

# Item 11b - M2020-01; Mediation Summary



Michael B. MacDonald, Chair  
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Whitney Barazoto, Executive Director

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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*

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## 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.<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).

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## 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.

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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:

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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 Uwadiale 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.