Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
February 2, 2009 and April 6, 2009

In the Matter of)
) Complaint No. 08-16
)

David Mix filed Complaint No. 08-16 on November 6, 2008.

I. SUMMARY OF COMPLAINT

Mr. Mix filed Complaint No. 08-16 alleging that the City's Public Works Agency ("PWA") violated the Oakland Sunshine Ordinance and Public Records Act by failing to provide him with copies of records pertaining to a City contract with an outside consultant. ***Attachment 1.***

II. FACTUAL SUMMARY

Early in 2008, the City Council considered a proposal to request that Oakland property owners increase the current assessment on certain real property in the City to help pay for a number of services, primarily street lighting and maintenance for City parks, fields, street medians and trees. The current Landscaping and Lighting Assessment District (LLAD) assessment was established in 1989 and, according to City staff reports, has not kept up with increasing development and service levels. As part of a proposal to increase LLAD assessments that ultimately was put to Oakland property owners for a vote in April, 2008, the City had earlier retained the services of Francisco & Associates, Inc., a consulting engineering firm whose job it was, in part, to assist in conducting the mail-in ballot process.

Mr. Mix sent a letter dated September 8, 2008, to Raul Godinez, the director of the City's Public Works Agency, to request a copy of the most recent version of Francisco & Associates' "Statement of Qualifications" to provide assessment engineering services to the City. ***Attachment 2.*** Mr. Mix sent an email dated October 2, 2008, to Mr. Godinez stating that he had not received a response to his September 8 request. ***Attachment 3.*** On November 24, 2008, the Public Works Agency provided Mr. Mix with a copy of a "Statement of Qualifications." ***Attachment 4.*** Mr. Mix objected to the November 24 response, telling Commission and Public Works Agency staff that he believed the City had in its possession a more comprehensive Statement of Qualifications than what he received.

On December 9, 2008, the Public Works Agency sent to Mr. Mix an electronic copy of an 84-page Request For Proposal from Francisco & Associates dated October

31, 2008, that was received by the City in connection with a new contract for assessment engineering services. Commission staff spoke to Mr. Mix who said that this electronic document contained the information he was seeking about Francisco & Associates in his initial record request. While he acknowledges that his request has been fulfilled, Mr. Mix questions why the City did not provide him with the information he requested in a timely manner.

III. 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]

Commission staff spoke with Jocelyn Combs, an assistant in the PWA who helped to respond to Mr. Mix's request. She noted that Mr. Mix had previously submitted a "massive" public records request to the PWA on August 20, 2008, pertaining to the LLAD. She said that she and others spent many hours searching for and compiling the many records responsive to his August 20 request before submitting them to the Office of the City Attorney for review.[1] She told Commission staff that she assumed the "Statement of Qualifications" was subsumed within the City's response to the August 20 request and was surprised to learn later that Mr. Mix was still demanding additional documents when she believed that she had already fulfilled.[2] She told Commission staff that the records sent to Mr. Mix on November 24 were all that she could locate. Several weeks later, she sent Mr. Mix an electronic version of Francisco & Associates' October 31st RFP even though it was received after Mr. Mix submitted his September 8, 2008, request.

Commission staff can both appreciate the complex and time consuming nature of Mr. Mix's records requests, as well as Mr. Mix's frustration over having to wait many weeks for a response to what appears to be a fairly simple request. While it appears

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[1] Mr. Mix has filed several additional complaints arising from his August 20 records request that have yet to be considered by the Commission.

[2] Commission staff notes that one of the record categories contained in Mr. Mix's August 20 records request was "[t]he contract between the City of Oakland and Francsico and Associates pertaining to the Landscaping and Lighting Assessment District (LLAD) for fiscal year 2008/09 whereby Francisco was engaged to prepare the Engineer's Report and conduct the election and all actions and services pertaining thereto."

that a dismissal is in order based on the fact that Mr. Mix ultimately received the records he requested, the Commission may wish to consider at some point ways in which the City can improve its response time for voluminous and/or complex record requests which involve more than one City office or agency.

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.*