

Item #9 - Enforcement Report



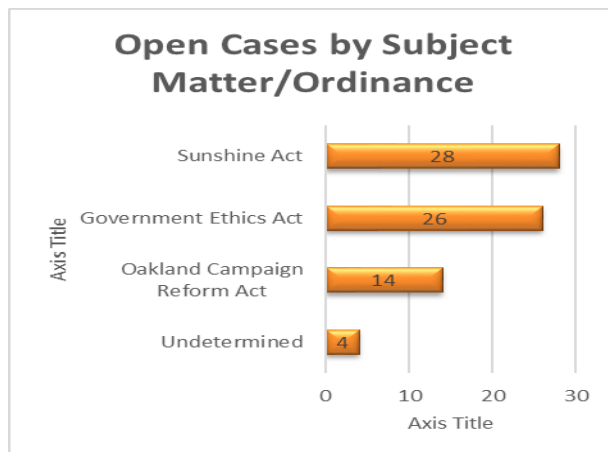
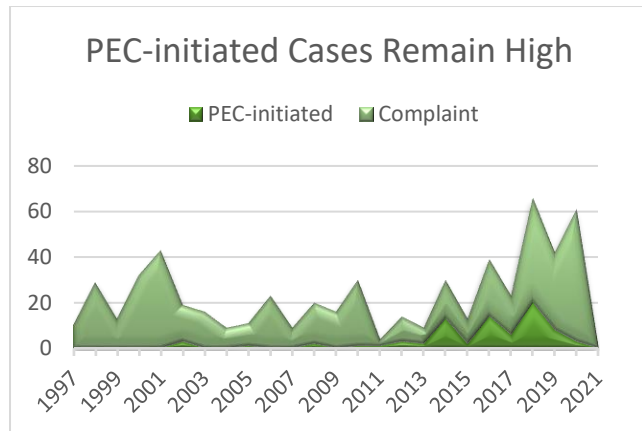
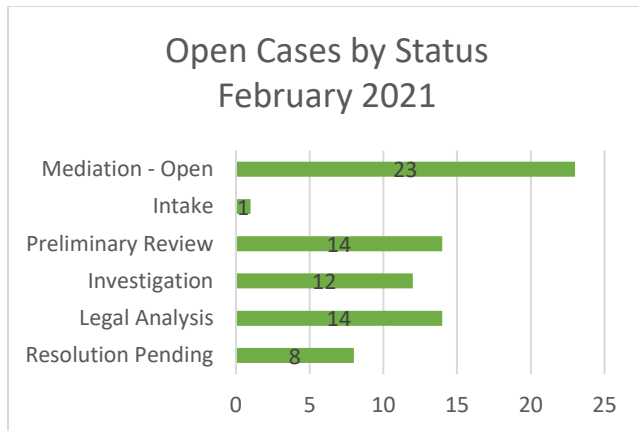
Michael McDonald, Chair
 Jerett Yan, Vice-Chair
 Avi Klein
 Arvon Perteet
 Janani Ramachandran
 Joseph Tuman

Whitney Barazoto, Executive Director

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

Current Enforcement Activities:

Since the last Enforcement Program Update on January 4, 2021, Commission staff received 3 complaints. This brings the total Enforcement caseload to 72 open cases: 15 matter(s) in the intake or preliminary review stage, 12 matters under active investigation, 14 matters under post-investigation analysis, 8 matters in settlement negotiations or awaiting an administrative hearing, and 23 ongoing public records request mediations.



Summary of Current Cases:

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

- 1. *In the Matter of Thomas Espinosa (Case No. 16-14)*** In 2016, the City of Oakland Public Ethics Commission (Commission) opened a proactive investigation into allegations that Thomas Espinosa violated the Oakland Government Ethics Act by, among other things, engaging in a bribery or *quid pro quo* scheme. The Commission's investigation found that between January 1, 2015, and September 15, 2016, Respondent committed 47 violations of the Oakland Government Ethics Act. In November 2018, the Public Ethics Commission found probable cause that Espinosa violated the Government Ethics Act and referred the matter for an Administrative Hearing before an Administrative Law Judge. Significant financial considerations necessitate that Staff return to the Commission to request authority to select a volunteer hearing officer to conduct the hearing. (See Action Item)
- 2. *In the Matter of Roma Groves-Waters (Case No. 20-36) Dismissal***, On September 24, 2020, the City of Oakland Public Ethics Commission (PEC) received this complaint that alleged that Roma Groves-Waters, the Principal for Oakland Unified School District (OUSD), Martin Luther King Jr. Elementary School, violated the Government Ethics Act when she used an OUSD email listserv to forward re-election campaign material for Lynette McElhaney to OUSD staff and faculty. After a thorough review of the complaint, the facts and the law, Staff concluded that the allegations raised in the complaint do not provide sufficient facts to establish a violation of any law within the PEC's jurisdiction; the complaint was dismissed. (See attachments)
- 3. *In the Matter of The City of Oakland Rent Board (Case No. 20-42) Dismissal***, On December 11, 2020, the City of Oakland Public Ethics Commission (PEC) received a complaint that alleged that on January 9, 2014, the City of Oakland Rent Board held a public meeting in which they published an agenda that contained the complainant's name as a party in a lawsuit. The complaint asserted that the Rent Board was in violation of City ethics rules because the complainants name was published on a City agenda without their expressed permission. After reviewing the law and the allegation, the complaint was dismissed because the City's notation of a lawsuit filed in an Alameda County Court does not establish facts of any violation within the jurisdiction of the Public Ethics Commission. (See attachments)

