Approved as to Form and Legality

_____
City Attorney

City of Oakland
Public Ethics Commission
April 6, 2009

In the Matter of)
) Complaint No. 08-13
)

David Mix filed Complaint No. 08-13 on November 6, 2008.

I. SUMMARY OF COMPLAINT

Mr. Mix filed Complaint No. 08-13 alleging that the City of Oakland violated the Oakland Sunshine Ordinance and Public Records Act by failing to provide him with copies of records pertaining to the Oakland Wildfire Assessment District. ***Attachment 1.***

II. BACKGROUND

The City of Oakland formed the Wildfire Prevention Assessment District ("WPAD") in January, 2004, to finance costs related to fire suppression and prevention in the Oakland Hills. The legislation forming the WPAD created a Citizen Advisory Committee that is responsible for preparing a budget for City Council approval and recommending program priorities. The Citizen Advisory Committee is staffed by members of the Fire Prevention Bureau within the Oakland Fire Department.

III. FACTUAL SUMMARY

On September 2, 2008, Mr. Mix sent an email to Leroy Griffin of the Oakland Fire Department requesting three sets of records:

1) All invoices submitted by Francisco and Associates, the City's retained consultant for the WPAD, for the assessments upon public properties within the WPAD and/or for those assessment not collected by or through the County of Alameda. The request specified all records in this category for the period 2004 to the present.

2) All invoices or billing statements "returned by the party billed." The request specified all records in this category for the period 2004 to the present.

3) Copies of all agreements or activity records in which the City has performed work on parcels owned or controlled by other public agencies within the WPAD, as further specified in the request. ***(Attachment 2.)***

Mr. Mix contends that he did not receive any records or response from the City at the time he filed this complaint. After the complaint was filed, Commission staff

contacted Mr. Griffin to determine the status of the request. Shortly afterwards, Mr. Griffin made arrangements with the City's Finance And Management Agency to begin assembling and copying the requested records. In a memorandum dated January 29, 2009, Mr. Griffin states that the records Mr. Mix requested were not in the custody of the City's Fire Prevention Bureau. The records were located in the City's Finance And Management Agency and stored within the City's "Oracle" computer system. Mr. Griffin states that when he identified where the records were stored and the people who could respond, he made arrangements with Mr. Mix for their production. Mr. Griffin states that any delay was unintentional. ***Attachment 3.***

IV. ANALYSIS

The Oakland Sunshine Ordinance provides that the release of public records by any local body, agency or department of the City shall be governed by the California Public Records Act unless the ordinance provides otherwise. [O.M.C. §2.20.190] The Public Records Act provides that members of the public shall have the right to inspect and obtain copies of public records. [Government Code Section 5263] A public record includes any writing "containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics." [Government Code Section 6252(d)] E-mails are expressly defined as a "writing" under the Public Records Act. [Government Code Section 6252(g)] Upon any request for public records, a local agency shall make the records available "promptly," subject to a number of legal exemptions that justify withholding the records from public disclosure. [Government Code Section 6257]

Mr. Mix acknowledges that he ultimately obtained the records he was seeking. He objects however, to the length of time it took to provide the records and the fact that it required him to file a complaint to generate any attention to his request. In conversations with Mr. Griffin, Commission staff emphasized the need to respond to public records requests promptly even if the material is located in other departments of the City. Commission staff also advised that the Office of the City Attorney has an "Open Government Coordinator" who can provide assistance in responding to future records requests.

V. STAFF RECOMMENDATION

Based on the representation that Mr. Mix has received the requested records and that the City's Fire Prevention Bureau has been instructed regarding future requests, Commission staff recommends that Complaint No. 08-13 be dismissed.[1]

Respectfully submitted,

Daniel D. Purnell
Executive Director

---

[1] Commission staff also recently provided the Wildfire Assessment District's Citizen Advisory Committee training in open government laws and meeting procedures.