



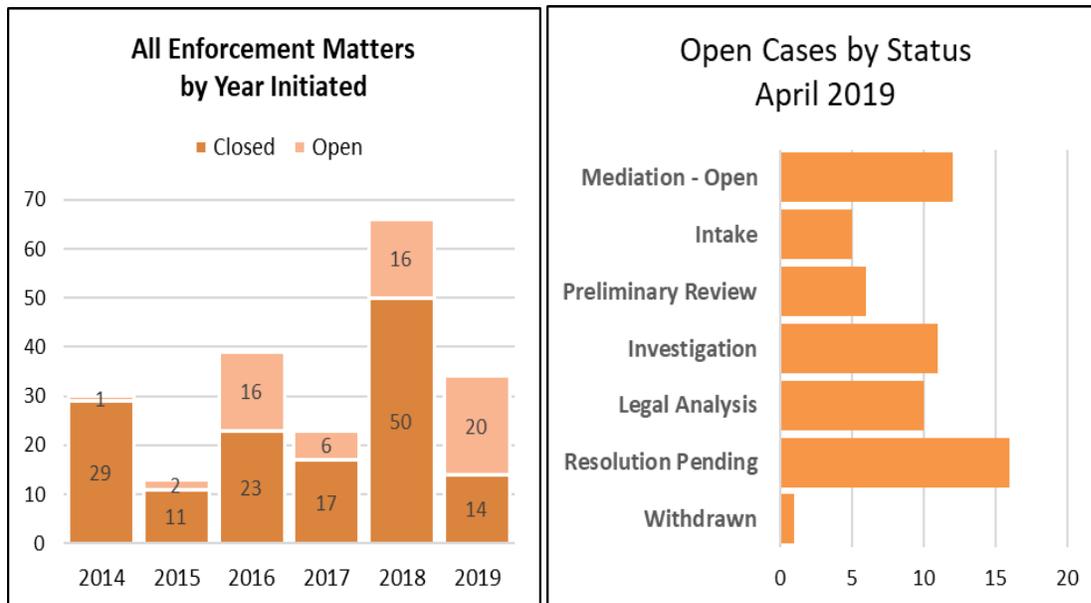
Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill M. Butler
Gail Kong
Joseph Tuman
Nayeli Maxson Velázquez
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: October 21, 2019
RE: Enforcement Program Update

Current Enforcement Activities:

Since the last Enforcement Program Update on September 23, 2019, Commission staff received four formal complaint and two requests for mediation. This brings the total Enforcement caseload to 17 matters in the intake or preliminary review stage, 11 matters under active investigation, 12 matters under post-investigation analysis, and 10 matters in settlement negotiations or awaiting an administrative hearing. Enforcement's caseload also includes 7 ongoing records requests for mediation.



Enforcement Priorities:

The Enforcement Staff continue to streamline and fast track minor cases with a focus on prioritizing multi-issued and complex ethics cases. To date this year, Enforcement has resolved/brought closure to a total of 34 complaints/requests for mediation.

Summary of Cases:

Since the last Enforcement Program Update in September 2019, the following status changes occurred:

