Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
April 6, 2009

In the Matter of)
) Complaint No. 08-15
)

David Mix filed Complaint No. 08-15 on November 6, 2008.

I. SUMMARY OF COMPLAINT

Mr. Mix filed Complaint No. 08-15 alleging that the Office of the Mayor never responded to a written public records he made in July, 2008. ***Attachment 1.***

II. BACKGROUND

Oakland's Landscaping and Lighting Assessment District (LLAD) was established in 1989 to help pay for street lighting and maintenance for City parks, fields, street medians and trees. According to City staff reports the current assessment has not kept up with increasing development and service levels. Early in 2008, the City Council considered a proposal to ask certain Oakland property owners to increase the assessment. The proposed assessment was put to certain Oakland property owners in April, 2008. In June, 2008, City staff reported a weighted vote tally of 53 percent in favor and 47 percent opposed to the proposed assessment increase. Later in 2008, the City Council rescinded its action to approve the vote based in part upon an intervening California Supreme Court ruling that invalidated a similar assessment process in Santa Clara County.

II. FACTUAL SUMMARY

On July 29, 2008, Mr. Mix sent David Chai, chief of staff to Mayor Ronald Dellums, the following public records request:

> *"Any and all information (oral public information, [Sunshine Ordinance] Section 2.20.200) and documents concerning or relating to activities (letters, e-mails, phone calls, etc.) engaged in by the Mayor, you or the staff of any of his aides, whereby particular parties (parcel owners controlling LLAD votes) were contacted regarding the parties or entities LLAD vote."*

Mr. Mix alleged in his email request that a recording of the Peralta College District Trustee Meeting of May 20, 2008, indicated that Mayor Dellums, former City Administrator Deborah Edgerly and Mr. Chai contacted Chancellor Elihu Harris in order

to persuade the College District (as well as other public entities) to either abstain or vote in favor of the proposed LLAD increase with the promise that if adopted, the public agencies would not be required to pay their share of the assessment.

Mr. Mix claims he never received a response from the Mayor's Office for the records he requested.

Commission staff made a number of attempts to contact Mr. Chai after delivering a copy of Mr. Mix's complaint to him on November 6, 2008. Beginning in January, 2009, Commission staff increased the frequency of contact due to a lack of response from Mr. Chai to previous calls. On January 27, 2009, Mr. Chai left a voice message stating that he had no records responsive to Mr. Mix's request. In a follow-up telephone conversation, Mr. Chai told Commission staff that he personally conducted a review of his emails, telephone messages and files shortly after receiving Mr. Mix's records request. He said he also instructed Marisol Lopez, the Mayor's executive assistant, to perform the same review for the Mayor's records. Commission staff spoke with Ms. Lopez who confirmed that she reviewed the Mayor's emails and desk files and found no written or electronic records of any communications to parcel owners relating to the LLAD vote. Commission staff also contacted City Administrator Dan Lindheim who stated he had no records responsive to Mr. Mix's request.

Mr. Chai told Commission staff that he never responded to Mr. Mix's records request because his office did not possess any of the requested records. Commission staff advised Mr. Chai and Ms. Lopez of the need to communicate a response to Mr. Mix regardless of the outcome of the search. Mr. Chai said he would do so. ***Attachment 2.*** Commission staff also recommended that the Mayor's staff receive specialized training in public records law. Mr. Chai said he would arrange training for himself and other members of the Mayor's staff. Commission staff will attempt to conduct or arrange the training within the next 60 days.

III. STAFF RECOMMENDATION

Commission staff recommends that the Commission dismiss Complaint No. 08-15 on grounds that the Office of the Mayor claims it does not possess records responsive to Mr. Mix's request. The Commission may wish to condition a dismissal upon the successful completion of public records training by Mr. Chai and his staff.

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.*