

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Hearing Room 1
Wednesday, June 14, 2023
6:30 p.m.



Effective March 1, 2023, all City of Oakland boards and commissions will conduct in-person meetings. Please check www.oaklandca.gov for the latest news and [important information about the City's return to in-person meetings.](#)

Commissioners: Ryan Micik (Chair), Charlotte Hill (Vice-Chair), Alea Gage, Arvon Perteet, Vincent Steele, and Francis Upton IV.

Commission Staff to attend: Nicolas Heidorn, Executive Director; Suzanne Doran, Lead Analyst; Chris Gonzales, Commission Assistant; Ana Lara-Franco, Commission Analyst; Simon Russell, Enforcement Chief.

City Attorney Staff: Trish Shafie, Deputy City Attorney.

PUBLIC ETHICS COMMISSION REGULAR MEETING AGENDA

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**
 - Please state your name each time you make public comment if you wish it to be included in the meeting minutes.
 - The Commission urges members of the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since public disclosure of such complaints or requests may undermine any subsequent investigation undertaken. Contact staff at ethicscommission@oaklandca.gov for assistance filing a complaint.

GUEST PRESENTATION

- 4. Mediation Process: Takeaways and Suggested Improvements.** Former Commission Law Clerk Chris Nardi will share an overview of his research regarding public records request mediations in Oakland and practices in other California cities as part of his internship project with the Commission ([Presentation Slides](#)).

ACTION ITEMS

- 5. Approval of Commission Meeting Draft Minutes.**
 - a. May 10, 2023, Regular Meeting Minutes ([Meeting Minutes](#))



DISCUSSION ITEMS

- 6. Measure W Implementation - Oakland Fair Elections Act.** Lead Analyst Suzanne Doran provides a summary of activities necessary to implement Measure W, which passed the ballot on November 8, 2022, and which alters the Commission’s staffing, authority, and creates a newly designed public financing program to be administered by the Public Ethics Commission. ([Staff Memo with timeline](#))

- 7. 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.
 - a. Measure W Implementation Subcommittee** (ad hoc, created December 14, 2022)
– Arvon Perteet (Chair), Ryan Micik, Francis Upton IV.

 - b. Measure W Equity and Outreach Subcommittee** (ad hoc, created on March 8, 2023)
– Charlotte Hill (Chair), Alea Gage, Vincent Steele.

 - c. Transparency and Public Records Subcommittee** (ad hoc, created March 8, 2023) -
Francis Upton IV (Chair) and Arvon Perteet.

- 8. Enforcement Case Confidentiality and Election-Related Complaints.** Enforcement Chief Simon Russell presents an informational report about the Enforcement Unit’s current laws and practices regarding case confidentiality and the processing of complaints relating to ongoing elections. This is a discussion item for purposes of hearing whether Commissioners and the public want the Commission to consider possible changes to these laws and procedures. ([Staff Memo](#))

INFORMATION ITEMS

- 9. Disclosure and Engagement.** Lead Analyst Suzanne Doran provides a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting. ([Disclosure Report](#))

- 10. Enforcement Program.** Enforcement Chief Simon Russell provides a summary of the Commission’s ongoing enforcement work, including overall caseload status, informal complaint intake, and enforcement-related litigation. ([Enforcement Report](#); [Dismissal Letter 23-13](#); [Dismissal Letter 23-18](#))

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11. **Executive Director’s Report.** Executive Director Nicolas Heidorn reports on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiatives not covered in other staff reports. ([Executive Director’s Report](#); [M2020-03 Mediation Summary](#); [M2020-15 Mediation Summary](#); [M2021-02 Mediation Summary](#); [M2021-04 Mediation Summary](#); [M2021-10 Mediation Summary](#); [M2021-12 Mediation Summary](#); [M2021-15 Mediation Summary](#); [M2022-04 Mediation Summary](#)).
12. **Future Meeting Business.** Commissioners and staff may propose topics for action or discussion at future Commission meetings.

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 Chair allocates additional time.

Members of the public may submit written comments to ethicscommission@oaklandca.gov.

The following options may be available to observe this meeting:

- **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 (via ZOOM):** Click on the link to join the webinar: <https://us02web.zoom.us/j/84356782713> Please note: the Zoom link and access number are to view/listen to the meetings only, not for participation.
- **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: 843 5678 2713
International numbers available: <https://us02web.zoom.us/j/84356782713>

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

Nicolas Heidorn

6/2/23

Approved for Distribution

Date

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This meeting location is wheelchair accessible. Do you need an ASL, Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email ethicscommission@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 ethicscommission@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 ethicscommission@oaklandca.gov or 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 ethicscommission@oaklandca.gov or hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.

Mediation Process: Takeaways and Suggested Improvements

CHRIS NARDI, LAW CLERK

JUNE 2, 2023



Lessons Learned

- Most mediations address “customer service” issues: lack of timely responses from departments
 - 14 out of 15 pending mediations allege unlawfully delayed responses
 - 3 out of 15 pending mediations allege a department is withholding records
 - 2 out of 15 pending mediations challenge a department’s redactions
- Electronic data requests (EDDR) are slowing departmental responses to requests
 - Currently, ITD is estimated to take two months to process an EDDR
- Biggest challenge with processing mediations is getting timely responses from requesters and departmental staff



Administrative Procedures in Other Cities

- San Francisco
 - Review by Sunshine Ordinance Task Force (SOTF)
 - SOTF has backlog of 100+ complaints
 - SOTF can order department to disclose records
 - Enforcement mechanisms are weak: can refer to Ethics Commission, etc.
 - Ordinance allows punishing willful nondisclosure
- San Jose
 - Multiple appeals, including to City's Open Government Manager
 - If an appeal is successful, the City must disclose the record
 - Open Government Manager is central liaison that ensures timely & lawful responses

Suggested Improvements

- Short term
 - Clear backlog of mediations
 - Increase staff responsiveness to mediators
- Medium term
 - Identify root causes of request delays
- Long term
 - Enhance oversight role of the City's Open Government Coordinator
 - Enhance the Commission's power over Sunshine Ordinance disputes

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DRAFT



Commissioners: Ryan Micik (Chair), Charlotte Hill (Vice-Chair), Alea Gage, Arvon Perteet, Vincent Steele, and Francis Upton IV.

Commission Staff to attend: Suzanne Doran, Acting Executive Director/Lead Analyst; Ana Lara-Franco, Commission Analyst; Simon Russell, Enforcement Chief; Chris Nardi, Law Clerk.

City Attorney Staff: Trish Shafie, Deputy City Attorney.

PUBLIC ETHICS COMMISSION REGULAR MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:30 p.m.

Members present: Micik, Hill, Gage, Perteet, Steele, Upton IV.

Perteet left at 7:56 pm.

Staff present: Suzanne Doran, Ana Lara-Franco, Chris Nardi, and Simon Russell.

City Attorney Staff: Tricia Shafie.

2. Staff and Commission Announcements.

Micik announced the appointment of Public Ethics Commission's new Executive Director, Nicolas Heidorn. Nicolas Heidorn introduced himself.

3. Open Forum.

Public comment: None.

A full recording of public comments is available in the meeting video. Video recordings are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec.

ACTION ITEMS

4. Approval of Commission Meeting Draft Minutes.

- a. April 12, 2023, Regular Meeting Minutes.

Public comment: None.

Hill moved, and Upton IV seconded to approve the minutes.

Ayes: Hill, Gage, Perteet, Steele, Upton IV, Micik.

Item 5 - Meeting Minutes

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Noes: None.

Vote: Passed 6-0.

DISCUSSION ITEMS

5. Reports on Subcommittees and Commissioner Assignments..

a. Transparency and Public Records Subcommittee (ad hoc, created March 8, 2023) - Francis Upton IV (Chair) and Arvon Perteet.

Upton IV reported the subcommittee met staff and is discussing how to improve the process of mediation and how other jurisdictions handle complaints over public records requests. The subcommittee will review recent data on public records request performance and is preparing questions to various City departments to learn more about issues impacting public records request response.

Public comment: None.

b. Measure W Equity and Outreach Subcommittee (ad hoc, created on March 8, 2023) – Charlotte Hill (Chair), Alea Gage, Vincent Steele.

Hill reported the subcommittee is collaborating with staff to draft high level outreach goals as well as outlining an outreach plan aligned with the Public Ethics' Commissions goals and principles.

The subcommittee also met with David Shor of Common Cause and discussed how other organizations can partner with the PEC to achieve outreach goals.

Public comment: None.

c. Measure W Implementation Subcommittee (ad hoc, created December 14, 2022) – Arvon Perteet (Chair), Ryan Micik, Francis Upton IV.

Perteet reported the subcommittee met and discussed the impact of the Mayor's proposed budget and delay of implementation of the Democracy Dollars program until the 2026 election, as well as potential alternatives the Commission could propose as the budget goes to City Council. Perteet shared options for a Democracy Dollars pilot with a reduced budget.

Public Comment: None

6. Measure W Implementation - Oakland Fair Elections Act.

Acting Director Doran provided an update on staff activities related to Measure W

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implementation and recommended the Commission pursue funding for a pilot program with just Council District elections in 2024. The Commissioners expressed their consensus to support the staff recommendation and directed staff to pursue a budget funding for a Measure W pilot program for the 2024 election with reduced budget.

Public Comment: Mathan Carter Griffin, Gail Wallace, Pedro Hernandez, and Nicolas Heidorn.

INFORMATION ITEMS

7. Disclosure and Engagement.

Ana Lara-Franco, Commission Analyst, provided a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting.

Public Comment: None.

8. Enforcement Program.

Simon Russell, Enforcement Chief, provided a summary of the Commission's ongoing enforcement work, including overall caseload status, informal complaint intake, and enforcement-related litigation, as well as an overview of Enforcement's new policy of placing certain matters on hold due to a staffing shortage noting some cases will be on hold due to staffing challenges.

Chief Russell introduced new Commission Assistant, Chris Gonzales who joined the Public Ethics Commission in April 2023.

Public Comment: None.

9. Executive Director's Report.

Acting Executive Director Doran reported on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiative not covered in other staff reports. Doran welcomed incoming Executive Director Nicolas Heidorn and thanked the Commissioners and PEC staff for their generous support during her service as Acting ED.

Public Comment: None.

10. Future Meeting Business.

Public Comment: Mathan Carter Griffin.

The meeting adjourned at 8:39 p.m.



Item 6 - Staff Memo with Timeline

Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Project Lead/Analyst
Nicolas Heidorn, Executive Director
DATE: June 2, 2023
RE: Measure W Oakland Fair Elections Act Implementation Update for the June 14, 2023, Regular PEC Meeting

With the passage of Measure W, the Oakland Fair Elections Act, the Public Ethics Commission (PEC or Commission) is planning for a transition of growth in staffing, structure, and responsibilities as administrator of a completely re-designed public financing program. This memorandum provides an update on implementation activities since the last Commission meeting and a timeline for implementation tasks.

Operational Changes and Tasks

Budget – The Mayor’s Proposed Budget postpones implementation of the Democracy Dollars voucher program to the 2026 election. While the budget does include significant funding for program start-up costs, no funding was included for additional staff resources to implement the program.

After the PEC’s May meeting, Commission staff forwarded a letter signed by the Commission Chair to the Mayor and Councilmembers expressing the Commission’s desire for funding to conduct a scaled-down pilot program for the 2024 election in lieu of program postponement. Executive Director Heidorn presented the Commission’s priorities and impacts of the proposed budget for PEC programs at a Special Council Meeting on May 30. In addition, staff met with the City Council budget team, including Council President Bas, Councilmembers Fife, Jenkins, and Kaplan, and their staff, and separately with the Mayor’s staff to share the Commission’s budget priorities and answer questions about the funds needed to carry-out a limited pilot program for the 2024 election. Meetings with the remaining Councilmembers are scheduled in early June. The Council President’s proposed budget amendments will be published on June 12th for discussion at the June 14th Council meeting. The City Council is scheduled to adopt the final budget at the June 26th Council meeting.

Administrative Processes and Technology

In May, staff met with the City of Oakland’s print services department to discuss production and mailing requirements for the Democracy Dollars voucher and information packet. Requirements were forwarded to the City of Oakland’s approved print service contractors, and one vendor provided an initial quote. Commission staff submitted follow-up questions

and are now awaiting vendor responses to assist in refining the service contract, cost estimates, and determine deadlines should the Commission receive funding for a pilot.

Discussions with the Alameda County Registrar of Voters (ROV) indicate that the Democracy Dollars program requires a unique contract for services to verify resident signatures on vouchers as well as qualifying contributions to participating candidates. Staff discussions with ROV leaders to develop a secure, efficient process and identify services that will be part of the PEC contract with the ROV are ongoing.

Commission staff also met with Seattle Democracy Dollars staff and Oakland ITD staff to discuss options to simplify or reduce tech development needs should the PEC conduct a limited pilot in 2024.

Outreach and Engagement

Online engagement – In May, Commission staff added a webpage with links to implementation updates to the [Democracy Dollars Program](#) website content.

Candidates and Campaigns – Updating education and training resources targeted to candidates to include new campaign finance rules impacting upcoming elections is underway and will be prioritized in the coming months.

Community – Chair Micik and Vice Chair Hill co-wrote an op-ed published in the [SF Chronicle](#) making the case for a limited Democracy Dollars pilot in 2024. The op-ed was shared on the Commission’s social media accounts in addition to general posts to raise awareness of the Democracy Dollars webpage.

