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TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
Kyle McLean, Mediation Coordinator
DATE: May 16, 2019
RE: *In the Matter of City of Oakland (Case No. 18-06M); Mediation Summary*

I. INTRODUCTION

On February 13, 2018, the Commission received a request for mediation alleging that the City Administrator's Office and the Department of Planning & Building failed to respond to a public records request made by the Requester on August 7, 2017. On July 27, 2018, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the City Administrator's Office released one record (19 pages total) and the Department of Planning & Building released five records (2,417 pages total) responsive to Requester's request in September 2018 - over one year after the City had received the request.

Because the City uploaded records in response to the mediation and the Requester was satisfied with the City's response, Commission Staff recommends that the Commission close this matter without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records are open to inspection by the public unless there is a specific reason not to allow inspection. The CPRA requires each agency to make public records promptly available to any person upon request.

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff. A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in the Commission's mediation program.

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.

III. SUMMARY OF FACTS

On August 7, 2017, the City received, via RecordTrac, the following public records request (RT-22445): “All emails authored by Sabrina Landreth to, from, or regarding John Protopappas, Rachel Flynn, Rich Fielding, Tim Lowe, Gene Martinelli, 1919 Market St., 1919 Bayside, Danny Haber, Negev, Market Holdings LLC, Madison Park, or Joy Newhart.”

At the time, RecordTrac was the City’s online portal for sharing public records. It allowed members of the public to make requests, receive responses from the City, and search past requests and responses.

On August 7, 2017, the Requester stated the following: “Beginning January 2015 to present.”

On February 13, 2018, the Requester filed a complaint with the Commission. Attached to the complaint was a December 18, 2017 email from the Requester to Councilmember Kaplan requesting assistance with a response; a January 5, 2018 email from the Requester to Online Records Custodian Amber Todd requesting assistance with a response; and a February 9, 2018 email from the Requester to Sabrina Landreth (City Administrator), Karen Boyd (Citywide Communications Director for the City Administrator’s Office), and Richard Luna (public record request liaison for the City Administrator’s Office) requesting compliance with her records request. As of February 13, 2018, the City had not provided any records in response to the request.

On April 17, 2018, the Department of Planning & Building and the City Administrator’s Office were added as points of contact on NextRequest by Amber Todd.

On May 4, 2018, the Department of Planning & Building sent a request to the City’s IT Department for the records requested by the Requester. On May 23, 2018, Mariko Highsmith of the Department of Planning & Building messaged the Requester via NextRequest and stated “This request was sent to our IT department on 5/4/18 and is still being processed. Thank you for your patience.”

On July 27, 2018, Commission Staff initiated its mediation efforts by contacting the Department of Planning & Building and the City Administrator’s Office regarding Requester’s public records request.

On July 30, 2018, Mariko Highsmith (public record request liaison for the Planning & Building Department) responded to Staff’s initiation of mediation efforts and stated that the email search sent to the IT Department on May 4, 2018 was still being processed. Highsmith further stated that the IT Department was unable to give them a timeframe regarding providing the responsive records. Highsmith acknowledged that the request was assigned to the Department, albeit extremely overdue, after the City switched from RecordTrac to NextRequest as its public record request platform.

On July 31, 2018, Richard Luna of the City Administrator’s Office responded to Staff and stated that the email records for Sabrina Landreth were with the City Attorney’s Office for review.

On August 1, 2018, Staff reached out to the Requester and informed them that the records had been retrieved by the IT Department and were being reviewed by the City Attorney’s Office.

On August 8, 2018, Staff reached out to the City Administrator’s Office and asked if the City Attorney’s Office had provided an update on the records. Richard Luna responded the same day and stated that the records were still with the City Attorney’s Office.

On August 22, 2018, Staff reached out to the City Administrator's Office and asked if the City Attorney's Office had provided an update on the records. Richard Luna responded that there had still been no update from the City Attorney's Office.

On September 11, 2018, the City Administrator's Office uploaded nineteen pages of records via NextRequest.

On September 13, 2018, Mariko Highsmith notified Staff that the Planning & Building Department received the IT results at the end of August and that all records were being sent to the City Attorney's Office for review and redaction before being uploaded on NextRequest.

On September 21, 2018, the Planning & Building Department uploaded two thousand, four hundred and seventeen (2,417) pages of records via NextRequest, stated the following message, and closed the request: "William Gilchrist, Director of Planning and Building, Mariko Highsmith, Account Clerk III, and Peter Spoerl, Sr Deputy Attorney has reviewed records and has not provided documents covered by the attorney-client privilege pursuant to Section 6254(k) of the Public Records Act which states that "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c)."

On September 24, 2018, Commission Staff reached out to the Requester and notified them that the Planning & Building Department and City Administrator's Office had confirmed that they released all responsive records at the time. On September 27, 2018, the Requester confirmed they were satisfied with the records produced in response to the request, but reiterated dissatisfaction with the timeliness of the City's response.

IV. RECOMMENDATION

Because the Requester received all of the originally requested records and confirmed that all responsive records had been provided, Commission Staff recommends that the Commission close this matter without further action.