

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Teleconference
Monday, July 6, 2020
6:30 p.m.



Commissioners: James E.T. Jackson (Chair), Nayeli Maxson Velázquez (Vice-Chair), Jill M. Butler, Michael MacDonald, Janani Ramachandran, Joseph Tuman and Jerett Yan

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION (PEC or COMMISSION) MEETING

NOTE: Pursuant to the Governor’s Executive Order N-29-20 and City of Oakland Emergency Order dated March 23, 2020, suspending the Sunshine Ordinance, all members of the Commission and participating PEC staff will join the meeting via phone/internet audio conference, and the following options for public viewing and participation are available:

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland’s KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on “View”
- **Online video teleconference:** Click on the link below to join the webinar: <https://us02web.zoom.us/j/88171471481?pwd=ODIQVFFUeVRsZUtHdFU3YU5XcHVadz09>
Password: 674732
 - To comment by online video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to “Raise Your Hand” is available at: <https://support.zoom.us/hc/en-us/articles/205566129> - Raise-Hand-In-Webinar.
- **Telephone:** Dial (for higher quality, dial a number based on your current location):
US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592
Webinar ID: 881 7147 1481
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 - To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing *9 to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to make public comments. After the allotted time, you will then be re-muted. Instructions of how to raise your hand

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- Joining-a-meeting-by-phone.

Members of the public may submit written comments to ethicscommission@oaklandca.gov.

If you have any questions about how to participate in the meeting, please email ethicscommission@oaklandca.gov before or during the meeting.

PEC MEETING AGENDA

1. **Roll Call and Determination of Quorum.**
2. **Staff and Commission Announcements.**
3. **Open Forum.**

ACTION ITEMS

4. **Approval of Commission Meeting Draft Minutes.**
 - a. May 4, 2020 Regular Meeting Minutes ([Meeting Minutes](#))
5. **Lobbyist Registration Online Filing System Demonstration.** Lead Analyst Suzanne Doran will provide a live demonstration of the PEC's new online filing system for Oakland lobbyists that was created in partnership with the City's Department of Information Technology. Chief Information Officer Andrew "Pete" Peterson will join the meeting in support of the joint effort and to be available for questions regarding the technology or the partnership. ([Staff Memorandum](#))
6. **Campaign Statement Electronic Filing Process.** Commission staff provides an overview of changes being made to the campaign filing process to simplify electronic filing and streamline in-person contact in light of the COVID-19 pandemic and beyond. ([Staff Memorandum](#))
7. **In the Matter of Dorian Gray; (Case No. 18-03).** In February 2018, the Public Ethics Commission opened a pro-active investigation into the alleged bribery and unlawful offer of a gift of an Oakland City Councilmember, Larry Reid and City Employee Gregory Minor by Dorian Gray. Gray, to secure a marijuana permit for a business associate, offered to pay the City Councilmember \$10,000 and provide and all-expense paid trip to Spain for Gregory Minor. City ethics ordinances prohibit anyone from offering a city



employee or political candidate a gift “when it is reasonably foreseeable that the public servant or candidate could be influenced by the gift in the performance of an official act.” The Oakland Government Ethics Act also bars anyone doing business or seeking to do business with the city from offering gifts to public servants. After a thorough investigation and cooperation with the Alameda County District Attorney’s Office, Staff determined that there was evidence to establish that Dorian Gray, violated Oakland Municipal Code section § 2.25.070 (A) (Bribery) and 2.25.060 (C)(1) (Gift Violation). Staff, the Alameda County District Attorney and the Respondent reached a No Contest stipulated settlement agreement. Staff recommends that the PEC approve the No Contest Stipulation and impose a \$8,000 penalty. ([Stipulation and Case Summary](#))

8. In the Matter of The City of Oakland Police Department, (Case No. 16-15). On August 24, 2016, the Commission received a complaint alleging that the Oakland Police Department (OPD) failed to disclose records in response to multiple public records requests made by the Requestor. On November 10, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. Once Staff initiated mediation, the Requestor received several responsive documents from OPD. However, upon conclusion of the mediation program on July 16, 2018, the requester had not received responsive documents to PRR No. 14437. This request remains open in NextRequest with relevant records still unproduced by OPD, even though this public records request was made on March 10, 2016. Commission Staff attempted to resolve this matter through mediation for two years with moderate success. However, OPD has not released all responsive documents to PRR No. 14437, and PEC Staff has exhausted all avenues in an attempt to recover the documents. Staff removed this item from the March Agenda to conduct further follow-up, which included meeting with the OPD Records Department and contacting the requester. The follow-up has been completed and an oral report will be provided to the PEC at the June 2020 meeting. Commission Staff recommends that the Commission close this matter without further action. ([Mediation Summary](#))

9. In the Matter of the City of Oakland Department of Building and Planning (Case No. M2019-17). On October 8, 2019, the Commission received a request for mediation from a member of the public alleging that the Building and Planning Department failed to provide responsive documents to two separate public records requests. The requester initiated their respective public records requests on May 11, 2019 and August 25, 2019, seeking copies of Radio Frequency Reports that they believed were submitted to the City of Oakland between January 1996 and August 2019; the department did not provide a response. Staff initiated the Mediation process on October 16, 2019. On October 21, 2019, Staff contacted the Building and Planning Department regarding the request for

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mediation. Planning Department staff released some responsive documents (Permit History Telecoms) to the requester and the request was closed with a note that informed the requester that the information she requested was not collected by the City but by the Federal Communications Commission. In response to Staff mediation inquiries, the requester confirmed that they received some documents but believed, according to the department procedures, there were additional documents that should be released. On February 3, 2020, Issam Shahrouri, the Deputy Director of the Building department, confirmed that the documents the requester was seeking were not documents collected or maintained by his department. This matter was set over from the May PEC Agenda to conduct further follow-up. Staff reviewed potential PEC options and now recommends that the Commission close the mediation so that Enforcement Staff can open a formal investigation of possible violations of the California Public Records Act and the Oakland Sunshine Ordinance. ([Mediation Summary](#))

DISCUSSION ITEMS

- 10. Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work. Current or recent subcommittees include the following:
 - a. Sunshine Review Subcommittee** (*ad hoc*/temporary, created on May 8, 2020)
– Michael MacDonald (Chair), Jill Butler and Joe Tuman

INFORMATION ITEMS

- 11. Disclosure and Engagement.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities. ([Disclosure Report](#))
- 12. Enforcement Program.** Enforcement Chief Kellie Johnson reports on the Commission's enforcement work since the last regular Commission meeting. ([Enforcement Report](#))
- 13. Executive Director's Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Executive Director's Report](#))

The meeting will adjourn upon the completion of the Commission's business.

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A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandca.gov/pec.



6/29/2020

Approved for Distribution

Date



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CITY OF OAKLAND
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Monday, May 4, 2020
6:30 p.m.

DRAFT



Commissioners: James E.T. Jackson (Chair), Nayeli Maxson Velázquez (Vice-Chair), Jill M. Butler, Michael MacDonald, Janani Ramachandran, Joseph Tuman, and Jerett Yan

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION (PEC or COMMISSION)
MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 6:30 p.m.

Members present: Commissioners Jackson, Maxson Velázquez, MacDonald, Ramachandran, Tuman, and Yan.

Absent: Butler

Staff present: Whitney Barazoto, Suzanne Doran, Kellie Johnson and Ana Lara-Franco.

City Attorney Staff: Trish Shafie

2. Staff and Commission Announcements.

Whitney Barazoto, Executive Director, shared the process on how to participate in the virtual meeting for members of the public.

3. Open Forum.

There was one public speaker.

ACTION ITEMS

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4. Approval of Commission Meeting Draft Minutes.

- a. March 2, 2020 Regular Meeting Minutes

Executive Director Whitney Barazoto mentioned the need to fix two typos: Page 2 (the word Public), Page 3 (vote incorrectly listed).

There were no public speakers.

MacDonald moved and Ramachandran seconded to adopt the minutes as amended.

Vote: Passed 5-0

Ayes: Jackson, MacDonald, Ramachandran, Tuman, Yan

Noes: None

Abstain: Maxson Velázquez

Absent: Butler

5. Public Ethics Commission Annual Report.

Commissioners reviewed the annual report summarizing the PEC's activities in 2019.

Ms. Barazoto presented the report and offered suggested edits based on feedback received by two commissioners. Commissioners discussed and made additional suggested edits.

There were no public speakers.

Maxson Velázquez moved and Tuman seconded to approve the annual report, with directions to staff regarding suggested edits.

Vote: Passed 6-0

Ayes: Jackson, MacDonald, Maxson Velázquez, Ramachandran, Tuman, Yan

Noes: None

Absent: Butler

6. Limited Public Financing Program Guide for City Council District Candidates.

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Ms. Barazoto presented the Limited Public Financing Guide for the 2020 election season, including suggested edits based on input from commissioners.

Commissioners reviewed and asked questions about the Guide.

There were no public speakers.

Tuman moved and Maxon Velázquez seconded to approve the Guide with staff and commissioner edits.

Vote: Passed 6-0

Ayes: Jackson, MacDonald, Maxson Velázquez, Ramachandran, Tuman, Yan

Noes: None

Absent: Butler

7. *In the Matter of City of the Department of Building and Planning; (Mediation Case No. M2019-17).*

Kellie Johnson, Enforcement Chief, presented and recommended that the Commission close the mediation without further action.

Commissioners discussed and asked questions regarding the mediation and process, expressing concern about the department's failure to produce records.

There was one public speaker, Alexis Schroeder, the requestor in this matter.

Ramachandran moved and Tuman seconded to keep the mediation open so that staff can explore the Commission's options as discussed.