OAKLAND FAIR ELECTIONS ACT – DEMOCRACY DOLLARS PROGRAM

Implementation Overview with Key Dates

Phase 1: Preliminary Tasks	
Nov 2022 – June 2023 Activities and Outcomes	
Nov 2022	<ul style="list-style-type: none"> ✓ Preliminary research and analysis of requirements for program administration. ✓ Begin coordination with other City stakeholders and agencies.
Dec 2022 – Jan 2023	<ul style="list-style-type: none"> ✓ 2023 – 2025 fiscal year budget preliminary deliverables including Democracy Dollars (DD) program complete. ✓ Updates to job specifications and civil service examination process for new staff positions. ✓ Business requirements for technology outlined in partnership with ITD. ✓ Establish advisory group/liaison with City Administrator’s office and internal stakeholders.
Feb 2023	<ul style="list-style-type: none"> ✓ Submit budget proposal with funding for DD program. ✓ Submit DD job specifications for union approval. ✓ Receive and incorporate feedback into tech system requirements.
Mar 2023	<ul style="list-style-type: none"> ✓ Present budget proposal with PEC priorities for DD program to Mayor. ✓ Response to union re: DD job specifications. ✓ Draft milestones, success metrics for program roll-out for discussion. ✓ Research DD design, printing, and distribution needs. ✓ Initiate RFP process for tech and voucher production services with Finance Department.
Apr 2023	<ul style="list-style-type: none"> ✓ Develop program webpages to chart implementation progress. ✓ Draft requirements and request quotes for printing and mailing of DD packets. ✓ Outreach plan development started.
May – Jun 2023	<ul style="list-style-type: none"> • Evaluate and cost options for Democracy Dollars pilot program. – ongoing • Draft tech RFP in partnership with ITD and Finance Department. – in progress • Revise to education resources to reflect OCRA amendments. – ongoing • Draft tech RFP in partnership with ITD and Finance Department. – in progress • Vendor selection for printing and mailing of DD packets. – in progress • Identify services needed and develop process for signature verification by Alameda County ROV. – ongoing • Issue tech system RFP.
Phase 2: Program Foundations	
Jul - Dec 2023	
Jul 2023	<p>MILESTONE 1: Program funds budgeted.</p> <p>MILESTONE 2: Vendor identified for printing and mailing of DD packets.</p> <ul style="list-style-type: none"> • Tech vendor selection in partnership with ITD and Finance Departments. • Identify policy questions requiring Commission action prior to 2024 launch. • Recruitment for new positions (subject to final budget). • Outreach plan development (subject to final budget).
Aug 2023	<p>MILESTONE 3: Vendor approved; tech system development begins.</p> <ul style="list-style-type: none"> • Preliminary development of forms, systems for program administration.
Sep – Oct 2023	<p>MILESTONE 4: New positions filled; staff onboarded.</p> <ul style="list-style-type: none"> • Adopt Commission regulations prior to 2024 launch, as needed. • Evaluate progress towards milestones required for 2024 launch date.
Nov – Dec 2023	<ul style="list-style-type: none"> • Publish outreach and training materials for Oakland residents, candidates. • Finalize service contract and process for signature verification by Alameda County ROV.

Phase 3: Program Launch	
Jan - Nov 2024	
Jan 2024	<ul style="list-style-type: none"> • DD funds available announcement. • Candidate application process begins. • Outreach to raise awareness of Democracy Dollars program.
Feb - Mar 2024	<ul style="list-style-type: none"> • Ongoing outreach to raise awareness of Democracy Dollars program. <p>MILESTONE 5: DD voucher, packet, and mailing information ready for printing and distribution.</p> <p>MILESTONE 6: Tech system MVP tested and ready to deploy.</p>
Apr 2024	<ul style="list-style-type: none"> • Tech system live. • DD distribution to Oakland registered voters by April 1, 2024. • Voucher assignment system and public program dashboard live.
May – Nov 2024	<ul style="list-style-type: none"> • PEC staff processes DD vouchers, disburses funds to candidates.
Phase 4: Post-election Evaluation	
Dec 2024 - ongoing	<ul style="list-style-type: none"> • Candidates return unused funds. • Program audit, performance evaluation reports for Commission and City Council. • Tech system and outreach development continues, user-experience, data-informed improvements.



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: May 31, 2023
RE: Overview of Confidentiality Rules for Enforcement Complaints and Investigations; and Proposed Practices for Handling of Election-Related Matters, for discussion at the June 14, 2023, meeting of the Public Ethics Commission

This report invites Commissioner and public discussion on two related issues:

1. What changes, if any, should the Enforcement Unit make to its rules concerning confidentiality of complaints and investigations? What is the proper balance between protecting the integrity of an investigation and avoiding potentially unfair publicity, while also assuring the Commission and the public that we have received complaints and are actively investigating them?
2. Should the Enforcement Unit have any special procedures in place for handling complaints and investigations relating to an ongoing election? How do we avoid potentially unfair pre-election publicity, while also investigating and enforcing campaign laws at the time when they matter the most: before an election, while the alleged harm is ongoing?

These questions do not have easy answers. The purpose of this report is to provide an overview of the Enforcement Unit's current approaches to these questions, both as required by law and in our informal practices. It will also compare how other state and local enforcement agencies address these questions. Finally, it will provide a range of possible new approaches. The goal is to get feedback from the Commission and the public, so that Enforcement staff can return at a later meeting with new draft procedures (if requested) for the Commission's analysis and vote.

Background and Brief Summary of Current Procedures

At its meeting of January 11, 2023, the Public Ethics Commission (PEC) asked Enforcement staff to prepare a briefing on Enforcement's practices for the processing of complaints relating to an ongoing election. The request was made in the wake of an incident during the lead-up to the November 2022 election, in which the media learned of, and reported on, Enforcement's then-recent decision to open an investigation into a candidate for City office.

Overview of Confidentiality Rules for Enforcement Complaints and Investigations; and Proposed Practices for Handling of Election-Related Matters
May 31, 2023

In brief, Enforcement does not have unique procedures for the handling of election-related complaints (as compared to non-election-related complaints). Informally, Enforcement may try to prioritize the preliminary review of election-related complaints (staff resources permitting) given the time-sensitive nature of the alleged public harm. But in making the final decision as to whether and when to open a full investigation, Enforcement consciously avoids taking the timing of an impending election into account. This is to avoid the possibility or appearance of bias, either in favor of the respondent-candidate (by deliberately shielding the respondent-candidate from scrutiny until after the election) or against the respondent-candidate (by deliberately exposing the respondent-candidate to scrutiny before the election). Put simply, Enforcement ignores the election when it comes time to decide whether move a case from “preliminary review” to “investigation.”

Enforcement’s confidentiality rules should, in theory, avoid undue publicity of complaints or investigations until our findings are ready to be made public at the end of an investigation. The City Charter requires that investigations be kept confidential until our findings are presented to the Commission.

However, Enforcement is also legally required under its Complaint Procedures to notify complainants and respondents of its decision to open an investigation, and it lacks the ability to restrain those persons from making disclosures to third parties (such as the media). Witnesses and other persons contacted by Enforcement might also notify third parties of the existence of the complaint or investigation, and Enforcement similarly lacks the ability to restrain such disclosures. Enforcement must also disclose the existence of a complaint or investigation in response to a public records request for that information, with limited exceptions.

These limited disclosure requirements are meant to provide a measure of public accountability for the Enforcement Unit. Their aim is to prevent Enforcement from unduly delaying or “burying” the investigation of complaints. However, the potential for unfair publicity is also apparent. While Enforcement stresses to complainants and respondents that the mere existence of an investigation does not necessarily mean that wrongdoing occurred, there is an unavoidable stigma associated with the investigation process. This problem is compounded by Enforcement’s understaffing challenge, which can greatly extend the length of time needed to complete an investigation and resolve the ambiguity over the validity and seriousness of the allegations.

The key issue is how to balance the desire for transparency and strong enforcement of Oakland’s ethics and campaign laws, with the equally compelling desire to avoid unfair publicity and/or compromising the integrity of Enforcement’s work.

Overview of Confidentiality Rules for Enforcement Complaints and Investigations; and Proposed Practices for Handling of Election-Related Matters
May 31, 2023

In Detail: Enforcement's Rules of Confidentiality for Complaints and Investigations

The fundamental requirement for Enforcement to keep most of its work confidential can be found in the City Charter, which states:

Investigations. Preliminary review by Commission staff of allegations shall be confidential, to the extent permitted by law, until any of the following occurs:

- (i) Placement of the item on a Public Ethics Commission meeting agenda;
- (ii) Passage of one year since the complaint was filed;
- (iii) Action by the Executive Director closing the file without placing it on the agenda, pursuant to the Commission's complaint procedures or policies; or
- (iv) Expiration of the Statute of Limitations.¹

This language is somewhat confusing, in that it refers interchangeably to both “investigations” and “preliminary review of complaints.” In practice, Enforcement treats these as two discrete phases in a single matter. Specifically, Enforcement classifies incoming complaints as being under a formal process of “Preliminary Review,” during which Enforcement determines whether there are sufficient legal and evidentiary grounds to open an investigation. If the answer to that question is “yes,” then Enforcement formally changes the status of that matter to “Investigation.” This is important not only for administrative purposes, but also because (as described in detail below) there are certain public disclosures that we are legally required to make at each stage in the process. But as far as the general confidentiality requirement of the City Charter goes, we interpret it as applying equally to both the “Preliminary Review” and “Investigation” phases of a single matter, given that the Charter refers to both stages.

Note that the Charter does not impose a penalty for a violation of the confidentiality requirement. The requirement appears not to be a punitive law, but rather an exemption from disclosure of an open Enforcement file under a public records request. We have also interpreted this language to mean that a complaint itself is generally disclosable as a public record, while the subsequent review and investigation of a complaint is not.²

¹ City Charter, section 603(f)(1).

² We do retain the direction under California Government Code section 6255 to withhold a complaint from a public records request if necessary in the public interest. This is rare, and is usually done for evidence preservation concerns (i.e., the respondent named in the complaint is currently unaware of the complaint and might destroy/tamper with evidence if they learn of it before being contacted by Enforcement).

May 31, 2023

In addition to the general confidentiality requirement imposed by the City Charter, the Enforcement Unit is also legally bound by the public notification requirements found in our formal Complaint Procedures (which are regulations adopted by the Commission itself, most recently in 2020). According to the Complaint Procedures, the first required notification occurs upon the initial receipt of a formal complaint:

- i. Upon receipt of a formal complaint, Commission staff will make a reasonable effort to acknowledge receipt of the complaint.
- ii. Commission staff shall process and review all formal complaints.³

In practice, this usually takes the form of an email to the complainant (or a letter or phone call if they lack a valid email address), confirming that the complaint was received and providing them with a complaint number.

Note that these rules state that Enforcement “shall” review every formal complaint it receives; we do not have the ability to reject formal complaints (e.g. for being clearly outside of our jurisdiction, or for making allegations that are clearly not a violation of the law, etc.) and thereby avoid confirming its receipt.⁴ The intent behind these requirements is to limit the potential for Enforcement to abuse its discretion in order to arbitrarily reject or “bury” any formal complaints (e.g. for political or personal motives).⁵

³ PEC Complaint Procedures, section III(A)(1)(b).

⁴ See also section III(B): “**Preliminary Review of Complaints.** Upon receipt of a formal complaint, Commission staff shall conduct a preliminary review of the complaint to determine whether to open an investigation.” (Emphasis in original)

⁵ This section of our Complaint Procedures refers to “formal” complaints, which are complaints made under penalty of perjury on our official complaint form. There is a separate section of our Complaint Procedures (III(A)(2)) dealing with the receipt of “informal” complaints, which are complaints that are not made on our official complaint form (e.g. via email or phone call), and are not usually made under penalty of perjury. Our Complaint Procedures are silent as to whether we are required to acknowledge receipt of an informal complaint; and we are expressly given the discretion to reject informal complaints without processing them any further, for whatever reason we determine. Later sections of our Complaint Procedures (including certain notification requirements) refer to “complaints” in general, without specifying whether they are formal or informal. In practice, Enforcement has begun to address this ambiguity by processing informal complaints in the same way as formal complaints *after we have determined whether or not to reject the informal complaint upon initial receipt* (e.g. for obvious lack of jurisdiction, etc.). This means that we provide a meritorious informal complainant with an acknowledgment and a complaint number – just as we do with formal complainants – and follow all procedures governing formal complaints from that point onward (including notification requirements). But given the ambiguous language of our Complaint Procedures, it is ultimately unclear

Item 8 - Staff Memo

Overview of Confidentiality Rules for Enforcement Complaints and Investigations; and Proposed Practices for Handling of Election-Related Matters

May 31, 2023

One issue that arises here is the possibility that a complainant might share the complaint acknowledgment (as well as the complaint itself) with third parties, thereby violating the spirit of the confidentiality requirement of the City Charter. There are a number of reasons that a complainant might do this, e.g. as part of a separate lawsuit or outside investigation; to deter an ongoing violation; or for publicity. Enforcement does not have the legal authority to restrain such disclosures, e.g. through a non-disclosure agreement (NDA) or as a violation of any of the laws we enforce.

The next required disclosure under our Complaint Procedures comes at the end of the preliminary review stage:

Intake Resolution. After conducting a preliminary review of a complaint, Commission staff shall decide whether to open a case for investigation, resolve the complaint by way of dismissal, or recommend closure. Commission staff shall notify the complainant of the result of the preliminary review in writing...

Notification to Respondent. After the preliminary review of the complaint, if Commission staff dismisses the complaint, then Commission staff may notify the respondent of the receipt and dismissal of the complaint. If Commission staff recommends closure or the opening of an investigation, then Commission staff shall notify the respondent of the complaint and the issue(s) to be investigated in writing...

Notification to Complainant. After the preliminary review of the complaint, Commission staff shall notify the complainant of its decision to dismiss, close, make a referral, or open an investigation. If Commission staff opens an investigation, Commission staff shall also provide to the complainant a copy of the notice to the respondent...⁶

(Emphasis in original; underlining added). Again, the intent behind these required disclosures is to provide a measure of accountability for Enforcement staff to investigate matters it is charged with enforcing, and avoid the possibility of “burying” allegations that need to be investigated. And again, there is a possibility that complainants or respondents could share these disclosures with third parties, despite the confidentiality requirement of the City Charter. While we typically discourage respondents and complainants from doing so, we lack any legal means to restrain their free speech rights in this area.

whether we are required to do that, and it was not our consistent practice with informal complaints until recently.

⁶ PEC Complaint Procedures, section IV(A), (C)-(D).

Overview of Confidentiality Rules for Enforcement Complaints and Investigations; and Proposed Practices for Handling of Election-Related Matters
May 31, 2023

No further notifications are required to the complainant or the respondent until the matter is ready to be heard at a public Commission meeting. However, it is not uncommon for complainants, members of the public, and/or the media to make a public records request concerning the existence and/or current status of a complaint or investigation. In light of the above laws, Enforcement releases only the following information in response to such requests:

- the complaint or case number
- the current status, e.g. “Preliminary Review” or “Investigation”
- the name(s) of the respondent(s) as listed on the Enforcement Database (our internal case tracking system)
- a copy of the initial complaint, if requested (personal information redacted, other than the name(s) of the complainant(s), respondent(s), and witnesses).

