

# ATTACHMENT 5



Jodie Smith, Chair  
James E.T. Jackson, Vice-Chair  
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Joseph Tuman  
Jerett Yan

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
DATE: November 7, 2019  
RE: *In the Matter of Libby Schaff (Case No. M2019-02);* Mediation Summary

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## I. INTRODUCTION

On November 4, 2018, the requester submitted a public records requests through NextRequest to the Mayor's office requesting copies of posts that were posted by the Mayor's office on a social networking sight "Nextdoor." In December 2018, the Requester filed a Formal Complaint alleging the Mayor's office violated the City of Oakland's Government Ethics Act by posting campaign material on Nextdoor. On December 18, 2018, Staff notified the Mayor's office of the complaint and requested more information regarding the posts in question. The Mayor's office provided a response but failed to release the requested documents to the requester.

Subsequently, on February 19, 2019, the Commission received a request for mediation alleging that Mayor Libby Schaff failed to timely disclose records in response to a public records requests made by the Requester. This request for mediation was related to the Formal Complaint the Requester filed in December of 2018, alleging misuse of government resources. Staff initiated its mediation program on April 18, 2019, pursuant to the Oakland Sunshine Ordinance.

On April 19, Staff contacted the Requester to confirm that the Requester received all responsive documents. The Requester affirmed that they received a spread sheet with responsive information; however, the Requester wanted a copy of the actual posted messages not a spread sheet of the posts in question. Staff subsequently learned that the posts were deleted by the Mayor's Director of Communication. Staff recommends that the Commission close the mediation without further action because the original posts have been deleted and cannot be retrieved.

## 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

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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 November 4, 2018, the 'Office of the Mayor' Nextdoor social media account added several posts advertising the endorsement of the mayor's campaign for re-election by local newspapers."

"Public Agency" accounts are granted by Nextdoor.com to public agencies under the presumption that they are in fact controlled by those agencies. Other examples of local agency accounts include an official "City of Oakland" account, the Oakland Police Department, and the East Bay Regional Parks District.

Members of Nextdoor.com who are residents of the jurisdiction of an agency account are automatically "subscribed" to updates from that agency. According to Nextdoor, at least 20% of Oakland's households are members of the site. This amounts to roughly 80,000 people who are automatically subscribed to receive one-way updates from the Office of the Mayor.

Previous posts from the "Office of the Mayor" Nextdoor account have publicized city events, touted city/mayoral achievements, and conveyed press release-style statements. Prior to September 2018, the account posted only sporadically (and appears not to have issued any posts at all in 2017). The recent uptick in posts appeared related to the mayor's re-election bid. The pace further increased in the week leading up to the November 6 election.

All four posts are dated November 4, 2018, and I have reproduced the wording of them below. The posts were as follows:

(1) November 4, 2018, at 7:10AM:

**Subject: East Bay Express Endorses Libby Schaaf**

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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).

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

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Honored to earn the sole endorsement of Oakland's alt-weekly. "The city is in better financial health than when she took office and has operated more efficiently and competently under City Administrator Sabrina Landreth; violent crime has continued to trend downward; police shootings and use of force cases have declined; and the city is finally starting to build much-needed housing.

<https://www.eastbayexpress.com/oakland/our-november-2018-endorsement-guide/Content?oid=21443046>

(2) November 4, 2018, at 7:18AM:

**Subject: San Francisco Chronicle Endorses Libby Schaaf**

Honored and humbled to receive the sole endorsement of the San Francisco Chronicle. "Schaaf has approached each issue with a blend of tough-mindedness, humanity and perspective. As she put it, her job is to 'not just solve the crisis of the moment' but to pursue long-term solutions. She also has become Oakland's most assertive ambassador and salesperson since her former mayoral boss, Jerry Brown, held the office.

<https://www.sfchronicle.com/opinion/editorials/article/Editorial-Re-elect-Oakland-Mayor-Libby-Schaaf-13301310.php>

(3) November 4, 2018, at 7:20AM:

**Subject: East Bay Times Endorses Libby Schaaf**

Honored + humbled to receive the sole endorsement of our East Bay Times. "Schaaf clearly understands the scale and complexity of the problem - something none of her opponents do." <https://www.mercurynews.com/2018/10/02/editorial-heres-why-to-re-elect-oakland-mayor-libby-schaaf/>

(4) November 4, 2018, at 7:26AM:

**Subject: The Bay Area Reporter Endorses Libby Schaaf**

Proud to earn the sole endorsement of The Bay Area Reporter. "Oakland Mayor Libby Schaaf made a courageous decision earlier this year that her nine challengers can't touch: in late February, she tweeted that 'credible sources' told her that an immigration sweep by federal authorities was imminent and said it was her 'duty and moral obligation' to warn families ... President Donald Trump and Attorney General Jeff Sessions called her out, and Sessions said back in March that the Justice Department was looking into obstruction of justice prosecution against her .... See more<sup>6</sup>

The posts by Mayor Schaaf's account were removed. At the time, the identity of the specific person(s) managing the "Office of the Mayor" account was not known. However, the account

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<sup>6</sup> The words "see more" can apparently be clicked to show the rest of the post. Whoever provided the printout included with the complaint did not click "see more" before printing.

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does appear to be controlled by employees of the Office of the Mayor (and thus employees of the City of Oakland). After the removal of the violating posts, the Mayor's Director of Communications Justin Berton responded on Twitter to a user complaining about the Nextdoor posts.

Staff contacted the Mayor's office and asked for clarification on what happened with the posts. Schaaf's office provided the following statement in response to the PEC:

1. The Mayor's director of communication, without knowledge of Mayor Schaaf, shared a few news editorials. You can see that the postings occurred only minutes apart. He regularly posts news articles about the Mayor's governmental work, so he mistakenly posted these editorials as a part of his regular practice without thinking about the campaign related nature of the editorials.
2. These actions were not done on an Oakland business day; it was a Sunday. He only spent an incidental and minimal use of his time to do this -- a few minutes at most. Any use of city resources was insubstantial.
3. The director of communications, realizing his error, quickly removed the post - less than an hour had passed for the entire incident from start to remedy.
4. When the individual's supervisor learned of the action, she imposed formal discipline on the individual.
5. Mayor Schaaf did not direct the posting and certainly did not authorize it. She was not aware that the posting went onto the Nextdoor network until well after it was taken down....

## **Request 18-3820**

On November 4, 2018, the City received, via NextRequest, the following public records request (No. 18-3820):

"All Nextdoor (Nextdoor) posts posted on the mayor's official account."

On November 13, 2018, Sun Kwong Sze uploaded a note to the NextRequest stating, "Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records."

The Requester did not receive another communication from the Mayor's office until February 27, 2019 when Ms. Sze uploaded the following note to NextRequest:

"Dear Requester, All the postings of the Mayor's Office are on Nextdoor.com. In the case of deleted posts, the user, i.e. our office, does not have access to them. However, we have contacted the company to retrieve those records. The company estimated they can provide us a copy of the deleted posts by the end of next week. Once we receive those records from Nextdoor, we will make them available.

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On March 6, 2019, Sun Kwong Sze uploaded Nextdoor documents to NextRequest and wrote, “We released all of the requested documents.”

On April 18, 2019, Staffed commenced mediation. The requester received a spreadsheet/ printout of the deleted posts but not the original individual posts.

## **IV. RECOMMENDATION**

Staff recommends that the Commission close the mediation without further action because the Requester has received the substantive information requested.