Vote: Passed 6-0

Ayes: Jackson, MacDonald, Maxson Velázquez, Ramachandran, Tuman, Yan

Noes: None

Absent: Butler

8. *In the Matter of The Economic and Workforce Development Department; (Mediation Case No. M2020-05).*

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DRAFT

Ms. Johnson presented the item and recommended that the Commission close the mediation without further action.

There were no public speakers.

MacDonald moved and Maxson Velázquez seconded to close the mediation.

Vote: Passed 6-0

Ayes: Jackson, MacDonald, Maxson Velázquez, Ramachandran, Tuman, Yan

Noes: None

Absent: Butler

DISCUSSION ITEMS

9. Reports on Subcommittees and Commissioner Assignments.

- a. **Limited Public Finance Policy Development Subcommittee** (ad hoc) – Nayeli Maxson Velázquez (Chair), Jill M. Butler and James Jackson

Commissioner Maxon Velázquez shared that there is ongoing outreach and research for 2020 in coordination with Bay Area Political Equality Collaborative (BayPEC) and California Common Cause.

There were no public speakers.

INFORMATION ITEMS

10. Disclosure and Engagement.

Suzanne Doran, Lead Analyst, provided a report of recent education, outreach, disclosure and data illumination activities. She highlighted that the 2020 first quarter lobbyist reporting deadline passed, and outreach and assistance was provided to registered lobbyists.

The training for Candidates and Treasurers scheduled for April had been cancelled due to the COVID-19 shelter in place order but has been rescheduled.

There were no public speakers.

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11. Enforcement Program.

Ms. Johnson reported on the Commission’s enforcement work since the last regular Commission meeting.

There were no public speakers.

12. Executive Director’s Report.

Ms. Barazoto reported on overall projects, priorities, and significant activities since the Commission’s last meeting. She shared the new date for candidates and treasurers will be May 28 from 10am to 12pm on Zoom.

There were no public speakers.

The meeting adjourned at 9:28 p.m.

Item 5 - Staff Memorandum



James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice-Chair
Jill M. Butler
Michael B. MacDonald
Janani Ramachandran
Joe Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Whitney Barazoto, Executive Director
DATE: June 26, 2020
RE: Lobbyist Reporting App Launch for the July 6, 2020, PEC Meeting

Overview

The Public Ethics Commission (Commission or PEC) will receive a presentation and official launch of the Lobbyist Reporting application, an online reporting system that simplifies lobbyist registration and disclosure reporting and makes the data available on Oakland's open data portal. The Lobbyist Reporting application is the result of a partnership between Commission staff and the City of Oakland's Information Technology Department (ITD). This memorandum provides an overview of the background, project goals, and partners involved in creating the PEC's Lobbyist Reporting app.

Background

The Public Ethics Commission (PEC) ensures compliance with the City of Oakland's lobbyist registration law. The [Lobbyist Registration Act](#) (LRA or Act) requires registration and activity disclosure for individuals and groups that influence public decisions by lobbying Oakland public officials and employees.

Under the Act, lobbyists must register before lobbying any City of Oakland official and renew their registration by January 31 each year ([OMC § 3.20.040, 3.20.120](#)). The Act also requires Oakland lobbyists submit reports of their lobbying activity for each calendar quarter ([OMC § 3.20.110](#)). Reportable activity includes contacts with City officials to influence government decisions, employment relationships between lobbyists and City officials, and persons solicited to make contributions to elected City officials or candidates for City office. Finally, the Act authorizes the PEC to prescribe how the required lobbyist disclosure information is submitted to the Commission ([OMC § 3.20.090](#)).

Until 2018, lobbyist disclosure forms were filed with the City Clerk. The copies of the forms were available for public inspection in binders at the City Clerk and PEC offices. In 2018 City Council amended the LRA to change the location for filing lobbyist forms from the City Clerk's Office to the PEC. As of January 16, 2018, all lobbyist forms and reports required by the Lobbyist Registration Act must now be filed with the Public Ethics Commission, and as a result, staff processes about 300 filings each year in a largely paper-based process requiring staff time to manually date-stamp, file, and re-enter data from the forms.

As filing officer, Commission staff initiated changes our campaign finance filing system, NetFile, so that the software could be utilized to manage the administrative and recordkeeping functions associated

Item 5 - Staff Memorandum

with filing officer status. Utilizing NetFile also allowed the PEC to provide online public access to filings with limited search capabilities for the first time by uploading filings to the public access system.

At present, the PEC collects a significant amount of data with information on lobbying activity in the City of Oakland. The PEC is responsible for making that information available to the public and monitoring compliance. As long as lobbyist disclosure remained a paper-based process, however, the disclosure data is not readily available or in a machine-readable format that allows multi-dimensional searches, such as searches by client, official contacted, or issue-area.

Electronic Lobbyist Registration and Reporting

In August 2019, Commission staff initiated a partnership with the City of Oakland's Information Technology Department (ITD) to build an electronic Lobbyist Registration and Reporting System to increase the efficiency of our lobbyist registration program and vastly improve internal and public access to the data contained within the reports. In addition, electronic filing would make compliance with the Oakland Lobbyist Registration Act simpler and more convenient for filers. Major project goals included:

- Providing a simple, user-friendly online process for lobbyists to register and file their reports electronically;
- Streamlining program administrative processes and developing automated tools to improve compliance; and
- Providing a user-friendly interface that enables the public to easily view filings, conduct multi-dimensional searches, and download data.

ITD embraced the project, and a team comprising Commission staff with IT developers assembled to build the application using the OakApps platform. PEC Lead Analyst Suzanne Doran served as the project lead and representative of the Commission, contributing expertise on legal and disclosure requirements, administrative workflow, user testing, and data needs. Information Systems Manager Ifeoma Olike and Application Developers Titus Kress and Geetha Gouindaswamy made up the development team, which built the database and designed, created and refined the frontend application for lobbyists and backend application for Commission staff to manage the system.

The resulting Lobbyist Registration and Reporting app on the City's OakApps platform enables lobbyists to submit and manage all aspects of their registration and reporting requirements online. Going forward, all registration and report documents will be filed electronically. Registration and client information is stored to reduce time spent by lobbyists on data entry. Lobbyists may view their filing history and print or download filings. Dropdown lists are provided to improve accuracy and standardize the data for greater searchability and analysis. Resources for lobbyists, such as links to the Act, our lobbyist guide, and a searchable FAQ are provided within the app. The administrative system enables Commission staff to easily track compliance with a dashboard feature and automated notifications to filers as well as full access to data entered in the system.

Commission staff will provide a demonstration of the new application at the July meeting and will implement the new system for the July 30, 2020, filing deadline.

Special appreciation goes to Oakland's Chief Information Officer, Andrew "Pete" Peterson, for supporting the Commission's project, and to the IT development team for the creativity, diligence and skill they devoted to the project.

Item #6 - Staff Memorandum



James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice-Chair
Jill M. Butler
Michael B. MacDonald
Janani Ramachandran
Joe Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Whitney Barazoto, Executive Director
DATE: June 26, 2020
RE: Signature validation for campaign statements filed electronically

This memorandum summarizes the existing process for verification of signatures on electronically filed campaign statements and describes the Commission's new, streamlined process.

Legal Background

The California Political Reform Act (PRA) requires all local candidates and campaigns to file campaign statements with the local filing officer according to a schedule of deadlines set by the PRA. [Section 84615](#) of the PRA allows local government agencies to oblige persons required to file campaign statements and reports under the California Political Reform Act to file those statements, reports, or other documents online or electronically with the local filing officer.

Specifically, section 84615(g) requires: "The online or electronic filing system shall include a procedure for filers to comply with the requirement that they sign statements and reports under penalty of perjury pursuant to [Section 81004](#)." No specific technology or process for signature verification is proscribed by Section 84615. The Code does require that "the online or electronic filing system will operate securely and effectively and [will] not unduly burden filers."

The Oakland Campaign Reform Act [Section 3.12.240](#) mandates that "Any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission..." There is no provision within OCRA mandating a specific technology or process for signature verification, and the Oakland City Attorney's advice to the PEC regarding electronic signatures did not identify any Oakland law or policy regarding electronic signatures that the PEC is obliged to follow.

However, the City Attorney has advised that, in California, electronic signatures are generally governed and given legal effect by the California Uniform Electronic Transactions Act (California Civil Code Sections 1633.1, et seq). Under CUETA an electronic signature can be an electronic sound, symbol or process attached to or logically associated with an electronic record. For the electronic signature to be valid it must meet three requirements:

1. It must be executed or adopted by a person with the intent to sign the electronic record.
2. The parties must have agreed to conduct the transaction by electronic means.

Re: Signature validation for campaign statements filed electronically
June 26, 2020

3. The electronic signature must be properly authenticated by the person to ensure it was an act attributable to that person.

Signature Verification Process for Campaign Statements

When the PEC took over filing officer duties for campaign statements in 2017, staff assumed administration of the electronic filing system for campaign statements (NetFile) and continued the signature verification process implemented by City Clerk's Office.

To utilize the NetFile system, filers must first contact the Public Ethics Commission and submit a copy of their Statement of Organization (FPPC Form 410). The initial form must be wet-signed and submitted to the California Secretary of State. The Statement of Organization includes the committee's officers and email address of record. When a NetFile account is established, a unique user ID and password are sent to the committee email of record. Users of the NetFile system must enter the ID and password to link their submissions to the campaign account. A user, therefore, cannot access a committee's account without a notification being generated and sent to the email contact of record. This process prevents third parties from submitting unauthorized statements on a committee's behalf.