Enforcement sometimes withholds some or all of the above information if necessary to preserve the integrity of an investigation (e.g. to avoid destruction of evidence or witness tampering) or the confidentiality of settlement negotiations.

Under no circumstances does Enforcement issue press releases or similar public announcements concerning the receipt of a complaint or the opening of an investigation.

Confidentiality Rules at Other Commissions

Other ethics commissions vary widely in their confidentiality rules. Some of them make open complaint and case information searchable on their public website, while others do not even confirm the receipt or existence of a complaint or case until they are ready to prosecute or settle.

The state Fair Political Practices Commission (FPPC), for example, has a “Case and Complaint Information Portal” on its website, allowing the public to search for open and closed complaints or cases by name, jurisdiction, or case number. The information provided includes the status of a matter (i.e., whether a complaint has been received and/or an investigation opened), the name(s) of the person(s) who are alleged to have violated the law, the name(s) of the person(s) making the allegations, and the type of allegations being made or investigated, among other information.

The FPPC’s online case portal, for example, appears as follows (this was after conducting a search for “cases” in the jurisdiction “Oakland”):

Item 8 - Staff Memo

Overview of Confidentiality Rules for Enforcement Complaints and Investigations; and Proposed Practices for Handling of Election-Related Matters

May 31, 2023

Case No.	Type	Status	Jurisdiction	External Parties
2023-00349	Staff/Filing Officer Referral	Case Opened and Pending	<u>State</u> Oakland, Alameda County	<u>Respondents</u> : Kandis Session; Kenneth Session; Kenny Session; Kenny Session for District 6 2022 <u>Complainants</u> : Ana Lara-Franco; Suzanne Doran
Date Opened:		05/10/2023		
Date Closed:		N/A		
Violation Type:		2022 Pre-Election		
Disposition:		N/A		
Disposition Details:		N/A		
2023-00329	Sworn Complaint	Case Opened and Pending	<u>Local</u> Oakland, Alameda County	<u>Respondents</u> : Caltrans; Dorothy Moore <u>Complainants</u> : Adina Flores
2023-00132	Staff/Filing Officer Referral	Closed	<u>Local</u> Oakland, Alameda County	<u>Respondents</u> : Thomas Quinn <u>Complainants</u> : Andrea Carey

And the FPPC’s online complaint portal appears as follows (this was after conducting a search for “complaints” in the jurisdiction “Oakland”):

Item 8 - Staff Memo

Overview of Confidentiality Rules for Enforcement Complaints and Investigations; and Proposed Practices for Handling of Election-Related Matters

May 31, 2023

Complaint No.	Type	Status	Jurisdiction	External Parties
▼ COM-05252023-01479	Staff/Filing Officer Referral	Complaint added to Existing Case	<u>Local</u> Oakland, Alameda County	<u>Respondents</u> : Sahar Shirazi <u>Complainants</u> : William Cameron
Date Received:		05/25/2023		
➡ COM-05252023-01477	Staff/Filing Officer Referral	Complaint added to Existing Case	<u>Local</u> Oakland, Alameda County	<u>Respondents</u> : Sahar Shirazi <u>Complainants</u> : William Cameron
➡ COM-04262023-01166	Sworn Complaint	Case Opened	<u>Local</u> Oakland, Alameda County	<u>Respondents</u> : Caltrans; Dorothy Moore <u>Complainants</u> : Adina Flores
➡ COM-03222023-00795	Staff/Filing Officer Referral	Complaint added to Existing Case	<u>Local</u> Oakland, Alameda County	<u>Respondents</u> : Yakpasua Zazaboi; Yakpasua Zazaboi; ZAZABOI FOR OAKLAND CITY COUNCIL DISTRICT 6 2022; YAKPASUA <u>Complainants</u> : Ana Lara-Franco

The PEC does not provide this information on our website. We do provide some of this information in response to public records requests, but we only provide the case number, the case status, and the name(s) of the respondent(s). We may also withhold some or all of this information if we determine that doing so is necessary for an investigation (usually to avoid evidence destruction or witness tampering).

At the other end of the spectrum, the Los Angeles City Ethics Commission does not provide any information about its complaints or cases until they are ready to present their probable cause report or settlement agreement at a Commission meeting. Complainants are not given a notification that their complaint was received, nor are they informed whether an investigation was opened or the complaint dismissed. Respondents are not notified of complaints either, though they may be contacted for evidence-gathering purposes in the course of a preliminary review or investigation. Individual cases that are dismissed or closed by staff without charges being filed are not reported to the public or the Commission, though

May 31, 2023

they do provide general statistics.⁷ L.A. City Ethics also does not release any information about specific open complaints or cases in response to public records requests, though once again they do provide general statistics.

The San Francisco Ethics Commission (SFEC) follows similar practices to Los Angeles. SFEC does notify complainants when an investigation is opened, but they do not notify respondents of a complaint or investigation unless necessary for evidence-gathering purposes. And similar to Los Angeles, SFEC does not confirm the existence of a complaint or investigation to members of the public or the media. It is official misconduct under the SFEC's procedures to reveal anything about a complaint or case until either a finding of probable cause or a settlement agreement is presented to their Commission at one of its public meetings.

Approaches to Election-Related Cases

Enforcement does not have special laws or procedures concerning complainants or cases relating to a current election. This is in line with most other ethics commissions consulted by Enforcement when preparing this report (including San Francisco, Los Angeles, and the FPPC). A partial exception is the San Diego Ethics Commission, which requires preliminary review of any formal election-related complaint⁸ to be completed within fifteen days instead of the usual thirty days mandated under its laws.⁹

Informally, Enforcement staff at the PEC may try to prioritize the preliminary review of complaints relating to an ongoing election, staff resources permitting. However, this may not always be possible given competing priorities, nor is the length of a preliminary review or investigation solely within Enforcement's control. (The complexity of a case, the lack of timely cooperation from witnesses or respondents, and/or a large caseload-to-staff ratio can significantly extend the length of time needed for a preliminary review or investigation).

When it comes to deciding whether to open a full investigation into an election-related complaint, all of the other ethics commissions consulted when writing this report (including San Francisco, Los Angeles, San Diego, and the FPPC) all take the same approach as the PEC.

⁷ This is in contrast to the PEC, where Enforcement reports all dismissed complaints to the Commission following preliminary review, and presents all of its investigation findings to the Commission even when it is recommending that the Commission close a case without charges.

⁸ The San Diego Ethics Commission defines an election-related complaint as any formal complaint that is "received by the Commission within ninety calendar days of a municipal election and alleging violations by a candidate seeking office at that election." San Diego Municipal Code section 26.0422(c).

⁹ By contract, the PEC does not have a deadline for completion of preliminary review of incoming complaints, whether election-related or otherwise.

The timing of the election is simply not factored into the decision of whether or when to open an investigation. Instead, the decision is made at the point in time when staff has been able to conduct sufficient preliminary evidence-gathering and legal research to determine that an investigation is warranted. Taking the timing of an election into account runs the risk of injecting an improper political motivation into this process, either in favor of the affected candidate (by delaying an investigation until after the election is over) or against them (by arbitrarily accelerating an investigation to begin before the election is over).

Questions For Discussion

In light of the above background, Enforcement reiterates the questions posed at the beginning of this report, to foster Commissioner and public discussion:

1. What changes, if any, should the Enforcement Unit make to its rules concerning confidentiality of complaints and investigations? What is the proper balance between protecting the integrity of an investigation and avoiding potentially unfair publicity, while also assuring the Commission and the public that we have received complaints and are actively investigating them? As a reminder, the preliminary review and investigation of complaints is strictly confidential except at the following points:
 - when Enforcement sends the complainant an acknowledgment that it has received their complaint, and gives them a complaint number;
 - when Enforcement notifies the respondent that a complaint has been made against them;
 - when Enforcement notifies the respondent that an investigation has been opened and what allegations are being investigated, or that the complaint has been dismissed;
 - when Enforcement notifies the complainant that an investigation has been opened, or that the complaint has been dismissed (and includes a copy of the notification that was sent to the respondent);
 - when Enforcement presents its investigation findings to the Commission at one of its public meetings (either as a settlement agreement, a probable cause report, or a closure request); and
 - in response to a public records request (giving the case number, status, name of the respondent(s), and a copy of the complaint).

May 31, 2023

2. Should the Enforcement Unit have any special procedures in place for handling complaints and investigations relating to an ongoing election? How do we avoid potentially unfair pre-election publicity, while also investigating and enforcing campaign laws at the time when they matter the most: before an election, while the alleged harm is ongoing?

If any changes are desired, then Enforcement offers the following possibilities. This list is not exhaustive and we welcome other ideas; nor are these possibilities mutually exclusive. As described below, each of these suggestions offer benefits as well as significant drawbacks:

1. Amending the PEC's Complaint Procedures to state that complainants will not receive a notification that an investigation into an election-related complaint has been opened until after the election is over, nor will election-related complaints or investigations be confirmed in a public records request until after the election is over.

Pros: Reduces the possibility of unfair publicity while an election is ongoing.

Cons: With no accountability to complainants or the public until after the election, this allows for the possibility that Enforcement could improperly “bury” an election-related complaint into a favored candidate until after an election has taken place. To the extent that the allegations in the complaint might already be public (e.g. if the allegations originated from a media report), the public also has no assurance that Enforcement is looking into the matter. Finally, complainants would still have the ability to publicize their own complaints.

2. Amending the PEC's Complaint Procedures to require that preliminary review of election-related complaints be prioritized and completed within a short period of time (e.g. ten business days). To the extent that Enforcement cannot meet the deadline due to lack of timely cooperation by respondents, an investigation will automatically be opened.

Pros: Diminishes the possibility of unfair pre-election publicity by quickly winnowing out non-meritorious complaints.

Cons: This may not be feasible without more Enforcement staff. Even with more Enforcement staff and full cooperation by respondents, it is not always possible to guarantee completion of a preliminary review within a set time frame if necessary third parties (witnesses, custodians of records, etc.) do not give timely cooperation, and it might be unfair to automatically open an investigation for reasons outside of the control of respondents (or conversely, to dismiss an otherwise meritorious complaint because third parties have been slow in responding). This approach also significantly reduces Enforcement's ability to set its own priorities among its caseload; it assumes

May 31, 2023

that all election-related complaints are meritorious and/or serious, when this is not always the case.

3. Create a permanent Enforcement subcommittee of 1-3 Commissioners, to which Enforcement must report the receipt of all election-related complaints, and which must vote to approve the investigation or dismissal of any election-related complaint.

Pros: Provides another layer of review to insulate Enforcement decision-making from the actuality or appearance of political bias.

Cons: Any commissioner taking part in the subcommittee would be barred from later voting on the final resolution of these cases, placing those consequential decisions in the hands of a smaller number of commissioners. Moreover, some commissioners are appointed by elected officials, which may lead to public mistrust of their neutrality.

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Item 9 - Disclosure Report



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Jelani Killings, Ethics Analyst
Ana Lara Franco, Commission Analyst
Suzanne Doran, Lead Analyst
DATE: May 31, 2023
RE: Disclosure and Engagement Monthly Report for the June 14, 2023, 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 required. 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

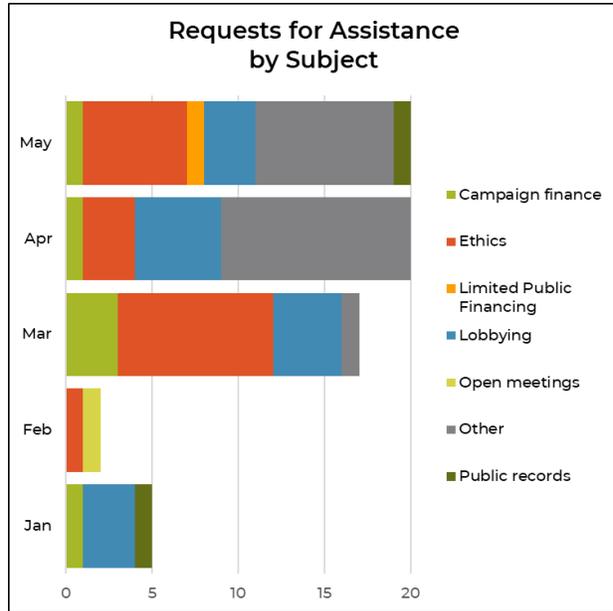
Campaign finance disclosure – A Special Election has been scheduled for November 7, 2023, to fill the OUSD District 5 School Director seat. The Special Election adds two additional pre-election deadlines for candidate's campaign statements. The first pre-election deadline for committees with activity related to the November 7 Special Elections is September 28 and the second pre-election deadline is October 26. 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 lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. April 30 was the deadline for quarterly lobbyist activity reports covering the period from January 1 through March 31, 2023. To date, 48 reports have been filed. Commission staff is reaching out to 13 possible non-filers to gain compliance and/or clarify filing status.

The Lobbyist Registration portal, which was taken offline due to the ransomware attack in February, is back online and available for lobbyists to submit filings. Lobbyist registration and activity reports may be viewed online at the [PEC's Lobbyist Dashboard and Data webpage](#).

Advice and Engagement

Advice and Technical Assistance – In the month of May, Commission staff responded to 20 requests for information, advice, or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues, for a total of 64 in 2023 to date. Since assuming filing officer duties in 2017, requests for advice and technical assistance typically peak in election years and the weeks prior to disclosure filing deadlines. Commission staff average approximately 32 requests per month in election years and 18 requests per month in non-election years.



New Employee Orientation – Staff continues to make presentations at the City’s monthly New Employee Orientation (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act (GEA). On May 17, Staff trained a total of 33 new employees on GEA provisions.

Ethics Check-In – On May 2, staff met with the office of District 6 Councilmember Kevin Jenkins to provide an overview of recent changes in state and local ethics laws. Staff also provided a link to the PEC’s ethics resource binder that includes guides and fact sheets relating to the Government Ethics Act, conflicts of interests, gift restrictions, non-interference provision, and the City’s ticket distribution policy.

OPRYD Ethics Training – On May 26, Staff conducted an ethics training for 120 new employees of the Oakland Parks, Recreation, and Youth Development Department during their summer staff orientation. Staff provided an overview of the PEC and the City’s Government Ethics Act.

