

CITY OF OAKLAND

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Public Ethics Commission

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October 5, 2021

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

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

Dear Director Gilchrist:

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

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

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

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

Item #4 -Letter to Director Gilchrist

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

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

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

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

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

Item #4 -Letter to Director Gilchrist

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

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

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

Sincerely,



Whitney Barazoto
Executive Director

Item #4 -Letter to Director Gilchrist

Item #4 -Letter to Director Gilchrist



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

Whitney Barazoto, Executive Director

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

BACKGROUND:

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

SUMMARY OF LAW:

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

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

Item #4 -Letter to Director Gilchrist

California Public Records Act § 6253:

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

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

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

FACTUAL SUMMARY:

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

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

Item #4 -Letter to Director Gilchrist

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

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

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

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

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

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

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

Item #4 -Letter to Director Gilchrist

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

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

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

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

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

Item #4 -Letter to Director Gilchrist

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

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

ANALYSIS:

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

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

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

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

Item #4 -Letter to Director Gilchrist

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

VIOLATIONS:

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

RECOMMENDATION:

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

CITY OF OAKLAND
Public Ethics Commission

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



Whitney Barazoto, Executive Director

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

I. INTRODUCTION

On September 7, 2016, the Commission received a complaint alleging that the Oakland Planning and Building Department (Department) failed to disclose records in response to a public records request made by the complainant (Complainant) on August 8, 2016. On October 31, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to Complainant's public records request. Commission Staff has completed mediation and recommends that the Commission close this matter without further action.

II. SUMMARY OF LAW

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

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

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

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

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

Item #4 -Letter to Director Gilchrist

were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

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

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

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

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

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

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

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

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

⁵ Complaint Procedures § IV (C)(5).

Item #4 -Letter to Director Gilchrist

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

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

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

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

IV. RECOMMENDATION

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

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

Item #4 -Letter to Director Gilchrist

Item #4 -Letter to Director Gilchrist



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

Whitney Barazoto, Executive Director

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

I. INTRODUCTION

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

Because the responding department has provided all responsive documents per the requests, Staff closed the mediation without further action.

II. SUMMARY OF LAW

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

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

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

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

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item #4 -Letter to Director Gilchrist

III. SUMMARY OF FACTS

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

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

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

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

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

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

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

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

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

Item #4 -Letter to Director Gilchrist

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Item #4 -Letter to Director Gilchrist

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

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

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

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

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

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

IV. RECOMMENDATION

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

Item #4 -Letter to Director Gilchrist



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

Whitney Barazoto, Executive Director

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

I. INTRODUCTION

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

Because the responding department has provided all responsive documents per the requests, Staff closed the mediation without further action.

II. SUMMARY OF LAW

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

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

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

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

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item #4 -Letter to Director Gilchrist

III. SUMMARY OF FACTS

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

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

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

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

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

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

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

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

These files include but are limited to:

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

DS190341 - T Mobile

B1903761 - T Mobile

DS180223 - ATT

B1803798 - ATT

DS170351 - Verizon

B1704009 - Verizon

DS160109

B1602185

DS150412

B1504583

CMDV10257

B1400614 - ATT

E1102562 - ATT

B1100941 - ATT

B1003670 - T Mobile

E1100467 - T Mobile

Thank you. Please remit documents as they become available.

Item #4 -Letter to Director Gilchrist

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

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

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

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

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

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

We released all of the requested documents.

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

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

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

The requested documents do not exist.

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

Yes, you can close M2020-07.

IV. RECOMMENDATION

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

Item #4 -Letter to Director Gilchrist

Item #4 -Letter to Director Gilchrist



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

Whitney Barazoto, Executive Director

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

I. INTRODUCTION

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

Because the responding department has provided all responsive documents per the requests, Staff closed the mediation without further action.

II. SUMMARY OF LAW

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

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

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

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

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item #4 -Letter to Director Gilchrist

III. SUMMARY OF FACTS

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

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

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

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

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

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

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

Thank you.

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

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

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

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

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

Item #4 -Letter to Director Gilchrist

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

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

Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

Item #4 -Letter to Director Gilchrist

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

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

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

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

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

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

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

We released all of the requested documents.

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

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

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

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

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

We released all of the requested documents.

Item #4 -Letter to Director Gilchrist

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

Yes, you can close M2020-12.

IV. RECOMMENDATION

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

Item #4 -Letter to Director Gilchrist

Item #4 -Letter to Director Gilchrist



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

Whitney Barazoto, Executive Director

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

I. INTRODUCTION

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

Because the responding department has provided all responsive documents per the requests, Staff closed the mediation without further action.

II. SUMMARY OF LAW

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

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

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

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

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item #4 -Letter to Director Gilchrist

III. SUMMARY OF FACTS

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

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

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

Requester information is still being researched.

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

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

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

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

We released all of the requested documents.

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

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

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

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

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

Hello,

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

Thank you

Item #4 -Letter to Director Gilchrist

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

Yes, you can close M2020-13.

Yes, you can close M2021-08.

IV. RECOMMENDATION

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

Item #4 -Letter to Director Gilchrist

Item #4 -Letter to Director Gilchrist



James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice Chair
Jill M. Butler
Michael MacDonald
Janani Ramachandran
Joseph Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: March 18, 2020
RE: *In the Matter of the City of Oakland Planning and Building Department (Case No. M2019-17);*
Mediation Summary

I. INTRODUCTION

On October 8, 2019, the Commission received a request for mediation from the Requestor alleging that Building and Planning Department failed to provide responsive documents to two separate public records requests. The Requester initiated their respective public records request on May 11, 2019 and August 25, 2019, seeking copies of Radio Frequency Reports that she believed were provided to the City of Oakland between January 1996 and August 2019, the department did not provide a response.

Staff initiated the Mediation process on October 16, 2019. On October 21, 2019, Staff contacted the Building and Planning Department regarding the request for mediation. David Guillory ("Guillory") with the Planning Department released some responsive documents (Permit History Telecoms) to the requester and the request was closed with a note that informed the Requester that the information they requested was not collected by the City but by the Federal Communications Commission. In response to that mediation, the Requester confirmed that they received some documents but believed, according to the department procedures, there were additional documents that should be released. On February 3, 2020, Issam Shahrouri the Deputy Director of the Building department confirmed that the documents that the Requester was seeking were not documents collected or maintained by his department. 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

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

² Government Code § 6253(b).

Item #4 -Letter to Director Gilchrist

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

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

III. SUMMARY OF FACTS

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

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

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

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

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

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

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

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

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

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

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item #4 -Letter to Director Gilchrist

“The requested documents do not exist.”

The request was closed on November 13, 2019.

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

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

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

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

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

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

17.128.130 - Radio frequency emissions standards.

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

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

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

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

Item #4 -Letter to Director Gilchrist

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

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

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

IV. RECOMMENDATION

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