Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
February 1, 2010

In the Matter of)
) Complaint No. 08-17
) **SUPPLEMENTAL**

Mr. Mix filed Complaint No. 08-17 in November, 2008, alleging that seven City Councilmembers failed to timely respond to a public records request made in July, 2008. Mr. Mix initially made a request to all eight City Councilmembers for ". . .any and all correspondence, written, e-mails, phone calls, messages, etc., regarding the recent LLAD election and the proposed increase, that you or members of your staff had or may have had with individual members of the public, city staff, city officials, other city employees, news groups, individual news reporters, etc."

The Commission considered a preliminary staff report at its meeting of April 6, 2009. Staff reported that at the time the complaint was filed, three offices still had not responded to Mr. Mix, although there was some confusion over whether records had been supplied to the City Attorney's Office and simply not forwarded to Mr. Mix. Commission staff reported contacting the various City Council offices to confirm whether they had records responsive to the request and/or provided a final response. The Commission voted to dismiss the complaint conditioned upon staff sending a letter to City Council offices reminding and instructing them on proper procedures for responding to public records requests. The Commission also directed staff to request City Councilmembers to advise what, if any, procedures were in place for responding to public records requests.

Within several weeks after the Commission's action, Commission staff contacted City Council offices as well as the offices of the City Administrator and Mayor to inquire about their procedures for responding to public records requests. The responses indicated no uniform process for responding: Most offices stated that they refer requests to the City Attorney's Open Government Coordinator for handling, usually by submitting any documents for a review for issues of confidentiality and/or privilege before making them available. Three council offices (Kaplan, De La Fuente and Quan) said they usually try to respond directly to a request unless there is an obvious legal issue, or if the City Attorney's Office has notified them that the City Attorney will be coordinating a response.

Commission staff concluded there is a need for greater awareness of the deadlines when responding to public records requests, and to provide the offices with at least a basic reference document. To that end, and recognizing that delays in

producing records has historically not been limited to the offices of elected or appointed officials, Commission staff began developing a brochure which, at the time of this writing, is still awaiting review from the Office of the City Attorney. ***Attachment 1.*** One of the challenges of producing abbreviated instructional material (such as a brochure or letter) is that public records law contains numerous exceptions sometimes require careful consideration. The intent of the attached brochure is to make employees aware of the basic rules and deadlines, but also to encourage them to ask for legal assistance when necessary.

The proposed brochure is by no means "the answer" to resolving the City's ongoing challenges regarding public records requests. As Commission staff has previously advised, part of the problem has to do with the lack of a Citywide records management policy, which would establish clear standards for retaining, indexing and retrieving public records. Other approaches, such as additional staff training, the City's new website featuring a direct link to the City's Open Government Coordinator for public records requests, and an automated record request calendaring system, are currently being developed. Commission staff can arrange a more detailed presentation of these current efforts if the Commission is interested.

At this time the Commission is invited to make any comments or suggestions to the proposed brochure before its planned distribution to City offices.

Respectfully submitted,

Daniel D. Purnell
Executive Director

** *City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*