In addition to the NetFile process outlined above, we currently utilize a second signature authentication process to ensure the identity of the signatories. Candidates and treasurers must create an account in NetFile's signer ID system, which is separate from the system where users record transactions and create their statements. Each signer creates a user account and generates a signature packet with a unique signer ID and PIN, which they must print out, bring to the PEC office, present with a government-issued photo ID, and sign in the presence of PEC staff. If the committee officers cannot come into the PEC office, they must get the signature packet notarized and forward it to the PEC. Committees cannot submit their campaign forms electronically until staff approves both signer IDs and the filer must enter the ID on all electronic filings.

In addition to entering the signer ID of the candidate and treasurer, when a campaign form requiring a signature is submitted to the NetFile system an email is sent to each signer notifying them that they must review and approve the filing. The signers must then log in with their signer ID and PIN, review the statement, and approve or reject the statement. The statement is not filed until both signers approve the statement.

Concerns with the Signature Verification Process

In our four years as filing officer, staff has noted the burdensome nature of the signature verification process for filers and staff. Seemingly simple aspects of the signature process generate the large majority of technical assistance requests, usually during the peak times for advice and assistance in the week of a filing deadline.

Simply generating the signature card and ID packet via the NetFile system is difficult for many filers, who must come into the office so staff can assist them with generating and printing out the packet. Requiring signatures witnessed by staff means candidates and treasurers must take time off during the workday.

Another challenge for filers is keeping track of the multiple accounts, passwords and PINs required for one committee. A candidate committee must keep track of four separate user accounts, two passwords and two signer PINs – an account ID and password for the committee, a user ID and

Re: Signature validation for campaign statements filed electronically
June 26, 2020

password for the person creating the report, and a signer ID and PIN for each signer. Filers are often confused about which account is which and that they must log-in to two separate systems to complete a filing. They misplace their signer IDs and PINs and lose track of which email addresses are associated with which accounts.

Problems with the final step of reviewing and approving the statement after clicking e-file is another one of the top reasons for technical assistance calls to staff. Often the notifications are sent to email accounts that are either overfull or rarely used and consequently signers miss the notifications or don't know how to sign-in to approve their filings. In addition, users report they cannot log-in to approve statements using their mobile devices. Filers click "e-file" and believe the process is complete. These small inconveniences add up to untimely filings in some cases. In addition, staff time is unnecessarily spent on technical assistance rather than more substantive issues.

The issue of the most immediate concern is that the PEC's public office is closed for the foreseeable future due to the COVID-19 pandemic and the majority of 2020 candidates and treasurers have not yet had to file their first campaign statement and therefore have not yet submitted their signature packets. To process the signature packets utilizing the normal process would require either opening our front office or requiring candidates and treasurers to visit a notary and mail in the packets.

Signer Verification in Other Jurisdictions

According to NetFile, of the 70 cities and 20 counties that use their electronic system for campaign filings, only four cities require the extra signature verification step: San Francisco, Oakland, Berkeley and San Diego. The San Francisco system is identical to Oakland's, likely because Oakland modeled its system after San Francisco, one of the first cities to adopt electronic filing. In the other cities and counties using NetFile, the owner of the NetFile user account may submit their statement without the additional step requiring both signers to review and approve the filing by entering their PIN. Also notable is that Oakland users of NetFile's professional software avoid the review and approval step altogether. The signer IDs are entered once and the approval step is skipped. So, users of the free version of the software face an additional step that those with resources to hire a professional treasurer may skip.

Two jurisdictions with electronic filing that do not use NetFile, the California Secretary of State and Los Angeles, simply require filers to sign a brief account request form before granting access to their electronic filing system (see attached). Both the State and Los Angeles e-filing registration forms require the filer to sign an acknowledgment that they understand the information submitted via the e-filing systems are made under penalty of perjury. Neither the Secretary of State nor Los Angeles require filers to produce an ID or sign the form in the physical presence of staff.

Conclusion

The current process of requiring a second authentication via in-person signature card is both burdensome and unnecessary. The NetFile filing system already meets the standard set out by State law, and there are no legal or security issues that require maintaining the redundant, multistep verification process. Therefore, Commission staff will eliminate the in-person signature card process and instead create a simple form that includes an agreement to conduct all further transactions electronically and that can be signed and submitted electronically. This process will allow campaign filings to be submitted without any in-person contact, which is particularly important during the COVID-19 pandemic but will continue indefinitely.

Item #7 - Stipulation and Case Summary

1 Kellie F. Johnson
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

Petitioner

BEFORE THE CITY OF OAKLAND

PUBLIC ETHICS COMMISSION

9 In the Matter of

) Case No.: 18-03

10 DORIAN GRAY

)
) **STIPULATION, DECISION AND**
) **ORDER**

11 Respondent.
12
13

14
15 **STIPULATION**

16 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
17 respondent Dorian Gray, agree as follows:

- 18 1. This Stipulation will be submitted for consideration by the City of Oakland Public
19 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 20 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
21 the final resolution to this matter without the necessity of holding an administrative
22 hearing to determine the liability of Respondents;
- 23 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
24 City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint
25 Procedures, including, but not limited to, the right to personally appear at an
26 administrative hearing held in this matter, to be represented by an attorney at their own
27 expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to
28 testify at the hearing, and to have the matter judicially reviewed;

Item #7 - Stipulation and Case Summary

- 1 4. This Stipulation is not binding on any other law enforcement agency, and does not
2 preclude the Commission or its staff from referring the matter to, cooperating with, or
3 assisting any other government agency with regard to this matter, or any other matter
4 related to it;
- 5 5. Respondent violated the Government Ethics Act by offering to pay an Oakland City
6 Councilmember \$10,000 and provide an all-expense paid trip to Spain for a City
7 employee to obtain a City Marijuana Dispensary Permit for a business associate, in
8 violation of the Oakland Municipal Code section 2.25.070 (A) and 2.25.060 (C)(1).
- 9 6. The attached exhibit (Exhibit- Case Summary) is a true and accurate summary of the
10 facts in this matter and is incorporated by reference into this Stipulation;
- 11 7. The Commission will impose upon Respondents a total administrative penalty in the
12 amount of \$8,000;
- 13 8. A cashier's check from Respondents, in said amount, made payable to the "City of
14 Oakland," is submitted with this Stipulation as full payment of the administrative
15 penalty, to be held by the Commission until the Commission issues its decision and
16 order regarding this matter;
- 17 9. In the event the Commission refuses to accept this Stipulation, it shall become null and
18 void, and within fifteen business days after the Commission meeting at which the
19 Stipulation is rejected, all payments tendered by Respondents in connection with this
20 Stipulation will be reimbursed to them; and
- 21 10. In the event the Commission rejects the Stipulation and a full evidentiary hearing before
22 the Commission becomes necessary, neither any member of the Commission, nor the
23 Executive Director, shall be disqualified because of prior consideration of this
24 Stipulation.

Item #7 - Stipulation and Case Summary

1 Dated: _____

2 Kellie F. Johnson, Enforcement Chief of the City of
3 Oakland Public Ethics Commission, Petitioner

4
5 Dated: _____

6 Dorian Gray, Respondent

7 8 **DECISION AND ORDER**

9 The foregoing Stipulation of the parties to “In the Matter of Dorian Gray,” PEC Case No. 18-
10 03, including all attached exhibits, is hereby accepted as the final Decision and Order of the
11 City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

12
13
14 Dated: _____

15 _____
16 James Jackson, Chair
17 City of Oakland Public Ethics Commission

Item #7 - Stipulation and Case Summary

CASE SUMMARY

INTRODUCTION

In February 2018, the Public Ethics Commission opened a pro-active investigation into the alleged bribery of an Oakland City Councilmember, Larry Reid and City Employee Gregory Minor by Dorian Gray, the Respondent. The Respondent, in an effort to secure a marijuana permit for a business associate, offered to pay the City Councilmember \$10,000 and provide and all-expense paid trip to Spain for Gregory Minor. Local Newspapers had reported that the Oakland City Administrator Sabrina Landreth had referred the report of bribery to the Alameda County District Attorney's Office for criminal investigation.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

Bribery

No person shall offer or make... anything of value in exchange for the performance of any official act.¹

Violation of Gift Restriction

GEA § 2.25.060(C)(1): A person shall not offer or make... a gift when it is reasonably foreseeable that the Public Servant or candidate could be influenced by the gift valued at more than \$50 cumulatively to a Public Servant.

Definition- Gift

PRA § 82028(a): "Gift" means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received.

FACTUAL SUMMARY:

In 2017, about a year after California legalized the sale of marijuana, the City of Oakland crafted an application process for interested businesses/investors to open marijuana dispensaries in the City. Interested parties could apply for a general license or apply for the lottery. The City approved eight dispensaries that year, four by application and four by lottery (the lottery was for equity businesses). More than 100 people applied for the equity dispensary permits.

The Respondent's business associate Aiden Sciandra, (DBA "The Plug) applied for a general permit. Due to the number of applications, it was highly unlikely that Sciandra would be granted a permit.

¹ O.M.C. § 2.25.070.

Item #7 - Stipulation and Case Summary

1 Around December 17, 2019, the Respondent contacted Councilman Larry Reid and asked him to set up a
2 meeting with Greg Minor (Minor). Minor is the Assistant to the City Administrator in the Nuisance
3 Abatement and Special Activity Permits Division. Councilman Reid called and left a message for Minor
4 to inform him that the Respondent would be contacting him.

