

# Item #10 - Enforcement Report



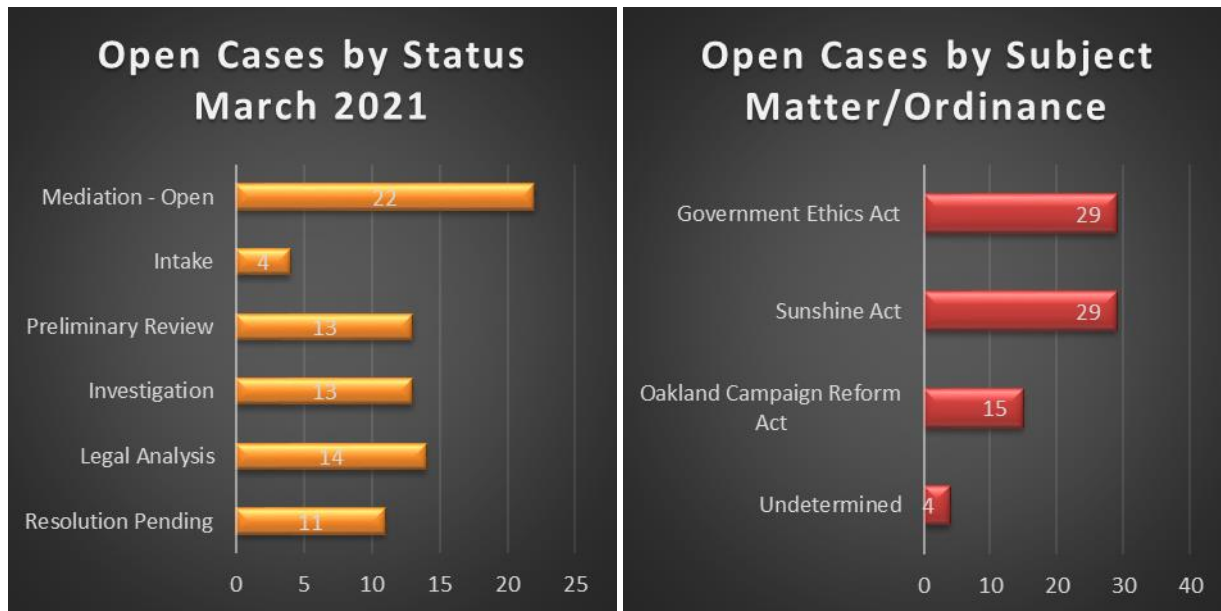
Michael McDonald, Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Arvon Perteet  
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
DATE: February 17, 2021  
RE: Enforcement Program Update for the March 1, 2021, PEC Meeting

## Current Enforcement Activities:

Since the last Enforcement Program Update on February 1, 2021, Commission staff received 2 complaints. This brings the total Enforcement caseload to 77 open cases: 17 matter(s) in the intake or preliminary review stage, 13 matters under active investigation, 14 matters under post-investigation analysis, 11 matters in settlement negotiations or awaiting an administrative hearing, and 22 ongoing public records request mediations.



## Summary of Current Cases:

Since the last Enforcement Program Update in February 2021, the following status changes have occurred.

1. ***In the Matter of City Councilmember Rebecca Kaplan (Case No. 20-38) Dismissal***, On September 25, 2020, the City of Oakland Public Ethics Commission (PEC) received this complaint that alleged that on four separate occasions, August 13, 2020; August 18, 2020; August 19, 2020; and August 20, 2020, Oakland City Councilmember, Rebecca Kaplan violated the Oakland Government Ethics Act (GEA) when she allegedly attended various virtual campaign candidate forums with the Oakland East Bay Democrats Forum and or the Alameda County Democrats Forum from what appeared to be her City office at the Oakland City Hall. After reviewing the facts, relevant law and Enforcement Procedures, Staff determined that the allegations do not allege sufficient conduct that constitutes a violation of the Government Ethics Act. The complaint was dismissed. (See attachments)
2. ***In the Matter of the City of Oakland Police Department [Mediation Summary]*** (Case No. M2021-01). On January 14, 2021, the Commission received a request for mediation from the Requester alleging that Staff employees in the City of Oakland Police Department failed to provide responsive documents to a public records request (20-8332). The original request was filed in October 2020 and the Requester was informed that the documents would be released on or before December 31, 2020. The Requester sought assistance from the PEC because they believed that they had not received a response. Staff initiated the Mediation process on January 14, 2021. On that same day, Alisha Banda with the Police Department confirmed that the records had been uploaded to NextRequest on December 10, 2020, for release and the request was closed. Staff confirmed the documents were released to NextRequest and assisted the Requester with retrieving the downloaded documents from NextRequest. Staff closed the mediation without further action. (See Attachments)
3. ***In the Matter of the City of Oakland Mayor's Office [Mediation Summary]*** (Case No. M2020-09) On May 6, 2020, the Commission received a request for mediation alleging the Mayor's Office failed to provide full responsive documents to a public records request made by the Requester on February 26, 2020. On May 21, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Mayor's Office informed the requestor that all responsive documents from both city and private email accounts and cell phones were provided. Staff requested an IT search and determined that there were a few additional documents that were responsive to the requestors request and sent them to the Requester. Because the Requester received all responsive documents that could be attained through the mediation process, Staff closed the mediation without further action. (See Attachments)

