City of Oakland

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Public Ethics Commission

Stamp Date/Time Received:

2009 SEP 11 A 10:23

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PUBLIC ETHICS COMMISSION
OAKLAND

COMPLAINT FORM

Complaint Number: 09-12

Please Type or Print in Ink and Complete this Form.

This complaint concerns a possible violation of: (please check all that apply)

☑ The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)

☐ Oakland Campaign Reform Act

☐ Oakland City Council's Rules of Procedure/Code of Ethics

☐ Oakland Limited Public Financing Act

☐ Oakland Conflict of Interest regulations

☐ Oakland Lobbyist Registration Act

☐ Oakland False Endorsement In Campaign Literature Act

☐ I am/We are not sure which specific law, ordinance or regulations apply. However, I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s)

See attached

The alleged violation occurred at the following place:

Oakland, CA

Please provide specific facts describing your complaint. (Or attach additional pages as necessary.)

See attached

The persons you allege to be responsible for the violation(s) are:

Mark Morodomi, Esq.
Michelle Abney
Jeff Baker
Renee Sykes

Any witnesses who were involved and/or who can provide additional information are: (Please indicate names and phone numbers, if available.)

See above

PLEASE NOTE:

There may be other laws that apply to the violation(s) you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filing this complaint. You should contact an attorney immediately to protect any rights available to you under the law.

By filing this complaint with the Public Ethics Commission it, and all other materials submitted with it, becomes a public record available for inspection and copying by the public.

NAME: Marlen Sacks PHONE NO.(Day):([redacted]

ADDRESS: [redacted] PHONE NO.(Eve.):([redacted]

CITY: Oakland STATE: CA ZIP: [redacted]

FAX NO.: ( ) _____

E-MAIL: [redacted]

PLEASE RETURN THIS FORM TO:

Public Ethics Commission
One Frank Ogawa Plaza, 4th floor
Oakland, CA 94612

Phone: (510) 238-3593
FAX:(510) 238-3315

Submit by Email

Print Form

Public Ethics Commission Complaint

This complaint relates to ongoing violations of the California Public Records Act and Oakland's Sunshine Ordinance. Over the past year, I have submitted several Public Records Act requests (PRR) to the City of Oakland, and the City has virtually never complied with applicable laws.

Under existing law, the City must respond within 10 days whether it will provide responsive documents, and it must give the reason for any non-disclosure. The City is also obligated to provide an estimated date of disclosure within that 10 day period. (Government Code Section 6253(b). Subsection (c) provides that "In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the4 extension and 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.

Oakland's Sunshine Ordinance actually contains stricter guidelines than the PRA, and public officials profess to a commitment to open government. As outlined below, the City has also improperly withheld documents, without explanation; footnoted explanations are specifically required by the Sunshine Ordinance, as outlined in my attached e-mails.

Below are examples of the violations. The list outlined below is just an example of the most recent violations that I am aware of:

1. On March 31, 2009 I submitted a PRR related to 14 "Problem Solving Officer" positions proposed to be paid out of Measure Y. **(Request # 1).** I did not receive a written response specifying the date that documents would be produced within the required 10 days. Rather, I received an e-mail from Michelle Abney indicating that she had "forwarded it to the appropriate department for review and processing. Please let me know if you do [sic] receive a response so I can follow up." This response was not in compliance with the PRA, and I advised Assistant City Attorney Mark Morodomi of this.

2. On May 26, 2009 I submitted a PRR related to the proposal to eliminate park rangers. **(Request # 2).** I did not receive a written response specifying the date the documents would be produced within the required 10 days.

3. On May 6, 2009 I received responsive documents to my March 31, 2009 request. I then sent an e-mail to Mark Morodomi following up on my March 6, 2009 PRR request, and amended the request to include some additional categories of documents. **(Request # 3).**

4. On June 23, 2009 I sent an e-mail to Mark Morodomi following up on my May 6, 2009 requests. I notified him that as of that date I had received no response whatsoever to my amended requests for records.

5. On June 25, 2009 I received an e-mail from Michelle Abney advising that she had been out on sick leave for two days and would forward my e-mail to staff "to ensure a response."