5 Around December 19, 2017, the Respondent met with Minor at his office in City Hall. The Respondent
6 told Minor that he was working with a group called "The Plug," that had submitted a general application
7 for a dispensary permit. The Respondent was not a disclosed applicant for a general permit, but Aiden
8 Sciandra applied for a general permit and referenced "The Plug" in his application. The Respondent told
9 Minor that he was working with some people from Spain and that they would be willing to pay for Minor
10 to go to Spain to learn about their cannabis permit process. When Minor questioned the Respondent about
11 the purpose of a paid trip to Spain, the Respondent could not answer. Minor informed the Respondent that
12 it would not be appropriate for him to accept a trip to Spain from the Respondent or his associate.

13 After meeting with the Respondent, Minor contacted City Administrator Sabrina Landreth and advised
14 her that he was offered a trip to Spain. Minor also told other employees that worked on his floor.

15 Within a week of meeting the Respondent, a local newspaper journalist contacted Minor about his
16 interaction with the Respondent. The journalist informed Minor that it was rumored that certain people
17 could get a marijuana dispensary permit through connections with Councilmembers Lynette Gibson-
18 McElhaney or Larry Reid.

19 Later that day, Minor encountered Councilmember Reid and told him about his encounter with the
20 Respondent and informed him of what the journalist said. Councilmember Reid told him that he too was
21 contacted by the Respondent and although he did not know him that well, he knew of him and that the
22 Respondent offered him \$10,000 in an exchange for a dispensary permit.

23 The Respondent had attempted to reach Reid three to four times. Reid did not return his calls. The
24 Respondent showed up at Reid's office to meet with him in person but was turned away. The Respondent
25 was able to obtain Reid's home number and contacted him at home. The Respondent asked Reid for ten
26 minutes of his time. Reid agreed to meet him at his office in City Hall. The Respondent contacted Reid at
27 his office and told Reid he had an envelope with ten-grand with his name on it. Reid told the Respondent
28 that is not how he works. The Respondent told Reid that he and his partner, who was from Spain, was
interested in getting a cannabis license. Reid told the Respondent that he would need to speak to Minor
who is familiar with the City's process on granting dispensary permits. As the Respondent started to leave
Reid's office, he asked Reid if he was sure that he did not want the money. Reid told the Respondent
again that he did not work that way. Reid also contacted the City Administrator to inform her of his
encounter with the Respondent.

On February 1, 2018, The Alameda County District Attorney's Office opened an investigation into the
Respondent's Bribery allegation. An Alameda County Grand Jury indicted the Respondent for Bribery
and related offenses. On or about February 3, 2020, the Respondent entered a plea negotiation in Alameda
County Superior Court on his criminal matter pleading to two counts of Bribery. The sentencing on the
criminal matter was set over until July 31, to allow for completion of community service and resolution of
the Public Ethics Commission (PEC) violations.

Item #7 - Stipulation and Case Summary

1 As a part of his criminal settlement, the PEC Enforcement Staff agreed to recommend that the PEC
2 impose a penalty of \$8,000.

3 VIOLATIONS:

4 For the reasons stated above, staff submits that there is probable cause to find Dorian Gray violated the
5 following violations of the Government Ethics Act.

6 **Count 1: Making a Bribe in Exchange for Performance of an Official Act**

7 On or between November 1, 2017 through January 31, 2018, Respondent, Dorian Gray, violated
8 O.M.C.2.25.070(A) of the Oakland Government Ethics Act by making an offer to Councilman Larry
9 Reid, a Public Servant/Elected Official, to provide a thing of value (\$10,000) in exchange for the issuance
10 of a City of Oakland Marijuana Dispensary Permit (for the performance of an official act).

11 **Count 2: Violation of Gift Restriction**

12 On or between November 1, 2017 through January 31, 2018, Respondent, Dorian Gray, violated O.M.C.
13 2.25.060(C)(1) of the Oakland Government Ethics Act by making or offering a gift (all-expense paid trip
14 to Spain) when it is reasonably foreseeable that the Public Servant (Greg Minor) could be influenced by
15 the gift valued at more than \$50 cumulatively to a Public Servant.

16 PENALTIES:

17 GEA authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three
18 times the amount not properly reported or received (whichever is greater), per violation of the Oakland
19 Government Ethics Act.

20 The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation
21 when deciding on a penalty, including, but not limited to, the following factors:

- 22 1. The seriousness of the violation, including, but not limited to, the extent of the public impact or
23 harm;
- 24 2. The presence or absence of any intention to conceal, deceive, or mislead;
- 25 3. Whether the violation was deliberate, negligent, or inadvertent;
- 26 4. Whether the violation was isolated or part of a pattern;
- 27 5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the
28 rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the
violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely
manner;

Item #7 - Stipulation and Case Summary

1 8. The relative experience of the respondent.

2 The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on
3 the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling
4 of factors that could be considered. There is no requirement or intention that each factor – or any specific
5 number of factors - be present in an enforcement action when determining a penalty. As such, the ability
6 or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to
7 bring an enforcement action or impose a penalty

8 For serious violations, such as Bribery and violations that do not qualify for a warning letter or the
9 streamlined stipulation program, the PEC will start a penalty amount with a “base-level” amount and then
10 adjust the penalty amount based on mitigating and aggravating factors of the enforcement action.

11 Aggravating Factors

12 Here, the circumstances of Gray's conduct establish several aggravating factors that should increase the
13 severity of the penalty:

- 14 1. The Respondent sought to persuade a public servant in a high-level decision-making position to
15 abuse his position of trust and authority. His willful target and bribery of a Councilman in a
16 position of authority designed to protect the public and the safety of the community posed a great
17 harm to Oakland citizens;
- 18 2. Gray's conduct was deliberate, he singled out two public officials to induce them for a favor for
19 his own personal gain;
- 20 3. His conduct was part of a pattern of conduct that he used on more than one Public Servant; and
- 21 4. Gray failed to take any steps to cure any of the enumerated violations. For example, he did not
22 accept responsibility for his conduct and initially denied publicly that he did anything
23 inappropriate.

24 Mitigating Factors

- 25 1. Gray has no previous history of violations in the City of Oakland;
- 26 2. He has been sanctioned by a separate state authority.

27 CONCLUSION

28 The Respondent should be held accountable by the City of Oakland for offering bribes in violation of the
public's trust. Although not all ethics violations are treated equally, punishments correspond to how bad
an instance of misconduct is viewed in the eyes of the community and in consideration of the harm a
violation may cause. The most severe consequences are normally reserved for cases of bribery and related
violations.

Here, the aggravating factors outweigh the mitigating factors and demonstrate that the Respondent's
failure to comply with the Oakland Government Ethics Act warrants a substantial penalty.

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1 The purpose of administrative penalties like those provided in the GEA is to promote transparency, gain
2 compliance with City ethics requirements and protect the public from persons who have not discharged,
3 will not discharge or are unlikely to properly discharge their professional duties. The public rightfully
4 expects the Commission to enforce the GEA requirements and hold those responsible who fail to comply.

PROPOSED RESOLUTION:

5
6 Staff recommends that the Commission impose the following administrative penalties:

Bribery Violation:

7
8 Count 1, Bribery is the most serious violation of the Oakland Governmental Ethics Act. Pursuant to the
9 Penalty Guideline, the base-level penalty amount for Bribery is \$5,000, which is also the maximum
10 penalty amount for each bribery violation. Staff recommends a \$5,000 penalty.

Violation of Gift Restriction:

11
12 Count 2, is a violation to Oakland's Gift Restrictions. The Penalty Guideline provides the base-level
13 penalty amount for a gift violation is \$1,000. The statutory limit is \$5,000 or three times the unlawful
14 amount, whichever is greater. Based on the aggravating factors in this case, Staff recommends a \$3,000
15 penalty.

RECOMMENDATION:

16
17 Staff recommends an administrative penalty in the total amount \$8,000 (\$5,000 for Bribery and \$3,000
18 for the violation of a Gift Restriction).

CITY OF OAKLAND
Public Ethics Commission



Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E.T. Jackson
Gail Kong
Krisida Nishioka

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
Kyle McLean, Law Clerk
DATE: October 24, 2018
RE: *In the Matter of the Oakland Police Department (Case No. 16-15); Mediation Summary*

I. INTRODUCTION

On August 24, 2016, the Commission received a complaint alleging that the Oakland Police Department (OPD) failed to disclose records in response to public records requests (PRR) Nos. 3544, 7354, 8936, 13074, and 14437. On November 10, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. Upon conclusion of the mediation program on July 16, 2018, the requester stated that he had no outstanding issues or concerns regarding Request Nos. 7354, 8936, and 13074. However, PRR Nos. 3544 and 14437 remain open with relevant records still unproduced by OPD, even though those public records requests were made on April 6, 2014, and March 10, 2016, respectively.

Commission Staff has attempted to resolve this matter through mediation for almost two years with significant success. However, the parties have reached an impasse regarding PRR Nos. 3544 and 14437. For those reasons, Commission Staff recommends that the Commission close this matter.

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.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

The time limit to respond to a request may be extended in unusual circumstances up to fourteen days by written notice to the person making the request; this notice must set forth the reasons for the extension, and the date on which the determination is expected to be dispatched.³ When a member of the public requests to obtain a copy of a public record, the public agency, in order to

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 6250 et seq.

² Government Code § 6253(b).

³ Government Code § 6253(c).

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assist the member of the public make a focused and effective request, shall assist the member of the public to identify records and information that are responsive to the request.⁴

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.⁵ 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.⁶

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.⁷

III. SUMMARY OF FACTS

PRR No. 3544

On April 6, 2014, OPD received, via RecordTrac, the following public records request: "Please provide in electronic format (pdf) a copy of all documents containing the search terms "Hailstorm" "Hail Storm" "Pen-Link" "Pen Link" "Harpoon", and any documents related to a cell phone mimicking tower, or cell phone signal interceptor."

At the time, RecordTrac was the City's online portal for sharing public records. It allowed members of the public to make requests, receive responses from the City, and search past requests and responses.