Public Records Sunshine Training – On May 31, Staff added a new Sunshine Training on public records to the PEC’s on-demand training suite. The training covers the rules for receiving and responding to public records requests and is now available through the PEC’s [website](#).

Online Engagement

Social Media – Commission staff post social media content to highlight specific PEC policy areas, activities, or client-groups. In May our posts focused on introducing our new Executive Director, June meeting agenda topics, and the Democracy Dollars updates webpage.

Item 10a - Enforcement Report



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

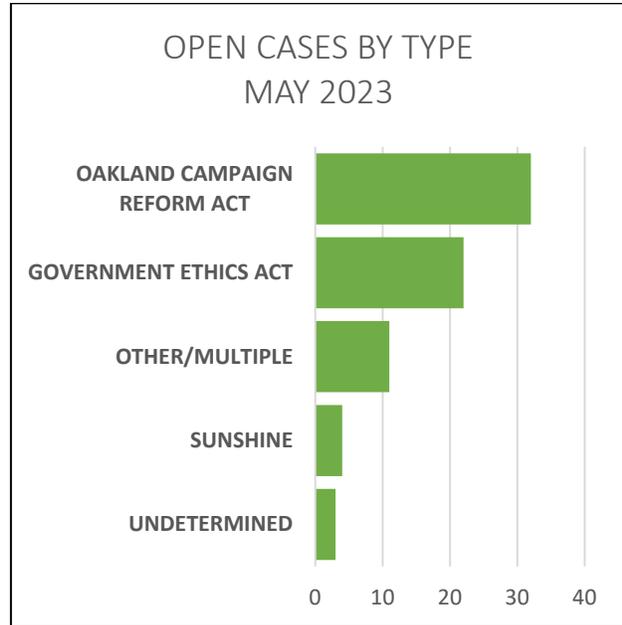
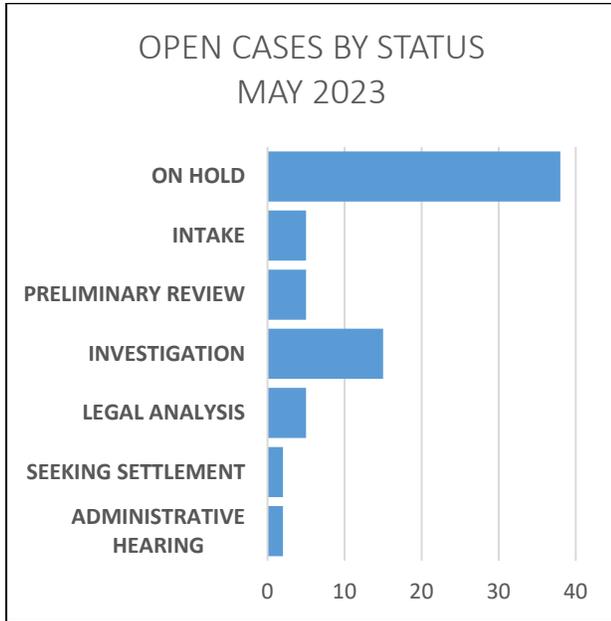
Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: June 1, 2023
RE: Enforcement Unit Program Update for the June 14, 2023, PEC Meeting

Current Enforcement Activities:

Since the Enforcement Unit Program Update submitted to the Commission on April 26, 2023, Commission staff received 2 formal complaints, one of which is under preliminary review and the other of which is still in the intake stage. Enforcement also received 7 informal complaints, one of which was escalated to preliminary review (i.e., is being processed like a formal complaint from this point onward); four of which were rejected; and two of which are awaiting a decision as to whether to reject them or escalate them to preliminary review.

This brings Enforcement's caseload to 72 matters at all stages, from preliminary review through to investigation, settlement negotiations or administrative hearing. That includes 38 cases or complaints that are now "On Hold." It does not include informal complaints awaiting a decision as to whether to reject them or escalate them to preliminary review.



Personnel

Enforcement is very pleased to announce the hiring of Garrett Micheels as an exempt limited duration employee (ELDE) Ethics Investigator. Garrett will be handling most of the Enforcement Unit’s investigations and assisting the Enforcement Chief with preliminary review of complaints. Garrett is a former Special Investigator with the Fair Political Practices Commission, which is the state-level equivalent to Oakland’s PEC. In that role he investigated cases across California pertaining to campaign finance, ethics, and lobbyist violations. He has a B.A. in the Administration of Justice from the University of Hawai’i at Hilo. Garrett is filling a position that has been vacant since last fall, and we are extremely pleased that he will be bringing his skills and experience to our team.

Case Resolutions or Submissions

Since the last Enforcement Unit Program report on April 26, 2023, the following cases have been resolved or submitted to the Commission:

1. **In the Matter of Nikki Fortunato Bas, et al. (PEC No. 23-13).** On March 22, 2023, Enforcement staff received a formal complaint alleging that District 2 City Councilmember Nikki Fortunato Bas and her staff violated the Government Ethics Act (GEA) by failing to return the phone calls and/or e-mails of a member of the public. After conducting a preliminary review of the complaint, Enforcement staff determined that the complaint fails to allege a violation of GEA. We have referred the complainant to our mediation program for resolution of any

dispute concerning public records and/or oral public information requests. The status of this matter is now “Closed.” (See Attachment)

2. **In the Matter of East Oakland Community Project (PEC No. 23-18).** On April 24, 2023, Enforcement staff received a formal complaint concerning the East Oakland Community Project (EOCP) Crossroads facility and staff. After conducting a preliminary review of the complaint, Enforcement staff determined that the PEC lacks jurisdiction over the EOCP and its staff, and dismissed the complaint. We advised the complainant of alternative agencies to which they could address their allegations. The status of this matter is now “Closed.” (See Attachment)



Item 10b - Dismissal Letter 23-13

ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

April 27, 2023

Office of Councilmember Nikki Fortunato Bas
[REDACTED]
[REDACTED]

Via email: [REDACTED] o/b/o Councilmember Bas and staff

Re: Public Ethics Commission Complaint no. 23-13; Notice of Dismissal and Advisory Letter

To Council President Fortunato Bas and District 2 staff:

On March 22, 2023, the City of Oakland Public Ethics Commission (PEC) received a complaint alleging that your office violated the Government Ethics Act by failing to return phone calls and/or e-mails from a member of the public. In a previous letter to you, we provided a copy of that complaint.

I am writing to inform you that the PEC has completed its preliminary review of the complaint and has dismissed it with no further action. We did this because there is no duty under the Government Ethics Act to respond to phone calls or emails from a member of the public. For more detail, you can consult the dismissal letter that we sent to the complainant, a copy of which is attached here pursuant to our Complaint Procedures.

No further action is necessary on your part; this letter is just a courtesy notice.

However, please be advised that the City's Sunshine Act (which is separate from the Government Ethics Act) requires each City agency (including the City Council) to respond to written and oral requests for public information¹ on a "timely and responsive" basis.² "Public information" means "the content of 'public records' as defined in the California Public Records Act . . . whether contained in public records or in oral communications."³ In turn, "public records" contain "information relating to the conduct of the public's business prepared, owned, used, or retained by any . . . local agency regardless of physical form or

¹ OMC § 2.20.200(A).

² OMC § 2.20.200(B).

³ OMC § 2.20.180(C).

Item 10b - Dismissal Letter 23-13

characteristics.”⁴ Agency liaisons have a duty to provide oral public information about agency “operations, plans, policies, and positions.”⁵

Here, the complainant provided us with copies of the emails that he claimed to have sent to your office and to which he allegedly did not receive any response. Most of them were not seeking information about public business conducted by your office. Rather, they were seeking assistance from, or to influence, you and/or your staff. Neither you nor your staff were under any legal obligation under the Government Ethics or Sunshine Acts to respond to those emails.

However, there was one email dated October 26, 2022, in which the complainant asked for the “status” of the Athol/East 18th St. tennis courts encampment. This email appeared to be requesting information about public business conducted by the City of Oakland, and may therefore have been a request for public records or oral public information.⁶ It is unclear whether your office would actually have the responsive records or information, but the law does not require that public records requests be made to the correct department of the City to receive a response.⁷ The person designated by your agency to respond to public records requests has an affirmative duty under the Sunshine Act to:

- facilitate the inspection and copying of public records;
- provide oral public information about agency or department operations, plans, policies, and positions;
- provide information on a timely and responsive basis to those members of the public who are not requesting information from a specific person; and/or
- assist members of the public in identifying those public records they wish to obtain.⁸

Please keep this advice in mind in the event that your office receives records or information requests from the public in the future.

Although I am dismissing Mr. Collins’ complaint against you, I advised him that he may want to pursue mediation of his public records/information request if he so chooses. Mediation of a Sunshine Act (public records) dispute is a separate process from the investigation of an ethics complaint, and your participation in it would be voluntary. If your office participates in that mediation and does not have the records or information he is seeking, then the person designated by your agency to respond to public records requests should direct Mr. Collins’

⁴ Cal. Gov. Code § 7920.530(A).

⁵ OMC § 2.20.200(A).

⁶ I would note that the complainant sent this email to [REDACTED] and it is unclear whether this is an email address on which you conduct City business (and therefore would be an appropriate place to send a public records/information request). That is an issue that would have to be resolved in mediation, if the complainant chooses to pursue it.

⁷ *Kumeta v. City of San Diego*, D037521, 2002 Cal. App. Unpub. LEXIS 6494, at *16 (July 16, 2002).

⁸ OMC § 2.20.200(A)-(B).

Item 10b - Dismissal Letter 23-13

request to the appropriate agency. We will let you know if Mr. Collins chooses to pursue mediation of his records/information request.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. The date/time and agenda of that meeting will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

If you have any questions regarding this matter, please feel free to contact me at (510) 424-3200 or srussell@oaklandca.gov.

Respectfully,

Simon Russell

SIMON RUSSELL | Enforcement Chief
CITY OF OAKLAND | Public Ethics Commission
City Hall, 1 Frank Ogawa Plaza, Room 104 |
Oakland, CA 94612
Phone: 510.238.2213 | Cell 510.424.3200 | Fax: 510.238.3315
Email: srussell@oaklandca.gov | he/him/his
www.oaklandca.gov/pec

Enclosure: Copy of Dismissal Letter to Complainant

April 27, 2023

David Collins
[REDACTED]
[REDACTED]

Via email: [REDACTED]

Re: Public Ethics Commission Complaint No. 23-13; Notice of Dismissal; Recommendation for Mediation

To David Collins:

On March 22, 2023, the City of Oakland Public Ethics Commission (PEC) received your complaint (#23-13) alleging that District 2 City Councilmember Nikki Fortunato Bas and her staff violated the Government Ethics Act by failing to return your phone calls and/or e-mails.

The PEC has completed its preliminary review of the complaint and determined that it does not allege a violation of the Government Ethics Act. No provision of the Government Ethics Act imposes a legal requirement on a City Councilmember or their staff to respond to phone calls and/or emails from a member of the public.

However, we also reviewed your complaint under the City’s Sunshine Act, which requires each City agency (including the City Council) to respond to written and oral requests for public information¹ on a “timely and responsive” basis.² “Public information” means “the content of ‘public records’ as defined in the California Public Records Act . . . whether contained in public records or in oral communications.”³ In turn, “public records” contain “information relating to the conduct of the public’s business prepared, owned, used, or retained by any . . . local agency regardless of physical form or characteristics.”⁴ Agency liaisons have a duty to provide oral public information about agency “operations, plans, policies, and positions.”⁵

¹ OMC § 2.20.200(A).

² OMC § 2.20.200(B).

³ OMC § 2.20.180(C).

⁴ Cal. Gov. Code § 7920.530(A).

⁵ OMC § 2.20.200(A).

Item 10b - Dismissal Letter 23-13

We reviewed the emails you provided to the PEC, showing your communications with Councilmember Bas' office. Most of them were not seeking information about public business conducted by Councilmember Bas' office. Rather, they were seeking assistance from, or to influence, Councilmember Bas. Neither Councilmember Bas nor her staff were under any legal obligation to respond to those emails.

However, your email to Councilmember Bas on October 26, 2022, asking for the "status" of the Athol/East 18th St. tennis courts encampment is requesting information about public business conducted by the City of Oakland, and may therefore be a request for public records or oral public information.⁶ It is unclear whether Councilmember Bas' office would actually have the responsive records or information, but the law does not require that public records requests be made to the correct department of the City to receive a response.⁷ The person designated by Councilmember Bas' office to respond to public records requests has an affirmative duty under the Sunshine Act to:

- facilitate the inspection and copying of public records;
- provide oral public information about agency or department operations, plans, policies, and positions;
- provide information on a timely and responsive basis to those members of the public who are not requesting information from a specific person; and/or
- assist members of the public in identifying those public records they wish to obtain.⁸

Mediation of a Sunshine Act (public records) dispute is a separate process from the investigation of an ethics complaint. If you wish to pursue mediation of your request for information concerning the encampment, you can complete and return the attached Mediation Request to our office. Meanwhile, I am dismissing your ethics complaint because it does not allege a violation of any laws over which the PEC has jurisdiction other than the Sunshine Act.

We are required to inform the Public Ethics Commission of the resolution of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting date/time and agenda will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this complaint, which is now closed. However, you are welcome to call-

⁶ I would note that you sent your email to [REDACTED] and it is unclear whether this is an email address used by the Councilmember to conduct City business (and therefore an appropriate place to which to send a public records/information request). That is an issue that would have to be resolved in mediation, if you choose to pursue it.

⁷ *Kumeta v. City of San Diego*, D037521, 2002 Cal. App. Unpub. LEXIS 6494, at *16 (July 16, 2002).

⁸ OMC § 2.20.200(A)-(B).

Item 10b - Dismissal Letter 23-13

in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have other questions regarding this matter or our mediation program, please feel free to contact me.

Respectfully,

Simon Russell

Simon Russell, Enforcement Chief
City of Oakland, Public Ethics Commission
(510) 424-3200
srussell@oaklandca.gov

Enclosure: Mediation Request Form



Public Records Request Mediation Guide

Item 10b - Dismissal Letter 23-13

Questions? Contact the PEC:

(510) 238-3593

Oakland City Hall, Room 104

EthicsCommission@oaklandca.gov

Keep this page for your records

What is a public record? A public record is any writing or recording that contains information about the conduct of the public's business, including those stored in electronic form (such as emails). State and local law provide the right for the people to inspect and obtain copies of public records, unless those records, or information in the records, are confidential. Examples of confidential records include those containing personal information like a social security number, those relating to an ongoing investigation, or attorney-client communications. Confidential records might be partially redacted or withheld entirely.