CITY OF OAKLAND



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

Public Ethics Commission
Enforcement Unit

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

January 22, 2021

Ishmael Armendariz



Re: PEC Complaint No. 20-36; Dismissal Letter

Dear Mr. Armendariz :

On September 24, 2020, the City of Oakland Public Ethics Commission (PEC) received your email (Complaint No. 20-36) that alleged that Roma Groves-Waters, the Principal for Oakland Unified School District (OUSD), Martin Luther King Jr. Elementary School, violated the Government Ethics Act when she used an OUSD email listserv to forward re-election campaign material for Lynette McElhaney to OUSD staff and faculty. Both the City of Oakland and OUSD prohibit the use of a work email listserv to send campaign material. However, under the City Charter, the Public Ethics Commission does not have authority to regulate OUSD employees, including school principals.

The Public Ethics Commission has jurisdiction over specified conduct of City “Public Servants.” The City of Oakland Municipal Code (OMC) 2.25.030 (D) provides a definition of Public Servant, and school principals are not included under the definition of “Public Servants.” The OMC provides the PEC with limited jurisdiction over candidates running for the office of Oakland School Board Director as it relates to gifts and conflicts of interest disclosure, but even school board directors are specifically excluded from the definition of “Public Servant.” Moreover, “School Principal” is not considered a City office.

According to the District website, the OUSD has published a Guideline for Political Activities and disseminated the guidelines throughout the district. The Guideline provides the general rules on political activities including examples of allowable and non-allowed materials that can be shared on the District email listserv.

Our preliminary investigation into the facts that you alleged confirmed that the OUSD was made aware of the email transmitted by Ms. Groves-Waters. On September 30, 2020, Ms. Groves-Waters wrote a letter of apology explaining that she forwarded the material believing

Item #9 - Enforcement Report

it was an informational newsletter from a Councilmember. That letter was forwarded to the OUSD listserv along with a retraction.

Because the allegations, if true, do not constitute a violation of law within the PEC's jurisdiction, we must dismiss your complaint pursuant to our Complaint Procedures. The PEC's Complaint Procedures are available on the PEC's website, and a copy has been included with this letter for your reference.

If you had questions or wanted more information from the Oakland Unified School District on its Guidelines for Political Activities, you can reach them by email at: ousdlegal@ousd.org.

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 February 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

CITY OF OAKLAND



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

Public Ethics Commission
Enforcement Unit

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

January 22, 2021

Gerald Rax
[REDACTED]

Re: PEC Complaint No. 20-42; Dismissal Letter

Dear Mr. Rax :

On December 11, 2020, the City of Oakland Public Ethics Commission (PEC) received your email (Complaint No. 20-42) that alleged that on January 9, 2014, the City of Oakland Rent Board held a public meeting in which they published an agenda that contained your name as a party in a lawsuit. The complaint asserted that the Rent Board was in violation of City ethics rules because your name was published on a City agenda without your expressed permission. After reviewing the law and the allegation, your complaint is dismissed because the City's notation of a lawsuit filed in an Alameda County Court does not establish facts of any violation within the jurisdiction of the Public Ethics Commission.

Generally, public trial details are a matter of public record, including the names of the parties in the lawsuit, unless an exception applies.¹ Further, the Rent board is required to give notice and a description under the California Brown Act of any matter for discussion or consideration at a Rent Board meeting, and thus can do so by referring to it by the litigation title. In this case, in 2014, the Rent Board put "Rax v. Eng" on its Agenda as required by public meeting regulations.

Because the allegations, if true, do not constitute a violation of law within the PEC's jurisdiction, we must dismiss your complaint pursuant to our Complaint Procedures. The PEC's Complaint Procedures are available on the PEC's website and upon your request via email to EthicsCommission@oaklandca.gov.

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

¹ Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978).

Item #9 - Enforcement Report

meeting will take place on February 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,

A handwritten signature in blue ink that reads "Kellie Johnson". The signature is written in a cursive style with a large, flowing "K" and "J".

Kellie Johnson,
Enforcement Chief