On April 7, 2014, OPD stated the following on RecordTrac: "Dear requester: Your request has been forwarded to the public records liaison of the Department of Information Technology. They will be in contact with you for any further clarification, but by reading your request, it might be helpful if you determine a period of time, kind of records, and names of city staff."

Also on April 7, 2014, the requester stated the following on RecordTrac: "You may narrow the time period to years 2009 through April 1, 2014. I seek all records (and specifically emails), including any record meeting the definition of a 'writing' per Cal. Evidence Code Sec. 250."

On April 14, 2014, OPD stated the following on RecordTrac: "Request extended: Additional time is required to answer your public records request. We need to compile data or create a computer report to extract data (Government Code Section 6253(c)(4))."

On May 2, 2014, the requester stated the following on RecordTrac: "Please provide a status update. Thank you."

⁴ Government Code § 6253.1(a).

⁵ O.M.C. § 2.20.270(C)(1).

⁶ O.M.C. § 2.20.270(F).

⁷ Complaint Procedures § IV (C)(5).

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Also on May 2, 2014, OPD stated the following on RecordTrac: “Department of Information Technology does not have any responsive documents pertaining to this request. I am forwarding your request to the Oakland Police Department Public Records Request Liaison to see if they have any responsive documents to your request.”

On May 18, 2014, the requester stated the following on RecordTrac: “The statutory deadline for a response has long passed, and no extension of time has been requested. Please comply with this request.”

On June 5, 2014, OPD stated the following on RecordTrac: “In order for IT staff to conduct an e-mail search, please provide the target mail box names to be searched. The existing request cannot be run without the specific names.”

On June 25, 2014, OPD stated the following on RecordTrac: “Dear requester: We have not heard from you yet in regards to this public records request. Please contact us so we can further assist you (see the note below). Please provide the target mail box names or the departments in the City to be searched.”

On July 7, 2014, OPD stated the following on RecordTrac:

This message is in regard to the below public records request that was submitted to the Department of Information Technology (DIT) for an email search. The City has tried to contact you via the online request you submitted several times. Annie To responded and stated: “In order for IT staff to conduct an e-mail search, please provide the target mail box names to be searched. The existing request cannot be run without the specific names.” I want to clarify which personnel or departments you would like DIT to search for these records. Please be advised that the email search will pick up on each term listed on your request and may provide a voluminous amount of records to be reviewed. Once we receive a response from you we will proceed with your request and update you with our progress.

On August 14, 2014, OPD stated the following on RecordTrac:

The Department of Information & Technology (DIT) is conducting the search for emails. DIT estimates the search for responsive records will be complete around September 20, 2014. Until the search is complete we do not know how many records will need to be reviewed. All records from the search results must be reviewed and in some cases redacted. When we receive the CDs we will provide you with a date your request will be complete. You will receive your next response by September 26, 2014.

On September 5, 2014, OPD stated the following on RecordTrac: “IT Completed the e-mail search and forwarded the CD to OPD for review on 09/03/14.”

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On September 18, 2014, OPD stated the following on RecordTrac: “Dear requester: Do you want all documents containing the below listed terms in your request that relate to a cell phone mimicking tower or cell phone signal interceptor? This message was also sent directly via email.” Also on September 18, 2014, the requester stated the following on RecordTrac: “I want all of the above.”

On October 2, 2014, OPD stated the following on RecordTrac: “At this time we do not have any responsive records to provide. You will receive your next response by October 17, 2014.”

On October 14, October 30, November 13, December 12, December 30, 2014; and January 17, February 20, April 2, April 30, June 8, July 2, August 3, August 28, October 5, December 1, and December 30, 2015; and February 1, March 1, March 31, and April 28, 2016, OPD stated the following on RecordTrac: “At this time the Department still needs additional time to answer your request.”

On May 31, 2016, OPD provided thirty pages of documents.

On July 1, and July 29, 2016, OPD stated the following on RecordTrac: “At this time the Department still needs additional time to answer your request.”

On August 24, 2016, the requester filed his complaint with the Commission.

On September 6, October 10, and October 31, 2016, OPD stated the following on RecordTrac: “At this time the Department still needs additional time to answer your request.”

On November 10, 2016, Commission Staff started its mediation efforts by sending the complaint to OPD and requesting a response to the allegations.

On November 23, 2016, OPD provided 434 pages of documents, and stated the following on RecordTrac:

Personal information, such as home addresses, telephone numbers, and credit card numbers, were removed from the documents to protect the privacy or identity of another individual (Government Code Section 6254(k)) and the constitutional right to privacy Article 1 Declaration of Rights Section 1). Authorized redactions or omissions made pursuant to 6254(f) CGC (records of security and tactical procedures).

On November 29, 2016, OPD stated the following on RecordTrac: “The remainder of the records are still being reviewed and will be released as soon as possible.”

On November 30, 2016, PEC Staff asked OPD for an update, and OPD informed Commission Staff that some of the responsive records had been provided on November 23, 2016, and that more records would be provided once OPD finished reviewing them.

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On June 29, 2018, Commission Staff reached out to OPD and asked if it was going to upload additional documents in response to the request. No additional documents had been uploaded at this time.

On July 16, 2018, OPD stated that the request previously was being completed by an employee who is no longer with the City while the current supervisor assigned to public records requests was out of the office. OPD stated that records were being reviewed but that the last batch of the records may have to be reviewed again.

As of November 2018, this request was closed and all responsive documents were reported disclosed.

PRR No. 7354

On December 30, 2014, the City received, via RecordTrac, the following public records request:

Please provide in electronic format (pdf) a copy of all writings, defined by California Evidence Code Section 250, including but not limited to training manuals, privacy policy, data retention policy, warrants, court orders, correspondence, emails, purchase orders, invoices, memos, grant applications and awards, funding sources, city council resolutions or information reports, for the following items used by Oakland Police Department, or vendors of equipment used by OPD: 1. Pole Attic camera 2. Under the door camera 3. Thru-wall camera 4. Crawl space camera 5. Stingray van 6. Lincoln System 7. GPS Vehicular tracking devices 8. Cellbrite 9. Penlink 10. Tracking the world 11. Anything relevant or referring to monitoring of social media 12. Handheld Doppler radar 13. Thermal imaging devices 14. FLIR (Forward Looking Infrared Device) For reference, please see to the March 16, 2010 Shawn Knight memo to Chief Batts. #DACPRR

On January 12, 2015, OPD stated the following on RecordTrac: “Your request was received today by our office. The Department needs additional time to respond to your request based on the following reason: The need to search for, collect, or examine a voluminous amount of records (Government Code Section 6253(c)(2)). The Department will continue to update you on the status of your request.”

On January 15, 2015, OPD stated the following on RecordTrac: “In order to proceed with fulfilling your PRR #7354, I would like to get clarity on the information you are requesting. Please contact the PRR Unit at 238-7143.”

On January 20, 2015, the requester stated the following on RecordTrac: “Please add "15. Rang-R" to the list of items I am seeking information about. Thank you.”

On January 30, 2015, OPD stated the following on RecordTrac: “The Alameda County DAs Office PRR is Stephanie Chan. She can assist with copies of warrants or court orders and is located at 1225 Fallon St. Suite 900. 510-272-6213.”

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On February 3, 2015, OPD stated the following on RecordTrac: “Mr. Hofer, the Department does not have an OPD policy, nor any training manuals for cell site simulators or “stingrays”.”

On February 5, 2015, OPD stated the following on RecordTrac: “Mr. Hofer, The Department does not possess templates for judicial orders and/or warrant applications that involve or mention the use of cell site simulators, also known as stingrays.”

On February 9, 2015, OPD stated the following on RecordTrac: “The Department does not have any invoices or purchase orders produced regarding the listed items.”

On February 20, 2015, the requester stated the following on RecordTrac: “The statutory 10 days, plus 14 days extension per code, have expired. I haven’t been provided a single document. Please comply. Thank you.”

Also on February 20, 2015, OPD provided an excel spreadsheet and the following statement: “The City Clerk's Office do not have any resolutions or report regarding the listed item. However, I am attaching the Citywide Record Retention Schedule policy as requested above.”

On March 10, 2015, OPD stated the following on RecordTrac:

The Information Technology Department (ITD) is conducting a comprehensive search for emails and any documents relating to your request. Once we receive the search results the records will need to be reviewed, and if necessary redacted per Government Code 6254(f), so as not to release any confidential information. In addition, consultation with other members of the Department who may have substantial knowledge of this subject matter may also be required. We will provide you with periodic updates and/or any responsive documents as they become available. You will receive your next response by March 31, 2015.

On April 3, May 4, and June 1, 2015, OPD stated the following on RecordTrac: “At this time the Department does not have any records to provide.”

On June 30, 2015, OPD stated the following on RecordTrac:

Public Records Request Unit still needs additional time to review the email search results, in addition, consultation with other members of the Department who may have substantial knowledge of this subject matter may also be required in order to ensure no confidential information is released. We will continue to provide periodic updates and/or any responsive records as they become available. You will receive your next response by July 10, 2015.

On July 10, 2015, OPD stated the following on RecordTrac: “At this time the Department does not have any responsive records to provide. We will provide you with an update by July 17, 2015.”

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On July 17, 2015, OPD stated the following on RecordTrac: “Responsive emails are being reviewed by the custodian of the records. In addition, consultation with other members of the department may also be required. We will provide you with an update by July 24, 2015.”

On July 24, July 31, and August 7, 2015, OPD stated the following on RecordTrac: “At this time the Department does not have any responsive records to provide. We will provide you with an update by July 31, 2015.”