6. On July 29, 2009 I submitted a PRR pertaining to actions the City had taken to date with respect to complying with the Measure Y audit requirements, repaying the Measure Y fund, and other issues related to Measure Y compliance. **(Request # 4).** The same day, I received an e-mail response from Ms. Abney advising that my request had been received and "I will forward as appropriate."

7. On August 6, 2009 I received an e-mail from Deputy City Attorney Kevin Siegel advising that the City was in the process of gathering documents responsive to my request, but the documents were numerous and he expected to provide responsive documents by August 21, 2009. While this response was an improvement over the total lack of compliance previously demonstrated, there is no indication that Mr. Siegel was the official designee for purposes of granting the extension to the City.

8. On August 10, 2009 I submitted a PRR to NSC Renee Sykes related to burglaries in my neighborhood. **(Request # 5) .** I received no response. Therefore, on August 18, 2009 I forwarded my request to Michelle Abney and Sharon Orgain.

9,. On August 18, 2009 I submitted a PRR to Ms. Abney and Sharon Orgain (as Ms. Abney was out of the office) requesting records related to the amount of funds transferred out of the Measure Y fund pursuant to the $7.7 million augmented recruiting program. **(Request # 6).**

10. On August 21, 2009 I received responsive records to my July 29, 2009 PRR.

11. On August 24, 2009, I wrote to Mr. Morodomi outlining how the City's response to my July 29, 2009 PRR was inadequate.

12. On August 28, 2009 I received an e-mail from Mr. Morodomi claiming my request for documents was somehow deficient because I described the documents similar to a "discovery request" in litigation. He also argued that some of the records were exempt from disclosure, and made various other excuses to defend the lack of full compliance with the PRA.

13. On August 29, 2009 I responded to Mr. Morodomi, outlining how the justifications for withholding the documents were not supported by the law, and demanded to know when I would receive a supplemental response with the additional documents. To date, I have received no response.

14. On August 31, 2009 I forwarded to Mr. Morodomi the previous e-mails I had sent to Renee Sykes and Michelle Abney related to my August 6, 2009 PRR (related to neighborhood burglaries). I advised him of the ongoing compliance issues, and that if the problems did not abate, I would be filing an official complaint with the Public Ethics Commission.

15. On September 3, 2009, I received an e-mail from Mr. Morodomi advising me that he was communicating with Ms. Sykes about why OPD was not providing the requested information. However, I never received any response regarding when I might receive responsive documents, and certainly not within the required 10 days.

16. On September 4, 2009 I submitted a PRR for the e-mail addresses of members of the Measure Y Oversight Committee. **(Request # 7).** This was after Jeff Baker of the City

Administrator's office blatantly refused to provide the information, claiming it was not public information. I have received no response to my request.

To date, I have received no formal responses to Requests 5, 6 and 7. Needless to say, the City has vastly exceeded the timelines required for response. In addition, Mr. Morodomi has failed respond to my August 29, 2009 "meet and confer" letter demanding additional documents.

As you may be aware, I am an attorney, and I represent public entities. I am very familiar with the requirements of the Public Records Act, and am also an experienced litigator. I recently prevailed in litigation against the City related to numerous violations of Measure Y. You can read the details on my blog at http://defendingmeasurey.blogspot.com.

If the City is so cavalier in responding to my public records requests, I shudder to think how it treats requests from members of the general public. According to a newspaper article I found on-line, the City received an "F-" in terms of compliance issues two years ago. It appears there has been no improvement.

I request that the City's compliance with the Public Records Act and Sunshine Ordinance be investigated. Because my complaints largely implicate violations committed by the Oakland City Attorney's Office, I am specifically requesting that the Public Ethics Commission obtain separate legal counsel to review the legal implications of my complaint, as there would otherwise be a clear conflict of interest. While the above are examples of my experiences, I suspect that the degree to which the City is violating the law is far greater. As a requested remedy, I am seeking all documents that have been previously requested, that have not already been requested. I am also seeking an audit to determine the scope of the compliance problems. Lastly, I am requesting that all officials responsible for receiving and processing requests for public records receive extensive training on how to achieve full compliance, and that necessary discipline be imposed on employees who have violated the law, as appropriate. Please do not hesitate to contact me if you have any questions.

Marleen L. Sacks