

ATTACHMENT 7



Jodie Smith, Chair
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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: November 12, 2019
RE: *In the Matter of the City of Oakland Department of Transportation*
(Case No. M2019-11); Mediation Summary

I. INTRODUCTION

The Requester, back in July 2018, attended a community event about the City of Oakland's "Worst Street Program." The Worst Street Program administered funds to communities in need of immediate street repair. At Councilmember Dan Kalb's community event, the Requester asked for more information on the program. The Requester followed up with Kalb's office to request any written materials on the program, but Kalb's office did not provide any documents to the Requester.

In December 2018, the Requester met with the Public Ethics Commission Staff about his concerns and made a request to file a formal complaint against Dan Kalb. Staff conducted a preliminary review and informed the Requester in February of 2019 that mediation is the first step in retrieving his responsive documents.

On June 13, 2019, Staff received a formal request for mediation from the Requester alleging that on April 18, 2019, the Requester submitted a public records request (19-1958) through NextRequest to the City of Oakland Department of Transportation and that the Office of Councilmember Dan Kalb failed to provide responsive records in a timely manner. On April 19, 2019 Dan Kalb's staff Oliver Luby removed Dan Kalb's office from the Requester's public records request. On April 23, 2019, Administrative Analyst Justine Colon extended the due date of the request to May 13, 2019.

On April 25, 2019 Justine Colon released some responsive emails related to the Requester's public records request and a CD of documents

Justine Colon extended the due date twice again on May 23 and June 5, 2019. On June 26, 2019, the public records request was still overdue.

Staff had already initiated mediation on April 8, 2019 in an effort to assist in recovering responsive documents pursuant to the Oakland Sunshine Act.

ATTACHMENT 7

On July 22, 2019, additional documents were released, and the request was closed. Staff contacted the Requester on August 13, 2019, to confirm that all responsive documents were provided. As of the date of this memorandum, staff has not received a response. Staff recommends that the Commission close the mediation without further action because the responsive documents have been received and the request is closed.

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

III. SUMMARY OF FACTS

Request 19-1958

In July 2018, the Requester attended a community event sponsored by Dan Kalb regarding the administration of the "Worst Street Program." The Requester advocated that 57th Street, between San Pablo Ave and Market Street, should be added to the worst streets repair list.

The Requester followed up with Kalb's office and requested written information including evidence that 57th Street was added to the worst streets list. The Requestor did not receive responsive documents from Kalb's office, so he contacted the Public Ethics Commission (PEC) to file a formal complaint against Kalb alleging government ethics violations.

PEC opened a preliminary investigation into the Requester's allegation and subsequently informed the Requestor that since his complaint concerned a request for public records, his complaint was best handled through the PEC mediation program. The Requester was encouraged to file a public records request for the documents through NextRequest.

In an effort to help assist the Requester, the PEC contacted Kalb's office to attempt to retrieve the responsive documents.

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).

ATTACHMENT 7

On April 18, 2019 the Requester submitted a public records request (19-1958) for the following:

“As per OMC 2.20.190 this is a written request to inspect and obtain copies of all public records that have to do with the “Worst Streets Fund” (“WSP”) paving priorities for District 1 since, and including, 2013 until today. I am specifically looking for the following:

- All communications, meetings, files and records received by the OakDOT from Dan Kalb regarding which streets in my district should be repaved with available funds.
- Any records of discussions, meetings, conversations and minutes of those held by either the OakDOT Director, Assistant Director, Division Manager, and Paving Program Manager with Council member Dan Kalb.”

Justine Colon was assigned as the point of contact. On April 18, 2019 Alex Katz with the City Attorney’s office was added as support, and Kalb’s office was the Department assigned to respond to the request. Later that same day the City Attorney’s office was removed as support staff.

On April 19, 2019, Oliver Luby, staff with Kalb’s office, updated a note to NextRequest that stated the following:

“While focused on District 1 this request appears to be only for OakDOT records. All specifics are for records in the possession of OakDOT.”

On April 23, 2019, Justine Colon updated NextRequest with the following message:

“Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253 (c)(2)).”

On April 23, 2019 the due date was changed from April 29, 2019 to May 13, 2019.

On April 25, 2019 a CD with Worst Street List was released to the Requester and email communications along with the following explanation:

“Attached was the running list for Council District 1 in 2017. Please note “Street saver” was not used for selection of streets for paving the “Worst Streets Fund.” The street selections were coordinated with the Council Member’s offices... Attached are emails related to a meeting with the Councilmember Kalb and the associated attachments.”

On May 23, 2019, Justine Colon uploaded the following message to NextRequest:

“An IT search for relevant records is still ending. Thank you. As soon as additional records become available, they will be uploaded. Thank you.”

On June 5, 2019, Colon uploaded the following message to NextRequest:

“The IT search for relevant communications is still pending. Thank you!”

ATTACHMENT 7

On June 13, 2019, the Requester contacted the PEC and complained that OakDOT was supposed to have his documents to him within 10-days and that it had taken 52-business days and he was still waiting for all the responsive documents.

On July 1, 2019, redacted emails were released to the Requester.

On July 22, 2019, additional sets of emails were released to the Requester with the following message:

“The Department of Transportation has released all available information.”

On August 13, 2019, Staff contacted the Requester by email to inquire if they received all of the documents and were satisfied with the request being closed. As of the date of this memorandum, the Requester did not respond to the Staff’s inquiry.

IV. RECOMMENDATION

Staff recommends that the Commission close the mediation without further action because the Requester has received all responsive documents.