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • CITY HALL • 1<sup>ST</sup> FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission  
Enforcement Unit

(510) 238-5239  
FAX (510) 238-3315  
TDD (510) 238-3254

February 19, 2021

Marlon Adams



**Re: PEC Complaint No. 20-38; Dismissal Letter**

Dear Mr. Adams:

On September 25, 2020, the City of Oakland Public Ethics Commission (PEC) received your complaint (Complaint No. 20-38) that alleged that on August 13, 2020; August 18, 2020; August 19, 2020; and August 20, 2020, Oakland City Councilmember, Rebecca Kaplan violated the Oakland Government Ethics Act (GEA) when she allegedly attended various virtual campaign candidate forums with the Oakland East Bay Democrats Forum and or the Alameda County Democrats Forum from what appeared to be her City office at the Oakland City Hall. After reviewing the matter with you, the facts, relevant law and Enforcement Procedures, we have determined that the allegations do not allege sufficient conduct that constitutes a violation of the Government Ethics Act.

Oakland Municipal Code (O.M.C.) 2.25.060 prohibits public servants, which includes City Councilmembers, from using or permitting others to use public resources for a campaign activity or for personal or non-City purposes not authorized by law. According to the Office of the City Attorney, “the fundamental rule under state law is that a candidate may not use City resources (City email systems, computers, copy machines, offices, etc.) for personal purposes or “campaign activity.” This rule applies at all times, including after work hours or when a staffer is on a lunch break. However, state law specifically states that “campaign activity” does **not** include the “incidental and minimal use of public resources, such as equipment or office space, for campaign purposes including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.”<sup>1</sup>

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<sup>1</sup> Office of the City Attorney City of Oakland “Campaign-Related Activities by Elected Officials, Candidates, City Officers and Employees,” July 2, 2015.; California Government Code §8314(b)(2).

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Our preliminary review found that Councilmember Kaplan, was a candidate for City Council Member at Large in August of 2020. She did attend and participate in four virtual candidate forums on or between August 13 and 20, 2020, as alleged. As such, Councilmember Kaplan was prohibited from misusing City resources. We, however, were not able to confirm that the location Councilmember Kaplan used to participate in the August virtual candidate forums was, in fact, her City office at 1 Frank Ogawa Plaza.

Moreover, there was insufficient evidence in the complaint to establish that even if the Councilmember participated in four candidate forums from her City office, that her participation on a virtual call was more than “incidental or minimal use of public resources.”

Because Councilmember Kaplan’s alleged conduct does not constitute a violation of the Government Ethics Act, we are dismissing your complaint pursuant to the PEC’s Complaint Procedures. The PEC’s Complaint Procedures is available on the PEC’s website.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on March 1, at 6:30 p.m. by teleconference as 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. Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,



Kellie Johnson,  
Enforcement Chief

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

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
DATE: February 17, 2021  
RE: *In the Matter of the City of Oakland Police Department (Case No. M2021-01);* Mediation Summary for the March 1, 2021, PEC Meeting

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## I. INTRODUCTION

On January 14, 2021, the Commission received a request for mediation from the Requester alleging that Staff employees in the City of Oakland Police Department failed to provide responsive documents to a public records request (20-8332). The original request was filed in October 2020 and the Requester was informed that the documents would be released on or before December 31, 2020. The Requester sought assistance from the PEC because they believed that they had not received a response.