Who may request mediation? Any person whose request to inspect or copy public records has been denied, delayed, or not completely fulfilled, may request mediation of their request through the Public Ethics Commission (PEC).

What does the mediation process look like? The PEC is responsible for conducting mediation. PEC staff will try to begin mediation within 10 days of receiving your request; however, due to high demand for PEC staff resources, many mediations begin later than 10 days after the request is made. The mediator (a PEC Commissioner or staff member) will conduct most communication between the parties by phone or email, and will aim to resolve the dispute to the mutual satisfaction of both parties. The mediator's recommendations are not binding on any party.

What is the difference between filing a mediation request and filing a complaint? The purpose of filing a mediation request is to have the PEC assist you in obtaining any records to which you are legally entitled. The purpose of filing a complaint is to have the PEC's Enforcement Unit investigate any potential violations of our local public records law; it is not necessarily meant to obtain any records you are requesting.

Do I have to participate in mediation before I can file a complaint or take legal action? Yes. A requestor who alleges an incomplete or untimely response to their public records request, must first participate in mediation before filing a complaint with the PEC or seeking a court order.

How long does mediation take? There is no legal deadline for when a mediation must end. Because the mediator cannot force an agency to release records, the length of the mediation depends upon the amount of cooperation received. Some mediations are completed within a few weeks, while others can go on longer than that.

Can I end the mediation myself? Yes, you may withdraw from the mediation process at any time. At that point, you may file a complaint with the PEC or seek a court order – but if you end the mediation, the PEC will no longer work to produce the records you are seeking. To withdraw your mediation request, please notify PEC staff in writing.

What if the mediation is unsuccessful? If the mediator is unable to resolve the dispute and determines that future mediation is unlikely to produce additional records, the mediator will notify both parties that they are closing the mediation and explain why. A final report regarding the mediation will be provided to the Public Ethics Commission at its next public meeting. You will be informed of that report in advance of the Commission's meeting and will have the opportunity to make a public comment at the meeting. You may then file a complaint with the PEC to investigate alleged violations of our local public records law, or seek a court order. Note: the PEC has no authority to impose fines for Sunshine violations.

How do I request mediation? Please complete both sides of the attached Request for Mediation form, and submit the form and any attachments to the Public Ethics Commission by email, mail, or fax via the contact information below.



Request for Mediation of Public Records Request Form

Staff Initials: _____

Request #: _____

If you would like to submit a request for mediation to help you obtain public records that you requested from a City employee or official, please complete this form. This form becomes a public record available for inspection and copying by the public, along with any documents submitted with this form. A copy of this request also will be provided to the persons identified in the allegations below. For more information about the Public Ethics Commission’s mediation process, see the [Oakland Sunshine Ordinance \(Oakland Municipal Code Chapter 2.20\)](#). Please contact the PEC with any questions you may have about mediation. The PEC’s contact information can be found at the end of this form.

Contact Information of Person Making Request:

Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Email: _____

Description of Request. Please complete the lines below and/or provide an attachment with the following details:

- **What records are you seeking?** Please include your Next Request number, if known. You can find your request number at <https://oaklandca.nextrequest.com/>

- **From whom are you seeking the records?** Please include the employee’s name, and any known title, department, phone number, email address, etc.

Item 10b - Dismissal Letter 23-13

- **Why are you seeking mediation?** Please describe the problem(s) you have encountered, and the outcome you are seeking.

- Additional information or documentation that might aid in the mediation. Please include copies of such documentation and list them here.

Verification. I certify under penalty of perjury under the laws of the State of California that my above and attached statements are true and correct.

(Signature)

Executed on _____ at _____
(Date) (City, State)

Request Submission. Please complete and submit this form and any attachments by email, mail or fax:

Email: EthicsCommission@oaklandca.gov
Mail: Public Ethics Commission
1 Frank H. Ogawa Plaza, Rm. 104 Oakland, CA 94612
Phone: (510) 238-3593
Fax: (510) 238-3315



Item 10c - Dismissal Letter 23-18

ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

April 28, 2023

Shari Wooldridge, Interim Executive Director
Ellen Hurtado, Director of Programs at Crossroads
East Oakland Community Project

[REDACTED]
[REDACTED]

Via email: [REDACTED] o/b/o EOCP and staff

Re: City of Oakland Public Ethics Commission Complaint no. 23-18; Notice of Complaint Received and Dismissal

To the East Oakland Community Project (EOCP):

The City of Oakland's Public Ethics Commission investigates alleged violations of the City's ethics laws. On April 24, 2023, we received a complaint (#23-18) concerning the East Oakland Community Project (EOCP) Crossroads facility and staff. I have attached a copy of the complaint for your reference.

Because our office does not have jurisdiction over EOCP or its staff (which is a non-governmental organization), we are dismissing the complaint. We have advised the complainant that she should utilize EOCP's grievance process and/or notify the City's Community Homeless Services office if she is not satisfied with EOCP's handling of her grievance.

For more detail, you can consult the dismissal letter that we sent to the complainant, a copy of which is attached here pursuant to our Complaint Procedures.

No further action is necessary on your part; this letter is just a courtesy notice.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. The date/time and agenda of that meeting will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to

Item 10c - Dismissal Letter 23-18

call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

If you have any questions regarding this matter, please feel free to contact me at (510) 424-3200 or srussell@oaklandca.gov.

Respectfully,

Simon Russell

SIMON RUSSELL | Enforcement Chief
CITY OF OAKLAND | Public Ethics Commission
City Hall, 1 Frank Ogawa Plaza, Room 104 |
Oakland, CA 94612
Phone: 510.238.2213 | Cell 510.424.3200 | Fax: 510.238.3315
Email: srussell@oaklandca.gov | he/him/his
www.oaklandca.gov/pec

Enclosure: Copy of Dismissal Letter to Complainant



Item 10c - Dismissal Letter 23-18

ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

April 28, 2023

M'Charlotte Cheatham

Via email: [REDACTED]

Re: Public Ethics Commission Complaint No. 23-18; Notice of Dismissal and Referral to EOCP Grievance Process and City of Oakland Community Homeless Services

To M'Charlotte Cheatham:

On April 24, 2023, the City of Oakland Public Ethics Commission (PEC) received your complaint (#23-18) concerning the East Oakland Community Project (EOCP) Crossroads facility and staff.

Our office does not have jurisdiction over EOCP or its staff, which is a non-governmental organization. We can only handle ethics complaints concerning City government officials or certain consultants, not including EOCP.

However, we recommend you do the following:

1. Use EOCP's own grievance process. You can contact Ellen Hurtado, Director of Programs at [REDACTED] and [REDACTED] in order to do that. We have already provided them with a copy of your complaint, with your contact information redacted. You should contact them if you want to pursue your complaint with them.
2. If you are not satisfied with EOCP's grievance process, you can contact the City of Oakland's Community Homeless Services office (which funds EOCP) and they will handle your complaint. You can contact C'Mone Falls, Acting Manager of Community Homeless Services, [REDACTED] and [REDACTED]. We have also provided them with a copy of your complaint.

We are required to inform the Public Ethics Commission of the resolution of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting date/time and agenda will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this complaint, which is now closed. However, you are welcome to call-

Item 10c - Dismissal Letter 23-18

PEC Dismissal Letter, 23-18

Page 2 of 2

in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have questions, please feel free to contact me.

Respectfully,

Simon Russell

Simon Russell, Enforcement Chief
City of Oakland, Public Ethics Commission
(510) 424-3200
srussell@oaklandca.gov



Item 11a - Executive Director's Report

Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: June 2, 2023
RE: Executive Director's Monthly Report for the June 14, 2023, PEC Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities not included in other program reports since the last regular meeting. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2023 for each program area.

Budget

In May, Commission staff met with Councilmembers and City staff to request that the Proposed Budget be amended to provide a limited pilot of the Democracy Dollars program in 2024, as detailed in the Measure W Implementation Update memo. Staff also advocated for additional staff resources, regardless of whether a pilot is funded, given the increased demand in all program areas.

Lobbyist Registration Fee & Late Filing Penalties

At its April meeting, the Commission authorized PEC staff to request that the City Council include the following fees in the Master Fee Schedule to take effect January 2024:

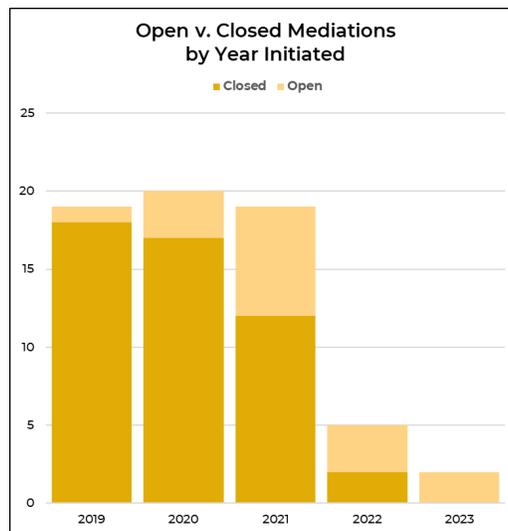
1. An annual lobbyist registration fee of \$500.
2. A late filing fee of \$10 per day after the filing deadline until the form is filed for lobbyist registration and lobbyist reports.

Both proposed fees have been included in the proposed Master Fee schedule. On May 22, 2023, the City Council Finance and Management Committee voted to recommend that the proposed Master Fee schedule be approved, with certain amendments not pertaining to the PEC's requests. The City Council will vote on the Master Fee schedule on June 6, 2023.

If the proposed lobbyist registration fee is adopted, prior to the fee's implementation, staff will bring back to the Commission a proposed amendment to the Lobbyist Registration Act reflecting the fee and a proposed registration fee waiver policy for lobbyists that are employees or representatives of 501(c)(3) nonprofit organizations and/or community-based organizations that can demonstrate hardship.

Mediation Program

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 16 open mediations, down from 24 last month. Ten mediations have been completed this year, including eight this month.



Following a mediation, Commission staff provides a written summary of the mediation to the Commission and can also make recommendations for further Commission action. Mediation summaries for the following eight mediations, conducted by staff and subsequently closed this past month, are attached:

1. In the Matter of the Workplace & Employment Standards Department (Case No. M2020-03)
2. In the Matter of the Human Resources Management Department (Case No. M2020-15)
3. In the Matter of the Public Works Department (Case No. M2021-02)
4. In the Matter of the Police Department (Case No. M2021-04)
5. In the Matter of the Cannabis/Special Activity Permitting Department (Case No. M2021-10)
6. In the Matter of the Housing & Community Development Department (Case No. M2021-12)
7. In the Matter of the Rent Adjustment Program (Case No. M2021-15)
8. In the Matter of the Finance and Human Resources Management Departments (Case No. M2022-04)

Staff Changes

The PEC had a number of staff transitions in May, including the hiring of a new Executive Director, announced last month, and more recently the hiring of a new exempt limited duration employee (ELDE) Ethics Investigator, Garrett Micheels. Micheels comes to the PEC with extensive experience enforcing government ethics laws, including formerly working as an investigator for the FPPC. Welcome, Garrett!

Also in May, Law Clerk Chris Nardi completed his clerkship with the PEC. Nardi worked on a number of PEC priorities, including taking a leading role in substantially reducing the number of open public records mediations. Chris also performed excellent work in assisting the Enforcement Chief with legal research and analysis, which enabled Enforcement to process more complaints during his tenure than it otherwise would have been able to do. We're thankful to Chris for his great work, and wish him well in his future career as an attorney!

Attachments: Commission Programs and Priorities; Mediation summaries.

Item 11a - Executive Director's Report

PUBLIC ETHICS COMMISSION

Programs and Priorities 2023

Program	Goal	Desired Outcome	Program Activities	2023 Major Projects
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	<ul style="list-style-type: none"> ○ Lead Measure W implementation 	<ul style="list-style-type: none"> ○ Public Records Performance Tool ○ Lobby Registration Act amendment and waiver policy if registration fee adopted ✓ GSPP project re contractor pay-to-play restrictions and improving disclosure
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.	<ul style="list-style-type: none"> ● Regular ethics training ● Information, advice, and technical assistance ● Targeted communications to regulated communities ● New trainings as needed for diversion 	<ul style="list-style-type: none"> ○ Develop Measure W/ Democracy Dollars training resources for candidates ○ Collaboration with Clerk and HR on process improvements for ethics onboarding/exit and Form 700 compliance ✓ Public Records training
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.	<ul style="list-style-type: none"> ● Public Records mediations ● Commissioner-led public outreach ● Outreach to client groups – targeted training and compliance ● PEC social media outreach 	<ul style="list-style-type: none"> ○ Develop content to reflect Measure W changes and Democracy Dollar Program ○ Develop Democracy Dollars Community Engagement plan ○ Review and update mediation procedures/staff manual
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>	<ul style="list-style-type: none"> ● Monitor compliance (campaign finance/lobbyist/ticket use) ● Proactive engagement with filers ● Technical assistance ● Assess late fees/refer non-filers for enforcement ● Maintain data assets 	<ul style="list-style-type: none"> ○ Democracy Dollars admin system development ○ Democracy Dollars performance tracking and public data development ○ Updates to Ticket Distribution (Form 802) database

Item 11a - Executive Director's Report

Program	Goal	Desired Outcome	Program Activities	2023 Major Projects
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction.	Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.	<ul style="list-style-type: none"> • Process and investigate complaints • Initiate proactive cases • Collaborate/coordinate with other government law enforcement agencies 	<ul style="list-style-type: none"> ○ Digital complaint form/mediation request ○ Improve Enforcement database
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.	<ul style="list-style-type: none"> • Prioritize cases • Conduct legal analyses, assess penalty options • Negotiate settlements • Make recommendations to PEC 	<ul style="list-style-type: none"> ○ Resolve 2016 and 2017 case backlog ○ Review/revise policies for release of public information and election-related complaints ○ Develop internal Enforcement staff manual
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.	<ul style="list-style-type: none"> • Annual Report • Budget proposal • Ongoing professional development and staff reviews • Fill staff vacancies • Commissioner onboarding 	<ul style="list-style-type: none"> ○ 2023 – 2025 strategic plan preparation/retreat ✓ Develop process for City Attorney and City Auditor Salary Adjustment and adopt resolution for Council

Item 11b - M2020-03 Mediation Summary



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 19, 2023
RE: *In the Matter of the Workplace & Employment Standards Department (Case No. M2020-03); Mediation Summary*

I. INTRODUCTION

On February 20, 2020, the Commission received a request for mediation alleging the Workplace & Employment Standards Department was unlawfully delaying its response to a public records request made by the Requester on July 11, 2019. On February 26, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the Department represents that it does not hold any responsive records to the request, and both the Economic & Workforce Development Department (EWD) and City Clerk's office represent the same, this mediation request was closed with no further action.

