

# ATTACHMENT 5



Jodie Smith, Chair  
James E.T. Jackson, Vice-Chair  
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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 21, 2019  
RE: *In the Matter of Oakland Police Department (Case No. M2019-13); Mediation Summary*

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## I. INTRODUCTION

On July 23, 2019, the Commission received a request for mediation alleging that the Oakland Police Department (OPD) failed to respond to a public records request made by the Requester on February 27, 2019. On August 1, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the OPD Records Division posted on September 23, 2019, that the Request was closed because the case was still pending, still active, under appeal or may be recharged.

OPD, albeit months later, did release some documents in response to the requester's request on September 23, 2019. Because OPD has asserted a legal basis for the denied request<sup>1</sup>, Staff recommends that the Commission close the mediation.

## 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.<sup>2</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>3</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>4</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 he or she has requested and participated in the Commission's mediation program.<sup>5</sup>

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<sup>1</sup> California Government Code 6254 (f) The case is pending, still active, under appeal or may be recharged; or the release may deprive a person(s) of a fair trial.

<sup>2</sup> Oakland Municipal Code § 2.20.010(C); Government Code § 6250 et seq.

<sup>3</sup> Government Code § 6253(b).

<sup>4</sup> O.M.C. § 2.20.270(C)(1).

<sup>5</sup> O.M.C. § 2.20.270(F).

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Once the 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>6</sup>

The Sunshine Ordinance provides that City Agency directors shall designate a person knowledgeable about the affairs of the respective agency to provide oral public information about agency operations, plans, policies, and positions.<sup>7</sup>

### III. SUMMARY OF FACTS

On February 27, 2019 the requestor made an in person public records request, (No.(s) 19-001779, 19001011, 16-055528 and 16-015035): “all police reports.”

On March 7, 2019, OPD did not provide or indicate whether they possessed responsive documents, instead OPD extended the due date of the request without providing an estimate of when the records would be produced.

On July 23, 2019, the requester sought assistance from the Public Ethics Commission and had a lawyer make a formal request for mediation.

On August 1, 2019, Staff initiated mediation.

On August 16, 2019, OPD did not provide or indicate whether they possessed responsive documents, instead OPD extended the due date of the request without providing an estimate of when the records would be produced.

On September 23, 2019, the OPD Records Division released some records via NextRequest in response to the requester’s original public records request.

On that same day, the OPD Records Division closed the request citing that the request is denied due to CGC 6254(f).

In October 2019, Staff notified the Requester that further mediation efforts were unlikely to result in any further release of records due to the California Government Code. Staff notified the Requester that Staff will recommend closure of the mediation.

### IV. RECOMMENDATION

Pursuant to OPD’s invocation of the California Government Code, Staff recommends that the Commission close this mediation without further action.

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<sup>6</sup> Complaint Procedures § IV (C)(5).

<sup>7</sup> O.M.C. § 2.20.200(A)