1. *In the Matter of Amber Todd (Complaint No. 19-02)*: On January 18, 2019, Staff received this formal complaint. This complaint was withdrawn by the complainant. Staff issued notice of the withdrawal to the respondent and closed the matter. (Attachment)
2. *In the Matter of the City Auditor Brenda Roberts (Complaint No. 18-28)* On September 25, 2018, after conducting a preliminary review, Staff dismissed the complaint after determining that the complaint had insufficient evidence to establish a violation of any of the laws under the PEC's jurisdiction. (Attachment)
3. *In the Matter of the City Auditor Brenda Roberts (Complaint No. 18-29)* On September 20, 2018, Staff received this complaint that alleged the same allegations in Complaint No. 18-28. Staff dismissed this complaint for the same legal analysis provided in the companion case that the complaint had insufficient evidence to establish a violation of any of the laws under the PEC's jurisdiction. (Attachment)
4. *In the Matter of Dana King (Complaint No. 15-03(b))*: The Commission received a complaint on January 5, 2015, alleging that Dana King's campaign received a campaign contribution that was an over the limit aggregate contribution in violation of the Oakland Campaign Reform Act (OCRA). Staff recommends that the Commission issue an Advisory Letter and close the matter without further action. (See Action Items)
5. *In the Matter of Friends of Desley Brooks for City Council 2014 (Complaint No. 15-04)*: The Commission received a complaint on January 5, 2015, alleging that the Friends of Desley Brooks for City Council 2014 received a campaign contribution that was an over the limit aggregate contribution in violation of the Oakland Campaign Reform Act (OCRA). Staff recommends that the Commission issue an Advisory Letter and close the matter without further action. (See Action Items)
6. *In the Matter of the City of Oakland Finance Department (Complaint No. 18-37M)*: On October 17, 2016, Staff initiated mediation pursuant to the Oakland Sunshine Ordinance. We conducted a preliminary review of the allegations that the City Finance Department improperly redacted a public records request document. Staff determined that the Requester is entitled to and received responsive documents except for those that were lawfully marked confidential. Staff recommends that the Commission close the mediation without further action (See Action Items).
7. *In the Matter of Alameda County Taxpayers Association (Complaint No. 18-38)*: Staff received a formal complaint on October 18, 2018, that alleged Alameda County taxpayers Association (ACTA) failed to register as a campaign committee, and put out three mailers re: Oakland taxes that lacked property disclosures under the Oakland Campaign Reform Act. Staff referred this matter to the California Fair Political Practices Commission (FPPC) for their determination. The FPPC determined that the mailers did not qualify as campaign mailers. The FPPC, however, did issue an advisory letter to the ACTA, informing them of the law and

to be cautious in the future with advertisements. In August 2019, Staff sent a letter informing the complainant of the FPPC's decision and action. Staff dismissed the matter after it determined the FPPC's decision rendered the complaint such that it did not warrant any further investigation by the PEC. (Attachment)

8. *In the Matter of the Oakland Police Department* (Complaint No. M2019-13): On July 23, 2019, Staff initiated mediation pursuant to the Oakland Sunshine Ordinance. At the time Staff initiated mediation each of the Requestor's public records requests were past due. After mediation commenced, the requestor received a notice from OPD that the request was closed and denied because pursuant to California Government Code 6254 (f) the case is pending/still active/ or under appeal and may be recharged. Staff recommends that the Commission close the mediation without further action (See Action Items).

ATTACHMENT 11



CITY OF OAKLAND

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Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

October 21, 2019

Amber Todd
Assistant to the Director, Finance Department
1923, 1 Frank H Ogawa Plaza,
Oakland, CA 94612
atodd@oakland.gov

Re: PEC Complaint No. 19-02; Notice of Withdrawn Complaint

Dear Ms. Todd:

The City of Oakland Public Ethics Commission received the attached complaint against you (19-02), alleging violations of the Oakland Sunshine Ordinance. However, the complainant has since informed us that she wishes to withdraw the complaint. As such, the PEC is considering this complaint withdrawn and resolved. No action is necessary on your part; this is just a courtesy notice.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting on November 4, 2019, as part of our regular monthly update on Enforcement actions. This is purely informational, and no action will be taken by the Commission regarding this matter. You are welcome to attend that meeting and/or give public comment if you wish, but not required to do so. This letter serves as formal notice that the matter is now closed. If you have any questions, you can reach me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Enforcement Chief
City of Oakland Public Ethics Commission

ATTACHMENT 11



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October 21, 2019

Elise Ackerman



Re: PEC Complaint No. 19-02; Dismissal Letter

Dear Ms. Ackerman:

On January 18, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint alleging that Amber Todd, Assistant to the Director of the City of Oakland's Finance Department, deliberately failed to disclose documents subject to a Public Records Request. After reviewing the allegation in your complaint, further discussing the matter with you, and confirming your request to withdraw the matter, we are dismissing your complaint.

Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me Kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Chief of Enforcement

cc: Amber Todd, City of Oakland Finance Department

ATTACHMENT 11



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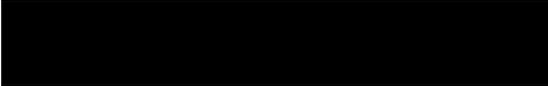
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October 21, 2019

Brenda Roberts



Re: PEC Complaint No. 18-28 and 18-29; Dismissal

Dear Ms. Roberts:

The City of Oakland Public Ethics Commission received the attached complaints against you (18-28 and 18-29), alleging violations of the Government Ethics Act. The complaint alleged that you misused your position and City resources by providing false statements in the City Auditor's Impartial Financial Analysis of Just Cause Measures to mislead voters in support of 2018 Ballot Measure Y in exchange for an increased opportunity for future political favors from politicians who support the Measure.

We have reviewed the complaint and are dismissing it because the alleged conduct, even if true, does not constitute a violation of law within the PEC's enforcement jurisdiction.

A copy of the dismissal letter is attached. If you have any questions regarding this matter, please feel free to contact me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Enforcement Chief
City of Oakland Public Ethics Commission

ATTACHMENT 11



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October 21, 2019

Elise Cox



Re: PEC Complaint No. 18-28 and 18-29; Dismissal Letter

Dear Ms. Cox:

On September 20th and 25th, 2018, the City of Oakland Public Ethics Commission (PEC) received duplicate complaints (#18-28 and 18-29) alleging that Brenda Roberts misused her position and City resources by providing false statements in the City Auditor's Impartial Financial Analysis of Just Cause Measures to mislead voters in support of 2018 Ballot Measure Y in exchange for an increased opportunity for future political favors from politicians who support the Measure. After reviewing your complaint and the law, we have determined that the allegation you set forth does not establish sufficient evidence to constitute a violation of the Government Ethics Act and therefore are dismissing the complaint.

Specifically, the complaint alleges the following statements in the Impartial Analysis are incorrect: "Per O.M.C. Section 8.22.500 (Rent Program Service Fee), fees are charged against residential rental units that are subject to either the Rent Adjustment Ordinance, the Just Cause for Eviction Ordinance, or both. Currently, the annual service fee is \$68 per rental unit (of which owners may pass through one-half of the annual fee to the tenant). Under this Measure, we estimate the City would collect additional revenues between \$612,000 and \$748,000 annually."

The Government Ethics Act Section (GEA) 2.25.060(A)(1) states that no Public Servant may use or permit others to use public resources for personal or non-City purposes not authorized by law. "Personal purpose," as defined under GEA 2.25.060(A)(1)(a)(i), means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business; it does not include the incidental and minimal use of public resources for personal purposes, including an occasional telephone call. "Public resources," as defined under GEA 2.25.060(A)(1)(a)(iii), means any property or asset owned by the City, including but not limited to City-compensated time.

Also, in GEA Section 2.25.060(A)(2) states that no Public Servant may use their prospective position, or the power or authority of his or her office or position, in any manner intended to

induce or coerce any person to provide any private advantage, benefit, or economic gain to the Public Servant or any other person.

O.M.C. 3.08.210 states that the City Auditor shall determine whether, in his or her opinion, the adoption of the measure will increase or decrease the cost of city government or the city tax rate, and the City Auditor shall prepare an impartial analysis of the measure covering its financial impact upon the city government. In preparing the financial analysis the City Auditor shall consult with the Director of Finance and the City Council Rules Committee.

The City Auditor submitted the financial analysis to the City Clerk on August 7, 2018. The City Auditor provided the following disclaimer at the end of the analysis: The Office of the City Auditor has not audited and, as such, has not validated the City of Oakland Housing and Community Development Department's housing data and salary analysis that supports this Measure. References to this data in our independent analysis represent the best data available at this time.

There is no evidence provided in the complaint that Brenda Roberts allocated any public resources (specifically City compensated time) for any purpose "not authorized by law." O.M.C. 3.08.210 requires the City Auditor to prepare an impartial financial analysis of each measure qualifying for ballot placement. Therefore, this use of City resources was authorized by law.

