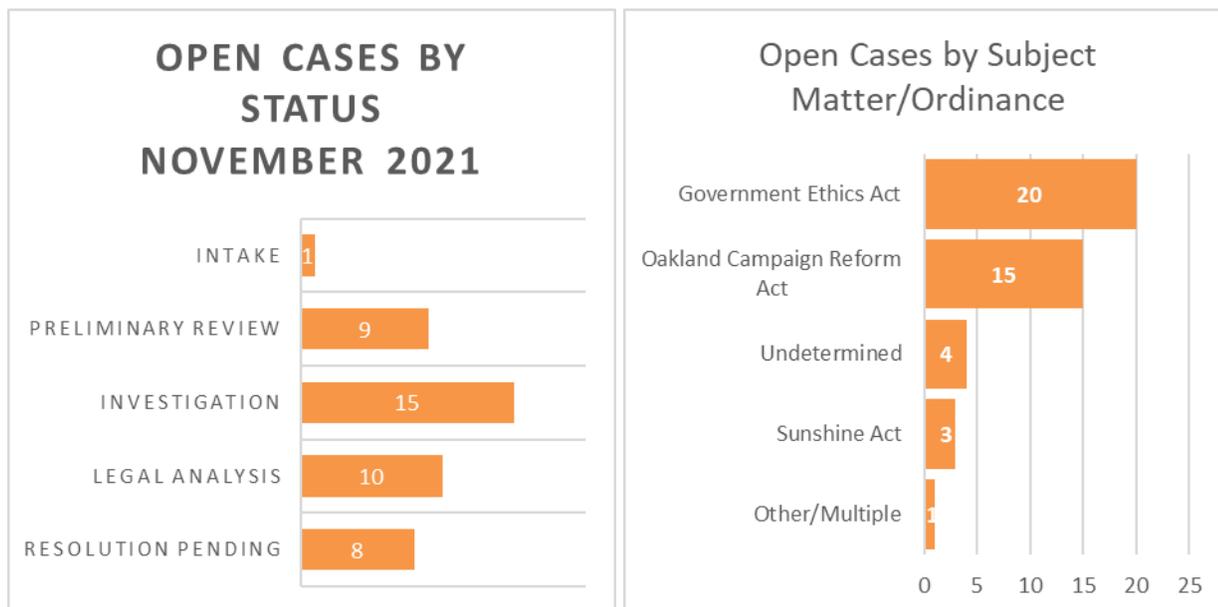
Michael McDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Ryan Micik
Arvon Perteet
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: October 20, 2021
RE: Enforcement Program Update for the November 1, 2021, PEC Meeting

Current Enforcement Activities:

Since the last Enforcement Program Update on September 2, 2021, Commission staff received one new complaint. This brings the total Enforcement caseload to 43 open cases: 10 matter(s) in the intake or preliminary review stage, 15 matters under active investigation, 10 matters under post-investigation analysis, and 8 matters in settlement negotiations or awaiting an administrative hearing.



Since the last Enforcement Program Update in September 2021, the following status change(s) have occurred:

1. **Non-Filer Cases Referred by PEC Filing Officer for the 2018 Election.** The following case(s) were referred to the Enforcement unit by the Public Ethics Commission filing officer for campaign statements required, but never filed, by campaign committees pursuant to the California Political Reform Act and the Oakland Campaign Reform Act during the 2018 election cycle and years leading to it. At the September 2021 Commission meeting, Staff provided a report for each committee showing probable cause that one or more violations exist in the following cases and requested approval from the Commission to schedule the cases for an administrative hearing in each case (See Agenda Items).
 - a. PEC Case No. 17-18 and 18-17; In the Matter of Darrel Carey, Kiarra Care, Aliyah Carey and the East Bay Small Business Council Committee
 - b. PEC Case No. 19-13; In the Matter of Matt Hummel 4D4 2018, and Donna Smithey

2. ***In the Matter of Annie Campbell Washington for Oakland City Council 2018 (Case No. 19-06).*** On January 3, 2019, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer emailed to former City Council Member Annie Campbell Washington the first warning “Notice of Non-filer Non-compliance” for failure to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018 for her committee Annie Campbell Washington for Oakland City Council 2018. After receiving no reply from the Respondent, on May 9, 2019, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. Enforcement opened an investigation into the Respondent’s campaign filings, PEC staff determined that Campbell-Washington and her campaign committee, despite multiple warnings, did not electronically file the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA). Staff recommends that the Commission approve a stipulation that Annie Campbell Washington for Oakland City Council 2018 violated the Oakland Campaign Reform Act for a penalty of \$1,000 on Count 1, and \$1,171 in late fees, totaling \$2,171 in fines and penalties. (See Agenda Items)

Item #12 - Executive Director's Report



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: October 22, 2021
RE: Executive Director's Report for the November 1, 2021, PEC Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities this past month that are not otherwise covered by other program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2020-21 for each program area. (Commission Programs and Priorities attached)

PEC Staffing

Suzanne Doran (Ethics Analyst II) has been promoted to the position of Ethics Analyst III (Supervisor), effective October 16, 2021. The Analyst III position was created last year in order to better reflect the duties of the lead analyst position as part of the front-office team that have become necessary as a result of the PEC taking on campaign and lobbyist filing officer duties from the City Clerk's office and the concurrent push for more complicated technology projects to collect and illuminate ethics-related data. Congratulations to Ms. Doran for this well-deserved promotion as a leader of the education, outreach, and disclosure team!

