

Item #12 - Executive Director's Report



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

Whitney Barazoto, Executive Director

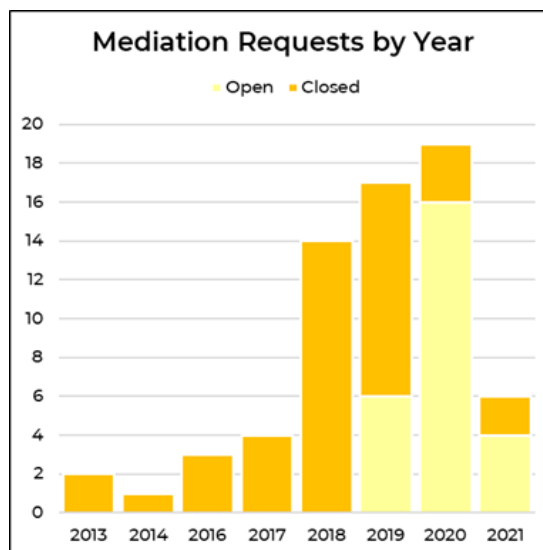
TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: March 23, 2021
RE: Executive Director's Report for the April 5, 2021, PEC Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities this past month that are not otherwise covered by other program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2020-21 for each program area. (Commission Programs and Priorities attached)

Mediations

Pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department's control. Following the mediation, Commission staff provides a written summary of the mediation to the Commission and can also make recommendations for further Commission action. The following two mediations were conducted by staff and subsequently closed this past month (reports attached):

1. In the Matter of Oakland Police Department (Case No. M2021-03); (Mediation Summary attached)
2. In the Matter of Oakland Police Department (Case No. M2021-06); (Mediation Summary attached)



Budget and Staffing

Commission staff met with the City Administrator and budget staff in March regarding the PEC's budget proposal, which included some minor reductions in its already lean general administration budget, along with requests for increases in funds to cover administrative hearings and information technology needs and three additional positions to address expanding enforcement caseload and to implement campaign finance equity programs. Staff discussed the Commission's equity proposal based on recommendations made in the PEC's Race for Power report, as well as the potential transition of Form 700 filing officer duties from the City Clerk's office to the PEC. This discussion is part of the Mayor's budget development and proposal process that will head to City Council in May.

Collections

Commission staff received partial payment of the \$10,000 penalty imposed in the matter of Michael Colbruno, who had refused to make payment on his fine since it was imposed in early 2020. The respondent submitted a \$5,000 payment on February 15 and paid the remaining \$5,000 on March 15; therefore, the balance of the fine has now been paid in full.

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PUBLIC ETHICS COMMISSION Programs and Priorities 2021

Program	Goal	Desired Outcome	Key Projects for 2021
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. Oakland Sunshine Report Card, ongoing compliance 2. Campaign Finance Redesign
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> 1. Ethics training and advice: a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 2. Sunshine training 3. New trainings as needed for diversion
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> 1. Sunshine mediations 2. Communications/outreach to client groups 3. PEC social media outreach
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> 1. Filing Officer/Compliance – assess, follow-up, and refer 2. Government Integrity E-Data Project – Lobbyist Registration, Form 700, Form 803, Show Me the Money App 3. Open Disclosure – continue coordination and development
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> 1. Investigations 2. Add part-time investigator to assist 3. Collaborate with other government law enforcement agencies

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	compliance with laws within the PEC's jurisdiction.	the laws within the PEC's jurisdiction.	
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Conduct legal analyses, assess penalty options, negotiate settlements, make recommendations to PEC 2. Case priority: 1) the extent of Commission authority to issue penalties, 2) the impact of a Commission decision, 3) public interest, timing, and relevancy, and 4) Commission resources. 3. Resolve all 2016 cases
Administration/ Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Annual Report 2. Enforcement database upgrade 3. Review data to adjust activities throughout the year 4. Ongoing: professional development and staff reviews

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Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: March 19, 2021
RE: *In the Matter of the Oakland Police Department (Case No. M2021-03); Mediation Summary*

I. INTRODUCTION

On February 18, 2021, the Commission received a request for mediation alleging that the Oakland Police Department failed to disclose records in response to a public records request made by the Requester on February 20, 2018. On February 19, 2021, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department has indicated that they do not have any responsive documents per the request, 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).

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III. SUMMARY OF FACTS

On February 20, 2018, the City received, via NextRequest, the following public records request (No. 25589):

Criminal Record- Peter William Kwaak Born [REDACTED] Charged as Bigamist in 1937. Former address was [REDACTED] Oakland 3 Oct 1936.

On February 25, 2018, OPD requested an extension to fulfill the public records request stating the following:

Our agency is in the process of reviewing your requested records to determine what information can be released in accordance with the California Public Records Act. All records must be reviewed and in some cases redactions may be necessary. Due to the Department's limited staffing resources and the numerous public records requests received, our agency needs additional time to respond to your request. All records that are not exempt will be provided within 30 days. Please contact the undersigned if you need the records sooner or can identify a shorter list of records (for voluminous requests) that can be provided to you. We will do our best to work with you. We appreciate your patience.

On February 18, 2021, the Commission received a complaint alleging that the Oakland Police Department had failed to disclose records in response to public records request No. 25589. At the time that the Commission received the Complaint, no responsive records had been produced by the City.

On February 19, 2021, Staff initiated its mediation program and notified OPD of the mediation request.

On February 22, 2021, OPD closed the record request and stated the following: "The Oakland Police Department does not have any records responsive to this request." Subsequently, OPD notified Staff stating that, "We conducted a thorough search of our archived documents. We did not find any responsive records. We updated the NextRequest portal and closed this request."

On March 10, 2021, Staff followed up with the Requester and notified him that the PEC would be closing the mediation. The Requester did not respond to Staff's outreach.

IV. RECOMMENDATION

Because OPD found no responsive records for the public records request, and because the Requester did not respond with any further inquiry, Staff closed the mediation without further action.

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Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: March 22, 2021
RE: *In the Matter of the Oakland Police Department (Case No. M2021-06); Mediation Summary*

I. INTRODUCTION

On March 10, 2021, the Commission received a request for mediation alleging that the Oakland Police Department failed to completely disclose records in response to a public records request made by the Requester on January 29, 2021. On March 11, 2021, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department has provided the responsive documents per the request, Staff has 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).

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III. SUMMARY OF FACTS

On January 29, 2021, the City received, via NextRequest, the following public records request (No. 21-835):

Police report for a theft of a bike on 12/26/2020 needed for insurance claim.

On February 21, 2021, OPD released responsive documents to the requester stating that personal information had been redacted pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On March 10, 2021, the Commission received a mediation request seeking the following:

A police report that isn't blacked out. I need the part of the report that list items that were on the bike when stolen.

On March 11, 2021, Staff initiated its mediation program and notified OPD of the mediation request.

Subsequently, OPD notified Staff:

The supplemental report listing all of the items was uploaded to request #21-835 yesterday [March 10, 2021] morning. I will reach out to the requester to confirm they received it.

Also, on March 10, 2021, OPD closed the record request and stated the following:

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).

Your request for information has been: approved - authorized redactions or omissions made pursuant to: 6254(f) CGC (Specifies information releasable to victims, or authorized representatives, of specific crimes).

The additional records released to the Requester appear to provide the details, unredacted, that the Requester was seeking.

On March 22, 2021, Staff followed up with the Requester and notified her that since all responsive documents had been made available, the PEC would be closing the mediation. The Requester did not respond to Staff's outreach.

IV. RECOMMENDATION

Because OPD provided the responsive records for the public records request, Commission Staff closed the mediation without further action.