

Item 5 - Mediation Summary M2017-12



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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
Kellie Johnson, Enforcement Chief
DATE: November 18, 2020
RE: *In the Matter of the City of Oakland Department of Human Services (Case No. M2017-12); Mediation Summary for the December 7, 2020, PEC Meeting*

I. INTRODUCTION

On June 1, 2017, the Commission received a request for mediation from the requestor alleging that employees in the City of Oakland Department of Human Services failed to provide responsive documents to a public records request made on April 25, 2017.

Staff initiated the Mediation process on June 5, 2017, and continued to mediate between the parties through April 19, 2019, when the entirety of responsive documents were provided to the requestor and the request was closed. 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

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 April 25, 2017, the requestor made a public records request via RecordTrac (the online records request system prior to NextRequest) that included a request for the following information:

“According to the public records request procedures we would like copies of all of proposals for grants and other funding submitted for Measure Z and Measure D distribution, including to the ones who were not funded for years 2014 – 2017.”

On May 8, 2017, the Assistant to the City’s Finance Director responded in RecordTrac as follows:

“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.”

The requestor submitted a complaint to the Public Ethics Commission on June 1, 2017, stating that he had requested records and not received them. PEC staff reached out to the Department of Human Services on June 5, 2017.

On June 5, 2017, staff from the Department of Human Services added another note as follows:

“The department is in process of gathering grant proposals per your request. It is voluminous and need a few more weeks.”

On June 6, 2017, staff from the Department of Human Services emailed the requestor outlining the scope of the request, which amounted to 224 proposals that were available on-site for the 2016-19 grant cycle, and 223 proposals available off-site for the earlier time period. Department staff explained that each of these proposals had multiple attachments and stated that they were not available for transmission in electronic format. In addition, personal information would have to be redacted from the documents. Staff explained that the cost of the hard copies was estimated at between \$1,000 and \$2,500 and would be made available in batches given the extensive time needed for compiling, redacting, and copying. She asked for confirmation that the requestor wanted the records in that fashion.

The requestor responded to department staff by email by saying, “if that is the only way you can do it, then fine with us” and then proceeded to suggest scanning the documents to a disk drive rather than make hard copies. The requestor added, “However, do it like you want to. Our concern is time!” There was additional discussion via email between department staff and the requestor about how best to get the documents to the requestor, with the requestor expressing frustration about not getting the documents electronically but wanting them in the fastest manner possible, thus agreeing to the hard copy approach. At one point, the requestor suggested an electronic database method for application submission in the future and offered his paid services in helping the City install such a system.

The Department of Human Services proceeded with making hard copies of the proposals and on July 10, 2017, department staff emailed the requestor stating that they had four file boxes of proposals that were ready for pickup, for a total cost to the requestor of \$890.62 for the copies (significantly more than that had been incurred for staff costs associated with fulfilling the request). The staff added that these boxes represented four of the six-seven boxes of proposals for the 2016-19 grant cycle and that each box of proposals would cost the requestor about \$200-\$269 per box for the copies.

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The requestor never picked up the records made available in hard copy. Upon inquiry from PEC staff over the course of multiple emails between September 2017 and March 2018, the requestor refused to pick up and pay for the hard copies and continued to demand that the records be provided in electronic format. The Department also refused to prepare any further documents in response to the request.

On April 24, 2018, the PEC Director reached out to the requestor, the department manager, and the Department of Human Services Director to determine how to resolve the matter. After reviewing the above facts and supporting emails, and hearing from all of the parties, the PEC Director explained to the department staff that the requestor has a legal right to request and receive records in electronic format, even if the requestor previously asked for and agreed to hard copies. Department staff still objected to providing the documents electronically, arguing that the system did not allow for exporting of the records.

On Friday, May 18, 2018, the PEC Director met with department staff to view the format of the proposals in the electronic database system. While proposals could not be exported to a separate file electronically, they could be accessed individually, downloaded, and each one saved as a pdf into a separate file. The PEC Director advised that, even though the request was voluminous, and downloading dozens of attachments for each of the hundreds of proposals was time-intensive, the proposals can and should be downloaded and saved as pdfs to an electronic folder and placed onto a disk or flash drive to be provided to the requestor. The PEC Director also advised that any documents that had already been printed in hard copy could be scanned and provided to the requestor electronically to meet the same requirement.

That same day, the PEC Director emailed the requestor to confirm whether he still wanted electronic copies of all of the originally requested proposals. He replied that he did. The PEC Director explained that the department staff would be providing electronic records to the requestor in batches over the next several weeks and months.

On June 21, 2018, department staff emailed the requestor to let him know that they had a USB flash drive available for pickup with a first batch of proposals that had been downloaded electronically.

On July 12, 2018, the requestor picked up the first batch of electronic records.

Between July 2018 and April 2019, batches of proposals were made available to the requestor over the course of several months. There were additional communications between department staff and the requestor regarding the order of records within the electronic files among other matters; department staff assisted the requestor by explaining how to search within the electronic records, and as a courtesy (not a legal requirement) staff further agreed to create a folder for each separate proposal and place the attachments within the appropriate folder.

Department staff reported that the request was completed on April 19, 2019.

PEC staff reached out to the requestor to confirm that all responsive documents were received. The requestor did not respond.

IV. RECOMMENDATION

Although there was significant delay due to actions by both parties, the requestor eventually received responsive documents. PEC staff recommends that the Commission close the mediation without further action.