On August 14, 2015, OPD provided thirty pages of records and the following statement on RecordTrac: “The PRR Unit has provided some material related to your request. You will receive your next response on or before August 21, 2015.”

On August 21, and August 28, 2015, OPD stated the following on RecordTrac: “The PRR Unit has provided some material related to your request.”

On September 3, and September 23, 2015, OPD stated the following on RecordTrac: “At this time the Department does not have any responsive records to provide.”

On October 15, 2015, OPD provided 57 pages of records and the following statement on RecordTrac: “Our agency needs additional time to respond to your request based on the following reason: The need to search for, collect, or examine a voluminous amount of records (Government Code Section 6253(c)(2)). You will receive a response or an up-date by 29 Oct 15.”

On November 13, November 24, and December 18, 2015, OPD stated the following on RecordTrac: “At this time the Department does not have any responsive records to provide.”

On December 30, 2015, OPD provided 25 pages of records and the following statement on RecordTrac: “Our agency needs additional time to respond to your request based on the following reason: The need to search for, collect, or examine a voluminous amount of records (Government Code Section 6253(c)(2)). You will receive a response or an up-date by 15 Jan 16.”

On February 11, and May 11, 2016, OPD stated the following on RecordTrac: “At this time the Department does not have any responsive records to provide.”

On July 14, 2016, OPD stated the following on RecordTrac: “Due to the Departments limited staffing, resources and the numerous public records requests received, our agency needs an additional 30 days to respond to your request.”

On August 24, 2016, the requester filed his complaint with the Commission.

On November 10, 2016, Commission Staff started its mediation effort by sending the complaint to OPD and requesting a response to the allegations.

On November 23, 2016, OPD provided 111 pages of records, the following statement on RecordTrac, and closed the records request: “We released all responsive documents.”

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On November 30, 2016, Commission Staff requested an update from OPD. OPD replied and informed Commission Staff that all responsive records had been provided on November 23, 2016, and the request was closed and considered resolved.

On December 28, 2016, Commission Staff relayed this statement to the requestor, who found the response unsatisfactory and stated that he had “firsthand knowledge of the existence of documents” related to several categories of the request.

On July 2, 2018, Commission Staff reached out to OPD and requested confirmation that no additional documents existed. OPD responded and stated that the requester had been informed by Supervisor Davis of the Oakland Police Department via email that all responsive documents had been released.

PRR No. 8936

On April 15, 2015, the City received, via RecordTrac, the following public records request: “Please provide in electronic format (pdf) all emails and attachments sent to or from the following email accounts, and for the time period of January 1, 2010 through April 14, 2015: 1) Jason Saunders jsaunders@oaklandnet.com; 2) Shawn Knight sknight@oaklandnet.com.”

On April 23, 2015, the requester stated the following on RecordTrac: “Please amend this request to include all faxes, including cover sheets and all attachments, sent to or from Jason Saunders and Shawn Knight for the same time period.”

On May 7, 2015, OPD stated the following on RecordTrac: “Request extended.”

Also on May 7, 2015, OPD stated the following on RecordTrac:

Dear requester: Staff from the Information Technology Department (ITD) has informed today (see history tab here in RecordTrac system), that they had run a search and produced two CD's. Staff will now have to review and redact (if necessary) those records. Representatives from those departments shall contact you no later than May 29 to provide you a status update and/or responsive records.

On July 6, 2015, OPD stated the following on RecordTrac: “The Department is still waiting on the search results from the City's Information & Technology Department. We will provide you with any updates and/or responsive records as they become available. You will receive your next response on or before July 20, 2015.”

On July 14, August 3, August 29, and September 29, 2015, OPD stated the following on RecordTrac: “Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request.”

On October 14, 2015, OPD stated the following on RecordTrac: “The Oakland Public Works Department does not have any info regarding this request.”

Item #8 - Mediation Summary

On October 29, November 30, December 30, 2015; and February 3, March 1, March 31, April 28, May 31, July 1, and July 29, 2016, OPD stated the following on RecordTrac: “Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request.”

On August 24, 2016, the requester filed his complaint with the Commission.

On September 6, October 11, and November 15, 2016, OPD stated the following on RecordTrac: “Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request.”

On November 22, 2016, OPD provided 343 pages of documents.

On November 24, 2016, OPD provided 1,299 pages of documents and stated the following on RecordTrac:

Dear requester: I apologize for the delay in providing you with all the responsive records for this request in a timely manner. There are over 8,000 records. Your request asks for all emails to and from the listed accounts. I am providing you with the releasable records while the others are being reviewed. If you do not wish to receive further emails that were sent to these accounts from the system administrator, such as the ones I have recently provided, please let me know and I will stop uploading them to this request. The remainder of the records are being reviewed and will be released as soon as possible.

Also on November 24, 2016, the Complainant stated the following on RecordTrac: “Ms. Fuller, first, why are you working on Thanksgiving? Don't do it! Secondly, I want real emails. You have uploaded thousands of pages of a form response stating the inbox is full. Those are NOT responsive, nor helpful. I need the real emails from the requested date range. Thanks, and happy thanksgiving.”

On November 29, 2016, OPD provided 310 pages of documents and stated the following on RecordTrac: “Personal information, such as home addresses, telephone numbers, and credit card numbers, were removed from the documents to protect the privacy or identity of another individual (Government Code Section 6254(k)) and the constitutional right to privacy Article 1 Declaration of Rights Section 1).”

On November 30, 2016, in response to the requester’s request for mediation, Commission Staff reached out to Records Division and requested an update on the request. Records Division replied and informed Staff that the documents responsive to the records request were in the process of being reviewed by the custodian of the record for consultation and possible redactions, and that Records Division would forward the documents to the requester once received from the custodian of the record.

In December 2016 and January 2017, Commission Staff, as part of its mediation effort, discussed this matter with OPD and the requester.

Item #8 - Mediation Summary

On January 30, 2017, OPD provided 108 pages of documents.

On February 1, 2017, OPD stated the following on RecordTrac: “Authorized redactions or omissions made so as not to release any personnel information pursuant to California Government Code 6254(c).”

On April 3, 2017, OPD stated the following on RecordTrac: “The Department is still reviewing records responsive to your request. Some documents have been omitted pursuant to California Government Code 6254(f) (confidential intelligence records and officer safety information). We will continue to provide you with updates and/or any responsive non-exempt documents as they become available.”

On December 19, 2017, OPD provided 19 pages of records, the following statement on RecordTrac, and closed the records request:

We released the requested documents. Personal information, such as home addresses, telephone numbers, and credit card numbers, were removed from the documents to protect the privacy or identity of another individual (Government Code Section 6254(k)) and the constitutional right to privacy Article 1 Declaration of Rights Section 1). Authorized redactions or omissions made pursuant to 6254(f) (investigative records) and (The case is pending, still active, under appeal or may be recharged; or the release may deprive a person(s) of a fair trial and release of this information may endanger the successful completion of any current or prospective investigation, or may disclose investigative techniques).

PRR No. 13074

On December 17, 2015, the City received, via RecordTrac, the following public records request:

Please provide in electronic format (pdf) a copy of all writings, defined by California Evidence Code Section 250, including but not limited to training manuals, privacy policy, data retention policy, warrants, court orders, correspondence, emails, purchase orders, invoices, memos, grant applications and awards, funding sources, city council resolutions or information reports, for the following items/social media monitoring software: 1. MediaSonor 2. Beware

On December 21, 2015, OPD stated the following on RecordTrac: “No records of legislations or any other materials were found in the City Clerk's Office.”

On January 6, 2016, OPD stated the following on RecordTrac: “Dear requester: Please advise the date range you would like the Department to search for the requested records. Also if possible please clarify the term beware, as this will produce a response for all records containing this word and may result in an excess of unresponsive documents and prolong the completion of your request.”

Item #8 - Mediation Summary

Also on January 6, 2016, the requester stated the following on RecordTrac: "Use date range 1/1/12 to 1/6/16. Beware is made by Intrado. Search "Intrado Beware", "Intrado", "Beware"."

On January 11, 2016, OPD stated the following on RecordTrac: "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))."

On February 8, 2016, OPD stated the following on RecordTrac:

The Department did not locate any training manuals, purchase orders, invoices, memos, grant applications and awards, funding sources, privacy policy, data retention policy, warrants, or court orders related to the MediaSonor and Beware. We are still in the process of conducting an email search for any correspondence related to these terms. We will continue to provide you with periodic updates and/or any responsive records as they become available. You will receive your next response by February 29, 2016.

On March 1, 2016, OPD stated the following on RecordTrac: "The Department is still waiting on the search results from the City's Information & Technology Department. We will provide you with any updates and/or responsive records as they become available. You will receive your next response on or before March 31, 2016."

On March 25, 2016, the requester stated the following on RecordTrac: "Please add Geofeedia to the request."

On March 31, 2016, OPD stated the following on RecordTrac: "Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request. You will receive an update by April 30, 2016."

On April 28, 2016, OPD stated the following on RecordTrac:

The previous message for this request was incorrect. The Public Records Request Unit is still waiting on the search results from the City's Information & Technology Department (ITD). ITD is currently backlogged and working to provide records as soon as possible. We will continue to provide you with any updates as they become available. You will receive your next response on or before May 31, 2016.

On May 31, 2016, OPD stated the following on RecordTrac: "The Public Records Request Unit has received the CD containing the results of the email search. Additional time is needed to review each document. Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request. You will receive an update by June 30, 2016."

On July 1 and July 29, 2016, OPD stated the following on RecordTrac, and stated that Complainant would receive an update by the end of the next month: "Due to limited staffing resources the

Item #8 - Mediation Summary

Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request.”

On August 24, 2016, the requester filed his complaint with the Commission.