Moreover, the City compensated time and hardware were not utilized for a "personal purpose" but rather to compensate the City Auditor for her services to the City, and therefore were not used for "personal enjoyment, private gain or advantage, or an outside endeavor not related to City business." The complaint fails to provide any evidence of a private gain or advantage beyond speculation that the City Auditor may have received political favor for the audit. This is unlikely because Brenda Roberts lost reelection in the November 2018 election and no longer holds public office.

Likewise, there is no evidence provided in the complaint that any Public Servant used their position or authority in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to any person. As described above, the City Auditor followed the correct procedure for providing an impartial financial analysis of Measure Y.

Because your complaint failed to establish a violation to the Government Ethics Act, we must dismiss your complaint pursuant to our Complaint Procedures. The PEC's Complaint Procedures are available on the PEC's website, and a copy has been included with this letter for your reference.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on November 4, 2019, at 6:30PM in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

ATTACHMENT 11

PEC Complaint No. 18-28 and 18-29; Dismissal Letter
Page 2

Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Kellie F. Johnson, Enforcement Chief

ATTACHMENT 11



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Public Ethics Commission
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October 21, 2019

Alameda County Taxpayers Association
[REDACTED]

Re: PEC Complaint No. 18-38; Dismissal Letter

Dear Alameda County Taxpayers Association:

On October 19, 2018, the City of Oakland Public Ethics Commission (PEC) received a complaint alleging that, among other things, you violated Oakland Campaign Reform Act when your organization Citizens for Oakland (“Committee”) failed to register as a campaign committee, and put out three mailers re: Oakland taxes that lacked proper disclosures required by law.

We have reviewed the complaint and although the allegations raised by the complainant are enough to warrant an investigation to determine whether the facts resulted in a violation to the Oakland Campaign Reform Act, we are aware that the same allegations were investigated and adjudicated by the California Fair Political Practices Commission in January 2019. We are dismissing this complaint because the conduct has been addressed by a separate state regulatory agency.

A copy of the dismissal letter is attached. If you have any questions regarding this matter, please feel free to contact me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Chief of Enforcement
City of Oakland Public Ethics Commission

Enclosure

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August 08, 2019

Dan Kalb



Re: PEC Complaint No. 18-38; Dismissal Letter

Dear Mr. Kalb:

On October 19, 2018, the City of Oakland Public Ethics Commission (PEC) received your complaint (#18-38) alleging that an organization called the Alameda County Taxpayers Association (ACTA) failed to register as a campaign committee, and put out three mailers re: Oakland taxes that lacked proper disclosures under the Oakland Campaign Reform Act (OCRA). The purpose of this letter is to inform you that we are dismissing your complaint, for the reasons described below.

Regarding the allegation that the ACTA failed to register as a campaign committee, we referred this allegation to the state Fair Political Practices Commission (FPPC) for their determination. The FPPC determined that, per the requirements of the California Government Code, the mailers put out by the ACTA do not qualify as campaign mailers, because a reasonable person could interpret these mailers as encouraging "some other kind of action on a legislative, executive, or judicial matter or issue" beyond voting against tax-related measures on the Oakland ballot. As such, in the FPPC's view, the ACTA was under no legal obligation to register as a campaign committee in connection with producing these mailers.

However, the FPPC did issue an advisory letter to the ACTA in this matter, informing them of the law and advising them to "be cautious in the future that an advertisement that states that the jurisdiction has too many taxes while multiple tax measures are on the ballot could be interpreted as unambiguously urging voters to reject all ballot

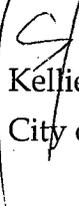
measures that propose tax increases," and might therefore trigger registration and disclosure requirements under the law.

This FPPC determination also affects your second allegation, that the ACTA failed to put the proper OCRA disclosure on these mailers. OCRA disclosures are not required on mailers that do not qualify as campaign literature. Because the FPPC addressed the crux of the allegations in your complaint, we are dismissing the matter.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on May 6, 2019, at 6:30PM in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,


Kellie Johnson, Chief of Enforcement
City of Oakland, Public Ethics Commission