Commissioner Recruitment

The Commission is currently recruiting for a new commissioner to fill the seat currently held by Commissioner Avi Klein who will be termed out on January 21, 2022. The new, 3-year term begins January 22, 2022 and ends January 21, 2025. PEC staff has been spreading the word via social media (Twitter, Facebook, and Nextdoor), email distribution to our network of followers and community group contacts, and has more recently purchased ads on Oaklandside to generate interest.

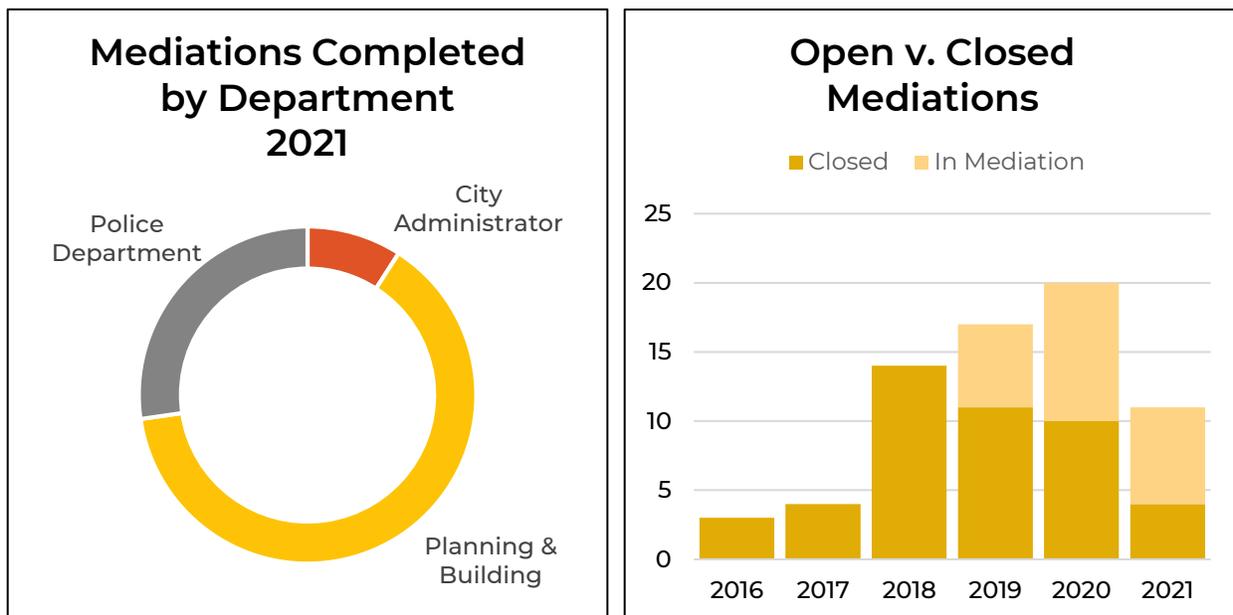
Public Meetings

On September 16, 2021, the Governor signed AB 361 which amended provisions of the Brown Act to allow local legislative bodies to continue to meet by teleconference so long as the body adopts certain findings in compliance with the new law. The Commission's resolution, to be approved at a special meeting on November 1, will allow the PEC to continue to meet via teleconference at least until City Hall reopens to the public, potentially on January 3, 2022. In addition, our City KTOP video-recording team also is working to test a hybrid model of hosting meetings in City hearing rooms combined with Zoom capability for remote-access to those meetings. PEC staff will continue to keep Commissioners updated as to any changes being made to our meeting format and location.

Mediations

Pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department's control. The PEC has 23 open mediations. Following a mediation, Commission staff provides a written summary of the mediation to the Commission and can also make recommendations for further Commission action. The following mediation was conducted by staff and subsequently closed this past month (reports attached):

1. In the Matter of the Oakland Police Department (Case No. M2019-07); (Mediation Summary attached)



Limited Public Financing Program

The City Auditor's Office is in the process of completing the audit of the 2020 Limiting Public Financing (LPF) Program. The LPF program provides District-City Council candidates with public funds via reimbursements for campaign-related expenses. PEC staff received a preliminary copy of the final audit report, showing positive audit results, and provided a response that will be included in the published report, to be issued by the City Auditor very soon.