II. SUMMARY OF LAW

One of the primary purposes of the Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records are open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of their 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 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); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 11b - M2020-03 Mediation Summary

III. SUMMARY OF FACTS

On July 11, 2019, the City received the following records request via NextRequest (19-3483):

All Schedule O documents from negotiations for sale of city property, 2100 Telegraph Avenue. All parties to the negotiations for city land are mandated to present a filled and signed Schedule O form to negotiate a DDA or LDDA for city-owned land.

On July 23, 2019, the Public Ethics Commission informed the Requester that they had no responsive records.

On February 20, 2020, the Commission received a mediation request from the Requester alleging that the Workplace & Employment Standards Department was unlawfully delaying release of records in response to their public records request.

On February 26, 2020, Staff initiated its mediation program and notified the Workplace & Employment Standards Department of the mediation request.

On January 24, 2022, Staff contacted Mary Mayberry (public records liaison for the Workplace & Employment Standards Department, Contracts Compliance Unit) to confirm if the Department was able to locate the requested records.

On March 30, 2023, Staff contacted Mayberry to confirm if the Department was able to locate the requested records. Mayberry responded on March 31, 2023, that she would “find the requested documents and forward to you ASAP.”

On April 6, 2023, and April 11, 2023, Staff followed up with Mayberry. Mayberry responded on April 11, 2023, stating:

My apologies for the delay in responding. The staff person who I needed to assist me in this regard was out of the office. Do you have the name of the contractor/vendor? Schedule Os are filed according to contractor.

Staff informed Mayberry that same day that it did not have the name of the contractor or vendor, but that the request was for the sale of property of 2100 Telegraph Avenue. Mayberry responded that same day:

Contract staff informed me that we probably don't have the Schedule O since it's for a sale of property which is not handled as a professional services contract and did not come through DWES for review. EWD may be your best recourse.

Staff contacted the Economic & Workforce Development Department (EWD) to confirm whether they held the requested records. On April 13, 2023, EWD notified Staff they were unable to find the records. The Department provided Staff with a copy of the executed Disposition and Development Agreement. Staff asked EWD if any other department might hold the requested records; they responded, “Not that I'm aware of - usually it would be with the department or contract compliance.”

Item 11b - M2020-03 Mediation Summary

On April 14, 2023, Staff provided Mayberry with the name of the property owner from the executed Disposition and Development Agreement, W/L Telegraph Owner LLC, and asked her to confirm whether the Workplace & Employment Standards Department held any Schedule Os for that contractor. Staff followed up with Mayberry on April 20, 2023.

On April 25, 2023, Staff learned from a public document posted by the Commission that additional entities were involved in the sale of 2100 Telegraph Avenue. Staff therefore asked Mayberry to search for Schedule Os from any of the following entities: W/L Telegraph Owner, LLC, TB2 Retail Complex, LLC, Lane Partners, Walton Street Capital, and Strategic Urban Development Alliance, LLC. Staff followed up with Mayberry on April 27, 2023. On April 28, 2023, Mayberry notified Staff that the Workplace & Employment Standards Department contacted the City Clerk's office, and the City Clerk's office was unable to find Schedule Os for any of these entities.

That same day, Staff asked EWD to search for Schedule Os for the updated list of entities. Staff followed up with EWD on May 3, 2023. On May 4, 2023, EWD notified Staff that it didn't have Schedule Os for any of the listed entities.

Later that day, Staff asked the City Clerk's office to confirm that it did not hold Schedule Os for any of the listed entities. The City Clerk's office responded an hour later, stating that it found a contract but without an attached Schedule O.

On May 4, 2023, Staff reached out to the Requester to determine whether they were satisfied with this response to their request. Staff followed up with the Requester on May 11, 2023, May 15, 2023, and May 18, 2023. On May 18, 2023, the Requester notified Staff that they wished to close this mediation since no responsive records were located. Staff subsequently notified the Requester that their mediation was closed.

IV. RECOMMENDATION

Because the Workplace & Employment Standards Department represented that it did not hold any responsive records, and the other relevant departments represented the same, the mediation has been closed with no further action. However, Staff notes that this request received no response from the Workplace & Employment Standards Department for nearly four years. Only when Staff made multiple attempts to contact Mayberry did the Workplace & Employment Standards Department perform a search for responsive records. Moreover, as of the date of this summary, the Workplace & Employment Standards Department has not closed this request in NextRequest.

Item 11c - M2020-15 Mediation Summary



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 19, 2023
RE: *In the Matter of the Human Resources Management Department (Case No. M2020-15);*
Mediation Summary

I. INTRODUCTION

On September 21, 2020, the Commission received a request for mediation alleging the Human Resources Management Department (HRM) was unlawfully delaying responding to public records requests made by the Requester on July 3, 2020, and August 2, 2020. Staff initiated its mediation program on September 28, 2020, pursuant to the Oakland Sunshine Ordinance.

Because HRM provided the Requester with one additional record on January 6, 2021, and the Requester is satisfied with that response, this mediation was closed with no 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 their 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 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); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 11c - M2020-15 Mediation Summary

III. SUMMARY OF FACTS

On July 3, 2020, the City received the following records request via NextRequest (20-3960):

This is a California Public Records Act request for the following records:

1. The complete personnel file and employment records for City of Oakland employee Elias Ferran (employed by the City Attorney's Office), including but not limited to his job application, dates of employment, titles/positions held, and salary/wages/bonuses/overtime earned, pension vested.
2. Copies of any and all complaints, investigations, reviews, audits made about/into Elias Ferran and copies of any documents that describe the corresponding outcomes, including but not limited to any discipline, assignment changes, coordinated retirement, or termination of employment, or any other type of sanctions or remedial action by the city.

On July 14, 2020, HRM extended the deadline to respond to the request until July 28, 2020. It stated:

Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2)).

On July 15, 2020, HRM posted an internal message on NextRequest stating: "Payroll info requested." One hour later, it released a redacted copy of the employee's employment application.

On August 2, 2020, the City received the following records request via NextRequest (20-4822):

Documentation for the separation of Elias Ferran from City of Oakland employment including any documents of termination, separation documents, or notification of any kind from or to Ferran that his employment at the City of Oakland ended.

On September 17, 2020, the Requester posted the following via NextRequest on request 20-4822:

This record is now over one month overdue and is in violation of Oakland's Sunshine Ordinance. Please release the records as soon as possible.

On September 21, 2020, the Commission received a mediation request from the Requester alleging that HRM had unlawfully delayed responding to these requests. Staff initiated its mediation program on September 28, 2020, and notified HRM of the mediation request.

On October 5, 2020, HRM posted the following on both requests:

Dear Requester,

City staff is in receipt of your request and is currently reviewing Mr. Ferran's employment records in consultation with legal counsel. Additional time is required to fulfill your request. Staff is examining a large number of records (Government Code Section 6253(c)(2)), many of which contain personnel information (Government Code Section 6254(c)) and attorney-client communications (Section 6254(k) of the Public Records Act) which are subject to legal

Item 11c - M2020-15 Mediation Summary

review. Staff estimates this review will be completed at the end of October and will provide additional updates as they become available.

On October 26, 2020, the Requester posted the following via NextRequest on request 20-3960:

Please provide documents as they become available, as per California law.

On January 6, 2021, HRM released a 129-page PDF to the Requester on both requests. HRM stated: "The documents you requested have been published. The pages of the documents cite the redactions that were made and which files were withheld." It subsequently closed both requests with a substantially similar message.

On May 4, 2023, Staff reached out to the Requester to determine whether they were satisfied with these responses to their requests. Staff followed up with the Requester on May 11, 2023, May 15, 2023, and May 18, 2023. On May 18, 2023, the Requester notified Staff that they wished to close this mediation. Staff subsequently notified the Requester that their mediation was closed.

IV. RECOMMENDATION

Because HRM provided the Requester with one additional record, satisfying the Requester's mediation request, the mediation has been closed with no further action. However, Staff notes HRM's substantial delay in responding to this request, taking an additional three months after mediation began to provide responsive records.

Item 11d - M2021-02 Mediation Summary



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 11, 2023
RE: *In the Matter of the Public Works Department (Case No. M2021-02); Mediation Summary*

I. INTRODUCTION

On January 25, 2021, the Commission received a request for mediation alleging the Public Works Department was failing to provide a responsive record to a public records request made by the Requester on October 5, 2020. Staff initiated its mediation program on January 29, 2021, pursuant to the Oakland Sunshine Ordinance.

Because the Public Works Department provided the Requester with one additional record on January 28, 2021, and the Requester is satisfied with that response, this mediation was closed with no 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 their 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 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); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 11d - M2021-02 Mediation Summary

III. SUMMARY OF FACTS

On October 15, 2020, the City received the following records request via NextRequest (20-6899):

Please provide all reports, photos & videos taken by Pacific Trenchless of the Lincoln main sewer easement from MH 56-014-62 to MH 56-014-53, from 5-6-20 to current.
Thank you

On November 19, 2020, the Public Works Department provided the Requester with 16 video files and 4 PDFs. It subsequently closed the request, stating, "We released all of the requested documents."

On November 29, 2020, the City received two records requests via NextRequest containing the following identical text (20-8482 and 20-8483):

Request #20-6899 (below) was closed without providing all records known to exist and is thus incomplete. Therefore, please provide the missing video and documents:
CCTV taken from 56-014-53 (upstream) to 56-014-54. David King (Pacific Trenchless) told me personally he took this video on 9-23-20.
WinCan (Pipe Graph) Inspection Reports for the following:
56-014-57 to 56-014-58
56-014-57 to 56-014-56
56-014-53 to 56-014-54

Thank you

Request #20-6899
CLOSED

Please provide all reports, photos & videos taken by Pacific Trenchless of the Lincoln main sewer easement from MH 56-014-62 to MH 56-014-53, from 5-6-20 to current.

On November 30, 2020, the Public Works Department closed request 20-8483, stating:

This is a duplicate request it is the same and PRR #20-8482. If any responsive documents are located they will be provided under PRR #20-8482.

On December 1, 2020, the Public Works Department closed request 20-8482 without releasing any records, stating:

56-014-57 to 56-014-58 Due to obstruction, only a Push Cam video was taken and is included in the records provided under PRR #20-6899. (No Report available)
56-014-57 to 56-014-56 Due to obstruction, only a Push Cam video was taken and is included in the records provided under PRR #20-6899. (No Report available)
56-014-53 to 56-014-54 Due to obstruction, only a Push Cam video was taken and is included in the records provided under PRR #20-6899. (No Report Available)
The Oakland Public Works Dept. has provided all the information currently available.

Later that day, the City received the following records request via NextRequest (20-8557):

Item 11d - M2021-02 Mediation Summary

This is my THIRD attempt to have this Public Records Request fulfilled. Prior PRR #20-6899 and now current PRR #20-8483 have both been closed WITHOUT providing the records I asked for. Despite the External Message claim that I have been provided everything I requested, NO WHERE in PRR #20-6899 was there a Push Cam video of 56-014-53 to 56-014-54 provided to me. Please provide this video ASAP. Thank you

On December 2, 2020, the Public Works Department released 12 video files to the Requester (6 of which were duplicates of the other 6 files). All 12 video files were previously released to the Requester in request 20-6899. The Public Works Department subsequently closed the request by including the same message as it did when closing request 20-8482, while also adding the following text:

There is no further information or responsive documents to provide. Please refer the the message sent providing an explanation regarding the videos. This is the same information that has been provided under #20-6899 and #20-8483. OPW has provided all the responsive information and documents currently available.

On January 25, 2021, the Commission received a mediation request from the Requester, alleging that the Public Works Department had failed to provide the Requester with a video that would be responsive to their request. The Requester alleged that they had been told by a City contractor that the contractor had taken this video.

On January 28, 2021, the Public Works Department reopened request 20-6899 and provided the Requester with one additional video file. It subsequently closed the request, stating that all requested records had been released.

On January 29, 2021, Staff initiated its mediation program and notified the Public Works Department of the mediation request.

On April 10, 2023, Staff communicated with the Requester via phone and email and discussed the additional video file that the Public Works Department had provided. The Requester informed Staff that they would view the video file to confirm whether this satisfied their mediation request.

Staff followed up with the Requester on April 25 and 27, 2023. On April 28, 2023, the Requester notified Staff that the additional video file satisfied their mediation request. Staff subsequently notified the Requester on May 1, 2023, that their mediation was closed.

IV. RECOMMENDATION

Because the Public Works Department provided the Requester with one additional video file, satisfying the Requester's mediation request, the mediation has been closed with no further action.

Item 11e - M2021-04 Mediation Summary



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 23, 2023
RE: *In the Matter of the Police Department (Case No. M2021-04); Mediation Summary*

I. INTRODUCTION

On March 1, 2021, the Commission received a request for mediation alleging the Police Department had unlawfully failed to respond to a public records request made by the Requester on June 5, 2019. Staff initiated its mediation program on March 10, 2021, pursuant to the Oakland Sunshine Ordinance.

