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TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
Kyle McLean, Mediation Coordinator
DATE: May 20, 2019
RE: *In the Matter of Amber Todd (Case No. 18-24M); Mediation Summary*

I. INTRODUCTION

On September 11, 2018, the Commission received a complaint alleging that Amber Todd (Assistant to the Director of the Finance Department) failed to disclose records in response to four public records requests made by the Requester on August 14, 2018: 18-2482, 18-2483, 18-2484, and 18-2485. On September 14, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Finance Department provided three spreadsheets, each with 25,000 to 26,000 entries; Councilmember Kalb's Office provided one responsive record after the Finance Department refused to.

The Requester notified Staff that they received all of the originally requested records that were the subject of the mediation: therefore, Staff recommends that the Commission close the mediation without further action.

II. SUMMARY OF LAW

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

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

Requests 18-2482, 18-2483, and 18-2484

On August 14, 2018, the Finance Department received, via NextRequest, the following public records request (No. 18-2482):

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain a copy of the following, which I understand to be held by your agency: Information from all the 2018 Rent Adjustment Form mailed to property owners requesting annual payment of the RAP free. I am requesting information from the following fields contained on the form as mapped to the information held in the city's database. Please note that if the information is available in electronic form, I am request that it be provided in electronic form and in PDF. If the information is available in CVS format or Excel, I am requesting it be provided in either CVS or Excel. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 8: Total number of units per Alameda County Records. I am also requesting information from the following fields provided by property owners who returned RAP forms. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 9 Exemptions claimed for 2018 a-f; Field Total Number of Exempt Units claimed.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record[s] in question.

If you determine that any or all or the information qualifies for an exemption from disclosure, I ask you to note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested.

In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

On August 14, 2018, the Finance Department received, via NextRequest, the following public records request (No. 18-2483):

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain a copy of the following, which I understand to be

⁵ Complaint Procedures § IV (C)(5).

held by your agency: Information from all the **2017** Rent Adjustment Form mailed to property owners requesting annual payment of the RAP free. I am requesting information from the following fields contained on the form as mapped to the information held in the city's database. Please note that if the information is available in electronic form, I am request that it be provided in electronic form and in PDF. If the information is available in CVS format or Excel, I am requesting it be provided in either CVS or Excel. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 8: Total number of units per Alameda County Records. I am also requesting information from the following fields provided by property owners who returned **2017** RAP forms. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 9 Exemptions claimed for 2018 a-f; Field Total Number of Exempt Units claimed . . .

On August 27, 2018, the Requester stated the following via NextRequest: "The purpose of this email is to inform the city that the ten-day period for providing these records has elapsed and the city is now in violation of the California Public Records law."

On August 14, 2018, the Finance Department received, via NextRequest, the following public records request (No. 18-2484):

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain a copy of the following, which I understand to be held by your agency: Information from all the **2015** Rent Adjustment Form mailed to property owners requesting annual payment of the RAP free. I am requesting information from the following fields contained on the form as mapped to the information held in the city's database. Please note that if the information is available in electronic form, I am request that it be provided in electronic form and in PDF. If the information is available in CVS format or Excel, I am requesting it be provided in either CVS or Excel. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 8: Total number of units per Alameda County Records. I am also requesting information from the following fields provided by property owners who returned **2015** RAP forms. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 9 Exemptions claimed for 2018 a-f; Field Total Number of Exempt Units claimed.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record[s] in question . . .

On August 27, 2018, the Requester stated the following via NextRequest: "The purpose of this email is to inform the city that the ten-day period for providing these records has elapsed and the city is now in violation of the California Public Records law."

On September 11, 2018, the Commission received a complaint alleging that Amber Todd had failed to disclose records in response to public records request No. 18-2482, 18-2483, 18-2484, and 18-2485. At the time that the Commission received the Complaint, the Finance Department had not responded to the record requests in any way.

On September 14, 2018, Staff notified the Requester that the Sunshine Ordinance requires public records requesters first undergo mediation before a complaint can be opened with the PEC. In

response, the Requester asked Staff to regard the complaint as a request for mediation. Staff commenced mediation proceedings and notified Amber Todd that the Commission received a request for mediation concerning the above referenced records request. Staff gave Todd the opportunity to respond to the allegation that the City had not provided records in violation of the Oakland Sunshine Ordinance.

On September 17, 2018, Todd responded to Staff's notification of the request for mediation and stated "We have been having some issues with notifications when requests come in, but we do our best to respond ASAP and check the system regularly. There have been some instances of misrouting and I am unable to see if they do not come directly to my attention."

On September 26, 2018, Staff contacted Amber Todd via telephone to obtain an update on the status of the request. Todd informed Staff that a response to the request with the records sought would be uploaded on NextRequest by September 27, 2018.

As of September 28, 2018, no records had been produced by the City in response to the request. Staff emailed Todd seeking an update on the status of the response to the request.