PUBLIC ETHICS COMMISSION
Programs and Priorities 2021

Program	Goal	Desired Outcome	Key Projects for 2021
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. Oakland Sunshine Report Card, ongoing compliance 2. Campaign Public Finance Redesign 3. City Ticket Policy Resolution
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> 1. Ethics training and advice: a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 2. Sunshine training – Open meetings; public records 3. New trainings as needed for diversion
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> 1. Sunshine mediations 2. Communications/outreach to client groups 3. PEC social media outreach 4. Website – PEC dashboards for enforcement cases and mediations
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> 1. Filing Officer/Compliance – assess, follow-up, and refer 2. Government Integrity E-Data Project – Lobbyist Registration, Form 700, Form 803, Show Me the Money App 3. Open Disclosure – continue coordination and development
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> 1. Investigations 2. Collaborate with other government law enforcement agencies

Item #12 - Executive Director’s Report

	compliance with laws within the PEC’s jurisdiction.	the laws within the PEC’s jurisdiction.	
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Conduct legal analyses, assess penalty options, negotiate settlements, make recommendations to PEC 2. Case priority: 1) the extent of Commission authority to issue penalties, 2) the impact of a Commission decision, 3) public interest, timing, and relevancy, and 4) Commission resources. 3. Resolve all 2016 cases
Administration/ Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Annual Report 2. Budget – new positions 3. Enforcement database upgrade 4. Review data to adjust activities throughout the year 5. Ongoing: professional development and staff reviews

Item #12 - M2019-07 Mediation Summary



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: September 23, 2021
RE: *In the Matter of the Police Department (Case No. M2019-07); Mediation Summary*

I. INTRODUCTION

On May 10, 2019, the Commission received a request for mediation alleging that the Oakland Police Department failed to disclose records in response to three public records request made by the Requester on September 18, 2018, January 28, 2019, and February 28, 2019. On May 24, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department stated that they released all responsive documents per the requests, 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.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 efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

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).

⁵ Complaint Procedures § IV (C)(5).

Item #12 - M2019-07 Mediation Summary

III. SUMMARY OF FACTS

On September 18, 2018, the Police Department received, via email, the following public records request (No. 18-3079):

Please release the body camera videos from the June 6, 2015, standoff at Lake Park Avenue and Lakeshore Avenue from the following officers:
Officer Karl Templeman
Officer Daniel Cornejo-Valdivia
Please let me know if you have any questions.
PDRD 15-029934

On January 28, 2019, the Police Department received, via email, the following public records request (No. 19-470):

Please provide the police department's incident report for each time an Oakland Police Department officer has fired his or her service weapon at a dog or other animal since Jan. 1, 2016. If some aspects of the reports are exempt from disclosure, please redact what is necessary and provide the report, or release all disclosable information as specified in California Government Code 6254(f).

Please also provide the names of all officers who have fired on an animal, the date and location of the incident, and whether the animal or any person was wounded by the gunfire since Jan. 1, 2009.

I would like any records as they become available. Let me know if you have any questions.

On February 28, 2019, the Police Department received, via email, the following public records request (No. 19-1058):

Please provide all documents relevant to any internal affairs investigations into officers David McLaughlin or Ryan McLaughlin where either officer used force that resulted in death or serious bodily injury or that resulted in sustained findings of dishonesty or sexual misconduct.

Please let me know if you have any questions.

On April 8, 2019, the Police Department changed the due date for public records request 19-1058 stating:

We are gathering and reviewing all records and will produce any responsive documents on a rolling basis, subject to applicable exemptions.

On May 3, 2019, the Police Department provided the Requester with a link to another unrelated public records request in response to request 19-1058 stating:

Please see email link below for newly released responsive documents
<https://oaklandca.nextrequest.com/requests/19-1146#>

Item #12 - M2019-07 Mediation Summary

On May 10, 2019, the Commission received a mediation request seeking the following:

Habitual non-responsiveness to public records requests. Requests are ignored for months and inquiries about status are either ignored or responded to with boilerplate extension language.

On May 22, 2019, the Police Department released five responsive documents related to public records request 18-3079. Subsequently, the Police Department closed the request stating:

We released all of the requested documents.

On May 23, 2019, Staff reached out to the Requester to verify receipt and completeness of the documents provided in response to public records request 18-3079. The Requester replied:

It is unfortunate that what was released was not more clearly communicated, but it does appear that OPD complied.

On May 24, 2019, Staff initiated its mediation program and notified the Police Department of the mediation request for the outstanding public records requests.

On October 7, 2019, the Police Department closed public records request 19-1058 stating:

The City has reviewed its records, including internal affairs records and use of force records, of David McLaughlin and Ryan McLaughlin and determined that the requested records do not exist.

On August 6, 2020, the Police Department released two responsive documents related to public records requests 19-470. The Requester was also notified that there would be additional responsive results within the next few days.

On August 10, 2020, the Police Department released one additional document related to public records request 19-470.

On July 13, 2021, the Police Department released one final responsive document related to public records request 19-470. Subsequently, the Police Department closed the request stating:

We released all responsive documents held by OPD.

On August 18, 2021, Staff followed up with the Requester regarding their public records requests to inquire if they had received all the responsive documents and informed them that their mediation request would be closed. Staff did not receive a response from the Requestor.

IV. RECOMMENDATION

Because the Police Department indicated that they provided all responsive records for the public records requests, Staff closed the mediation without further action.