On September 6, October 10, and November 30, 2016, OPD stated the following on RecordTrac, and stated that the requester would receive an update by the end of the next month: “Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request.”

On November 30, 2016, in response to Complainant’s request for mediation, Commission Staff reached out to Records Division and requested an update on the request. Records Division replied and informed Staff that the documents responsive to the records request would be provided by December 30, 2016.

On December 30, 2016, OPD provided 522 pages of records and stated the following statement on RecordTrac: “We released all responsive documents.”

On January 26, 2017, the requester informed Commission Staff that the records provided in response were erroneous and “not what I was seeking.” On January 27, 2017, Commission staff relayed this concern to OPD.

On February 6, 2017, OPD stated that the request was completed because there were no additional documents to provide and that it had informed the requester by posting a message on RecordTrac.

On February 6, 2017, OPD stated the following on RecordTrac and closed the records request: “The Department did not locate any other records for this request. Although some of the responses provided to you were not responsive to this request, we provided the records we found relating to your requested search terms.”

PRR No. 14437

On March 10, 2016, the City received, via RecordTrac, the following public records request:

Please provide in electronic format (pdf) a copy of all writings, defined by California Evidence Code Section 250, related to CCTV surveillance, video surveillance, or other electronic surveillance within the City of Oakland and involving the following agencies during the date range of 01/01/2010 through 03/10/2016: 1. Bureau of Alcohol Tobacco Firearms and Explosives (ATF) 2. US Department of Justice 3. Drug Enforcement Agency 4. Department of Homeland Security 5. US Immigration and Customs Enforcement 6. Northern California Regional Intelligence Center 7. US Marshals 8. Federal Bureau of Investigations
The writings shall include, but not be limited to, privacy policies, data sharing agreements, memoranda of understanding, emails or any other correspondence, legal authorization or justification for the surveillance, invoices, purchase orders, and grant applications.

Item #8 - Mediation Summary

On March 17, 2016, OPD stated the following on RecordTrac: “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)).”

On April 19, 2016, OPD stated the following on RecordTrac:

The Oakland Police Department did not locate any privacy policies, data sharing agreements, memoranda of understanding, invoices, purchase orders, or grant applications. The Information Technology Department (ITD) is conducting a search for emails or writings responsive to your request. There is a backlog of requests and at this time we cannot provide a date the search will be complete. We will provide you with any updates as they become available. You will receive your next response by April 30, 2016.

On April 28, May 31, July 1, and July 29, 2016, OPD stated the following on RecordTrac: “The Public Records Request Unit is still waiting on the search results from the City's Information & Technology Department (ITD). ITD is currently backlogged and working to provide records as soon as possible. We will continue to provide you with any updates as they become available.”

On August 24, 2016, the requester filed his complaint with the Commission.

On September 6, and October 11, 2016, OPD stated the following on RecordTrac: “The Public Records Request Unit is still waiting on the search results from the City's Information & Technology Department (ITD). ITD is currently backlogged and working to provide records as soon as possible. We will continue to provide you with any updates as they become available.”

On November 10, 2016, Commission Staff started its mediation efforts by sending the complaint to OPD and requesting a response to the allegations.

On November 29, 2016, OPD stated the following on RecordTrac: “The Department is still working on obtaining the search results for this request. We will continue to provide you with any updates and/or responsive records as they become available.”

On November 30, 2016, Commission Staff requested an update from OPD. Records Division replied and informed Commission Staff that IT was still working on searching for all responsive records due to the scope of the request.

On January 27, 2017, Commission Staff requested an update from OPD because no records had been provided. On February 6, 2017, OPD stated that it was still working on this request and did not have responsive records to provide at that time.

On February 6, 2017, OPD stated the following on RecordTrac: “The Department is still working on obtaining the search results for this request. We will continue to provide you with any updates and/or responsive records as they become available.”

Item #8 - Mediation Summary

On June 29, 2018, Commission Staff requested an update as no records had been provided. On July 16, 2018, Fuller stated that she submitted an e-discovery request to the IT Department to conduct a search for emails but did not receive a response. Fuller stated she will need to submit a new request.

As of October 15, 2018, this request remains open and OPD has not provided any records.

IV. RECOMMENDATION

Mediation efforts have resolved Complainant's concerns regarding PRR Nos. 7354, 8936, 13074, and 3544. Request 14437 has not been closed. However, because this matter has been in mediation status for more than two years and the parties have reached an impasse regarding OPD's lack of response to PRR No. 14437, Commission Staff recommends that the Commission close mediation and not take any further action.

Item #9 - Mediation Summary



James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice Chair
Jill M. Butler
Michael MacDonald
Janani Ramachandran
Joseph Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: March 18, 2020
RE: *In the Matter of the City of Oakland Planning and Building Department
(Case No. M2019-17); Mediation Summary*

I. INTRODUCTION

On October 8, 2019, the Commission received a request for mediation from the Requestor alleging that Building and Planning Department failed to provide responsive documents to two separate public records requests. The Requester initiated their respective public records request on May 11, 2019 and August 25, 2019, seeking copies of Radio Frequency Reports that she believed were provided to the City of Oakland between January 1996 and August 2019, the department did not provide a response.

Staff initiated the Mediation process on October 16, 2019. On October 21, 2019, Staff contacted the Building and Planning Department regarding the request for mediation. David Guillory (“Guillory”) with the Planning Department released some responsive documents (Permit History Telecoms) to the requester and the request was closed with a note that informed the Requester that the information they requested was not collected by the City but by the Federal Communications Commission. In response to that mediation, the Requester confirmed that they received some documents but believed, according to the department procedures, there were additional documents that should be released. On February 3, 2020, Issam Shahroui the Deputy Director of the Building department confirmed that the documents that the Requester was seeking were not documents collected or maintained by his department. Staff recommends that the Commission close the mediation without further action.

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.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

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

² Government Code § 6253(b).

Item #9 - Mediation Summary

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.³ 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.⁴

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.⁵

III. SUMMARY OF FACTS

On May 11, 2019 and August 25, 2019, the Requester made a request via the City's NextRequest system for the following (Both records requests were assigned to the Planning and Building Department):

1. May 11, 2019, Request No. 19-2426.

"On Attachment B: Standard Conditions for many telecom applications/decision letters, Item #14 - Radio Frequency Emissions is a category. "Prior to the final building permit sign-off. The applicant shall submit a certified RF emissions report stating the facility is operating within the acceptable standards established by the regulatory FCC."

I am requesting copies of the certified RF emissions reports for all telecom facilities installed in Oakland since 1996. I would like to have the reports be sorted by (1) zip code, (2) facility location address, (3) date installed and date of report, (4) facility description and (5) include the Planning and Building Departments case file identifying code and the telecom company who applied for this facility. "

On July 2, 2019, Guillory released Permit History Telecoms covering 1996-2019 and on July 31, 2019, he closed the public records request 19-2426.

2. August 25, 2019, Request No. 19-4253.

"Please provide all complete RF (Radio Frequency) Emission reports provided to the City in compliance with Ordinance 17.128.130 (b) for the period of time from 01/01/1996 to 08/20/2019."

Staff received a request for mediation on October 8, 2019.

Staff contacted Guillory with the Planning Department on October 21, 2019, and November 12, 2019.

On November 13, 2019, Guillory wrote a note to NextRequest regarding No. 19-4253 that informed the Requester of the following:

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item #9 - Mediation Summary

“The requested documents do not exist.”

The request was closed on November 13, 2019.

Staff contacted Guillory on November 15, 2019. Guillory confirmed that the department received guidance from its Oakland City Attorney representative that the Requester should contact the Federal Communications Commission (FCC) to get copies of any related Radio Frequency Emissions reports.

The Requester contacted the FCC to obtain a copy of the reports and was informed that the RF Emissions reports they were seeking are not maintained by the FCC, but by the respective City government.

The Planning department re-opened the request on November 18, 2019 and uploaded some responsive documents.

On December 2, 2019, Staff contacted Alexandria McBride the City of Oakland Chief Resilience Officer.

Staff contacted the requester to seek additional information about the public records request and what specific documents he believed were missing. The Requester believed the post Radio Frequency Emissions reports, per City policy, regarding tests conducted after the telecom poles were installed in specific neighborhoods were documents that were not disclosed in the public records request.

The City of Oakland Planning and Building department is subject to Oakland ordinance on Telecommunications Regulations 17.128.130 (c), which provides that:

17.128.130 - Radio frequency emissions standards.

“The applicant for all wireless facilities, including requests for modifications to existing facilities, shall submit the following verifications:

- a. With the initial application, a RF emissions report, prepared by a licensed professional engineer or other expert, indicating that the proposed site will operate within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.
- b. Prior to commencement of construction, a RF emissions report indicating the baseline RF emissions condition at the proposed site.
- c. Prior to final building permit sign off, an RF emissions report indicating that the site is actually operating within the acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.

The Requester asked that Staff assist in obtaining a copy of any and all RF emissions reports as described in section (c) of the Radio Frequency Emissions Standards ordinance.

Staff contacted Issam Shahrouri the Deputy Director of the Building department to request a department search for any and all post installation Radio Frequency Emission reports. The Deputy Director confirmed

Item #9 - Mediation Summary

that his department does not and have not collected or maintained any post Radio Frequency Emission reports.

The request was closed again on March 11, 2020 with a note that the requested documents do not exist.

The Requester wants the PEC to be aware of the enormous amount of time consumed and the frustration that resulted in attempting to get responsive documents to their public records request.

IV. RECOMMENDATION

The requester received all responsive reports that the Planning and Building department maintains on Radio Frequency Emissions, Staff recommends that the Commission close the mediation without further action.