Staff initiated the Mediation process on January 14, 2021. On that same day, Alisha Banda with the Police Department confirmed that the records had been uploaded to NextRequest on December 10, 2020, for release and the request was closed. Staff confirmed the documents were released to NextRequest and assisted the Requester with retrieving the downloaded documents from NextRequest. After confirming the requester received all responsive documents, 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.<sup>1</sup> The CPRA requires each agency to make public

records promptly available to any person upon request.<sup>2</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>3</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 they have requested and participated in the Commission's mediation program.<sup>4</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

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

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

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> 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.<sup>5</sup>

### III. SUMMARY OF FACTS

The Requester contacted the Police Department in October 2020, by phone to request a copy of a self-reported domestic violence police report. It was important to the Requester to receive the reports. The Requester was informed that they would receive the documents by email and that once the documents were prepared, they would be notified by email that they are available. The Requester was told that the documents would be ready on or before December 31, 2020.

On December 10, 2020, Selina Jones uploaded the responsive police reports into NextRequest.

The complete text of the NextRequest timeline is as follows:

request history... [Storage]

< Request #20-8332 > CLOSED

Report: 20-021088, 20-022143

Received: November 20, 2020 via phone

Due: December 30, 2020

Departments: [Police Department](#)

Requester: [Shereen Ortiz](#)  
reenebony45@gmail.com  
5107769851

[View email status](#)

Tags

Documents: All

Public: [20-022143\\_Redacted.pdf](#)  
[20-021088\\_Redacted.pdf](#)

Requester: (none)

Staff Only: (none)

Filter Timeline: All Events

Request Closed [Hide](#) Public  
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).  
December 10, 2020, 10:02am by Selina K Jones

Document(s) Released [Hide](#) Public  
20-021088\_Redacted.pdf  
20-022143\_Redacted.pdf  
December 10, 2020, 10:02am by Selina K Jones

External Message [Hide](#) Requester + Staff  
**Partially approved for release:**  
Restricted information withheld per 6254(f) (2) CGC (exempts sex, hate, & domestic violence crimes) 6254(f) (1) CGC (Specifies releasable arrest information)  
December 10, 2020, 10:02am by Selina K Jones (Staff)

Document(s) Added [Hide](#) Staff Only  
20-021088\_Redacted.pdf  
20-022143\_Redacted.pdf  
December 10, 2020, 10:02am by Selina K Jones

The Requester was not familiar with Next Request. The Requester did not make a public records request on NextRequest, they had placed a telephone call to OPD. OPD did not return the telephone call to the requester to inform them that the documents were available on NextRequest. Instead, an OPD clerk forwarded a copy of the NextRequest printout, like the aforementioned, to the Requester's email.

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

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The Requester received the email, but thought the email was a receipt of her request. OPD did not provide instructions on how to retrieve the documents from NextRequest.

Staff contacted the requester by telephone to confirm that they received the email from OPD. Staff informed the Requester of how to locate and log in to NextRequest to retrieve their documents. The Requester confirmed that all responsive documents were received.

### **IV. CONCLUSION**

Although OPD did not provide complete information to the Requester on how to retrieve their documents, OPD did upload the documents earlier than reported and the requester received responsive documents, Staff closed the mediation without further action.

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Michael McDonald, Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
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Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
Kyle McLean, Mediation Coordinator  
DATE: May 24, 2019  
RE: *In the Matter of the City Clerk (Case No. M2019-05); Mediation Summary*

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## I. INTRODUCTION

On March 14, 2019, the Commission received a request for mediation alleging that Councilmember Kalb's office and Councilmember Gallo's office failed to disclose records in response to public records requests made by the Requester on February 10, 2019: 19-724 and 19-725. On April 19, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, both offices released additional records and the Requester stated that all responsive records had been released.

Because the Requester received all responsive records, 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.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</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>3</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 they have requested and participated in the Commission's mediation program.<sup>4</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 efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.<sup>5</sup>

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

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

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

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



### III. SUMMARY OF FACTS

19-724

On February 10, 2019, the City received, via NextRequest, the following public records request (No. 19-724):

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain an electronic copy of the following records and to review and papers records, which I understand to be held by your agency, including any reports, memoranda, communications, or any other writings, as defined in section 6252(e) of the California Government Code, pursuant to the California Public Records Act (Cal. Gov't Code §§ 6250 et seq.).