On October 9, 2018, Amber Todd left a voicemail and emailed Staff, informing them that she had been out of the office due to being ill.

On October 10, 2018, Staff and Todd spoke via telephone. Todd informed Staff that she believed the records sought by the request were labelled confidential pursuant to Oakland Municipal Code 5.04.140. Staff clarified that the request was not for confidential records, because the request sought a listing of the account and parcel numbers of the businesses that received the tax notice. The request did not seek copies of the actual notices, which would be labelled as confidential by O.M.C. 5.04.140 and exempt from disclosure. Todd did not upload any documents in response to the clarification from Staff.

On November 7, 2018, Staff emailed Juliet Naishorua, the records request liaison for the Finance Department. Naishorua had been on maternity leave up until this time. Staff relayed to Naishorua that the requested information in this request was not labelled as confidential under O.M.C. 5.04.140. Naishorua responded to the email on November 8, 2018, and stated that "Revenue Bureau is in the process of reviewing and ensuring the accuracy of the data and it will be available on Friday November 16th."

On November 26, 2018, in response to request 18-2484 Shahla Azimi (revenue analyst for the Finance Department) released one excel spreadsheet with approximately 26,000 entries, closed the records request, and stated the following: "We have released the information requested except there is no accurate data available regarding the claim of exemptions. Thank you."

On November 27, 2018, in response to request 18-2482 Shahla Azimi closed the records request and stated the following: "This request is the same as request # 18-2960 and the requested information can be obtained from the above request #. Thank you." On November 30, 2018 Shahla Azimi released one record in response to 18-2960 – an excel spreadsheet with approximately 25,000 fields.

Also on November 27, 2018, in response to request 18-2483 Shahla Azimi closed the records request and stated the following: "We have released the information requested except there is no accurate

data available regarding the claim of exemptions. Thank you.” On November 30, 2018 Shahla Azimi released one record in response to 18-2483 – an excel spreadsheet with approximately 25,000 fields.

On December 19, 2018, the Requester notified Staff that the records produced in response to the mediation satisfied these public records requests.

Request 18-2485

On August 14, 2018, the Finance Department received, via NextRequest, the following public records request (No. 18-2485):

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain a copy of the following, which I understand to be held by your agency: The original public records request 18-1801. I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record[s] in question. If you determine that any or all of the information qualifies for an exemption from disclosure, I ask you to note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

On September 11, 2018, the Commission received a complaint alleging that Amber Todd had failed to disclose records in response to public records request No. 18-2482, 18-2483, 18-2484, and 18-2485. At the time that the Commission received the Complaint, the Finance Department had not responded to the record requests in any way.

On September 14, 2018, Staff notified the Requester that the Sunshine Ordinance requires public records requesters first undergo mediation before a complaint can be opened with the PEC. In response, the Requester asked Staff to regard the complaint as a request for mediation. Staff contacted the Requester and clarified that the request sought the personal information of the individual who filed request No. 18-1801. When the City receives public record requests, the requests are public records. Individuals who submit a request via NextRequest are warned “Personal information is visible only to staff by default, but requests are part of the public record and requester information may be released in response to a public records request.”

On September 17, 2018, Amber Todd changed the due date for the request on NextRequest and posted the following: “Due Date Changed 09/28/2018 (was 08/24/2018). staff needs more time to assemble and review the requested information due to the volume of requests to this Unit. We apologize for the delay.”

On November 7, 2018, Staff emailed Juliet Naishorua (records request liaison for the Finance Department) and asked for the Finance Department to respond to 18-2485 with the personal information of the requester for 18-1801.

On November 8, 2018, Shahla Azimi rerouted request No. 18-2485 to Councilmember Kalb's Office via NextRequest, assigned Susan Sanchez (Executive Assistant to City Council) as the point of contact, and removed the Finance Department and its staff from the request. Request No. 18-1801 had been received by Councilmember Kalb's Office, although all staff with NextRequest credentials can see the personal information of requesters.

On December 17, 2018, after it became apparent that the Finance Department would not provide the information to the Requester, Staff contacted Susan Sanchez and asked her to provide the requested information. Staff did not receive a response.

On January 11, 2019, Staff followed up and contacted Susan Sanchez again. Sanchez called Staff the same day and refused to respond to the request, stating that she was uncomfortable with posting personal information. Staff reiterated that the information was public and the City was bound by law to disclose the information but Sanchez repeated that she would not post the information.

On April 18, 2019, Staff contacted Oliver Luby (public record request liaison for Councilmember Kalb's Office) and asked for Councilmember Kalb's office to release the information since it was not listed as the point of contact on the request. The same day Oliver Luby posted the information sought by the Requester via NextRequest and closed the request.

Also on April 18, 2019, the Requester confirmed that there were no outstanding issues with the City's response to all four requests and asked Staff to close mediation proceedings.

IV. RECOMMENDATION

Because the Requester notified Staff that they received all originally requested records that were the subject of the mediation, Staff recommends that the Commission close the mediation without further action.