

Item 7 - Mediation Summary M2020-16 Final



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TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: October 20, 2020
RE: *In the Matter of the City of Oakland Fire Department and Assistant Fire Marshal Vincent Crudele. (Case No. M2020-16);* Mediation Summary for the November 2, 2020, PEC Meeting

I. INTRODUCTION

On September 30, 2020, the Commission received a request for mediation from the requestor alleging that Staff employees in the City of Oakland Fire Department failed to provide responsive documents to a public records request. More than seven months had passed since the request was filed and the requester had not received a response.

Staff initiated the Mediation process on or about October 1, 2020. On October 7, 2020, Myra Gloria with the Fire Department released responsive documents to the requester 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).

Item 7 - Mediation Summary M2020-16 Final

III. SUMMARY OF FACTS

Around July 13, 2020, it is alleged that Assistant Fire Marshal Vincent Crudele (“Crudele”) contacted residents at a low-income artist property in the City of Oakland to inform them of serious property and building code violations. During this confrontation, Crudele had a set of documents with him that provided details of all the violations of the property. Residents asked to view the documents that Crudele had in his possession, but he refused to allow them to view or inspect the documents or provide a copy.

As a result of Crudele’s refusal to disclose the documents, on July 21, 2020 the requester made a public records request through NextRequest for the documents Crudele had in his possession along with any emails or documented communications regarding the incident at the property.

July 21, 2020, the Requester made a public records requests for the following:

The complete text of the NextRequest timeline is as follows:

Request #20-4454

CLOSED

APN: 18-460-2 (018 046000200)

1. Please provide complete content (less personally-identifying information) of complaint to Fire Prevention, submitted on or before Monday July 13 2020, to which the assigned inspector is Assistant Fire Marshal Vincent Crudele (VCrudele@oaklandca.gov).
2. Please provide all recent (back to Jan 2020) written correspondence between AFM Crudele, AFM Watson (EWatson@oaklandca.gov), and Inspector Markarian (marakarian@oaklandca.gov) regarding this property, including any correspondence to Code Enforcement, Planning, or Building departments.

3. Please Fire Inspection Report and complete inspection notes of 7/20/2020 inspection.

Thank you :)

[Read more](#)

Received

July 21, 2020 via web

Due

July 31, 2020

Departments

Fire

Item 7 - Mediation Summary M2020-16 Final

Documents

(none)

Staff

Point of Contact

Myra Gloria

Request Closed Public

We released all of the requested documents.

October 7, 2020, 3:31pm

Document(s) Released to Requester Public

7-13-20 Email.pdf

7-13-20 Inspection Work Order.pdf

7-20-20 inspection.pdf

7-20-20 Inspection Work Order.pdf

7-20-20 Report of Fire Inspection.pdf

October 7, 2020, 3:29pm

Department Assignment Public

Fire

July 21, 2020, 12:59pm

Request Opened Public

Request received via web

July 21, 2020, 12:59pm

Myra Gloria was noted as the "Point of Contact." Ms. Gloria works for the City of Oakland Fire Department and was assigned the duties of the NextRequest liaison. Although assigned as the point of contact early on, neither Gloria nor anyone else from Fire Department responded to the requestor in NextRequest. The California Public Records Act Requires the following:

California Government Code §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

Item 7 - Mediation Summary M2020-16 Final

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...

Contrary to the requirements of the CPRA, no information was uploaded to Next Request to inform the requestor which department would respond to the request, if the department had responsive documents and when or if the documents would be disclosed to the requestor.

Between July 21, 2020 and October 6, 2020, NextRequest does not note or reflect that any activity was conducted in response to the requester's inquiry.

Subsequent to the Commission initiating mediation, the department uploaded responsive documents on October 7, 2020 and closed the request. Staff contacted the requester by email to confirm that all responsive documents were received. The requester did not respond.

IV. RECOMMENDATION

Although there was some delay, the requester received responsive documents, Staff recommends that the Commission close the mediation without further action.