

Item #9 - Mediation Summary



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TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: March 18, 2020
RE: *In the Matter of the City of Oakland Planning and Building Department*
(Case No. M2019-17); Mediation Summary

I. INTRODUCTION

On October 8, 2019, the Commission received a request for mediation from the Requestor alleging that Building and Planning Department failed to provide responsive documents to two separate public records requests. The Requester initiated their respective public records request on May 11, 2019 and August 25, 2019, seeking copies of Radio Frequency Reports that she believed were provided to the City of Oakland between January 1996 and August 2019, the department did not provide a response.

Staff initiated the Mediation process on October 16, 2019. On October 21, 2019, Staff contacted the Building and Planning Department regarding the request for mediation. David Guillory (“Guillory”) with the Planning Department released some responsive documents (Permit History Telecoms) to the requester and the request was closed with a note that informed the Requester that the information they requested was not collected by the City but by the Federal Communications Commission. In response to that mediation, the Requester confirmed that they received some documents but believed, according to the department procedures, there were additional documents that should be released. On February 3, 2020, Issam Shahrouri the Deputy Director of the Building department confirmed that the documents that the Requester was seeking were not documents collected or maintained by his department. 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

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

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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

III. SUMMARY OF FACTS

On May 11, 2019 and August 25, 2019, the Requester made a request via the City's NextRequest system for the following (Both records requests were assigned to the Planning and Building Department):

1. May 11, 2019, Request No. 19-2426.

"On Attachment B: Standard Conditions for many telecom applications/decision letters, Item #14 - Radio Frequency Emissions is a category. "Prior to the final building permit sign-off. The applicant shall submit a certified RF emissions report stating the facility is operating within the acceptable standards established by the regulatory FCC."

I am requesting copies of the certified RF emissions reports for all telecom facilities installed in Oakland since 1996. I would like to have the reports be sorted by (1) zip code, (2) facility location address, (3) date installed and date of report, (4) facility description and (5) include the Planning and Building Departments case file identifying code and the telecom company who applied for this facility. "

On July 2, 2019, Guillory released Permit History Telecoms covering 1996-2019 and on July 31, 2019, he closed the public records request 19-2426.

2. August 25, 2019, Request No. 19-4253.

"Please provide all complete RF (Radio Frequency) Emission reports provided to the City in compliance with Ordinance 17.128.130 (b) for the period of time from 01/01/1996 to 08/20/2019."

Staff received a request for mediation on October 8, 2019.

Staff contacted Guillory with the Planning Department on October 21, 2019, and November 12, 2019.

On November 13, 2019, Guillory wrote a note to NextRequest regarding No. 19-4253 that informed the Requester of the following:

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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“The requested documents do not exist.”

The request was closed on November 13, 2019.

Staff contacted Guillory on November 15, 2019. Guillory confirmed that the department received guidance from its Oakland City Attorney representative that the Requester should contact the Federal Communications Commission (FCC) to get copies of any related Radio Frequency Emissions reports.

The Requester contacted the FCC to obtain a copy of the reports and was informed that the RF Emissions reports they were seeking are not maintained by the FCC, but by the respective City government.

The Planning department re-opened the request on November 18, 2019 and uploaded some responsive documents.

On December 2, 2019, Staff contacted Alexandria McBride the City of Oakland Chief Resilience Officer.

Staff contacted the requester to seek additional information about the public records request and what specific documents he believed were missing. The Requester believed the post Radio Frequency Emissions reports, per City policy, regarding tests conducted after the telecom poles were installed in specific neighborhoods were documents that were not disclosed in the public records request.

The City of Oakland Planning and Building department is subject to Oakland ordinance on Telecommunications Regulations 17.128.130 (c), which provides that:

17.128.130 - Radio frequency emissions standards.

“The applicant for all wireless facilities, including requests for modifications to existing facilities, shall submit the following verifications:

- a. With the initial application, a RF emissions report, prepared by a licensed professional engineer or other expert, indicating that the proposed site will operate within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.
- b. Prior to commencement of construction, a RF emissions report indicating the baseline RF emissions condition at the proposed site.
- c. Prior to final building permit sign off, an RF emissions report indicating that the site is actually operating within the acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.

The Requester asked that Staff assist in obtaining a copy of any and all RF emissions reports as described in section (c) of the Radio Frequency Emissions Standards ordinance.

Staff contacted Issam Shahrouri the Deputy Director of the Building department to request a department search for any and all post installation Radio Frequency Emission reports. The Deputy Director confirmed

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that his department does not and have not collected or maintained any post Radio Frequency Emission reports.

The request was closed again on March 11, 2020 with a note that the requested documents do not exist.

The Requester wants the PEC to be aware of the enormous amount of time consumed and the frustration that resulted in attempting to get responsive documents to their public records request.

IV. RECOMMENDATION

The requester received all responsive reports that the Planning and Building department maintains on Radio Frequency Emissions, Staff recommends that the Commission close the mediation without further action.