The Police Department provided the Requester with two records on June 9, 2021. Despite five attempts to contact the Requester, Staff could not determine whether the Requester was satisfied with this response. However, since the Requester is no longer responsive to Staff attempting to mediate this request, this mediation was closed with no 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 their 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 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); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 11e - M2021-04 Mediation Summary

III. SUMMARY OF FACTS

On June 5, 2019, the City received the following records request via NextRequest (19-2865):

To Whom It May Concern:

****Note that every response (including all responsive records) you send may be automatically and immediately visible to the general public on the MuckRock.com internet service used to issue this request.****

Pursuant to the California Public Records Act (CPRA), I hereby make the following 5 distinct requests for records from Oakland Police Department ("agency"):

1. Every communication (including without limitation any message on an agency's officers/employees personal email/devices pursuant to City of San Jose v. Superior Court (Smith), S218066) to or from ICE between Jan 1, 2018 until the date of receipt of request (inclusive) that is a public record pursuant to Govt Code 7283.1(c) which reads in relevant part "All records relating to ICE access provided by local law enforcement agencies, including all communication with ICE, shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. Records relating to ICE access include, but are not limited to, data maintained by the local law enforcement agency regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means."
2. The contents of any internal tracking mechanism, database, or log your agency uses to manage or related to "ICE access", "Notification requests", "Hold requests", and/or "Transfer requests" (all as defined under Govt Code 7283) showing all items between Jan 1, 2018 until the date of receipt of request (inclusive), pursuant to Govt Code 7283.1(c)
3. Records showing "whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means" pursuant to Govt Code 7283.1(c), showing all items between Jan 1, 2018 until the date of receipt of request (inclusive)
4. Every inter- or intra-agency memorandum regarding whether or not to comply with an ICE access request of any kind between Jan 1, 2018 until the date of receipt of request (inclusive)
5. Every guideline, policy, ordinance, resolution (incl any 'sanctuary' OR 'non-sanctuary' declarations) that you follow to determine whether or not to comply with an ICE access request of any kind.
6. Every presentation your agency has given to the jurisdiction's governing entity (board of supervisors, council, etc.) or public re: ICE access requests

You have an obligation under CPRA to, for **each** of the 6 requests made, to provide a notice of determination that you: have no responsive records, have disclosed all responsive records, have withheld all responsive records, have disclosed some and withheld some responsive records (incl. redaction), and to provide statutory authority for any records withheld in whole or in part.

I would prefer the request fulfilled electronically, by attachments, if possible.

Item 11e - M2021-04 Mediation Summary

For all electronic copies, you have an obligation to provide electronic records in the original format you hold them.

Therefore, where emails, text messages, chat logs, or similar are provided, we would like them in a format that provides **all** the parts of the record, namely all headers, metadata, attachments, and inline images.

.eml or .msg message formats are best. However, if you convert messages to PDFs or screenshots of iPhone messages, etc. in order to perform redaction, please ensure you include all headers, metadata, attachments, and inline images when converting; the usual From/To/Subject/Sent headers are not enough. If you withhold parts of e-mail or text records (such as headers) without statutory justification, you may be in violation of the CPRA and we may challenge your response.

Please consider your obligations under *City of San Jose v. Superior Court (Smith)*, S218066 to search personal accounts/devices storing public records -- which we do explicitly request. Please send only those records available without any fees - since we have asked for electronic copies, we expect all will be available without fees. Nevertheless, for any records for which you would charge fees, instead of copies, please provide us the (free) statutorily-mandated CPRA determination of what records exist, so we may inspect them in person if we so choose to do so, and notify us of the expected costs if we wished to move forward with copies.

Please provide responsive records on a rolling basis as you approve/redact them for disclosure.

Thank you in advance for your anticipated cooperation in this matter.
I look forward to receiving your response to this request within 10 calendar days, as the statute requires.

Sincerely,
Anonymous Person

On June 24, 2019, the Police Department extended the deadline to respond to this request to July 24, 2019. It stated: "Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2))."

On September 11, 2019, the Police Department extended the deadline to respond to this request to October 14, 2019. On October 19, 2019, it extended the deadline to November 20, 2019. On November 19, 2019, it extended the deadline to December 20, 2019. On December 17, 2019, it extended the deadline to January 31, 2020. The Police Department posted the same message after each extension: "Request extended: Additional time is required to answer your public records request."

On December 17, 2019, the Requester sent the following message to the Police Department via email:

This is a follow up to request number 19-2865:

No, it has been half a year.

Item 11e - M2021-04 Mediation Summary

Please provide immediately all records this far reviewed and redacted.

We reserve our right to file complaints with the Public Ethics Commission and/or suit against the City in Superior Court if you refuse.

Sincerely, Anonymous

On January 24, 2020, the Police Department extended the deadline to respond to this request to February 28, 2020. On February 28, 2020, it extended the deadline to March 26, 2020. The Police Department again posted the same message after both extensions: "Request extended: Additional time is required to answer your public records request."

On March 12, 2020, a public records liaison for the Police Department sent emails to four Police Department employees seeking information and records. This public records liaison also submitted an EDDR request to the IT Department for responsive emails. The Police Department subsequently posted the following message on NextRequest:

We are sorry for the delay.

Your request has been delivered to the appropriate City Departments to review and provide responsive documents.

We have also submitted an email inquiry to our IT team.

The City of Oakland is committed to transparency and to providing you with the appropriate responsive documents.

On March 27, 2020, the Police Department extended the request deadline to April 24, 2020. On April 30, 2020, it extended the deadline to May 28, 2020. On June 25, 2020, it extended the deadline to July 24, 2020. On July 27, 2020, it extended the deadline to August 24, 2020. On August 24, 2020, it extended the deadline to September 24, 2020. On September 24, 2020, it extended the deadline to October 23, 2020. The Police Department again posted the same message after each extension: "Request extended: Additional time is required to answer your public records request."

On October 5, 2020, a public records liaison for the Police Department checked with the IT Department on the status of the EDDR request. On October 7, 2020, a public records liaison for the Police Department followed up with two Police Department employees regarding the request.

On October 8, 2020, the IT Department notified this public records liaison that the EDDR request was in progress with 1125 names. The Police Department subsequently posted the following messages on NextRequest: "The IT team is still working on the email search portion of your request," and "I sent a follow up email to The Training Unit and The Policies and Publication Unit."

On January 25, 2021, the Police Department extended the request deadline to February 25, 2021. On February 26, 2021, it extended the deadline to March 25, 2021. The Police Department again posted the same message after both extensions: "Request extended: Additional time is required to answer your public records request."

Item 11e - M2021-04 Mediation Summary

On March 1, 2021, the Commission received a mediation request from the Requester alleging that the Police Department had unlawfully failed to respond to their public records request. Staff initiated its mediation program on March 10, 2021, and notified the Police Department of the mediation request.

Later that day, a public records liaison for the Police Department followed up with the IT Department on the status of the EDDR request. The Police Department subsequently posted the following message:

Good Morning, we sent a follow up to The IT team regarding the requested email search. We will give you an update, once they respond.

Another Police Department public records liaison followed up with two Police Department employees regarding whether they had responsive documents. The Police Department subsequently posted the following message:

Good Morning, we sent a follow up to The Training Unit and The Policies and Publications Unit regarding the requested information. We will give you an update, once they respond.

One of the Police Department employees notified the public records liaison that same day that they didn't have knowledge of any responsive records since the Department is prohibited from cooperating with ICE by ordinance.

The Police Department notified Staff on March 11, 2021, that they were waiting on responsive documents from the Research and Planning Section, the Training Division, and the IT Department.

On March 15, 2021, a public records liaison for the Police Department sent an email to the Executive Assistant to the Chief of Police inquiring if the Office of the Chief of Police was aware of any responsive records. The email set a deadline of March 22, 2021, to respond to the Records Division.

On March 19, 2021, the executive assistant to the Chief of Police forwarded the email to the Chief of Staff of the Office of Chief of Police.

On April 9, 2021, Staff followed up with the Police Department regarding this request. On April 12, 2021, a public records liaison for the Police Department followed up with the Chief of Staff of the Office of Chief of Police. The Police Department subsequently posted on NextRequest:

Good Morning. We sent a follow up email today. We are awaiting responsive documents.

A public records liaison for the Police Department subsequently emailed Staff:

We have not received the requested information as of today. We sent a follow-up email today. We also left a message for the requester on the NextRequest Portal, in regards to the status. The Records being requested are not housed within The Records Division.

The Chief of Staff responded to the public records liaison approximately an hour later, stating: "I will work on an ETA."

Item 11e - M2021-04 Mediation Summary

On April 30, 2021, the Police Department posted on NextRequest: “We sent a follow up email today. We are awaiting responsive documents.”

On May 12, 2021, a public records liaison for the Police Department followed up with the Chief of Staff regarding this request. The email set May 22, 2021, as a deadline to provide responsive documents or a date of completion.

On June 7, 2021, a public records liaison for the Police Department sent an email to several Police Department employees stating: “I am following up on this request.”

On June 9, 2021, the Police Department posted on NextRequest, “Your request is in the final review phase.” It subsequently posted a copy of Oakland’s sanctuary city ordinance and a copy of the Police Department’s immigration policy. It also posted the following message:

From Jan 2018 to date, the Oakland Police Department has not engaged in any operations with Immigration and Customs Enforcement “ICE”. The Oakland Police Department does not engage in any operations with ICE per the City of Oakland Resolution.

The Police Department subsequently closed the request, stating, “We released all of the requested documents.”

On July 13, 2021, Staff reached out to the Requester to determine whether they were satisfied with this response to their request.

On May 1, 2023, Staff again reached out to the Requester to determine whether they were satisfied with this response to their request. Staff notified the Requester on May 8, 2023, that this mediation would be closed if Staff received no further communications by May 22, 2023. Staff followed up with the Requester on May 16, 2023, and May 18, 2023. Since Staff did not receive any communications from the Requester, Staff notified the Requester that this mediation was closed on May 23, 2023.

IV. RECOMMENDATION

Because the Police Department provided the Requester with two additional records, and the Requester has not contacted Staff after five requests for information, the mediation has been closed with no further action.

Item 11f - M2021-10 Mediation Summary



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 11, 2023
RE: *In the Matter of the Cannabis/Special Activity Permitting Department (Case No. M2021-10); Mediation Summary*

I. INTRODUCTION

On May 3, 2021, the Commission received a request for mediation alleging the Cannabis/Special Activity Permitting Department was unlawfully delaying its response to public records requests made by the Requester on April 14, 2021. Staff initiated its mediation program on May 4, 2021, pursuant to the Oakland Sunshine Ordinance.

Because the Cannabis/Special Activity Permitting Department provided the Requester with 69 additional documents on May 3 and 4, 2021, and the Requester is satisfied with that response, this mediation was closed with no 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 their 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 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); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 11f - M2021-10 Mediation Summary

III. SUMMARY OF FACTS

On April 14, 2021, the City received the following records request via NextRequest (21-3332):

Copies of any traffic, noise, odor, public safety, public safety, or other environmental reports, studies, or analyses related to E7 Oakland LLC's application to establish a cannabis dispensary at 1446 Leimert Boulevard in the City of Oakland.

Later that day, the City received the following records request via NextRequest (21-3334):

1. A copy of the lease, draft lease, or other document establishing a legal or equitable interest of E7 Oakland LLC in the property located at 1446 Leimert Boulevard.
2. Materials related to the City of Oakland's notice or other document informing E7 Oakland LLC that it was eligible to proceed with RPA Phase Three: Site Identification, in which applicants have up to 120 days to identify a location for a cannabis dispensary that complies with the location restriction under OMC Chapter 5.80.

Later that day, the City received the following records request via NextRequest (21-3347):

21-3326

All correspondence, including without limitation letters and emails, between (1) E7 Oakland LLC and any of its representatives or associates, including without limitation Robert Devito, Gary Payton, Brendan Royal, Assata Bilal, Scott Lambert, Amber Norwood, Elicia Terry, Yolanda Shavies, officers, principals, staff members, and agents and (2) the City of Oakland, including without limitation its City Councilmembers, Planning Commissioners, the City Administrator, Nancy Marcus, or staff members of the Special Activity Permits Division, pertaining to the application for a cannabis dispensary at 1446 Leimert Blvd, Oakland from 01/01/2020 to the present.

Later that day, the City received the following records request via NextRequest (21-3350):

21-3326

Copies of any documents, including without limitation staff reports, findings (draft or final), memoranda, emails, notes, and letters concerning compliance of E7 Oakland LLC's application to establish a cannabis dispensary at 1446 Leimert Blvd in the City of Oakland with the California Environmental Quality Act, including without limitation such documents that discuss whether a CEDA exemption, negative declaration, mitigated negative declaration, or environmental impact report must be prepared with respect to the foregoing application.

On May 3, 2021, the Commission received a mediation request from the Requester, alleging that the Cannabis/Special Activity Permitting Department had unlawfully delayed responding to these requests.

Later that day, the Requester stated the following on request 21-3332 via NextRequest:

Item 11f - M2021-10 Mediation Summary

Within 10 days from receipt of a request for public records, a local agency must, under Government Code § 6253, make an initial determination of whether it has disclosable documents in its possession responsive to the request. It must notify the requesting party as to the records it can provide, and the estimated date the records will be available. To date, I've received no response in violation of the Public Records Act. Please provide this information. My neighbors have also submitted information requests and not heard back. All this information relates to a proposed marijuana dispensary at 1446 Leimert Boulevard, and we are troubled by what appears to be a systematic strategy of non-response. If we do not receive the records request by Tuesday, May 4, we request the hearing on the marijuana dispensary be continued at least one month. These records are important to the community's understanding of the proposal, its merits, and its impacts on the neighborhood and the environment, and it is unfair to introduce such a polarizing use without the benefit of critical information. Failure to provide information is a violation of our constitutional due process rights.

Fifteen minutes later, the Cannabis/Special Activity Permitting Department closed request 21-3332, stating:

These documents do not exist.

The applicant may address these concerns at their public hearing, but the city did not do these reports requested.

Eight minutes later, the Cannabis/Special Activity Permitting Department released two records to the Requester on request 21-3344. It subsequently closed the request, noting that personal information had been redacted under Government Code Section 6254(c).

On May 4, 2021, Staff initiated its mediation program and notified the Cannabis/Special Activity Permitting Department of the mediation request. An hour later, the public records liaisons for the Cannabis/Special Activity Permitting Department notified Staff that they were working on the requests.

Later that day, the Cannabis/Special Activity Permitting Department stated the following on request 21-3350:

California Environmental Quality Act, including without limitation such documents that discuss whether a CEQA exemption, negative declaration, mitigated negative declaration or environmental impact report must be prepared with respect to the foregoing application.

The City does not require the CEQA process until the site has been approved to move forward. This determination will be made after the public hearing on May 10th.

Other items noted in the PRR will be available shortly attached to PRR #21-3447

An hour and a half later, the Cannabis/Special Activity Permitting Department released 67 records to the Requester on request 21-3347. It subsequently closed the request, noting that personal information had been redacted under Government Code Section 6254(c).

