

ATTACHMENT 5



Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill M. Butler
Gail Kong
Nayeli Maxson Velázquez
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: August 14, 2019
RE: *In the Matter of Katano Kasaine, Director of the Department of Finance*
(Case No. M2019-12); Mediation Summary

I. INTRODUCTION

On June 26, 2019, the Commission received a request for mediation alleging that the City of Oakland's Finance Department and the Planning and Building Department failed to timely disclose records in response to three separate public records requests made by the Requester. On May 11, 2019, the requester submitted two public records requests through NextRequest to the Finance Department. On May 21, 2019, the requester submitted a public records request through NextRequest to the Planning and Building Department. Each request was past due at the time Staff initiated its mediation program on June 26, 2019, pursuant to the Oakland Sunshine Ordinance.

On August 13, 2019, Staff contacted the requester to confirm that the requestor received all responsive documents. The requester affirmed that multiple documents were provided; however, on one of the public records requests (#19-2426), the information requested was time sensitive and the delay in receiving the documents was a hindrance to the requester. The requester agreed that the mediation could be closed but wanted the Public Ethics Commission to be made aware of the undue delay. 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

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).

ATTACHMENT 5

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 19-2428

On May 11, 2019, the City received, via NextRequest, the following public records request (No. 19-2428):

"I am requesting a copy of all the files for all the telecom sinking fund contributors. This is Fund 7460. Files are located in the Treasury Division.

An accompanying cover page with these documents should include:

1. Zip Code
2. Address of Equipment/Pole
3. Telecom Company
4. Amount of Funds
5. Date of Contribution to the Fund in order to verify that all funds are accounted for and accompanying documents are attached."

On May 21, 2019, Juliet Naishorua uploaded a note to the NextRequest stating, "Staff needs more time to assemble data."

On June 3, 2019, Juliet Naishorua uploaded a note to the requester stating: "Staff needs more time to assemble data. Thank you for your patience."

On June 26, 2019, Staff commenced mediation proceedings.

On August 13, 2019, Staff contacted the Requester to confirm whether they received responsive documents and the requester confirmed and agreed the mediation could be closed, even though the request had not been closed in the NextRequest system. The city produced all responsive records.

Request 19-2426

On May 11, 2019, the City received, via NextRequest, the following public records 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

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

ATTACHMENT 5

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 May 21, 2019, David Guillory with the Planning and Building Department uploaded the following note to NextRequest, “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 May 31, 2019, David Guillory uploaded the following note to NextRequest, “Good Morning Alexis, We are still researching the information you requested and will update as soon as they are available... David”

On June 26, 2019, Staff commenced mediation.

On August 13, 2019, Staff contacted the Requester to confirm whether they received responsive documents. The requester agreed the mediation could be closed; however, the requester was unsatisfied with the delay of the public records request. This request was time sensitive because it involved the Planning Department’s new guidelines for telecom facilities in the PROW. After waiting to get responsive documents, the Planning Department informed the requester that they do not possess or maintain the information that was requested and that after doing some research, they discovered that a federal agency (FCC) maintained the records the requester sought. The requester would like to see the Department held responsible for the extended delay to determine that the Department, in fact, did not possess the responsive records. On August 15, 2019, the request had not been closed in the NextRequest system.

Request 19-2604

On May 21, 2019, the City received, via NextRequest, the following public records request (#19-2604):

“Requesting all permit applications, staff reports, blue prints/plans, decision letters, conditions of approval, maps, building department documentation and sign-offs, email or any other documented correspondence between the City and any and ALL telecom companies or their agents regarding 1720 MacArthur Blvd as it pertains to telecom equipment installations (new, changed, replaced or removed).

Please provide Fund 7460 contributions or withdrawals for any project at this location.

Please provide the certified RF emission reports from each telecom company as part of the building departments sign-off for any telecom installation at this location.

Please provide a list of telecom companies who currently have permits to operate their telecom equipment at this location.”

On May 21, 2019, Building and Planning were assigned to the request.

On May 21, 2019, the requester uploaded the following note, via NextRequest, “Near, on or adjacent to 1720 MacArthur Blvd please.”

ATTACHMENT 5

On May 28, 2019, David Guillory with the Building and Planning Department sent the following note, via NextRequest: “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 June 26, 2019, Staffed commenced mediation.

On August 13, 2019, Staff contacted the Requester to confirm whether they received responsive documents. The requestor confirmed that they had received responsive documents and that the mediation could be closed.

IV. RECOMMENDATION

Staff recommends that the Commission close the mediation without further action, because the requester received all of the responsive documents that were in the City’s possession. The requester, however, asked that the Public Ethics Commission be made aware of the unreasonable delay in obtaining responsive documents to the public records request.