**All documents, including staff all notes and emails, documenting the eviction of any tenant or any reported rent increase, that have been communicated with your office [Dan Kalb], including ALL information by Centro Legal de la Raza since 2016. Please indicate which information provided by Centro Legal de la Raza has formed the rational basis of your proposals you have presented to the council to withdraw the exemption from owner-occupied duplexes and triplexes from Just Cause, the Rent Adjustment and the Tenant Protection Ordinances.**

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 March 12, 2019, the Requester stated the following via NextRequest: "Please note that you are officially in violation of the California Public Records Request and that I will be filing an ethics complaint."

On March 14, 2019, the Commission received a mediation request alleging that Councilmember Kalb's office had failed to disclose records in response to public records request No. 19-724. At the time that the Commission received the Complaint, no responsive records had been produced by the City.

On April 19, 2019, Staff commenced mediation proceedings and contacted Oliver Luby (public records request liaison for Councilmember Kalb's office) for an estimated completion date and explanation for the delayed response. Luby stated on April 22, 2019, that the office had received a substantial increase in the number of requests received, but that the work necessary to fulfill the request had almost finished and expected to release all responsive records by April 24, 2019.

On April 26, 2019, Oliver Luby uploaded eighty-six pages of responsive records, closed the request, and stated the following via NextRequest: "We have redacted personal information, pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c)."

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On May 23, 2019, the Requester confirmed to Staff that mediation should be closed as the City had provided all responsive records.

19-725

On February 10, 2019, the City received, via NextRequest, the following public records request (No. 19-725):

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain an electronic copy of the following records and to review and papers records, which I understand to be held by your agency, including any reports, memoranda, communications, or any other writings, as defined in section 6252(e) of the California Government Code, pursuant to the California Public Records Act (Cal. Gov't Code §§ 6250 et seq.).

**All documents, including staff all notes and emails, documenting the eviction of any tenant or any reported rent increase, that have been communicated with your office [Noel Gallo], including ALL information by Centro Legal de la Raza since 2016. Please indicate which information provided by Centro Legal de la Raza has formed the rational basis of your proposals you have presented to the council to withdraw the exemption from owner-occupied duplexes and triplexes from Just Cause, the Rent Adjustment and the Tenant Protection Ordinances.**

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 March 14, 2019, the Requester stated the following via NextRequest: "Please note that you are in violation of the California Public Records Act and a Public Ethics Complaint has been filed."

Also on March 14, 2019, the Commission received a mediation request alleging that Councilmember Gallo's office had failed to disclose records in response to public records request No. 19-725. At the time that the Commission received the Complaint, no responsive records had been produced by the City.

On March 15, 2019, Mayra Chavez (public records request liaison for Councilmember Gallo's office) stated the following via NextRequest: "The City is searching for records responsive to your request and will provide an update by Friday, March 22nd"

On March 26, 2019, Mayra Chavez stated the following via NextRequest: "Dear requestor, there is a need to compile data, write a computer program, or construct a report to extract data. (Government Code Section 6253(c))."

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On March 29, 2019, Mayra Chavez stated the following via NextRequest: “Dear requestor, we have received the data from IT Department and will be posting documents next week.”

Also on March 29, 2019, the Requester stated the following via NextRequest: “Excellent. Thank you for the response.”

On April 12, 2019, Rosa Velasquez (special assistant for Councilmember Gallo’s office) released over one thousand pages of records and stated via NextRequest: “Dear requestor, attached are CM Gallo records. Personal information has been redacted.”

On April 14, 2019, Mayra Chavez stated the following via NextRequest: “Dear requestor, this is the first batch of the responsive records. More to come.”

On April 19, 2019, Staff commenced mediation proceedings and contacted Mayra Chavez for an estimated completion date. Chavez stated that another batch of records would be released the same day and estimated completion by May 10, 2019. That same day Chavez released two hundred and eighty-three pages of records and stated the following via NextRequest: “Dear requestor, some files have been redacted 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 May 3, 2019, Mayra Chavez released over five hundred pages of responsive records and stated the following via NextRequest: “We have redacted personal information, pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).”

On May 14, 2019, Mayra Chavez released sixty-two pages of records, closed the request, and stated the following via NextRequest: “Dear requestor: this is the last of the documents for this request.”

On May 23, 2019, the Requester confirmed to Staff that mediation should be closed as the City had provided all responsive records.

#### **IV. CONCLUSION**

Because the Requester received all responsive records, Staff closed the mediation without further action.