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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 Joanne Karchmer (Case No. 18-39M); Mediation Summary*

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## I. INTRODUCTION

On October 23, 2018, the Commission received a complaint alleging that Joanne Karchmer (Deputy Chief of Staff Mayor's Office) failed to respond to a public records request made by the Requester on September 29, 2018. On November 5, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response to mediation efforts the Mayor's Office produced one responsive record and the City Administrator's Office produced one responsive record.

Because all responsive records were produced in response to the mediation, Staff recommends that the Commission close the mediation without 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.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</sup> Under the CPRA no local agency shall post the home address or telephone number of any elected or appointed official, including the Mayor, without first obtaining the written permission of that individual.<sup>3</sup>

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.<sup>4</sup> A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in the Commission's mediation program.<sup>5</sup>

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what

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<sup>1</sup> Oakland Municipal Code § 2.20.010(C); Government Code § 6250 et seq.

<sup>2</sup> Government Code § 6253(b).

<sup>3</sup> Government Code § 6254.21.

<sup>4</sup> O.M.C. § 2.20.270(C)(1).

<sup>5</sup> O.M.C. § 2.20.270(F).

efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.<sup>6</sup>

### III. SUMMARY OF FACTS

On September 29, 2018, the City received, via RecordTrac, the following records request (No. 18-3281): “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 in electronic form: All reports and emails sent to the Mayor or the City Administrator regarding the need for or the results of the 2015 Noncompliant Rental Project.”

On October 23, 2018, the Requester stated the following via NextRequest: “Please note that you are in violation of the California Public Records Act.”

Also on October 23, 2018, the Commission received a complaint alleging that Joanne Karchmer had failed to disclose records in response to public records request No. 18-3281. At the time that the Commission received the Complaint, the City had not responded to the request at all. Staff notified the Requester that the Sunshine Ordinance requires complaints regarding public records requests undergo mediation before the complaint can be opened, and considered the complaint as a request for mediation.

On October 25, 2018, Sun Kwong Sze (special projects coordinator for the Mayor’s Office) stated the following via NextRequest: “Dear Ms Ackerman, In order to better serve you, could you clarify what the ‘2015 Noncompliant Rental Project’ is? For example, is it a legislation or a city program? Thank you”

On November 5, 2018, Staff commenced mediation proceedings. Staff first contacted the Requester and clarified that “2015 Noncompliant Rental project” referred to an audit by the Finance Department of landlords who did not pay a business license tax. Staff also notified Joanne Karchmer that the Commission received a request for mediation concerning records request No. 18-3281 and gave Karchmer the opportunity to respond to the allegation that the City had not provided records in violation of the Oakland Sunshine Ordinance. Staff also forwarded the clarification of the request to Karchmer.

Also on November 5, 2018, Karchmer stated to Staff that the Mayor’s Office did an initial keyword search that returned no responsive records and that a more thorough search through the IT department of past Staff for the Mayor’s Office may be necessary

On November 6, 2018, Sun Kwong Sze uploaded one responsive record via NextRequest but did not release it for public view.

On November 14, 2018, Staff followed up with Karchmer and Sze asking whether an IT search had been conducted. Karchmer responded two days later (November 6, 2018) and stated that no additional responsive records had been found.

On November 26, 2018, Richard Luna (public record request liaison for the City Administrator’s Office) released the record previously uploaded by the Mayor’s Office, one additional record, closed the

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<sup>6</sup> Complaint Procedures § IV (C)(5).

request, and stated the following: “There was also mention of the non-compliant rental property project in the FY 2015-16 Q4 Revenue and Expenditure Report submitted to the City Council. It's on page 11 of the report attached to the link.”

Staff contacted the Requester to confirm that they were satisfied with the City’s response to the request. The Requester stated they were not satisfied with the record produced by the Mayor’s Office because the Mayor’s personal phone number was redacted. Staff informed the Requester that section 6254.21 of the CPRA precludes a local agency from releasing the telephone number of the Mayor without first obtaining written permission of the Mayor and that no permission was given here.

#### **IV. RECOMMENDATION**

Because all responsive records were produced in response to the mediation, Staff recommends that the Commission close the mediation without further action.