



Jodie Smith, Chair  
James E.T. Jackson, Vice-Chair  
Jill Butler  
Lisa Crowfoot  
Gail Kong  
Nayeli Maxson  
Jerett Yan

Whitney Barazoto, Executive Director

---

TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
Kyle McClean, Mediation Coordinator

DATE: July 8, 2019  
RE: *In the Matter of the Mayor's Office (Case No. M2019-01); Mediation Summary*

---

## I. INTRODUCTION

Between January 8 and April 1, 2019, the Commission received both a formal complaint alleging violations to the Government Ethics Act (GEA) and a request for mediation alleging that the Mayor's Office failed to disclose records in response to a public records request made by the Requester on January 6, 2019 (Request No. 19-96). On April 8, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, Alex Katz, Oakland City Attorney's Chief of Staff released one record; Mark Forte, the Open Government and Legal Services Coordinator for the Oakland City Attorney released three records on behalf of the Mayor's Office; Mayra Chavez, with Councilmen Gallo's Office released three records; Sun Kwong-Sze released one record on behalf of the Mayor's Office; Patricia Mossburg, Special Assistant and Scheduler for Councilmember Reid's Office released three records, and Joanne Karchmer, Deputy Chief of Staff with the Mayor's office confirmed releasing about 1500 pages in response to the Requester's public records request.

Although several records were released to the Requester, the Requester asserts the Mayor's office withheld records related to both the consultant(s) that were hired by the City to perform services related to Measure AA and failed to release records from a poll that was conducted on Measure AA. The Requester believes the City, in fact, has polling information because an email that the City released in response to the public records request, refers to a poll that was conducted on Measure AA. Joanne Karchmer with the Mayor's office represented that there were no responsive documents related to polling and that all records of the Mayor's correspondence in her official capacity regarding Measure AA has been released. Staff has made multiple efforts, including obtaining a copy of the poll from the pollster company, to determine if the Mayor's office has/had responsive documents to no avail.

Staff recommends that the Commission close the mediation per the Requester's request without further action. The Requester's remaining GEA complaint will be forwarded to enforcement for preliminary review.

## II. SUMMARY OF LAW

# ATTACHMENT 3

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</sup>

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.<sup>3</sup> 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 they have requested and participated in the Commission's mediation program.<sup>4</sup>

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.<sup>5</sup>

### III. SUMMARY OF FACTS

On January 6, 2019, the City received, via NextRequest, the following public records request (No. 19-590):

Pursuant to the California Public Records Act, I am requesting the following categories of documents:

1. All drafts/versions of the ballot initiative known as the "Children's Initiative" and/or "Measure AA," including all correspondence/emails indicating to whom drafts were sent from and to, edits to drafts of the initiative, who made the edits, and responses to suggested edits.
2. All documents referring, relating to or comprising contracts/agreements with consultants who performed work related to the "Children's Initiative"/Measure AA, including how much these consultants were paid, and whether the consultant fees were paid from City funds.
3. All correspondence to/from consultants who conducted polling related to the Children's Initiative, including proposed polling questions, and results of polls, as well as the costs of administering polls and who paid for the polls.
4. All documentation related to instructions or directions given to City staff, particularly City staff in the Mayor's office, about when to use non-City email addresses, particularly as related to City staff's work on non-City business, such as campaigning for the Children's Initiative, fundraising for the Children's Initiative, etc.
5. All documentation related to the amount of time spent by city staff, particularly city staff in the Mayor's Office, working on tasks related to the Children's Initiative, including, but not limited to: (1) the identity of all City staff working on the Children's Initiative; (2) the hourly pay of staff working on the Children's Initiative; (3) whether or how hours spent by City staff on the Children's Initiative were tracked in any way, in

---

<sup>1</sup> Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

<sup>2</sup> Government Code § 6253(b).

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

<sup>5</sup> Complaint Procedures § IV (C)(5).

# ATTACHMENT 3

order to prevent taxpayer funds from being used to support, create or endorse a ballot measure; (4) all hiring and salary documentation related to a public policy fellow recruited and/or hired by the Mayor's Office specifically for the purpose of working on the Children's Initiative;

6. All documentation referring or relating to how the City justified the use of City staff/Mayor's Office staff in working on the Children's Initiative, including, but not limited to, (1) complaints about City staff working on this matter; (2) responses to complaints about City staff working on this matter; and (3) guidelines for City staff working on this matter (e.g. directives not to use City time/resources/email server)

On January 7, 2019, Alex Katz (Oakland City Attorney's Chief of Staff) changed the due date of the request from January 16, 2019 to January 30, 2019 and stated the following via NextRequest: "Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2))."