Item 11f - M2021-10 Mediation Summary

Three minutes later, the Cannabis/Special Activity Permitting Department closed request 21-3350, noting that all requested correspondence could be found under request 21-3347.

On May 1, 2023, Staff reached out to the Requester to determine whether they were satisfied with these responses to their requests. Later that day, the Requester notified Staff that they were satisfied with these responses. Staff subsequently notified the Requester that their mediation was closed.

IV. RECOMMENDATION

Because the Cannabis/Special Activity Permitting Department provided the Requester with 69 additional records, satisfying the Requester's mediation request, the mediation has been closed with no further action.

Item 11g - M2021-12 Mediation Summary



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 19, 2023
RE: *In the Matter of the Housing & Community Development Department (Case No. M2021-12); Mediation Summary*

I. INTRODUCTION

On June 7, 2021, the Commission received a request for mediation alleging the Housing & Community Development Department had unlawfully failed to respond to a public records request made by the Requester on April 29, 2021. Staff initiated its mediation program on June 7, 2021, pursuant to the Oakland Sunshine Ordinance.

Because the Housing & Community Development Department provided the Requester with two records on June 7, 2021, and the Requester is satisfied with that response, this mediation was closed with no 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 their 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 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); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 11g - M2021-12 Mediation Summary

III. SUMMARY OF FACTS

On April 29, 2021, the City received the following records request via NextRequest (21-3889):

Inspections reports reviewing habitability criteria for occupants at 1720 MacArthur Boulevard that are part of the compliance requirement to receiving financial assistance (*) from the City of Oakland. Please provide reports starting from 2015 to current. Thank you.

(*) HOME Investment Partnership Program

The request was originally assigned to the Housing & Community Development Department. Later that day, the Housing & Community Development Department unassigned itself from the request and assigned the Planning & Building Department. The next day, the Planning & Building Department reassigned the Housing & Community Development Department to the request. On May 3, 2021, the Planning & Building Department unassigned itself from the request.

On May 4, 2021, the Housing & Community Development Department closed the request without explanation. A few hours later, the Requester stated via NextRequest:

Please advise why this public record request was closed with no explanation. Thank you.

On June 7, 2021, the Commission received a mediation request from the Requester alleging that the Housing & Community Development Department had unlawfully failed to respond to their public records request. Staff initiated its mediation program that same day and notified the Housing & Community Development Department of the mediation request.

Two hours later, the Housing & Community Development Department reopened the request and released two records to the Requester. It then closed the request, stating: "Documents pertaining to this request from Housing & Community Development Department (HCD) are attached. Thank you."

On April 26, 2023, Staff reached out to the Requester to determine whether they were satisfied with these responses to their requests. Staff followed up with the Requester on May 3, 2023, May 10, 2023, and May 18, 2023. On May 19, 2023, the Requester notified Staff that they wished to close this mediation. Staff subsequently notified the Requester that their mediation was closed.

IV. RECOMMENDATION

Because the Housing & Community Development Department provided the Requester with two additional records, satisfying the Requester's mediation request, the mediation has been closed with no further action.

Item 11h - M2021-15 Mediation Summary



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
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Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 19, 2023
RE: *In the Matter of the Rent Adjustment Program (Case No. M2021-15); Mediation Summary*

I. INTRODUCTION

On July 16, 2021, the Commission received a request for mediation alleging the Rent Adjustment Program was unlawfully delaying responding to a public records request made by the Requester on December 20, 2019. Staff initiated its mediation program on July 16, 2021, pursuant to the Oakland Sunshine Ordinance.

The Rent Adjustment Program provided the Requester with over 100 additional records on July 19, 2021, in response to this mediation request. Though the Requester believes additional records have not been disclosed, they don't believe continuing the mediation process would be productive. Therefore, Staff closed this mediation with no 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 their 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 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 § 7920.000 et seq.

² Government Code § 7922.530(a).

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 December 20, 2019, the City received the following records request via NextRequest (19-6239):

I would like copies of the the full text of all legislative history, including notes, minutes, decisions, or other communications that evidence discussion and history of the following ordinance and rules and regulations:

- 1) Oakland Municipal Ordinance 8.22.030 A.5. (Residential Rent Adjustment Program New Construction Exemption);
- 2) Residential Rent Adjustment Program Rules and Regulations 8.22.020 B.2. ("Types of Dwelling Units Exempt- -Newly Constructed Dwelling Units.")
- 3) All documents, communications, minutes, decisions, discussions regarding NEW CONSTRUCTION EXEMPTIONS FROM THE RESIDENTIAL RENT ADJUSTMENT PROGRAM.

Thanks

The Housing & Community Development Department was assigned to this request. On December 23, 2019, the Housing & Community Development Department added the Planning & Building Department to this request.

On January 3, 2020, the Housing & Community Development Department changed the due date to January 17, 2020. It stated:

Staff to review the request has been out of the office. Need additional to time for review/response.

On January 10, 2020, the Planning & Building Department removed itself from this request.

On March 24, 2020, the Housing & Community Development Department changed the due date to April 13, 2020, stating:

Due to the order to shelter in place in Alameda County, City of Oakland non-essential offices are closed effective March 17, 2020. Staff will work on tasks out-of-office as much as possible. Currently, normal business is expected to resume April 7th. Sorry for the inconvenience.

On April 16, 2020, the Housing & Community Development Department changed the due date to April 30, 2020. On May 8, 2020, the Housing & Community Development Department changed the due date to May 18, 2020. On June 4, 2020, the Housing & Community Development Department changed the due date to June 18, 2020. Each due date change stated that staff was continuing to search for responsive records.

⁵ Complaint Procedures § IV (C)(5).

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On September 3, 2020, the Housing & Community Development Department removed itself from the request and added the Rent Adjustment Program in place of it.

On September 17, 2020, the Rent Adjustment Program asked for clarification of the request:

Please provide more details regarding item three (example policy or procedure manual. clarify your request). Thank you.

On October 15, 2020, the Rent Adjustment Program released 10 links to Oakland's City Council tracking website. It subsequently stated:

Item #1 is provided.

And:

Item #2 is provided. Note: some of the ordinances are part of item #1 and #2.

On March 3, 2021, the Rent Adjustment Program asked for clarification from the requester, stating:

We are working to fulfill item #3. There are over 100 case files responsive to this request. Please confirm whether you want entire case files or just hearing and appeal decisions.

On April 13, 2021, the Rent Adjustment Program closed the request, stating:

Requester clarified via email that no case files, hearing decisions or appeal decisions are needed. All of the requested records were released.

On April 30, 2021, the Rent Adjustment Program reopened the request. It released an additional seven PDF records of legislative history. It subsequently stated:

Additional records responsive to this request were located and posted. Staff will continue to search for any other records.

On July 10, 2021, the Requester stated:

I still have not received the requested records.

On July 16, 2021, the Commission received an email from the Requester, alleging that the Rent Adjustment Program had unlawfully delayed responding to this request. The Requester alleged that they had received records responsive to their request by directly contacting the City Clerk's office. The Requester further alleged that they attempted to contact KTOP for responsive videos of City Council meetings, but KTOP did not answer their phone calls. Staff treated this email as a request for mediation.

Later that day, Staff initiated its mediation program and notified the Rent Adjustment Program and KTOP of the mediation request. An hour later, the Rent Adjustment Program told Staff that "According to RAP staff, all responsive documents have been produced."

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The Rent Adjustment Program stated to the Requester on July 19, 2021:

This was visible only to the requester because it was accidentally posted that way, rather than to the public. When you use Next Request the rules require that you log in with the same email you originally used. If you do that, you will have access to all documents provided to requester only.

The Requester subsequently stated:

I found this out last week when I called Cynthia Jay. I have these records already.

Later that day, the Rent Adjustment Program released one link and approximately 180 PDFs to the Requester. It stated:

This is one of the documents produced to us by Nai from the City Clerk's office.

And:

Here are the rest of the documents produced by the City Clerk's office.

It subsequently closed the request, stating:

Please note for the future that the RAP is not the holder of documents related to legislative history; these are kept by the City Clerk. The documents that were posted came from the City Clerk's office.

That same day, the Rent Adjustment Program stated to staff:

I believe the request in question has been handled. It would seem the requester was having a hard time accessing records as she registered with a different email.

On April 26, 2023, Staff reached out to the Requester to see if they were satisfied with this response to their public records request. Staff followed up with the Requester on May 3, 2023, May 10, 2023, May 12, 2023, May 15, 2023, and May 16, 2023. On May 16, 2023, the Requester notified Staff that they believed there were still some legislative history records that were not disclosed in response to their request. The Requester alleged that the City stated these records were not maintained. However, the Requester believed it was unlikely that the mediation process would lead to disclosure of these records, especially because of the length of time that had elapsed since the original request. Since the Requester no longer wanted to continue the mediation process, Staff notified the Requester that this mediation would be closed.

IV. RECOMMENDATION

Because the Requester is no longer interested in pursuing mediation, the mediation has been closed with no further action.

However, this mediation highlights the importance of ensuring the Rent Adjustment Program is complying with public records laws. The Requester noted that they were requesting these records

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on behalf of clients who had hearings before the Rent Adjustment Program. The Requester asserted that they had previous problems requesting records from the Rent Adjustment Program. Under the Public Records Act, there is no need to direct a response to the appropriate department; the City as a whole is tasked with responding to that request.⁶ Staff recommends including the Rent Adjustment Program as part of the Transparency and Public Records Subcommittee’s analysis of Sunshine Ordinance compliance.

⁶ *Kumeta v. City of San Diego*, D037521, 2002 Cal. App. Unpub. LEXIS 6494, at *16 (July 16, 2002) (“Accordingly, when [the] City receives an appropriate request for disclosure of public records, it is [the] City's duty to ensure it provides prompt disclosure of responsive public records regardless of the fact that those responsive public records may be kept or maintained by one or more of its departments, divisions, or other components.”).

Item 11i - M2022-04 Mediation Summary



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Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: May 11, 2023
RE: *In the Matter of the Finance and Human Resources Management Departments (Case No. M2022-04); Mediation Summary*

I. INTRODUCTION

On September 27, 2022, the Commission received a request for mediation alleging the Finance Department and Human Resources Management Department (HRM) were unlawfully delaying their responses to a public records request made by the Requester on July 29, 2022. Staff initiated its mediation program on September 27, 2022, pursuant to the Oakland Sunshine Ordinance.

Because the Finance Department provided the Requester with three responsive records on September 29, 2022, HRM notified the Requester it had no responsive records, and the Requester is satisfied with these responses, this mediation was closed with no 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 their 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 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); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

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III. SUMMARY OF FACTS

On July 29, 2022, the City received the following records request via NextRequest (22-5804):

Records indicating the date(s) of hire, promotion or demotion, termination of Manuel Escamilla (aka Manny Escamilla) who may be employed by the Planning Department
Records of timesheets or timecards or other records indicating days and hours worked by Manuel Escamilla
Records of disbursements made or compensation paid to Manuel Escamilla
The resume of Manuel Escamilla, submitted by Mr. Escamilla in order to obtain employment with the City of Oakland

That same day, the request was assigned to HRM.

On August 18, 2022, HRM's public record liaison stated on NextRequest:

The City will not produce records covered by Government Code Section 6254(c), which exempts "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."

On August 24, 2022, the Requester stated:

Please provide an update on this request, #22-5804, submitted on July 29, 2022.

Requester understands that per Government Code Section 6254(c), you will not produce records which would "constitute an unwarranted invasion of privacy."

None of the records requested should be exempt under GC §6254(c), though some of the records may contain information which are segregable and should be rightly redacted, such as home address, home phone, Social Security number, or bank information, etc. Requester does not seek such information.

Dates of hire, promotion or demotion, or termination may constitute the employee's contract with the public agency, and therefore is explicitly public under statute. (See Braun v. City of Taft, 154 Cal. App. 3d 332, citing Cal Gov Code § 6254.8.)

Records of compensation similarly do not constitute an unwarranted invasion of privacy. "To the extent that some public employees may expect their salaries to remain a private matter, that expectation is not a reasonable one." (International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court (2007) 42 Cal.4th 319.) California courts have routinely found that salary information should be publicly disclosed.

Similarly, records indicating days and hours worked should be publicly disclosed. Such records shed light on the workings of a public agency. To the extent that salaries or compensation are based on time worked by a public employee, timesheets form the basis on which compensation is determined, and is essentially a budgetary matter, not a private personal matter.

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Finally, California courts have recognized that information “as to the education, training, experience, awards, previous positions and publications of the auditor” is routinely presented in both professional and social settings, is relatively innocuous and implicates no applicable privacy or public policy exemption. (§§ 6254, subd. (c), 6255.)” (Eskaton Monterey Hospital v. Myers, 134 Cal. App. 3d 788.)

Accordingly, Requester looks forward to disclosure of the requested records at your earliest possible convenience.

On September 1, 2022, the Finance Department was added to the request on NextRequest.

On September 27, 2022, the Commission received a mediation request from the Requester, alleging that the Finance Department and HRM had unlawfully delayed responding to this request. Staff initiated its mediation program that same day and notified both departments of the mediation request.

Later that day, the public records liaison for HRM stated on NextRequest:

Verified that there is no responsive record of “resume” in the official personnel file on, Wednesday, September 14, 2022.

The public records liaison for HRM notified Staff that same day:

PRR 22-5804 includes four requests. HRM has responded to #4 and email and in the Next Request system.

On 9/27/2022, I forwarded #1-#3 requests to Central Payroll (see attached) outside of the Next Request system. I also attached the Mediation request.

On September 29, 2022, the Finance Department released three records to the Requester. It then closed the request, stating that personal information had been redacted pursuant to Government Code Section 6254(c). That same day, the public records liaison for the Finance Department notified Staff it had fulfilled and closed the request.

On April 26, 2023, Staff reached out to the Requester to determine whether they were satisfied with these responses to their request. Staff followed up with the Requester on May 3, 2023. Later that day, the Requester notified Staff that they were satisfied with these responses. They also expressed appreciation for the mediation program. Staff subsequently notified the Requester that their mediation was closed.

IV. RECOMMENDATION

Because the Finance Department provided the Requester with three records, and HRM notified the Requester it had no responsive records, satisfying the Requester’s mediation request, the mediation has been closed with no further action.