

# ATTACHMENT 4



Jodie Smith, Chair  
James E.T. Jackson, Vice-Chair  
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Gail Kong  
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Jerett Yan

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
Kyle McLean, Mediation Coordinator  
DATE: October 23, 2019  
RE: *In the Matter of the City of Oakland Finance Department (Case No. 18-37M);*  
Mediation Summary

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## I. INTRODUCTION

On October 16, 2018, the Commission received a request for mediation from the requestor alleging that an employee from the Finance Department improperly redacted a business tax statement. The mediation request had the business tax statement attached but did not identify the record request where the City provided the statement. The requestor stated in her mediation request, “ please note that I am not interested in seeing the employee disciplined, but in getting confirmation from the PEC that this information, which is available in the Assessor database, is public and should not have been redacted.”

Staff determined that the Requester is entitled to the information on the statement identified in O.M.C. 5.04.060 that is not confidential. In this case, the Requester received this public information in an excel spreadsheet in response to a separate public records request 18-2484 as part of Staff’s mediation efforts in PEC Case No. 18-24M. In response to that mediation, the Requester confirmed that she was satisfied that the City provided all responsive records.

## II. SUMMARY OF LAW

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>

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<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).

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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>

**Failure to Release Documentary Public Information.** Sunshine Act section 2.20.190 states that the release of public records by a local body shall be governed by the California Public Records Act (Government Code Section 6250 *et seq.*) ("CPRA") in any particulars not addressed by Article III of the Sunshine Act (which governs the release of public information).

CPRA section 6253 states that non-exempt public records shall be made "promptly" available to a requestor, except with respect to public records exempt from disclosure by express provisions of law.

**Business Tax Statement.** Oakland Municipal Code (O.M.C.) section 5.04.090 requires every person who is conducting business activities to file with the Business Tax Section of the Department of Finance a "written statement setting forth the then applicable factor or factors that constitute the measure of the tax ... The written statement provided for herein shall be on a form prescribed by the Business Tax Section and shall include a declaration substantially as follows: I declare under penalty of perjury that to my knowledge all information contained in this statement is true and correct."

O.M.C. section 5.04.140 states that "statements filed pursuant to the provisions of this chapter shall be deemed confidential in character and shall not be subject to public inspection." O.M.C. section 5.04.60 provides that the following information from these statements is subject for public inspection: (1) the name and address of the business; (2) The name of the owner of the business, if such name is shown on the records filed pursuant to this chapter; (3) Industrial classification; (4) expiration date; and (5) account number.

### III. SUMMARY OF FACTS

Once we received the complaint on October 16, 2018, Staff contacted the requester to seek additional information about the complaint and retrieve the case number for the requester's public records request. The requester stated during an oral interview on October 17, 2018 that they did not remember which records request the City responded to by providing the attached business tax statement. Staff conducted a search of all record requests using queries such as "rental property business tax" and "2015 business tax" but was unable to locate the request in which the attached statement had been produced in response.

The business tax statement was sent to a property owner in 2015, and informed the owner that the Department of Finance identified their property as a "possible" rental property; the statement required the property owner to state the use of the property if it was not a rental property and to sign the notice below the following statement: "I declare under penalty of perjury that to my knowledge all information contained in this statement is true and correct/complete."

The business tax statement attached to the mediation request was filed pursuant to chapter 5.04 of the Oakland Municipal Code and therefore is labelled confidential per O.M.C. 5.04.140. Because the

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

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statement is exempt from disclosure under express provisions of law, it is not subject to public inspection pursuant to CPRA section 6253. This analysis has been confirmed by Patrick Tang, outside counsel for the City Attorney's Office.

## **IV. CONCLUSION**

Even under the assumption that the requester had standing to request mediation, this request for mediation should be dismissed because the redactions on the business tax statement were proper. The business tax statement attached to the mediation request was filed pursuant to chapter 5.04 of the Oakland Municipal Code and therefore is labelled confidential per O.M.C. 5.04.140. Because the statement is exempt from disclosure under express provisions of law, it is not subject to public inspection pursuant to CPRA section 6253.

## **V. RECOMMENDATION**

Since the finance department's redaction did not violate the Sunshine Ordinance, and the requester received all responsive documents that were not protected by confidentiality, Staff recommends that the Commission close the mediation without further action.