Also on January 7, 2019, Alex Katz released one record and stated the following via NextRequest: "City Attorney FAQ: Campaign-related activities by elected officials, employees, etc. Not specific to Measure AA. These guidelines are posted on the City Attorney website."

On January 9, 2019, Alex Katz stated the following via NextRequest: "Some responsive records (communications related to the initiative) are posted under request # RT-25502."

On January 29, 2019, John Knight (Legislative Aide to Rebecca Kaplan, Councilmember at Large) released one record and stated the following via NextRequest: "The City is withholding 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.' Additionally, Councilmember Kaplan's office has redacted some personal phone numbers & addresses from the responsive records pursuant to the constitutional rights of privacy and to protect against identity theft per Government Code Section 6254(c)."

On January 30, 2019, Mayra Chavez (public record request liaison for Councilmember Gallo's office) stated the following via NextRequest: "Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2))."

Also on January 30, 2019, Oliver Luby (public record request liaison for Councilmember Kalb's office) stated the following via NextRequest: "Dear Requester, Due to some glitch, the Office of Councilmember Dan Kalb did not become aware of Request 19-96 until yesterday. We will post responsive records as soon as possible."

On February 5, 2019, Mark Forte (Open Government and Legal Services Coordinator for the Oakland City Attorney) released three records on behalf of the Mayor's Office.

On February 20, 2019, Louansee Moua (Chief of Staff for Councilmember Thao's Office) stated the following via NextRequest: "Councilmember Sheng Thao has no responsive records for this request."

# ATTACHMENT 3

On February 22, 2019, Oliver Luby released one record and stated the following via NextRequest: “Dear Requester, The Office of CM Dan Kalb is posting AA records responsive to requests 18-4386, 18-4442, 18-4446, and 19-96. In the posted responsive records from the Office of CM Dan Kalb, some personal contact information has been redacted pursuant to the individual's right of privacy, per California Government Code Section 6254(c). In addition, some records have been withheld due to attorney-client privilege, per Gov. Code Sect. 6254(k), or because the public interest served by not disclosing the info clearly outweighs the public interest served by its disclosure, per Gov. Code Sect. 6255.”

On February 26, 2019, Sun Kwong Sze (Special Projects Coordinator to the Mayor) stated the following via NextRequest: “Dear Requester, Additional responsive records from the Mayor's Office to Measure AA requests have posted today to Request #18-4523. Please refer to Request #18-4523 to review those records that also answer your request. Thank you”

On March 14, 2019, Mayra Chavez released three records and stated the following via NextRequest: “Dear Requester, The Office of CM Gallo is posting AA records responsive to requests 18-4386, 18-4442, 18-4523, and 19-96. In the posted responsive records from the Office of CM Noel Gallo, some personal contact information has been redacted pursuant to the individual's right of privacy, per California Government Code Section 6254(c).”

On March 15, 2019, Sun Kwong Sze stated the following via NextRequest: “Dear Requester, Additional responsive records from the Mayor's Office to Measure AA requests have posted today to Request #18-4523. Please refer to Request #18-4523 to review those records that also answer your request. Thank you”

On March 19, 2019, Sun Kwong Sze released one record and stated the following via NextRequest: “Dear Requester, Additional responsive records from the Mayor's Office to Measure AA requests have posted today to Request #18-4523. Please refer to Request #18-4523 to review those records that also answer your request. Thank you”

Also on March 19, 2019, the Requester emailed Joanne Karchmer (Deputy Chief of Staff for the Mayor's Office) a copy of request No. 19-96 alleging that the Mayor's Office had failed to provide responsive records to the request, including records related to consultants hired by the City to perform services related to Measure AA, correspondence and documentation related to polling for Measure AA, and any correspondence from Mayor Schaaf related to Measure AA.

On March 20, 2019, the Requester emailed Joanne Karchmer seeking a response to the March 19, 2019 email and stating that the records produced the day before by the Mayor's Office were unresponsive because they were copies of records that had already been produced.

On March 29, 2019, Sun Kwong Sze stated the following via NextRequest: “Dear Requester, Additional responsive records from the Mayor's Office to Measure AA requests have posted today to Request #18-4523. Please refer to Request #18-4523 to review those records that also answer your request. Thank you”

Also on March 29, 2019, Joanne Karchmer emailed the Requester. Karchmer stated that the City had released 1500 pages of records in response to request No. 19-96. Karchmer additionally stated that

# ATTACHMENT 3

the Mayor's Office had provided records for the request referencing "Measure AA," which Karchmer stated was a voter initiative submitted by outside proponents and placed on the ballot by the City Council on July 24, 2018. Karchmer distinguished Measure AA from the "Children's Initiative," a City proposed ballot measure discussed in the Finance and Life Enrichment Committees on April 10, 2018, but never forwarded to the full council to be considered for placement on the ballot. Karchmer further stated that the Mayor's Office had no responsive records related to the hiring of consultants because the City did not hire any consultants to work on the Measure AA ballot initiative. Karchmer pointed to records that had been provided by the City (although Karchmer stated that these records were unresponsive because they did not involve the City) where the Oakland Public Education Fund (OPEF) contracted work to develop the Children's Initiative.<sup>6</sup> Karchmer stated the Mayor's Office had no responsive records related to polling, including correspondence, because the City did not conduct polling. Karchmer finally stated that all records of the Mayor's correspondence in her official capacity regarding Measure AA had been released.

Also on March 29, 2019, the Requester emailed Joanne Karchmer and stated that emails provided by the City in response to the record request indicated that the City commissioned a poll, and that Karchmer's statement that David Silver had signed the contracts in his personal capacity was not credible. The Requester also stated that Kyra Mungia (a policy fellow who worked on drafting Measure AA) was a City employee based on Mungia's City email address and LinkedIn profile, which stated that Mungia was an employee of the Mayor's Office.

On April 1, 2019, Commission Staff received a request for mediation from the requester via email alleging improper response to records request No. 19-96. Chief of Enforcement Kellie Johnson assigned the mediation to Mediation Coordinator Kyle McLean and reached out to Commissioner James E.T. Jackson to seek his assistance in the matter. Commissioner Jackson had volunteered to assist in mediations at an earlier public meeting of the PEC.

On April 10, 2019, Patricia Mossburg (Special Assistant and Scheduler for Councilmember Reid's office) released three records and stated the following via NextRequest: "CM Reid's responsive requests"

On April 16, 2019, Commissioner Jackson and Commission Staff teleconferenced to determine the next appropriate steps for the mediation. In response, Staff contacted Joanne Karchmer on April 18, 2019, to determine whether there had been further correspondence between the Mayor's Office and the requester, whether any records from the Mayor's personal devices had been provided, and whether Karchmer would participate in a face to face mediation.

On May 6, 2019, Staff followed up with Joanne Karchmer via phone and left a voicemail. Staff additionally contacted the Requester seeking evidence that additional responsive records existed. On May 8, 2019, the Requester provided emails produced by the City with an attachment where the "Children's Initiative" stated in a newsletter that it had conducted polling related to Measure AA. Staff forwarded this evidence to the Mayor's Office and asked whether the Mayor's Office still maintained the position that there were no additional responsive records.

---

<sup>6</sup> The Oakland Public Education Fund (OPEF) is a nonprofit that received approximately \$200,000 in City funding between 2017 and 2018. Karchmer also referenced a contract between GO Public Schools and the OPEF, both of which had been signed by David Silver (Director of Education for the Mayor's Office). Karchmer stated in her March 29, 2019 email that Silver signed both contracts in his private capacity.

# ATTACHMENT 3

On May 14, 2019, Joanne Karchmer responded to Staff and stated that the record had been produced in response to request No. 18-4523, which sought records related to Measure AA and the Children's Initiative. Karchmer stated the emails were sent by Kyra Mungia and David Silver, but did not address whether additional responsive records existed. Staff contacted the entity that conducted the poll and asked whether the client who commissioned the poll was private or public, and whether a copy of the poll results was publicly available. The polling company responded that the client was private and provided a copy of the poll, but stated that the client desired to remain anonymous. Staff forwarded the poll results to the Requester.

On May 21, 2019, Staff contacted the Human Resources Department to determine whether Kyra Mungia had ever been a City employee. Human Resources Staff stated that Mungia had never been employed by the City. Staff located a report submitted to the Finance Committee by the Mayor's Office, Vice Mayor's Office, and Councilmember Gallo's office; the report cited the privately conducted poll. Mayra Chavez stated that Councilmember Gallo's office did not possess records containing correspondence from the polling data. Staff forwarded a copy of the poll and the report of the Finance Committee to Joanne Karchmer and asked how the Mayor's Office obtained the poll results without any related correspondence. Staff has not received a response from the Mayor's office.

## IV. RECOMMENDATION

Although the Requester received most of the requested records, the Requester made a formal request to close/terminate the mediation due to the Mayor's seemingly deliberate failure to timely respond and or produce complete responsive documents to the records request. Staff recommends that the Commission close the mediation without further action. Staff will refer the remaining GEA complaint to Enforcement for preliminary review.