Item #11 - Disclosure Report



James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice-Chair
Jill M. Butler
Michael B. MacDonald
Janani Ramachandran
Joe Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: June 26, 2020
RE: Disclosure and Engagement Report for the July 6, 2020, PEC Meeting

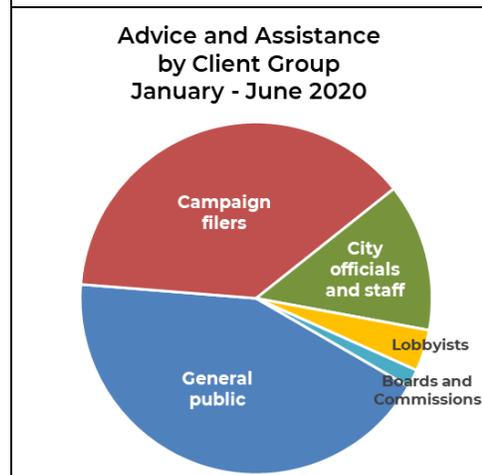
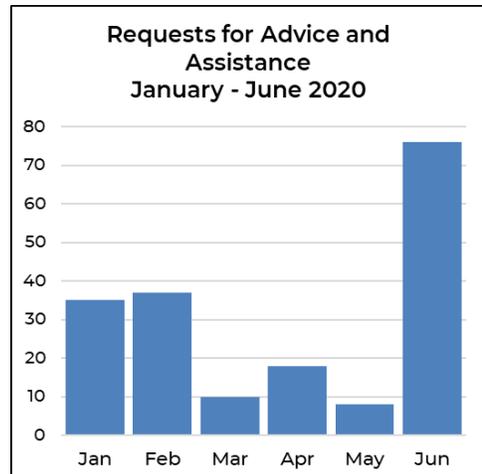
This memorandum provides a summary of the Public Ethics Commission’s (PEC or Commission) Disclosure and Engagement program activities since the last monthly meeting. Commission staff disclosure activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting data analysis for PEC projects and programs as required. Engagement activities include training and resources provided to the regulated community, as well as general outreach to Oakland residents to raise awareness of the Commission’s role and services and to provide opportunity for dialogue between the Commission and community members.

Advice and Engagement

Advice and Assistance – Commission staff continues to respond to email and phone advice calls and requests for assistance, which amount to 184 requests to date this year. Inquiries by community members about issues of police misconduct were responsible for a large uptick in June contacts with staff.

Candidates and Campaigns – Ten local positions are up for election on Oakland’s November ballot. Thirty-nine candidates have submitted statements of intent to run for office, and 20 have registered campaign committees.

On May 28, staff conducted a joint candidate and treasurer training with representatives from the California Fair Political Practices Commission (FPPC). The 26 attendees received a two-hour training on the CA Political Reform Act and the Oakland Campaign Reform Act. Topics covered included campaign forms, committee IDs, campaign bank accounts, recordkeeping, contribution rules, and advertising disclosures. Attendees expressed appreciation for the training and the information that was provided. The training



Item #11 - Disclosure Report

was recorded and added to the PEC's website as a resource available for new candidates and committees.

As part of our campaign education efforts, staff provides monthly advisories to ensure that candidates and committees are aware of local rules during the election season. The June advisory highlights rules specific to ballot measure and officeholder committees. In addition, staff drafted a hand-out outlining campaign finance requirements for ballot measure committees that can be distributed when residents initiate the process to qualify a local referendum.

Ethics – On June 11, staff facilitated a live ethics discussion via Zoom for the City's quarterly Supervisory Academy. The discussions are intended to allow for more meaningful dialogue concerning ethical values in decision making with a focus on identifying ethical dilemmas that City staff face in carrying out their daily duties. Staff provided an overview of the Government Ethics Act including conflicts of interests, gift restrictions, and post-employment restrictions.

On June 26, staff will conduct an ethics training for new employees of the Oakland Parks, Recreation, and Youth Development Department during their summer staff orientation.

Newsletter – Staff is drafting the ninth issue of the PEC's newsletter **Public Trust** to be published in July. The latest newsletter covers a range of topics including campaign rules, use of city resources, and PEC program activities.

Social Media – Communications in June focused on sharing the Commission's 2019 accomplishments and annual report.

Illuminating Disclosure Data

Lobbyist E-filing – The online lobbyist registration and reporting app is now live on the City's OakApps platform. Going forward, all lobbyist registration and quarterly activity reports will be submitted electronically. An advisory to Oakland lobbyists with account set-up instructions will go out the last week of June. Commission staff will present a demonstration of the app at the July 6 Commission meeting, with Oakland's Chief Information Officer, Andrew "Pete" Peterson, joining in attendance.

Open Disclosure – Updates to the www.OpenDisclosure.io campaign finance app for the November 2020 election are ongoing until the qualification period for Oakland candidates closes in mid-August and the November ballot is finalized. Campaign finance data for the first half of 2020 will be available on the site after the July 31st campaign statement deadline. OpenDisclosure is a project of OpenOakland volunteers in partnership with the Public Ethics Commission. OpenOakland is part of Code for America, a national network of community organizers and technologists seeking to put technology to work for the benefit of their local communities.

Item #12 - Enforcement Report



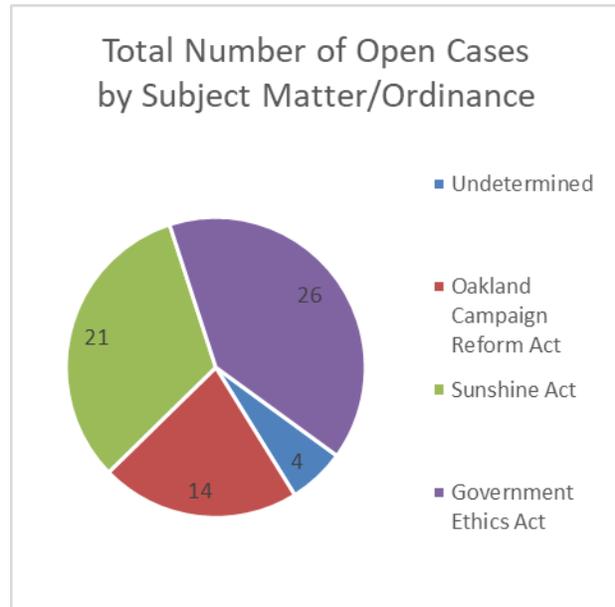
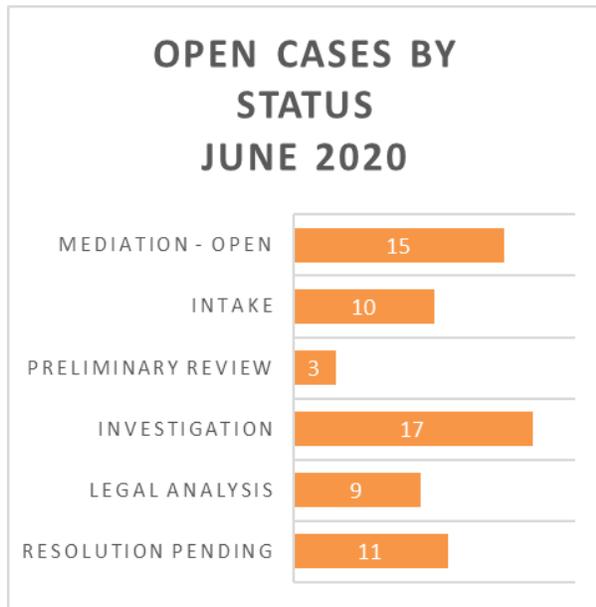
James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice Chair
Jill M. Butler
Michael MacDonald
Janani Ramachandran
Joseph Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission (PEC)
FROM: Kellie Johnson, Enforcement Chief
DATE: June 25, 2020
RE: Enforcement Program Update for the July 6, 2020 PEC Meeting

Current Enforcement Activities:

Since the last Enforcement Program Update on May 4, 2020, Commission staff received 3 complaints. This brings the total Enforcement caseload to 65 enforcement and mediation cases: 10 matters in the intake or preliminary review stage, 17 matters under active investigation, 9 matters under post-investigation analysis, 11 matters in settlement negotiations or awaiting an administrative hearing, and 15 ongoing public records request mediations.



Summary of Cases:

Since the last Enforcement Program Update in May 2020, the following status changes occurred:

1. *In the Matter of the Oakland City Attorney Barbara Parker and the City Council President Rebecca Kaplan* (Complaint No. 20-09). On April 15, 2020, the City of Oakland Public Ethics Commission (PEC) received a complaint (#20-09) alleging that on April 9, 2020, the City Council held a

Special Closed Session Council meeting by teleconference to appoint a new City Administrator. The complaint alleged that the City Council did not supply an appropriate description of the item to be discussed in the closed session on the Council Agenda and that the Council discussed executive salary and benefits during the closed session in violation of the law. After a thorough review of the complaint, the facts and the law, Staff concluded that the allegations raised in the complaint do not provide sufficient facts to establish a violation of the California Public Records Act, the Brown Act, the Oakland Sunshine Act or any other law within the PEC's jurisdiction; the complaint was dismissed. (See attachments)

2. *In the Matter of the City of Oakland Department of Building and Planning* [Mediation Summary] (Case No. M2019-17). On October 8, 2019, the Commission received a request for mediation from the Requestor alleging that Building and Planning Department failed to provide responsive documents to two separate public records requests. The Requestor initiated their respective public records request on May 11, 2019 and August 25, 2019, seeking copies of Radio Frequency Reports that they believed were provided to the City of Oakland between January 1996 and August 2019, the department did not provide a response. Staff initiated the Mediation process on October 16, 2019. The Deputy Director of the Building department confirmed that the documents that the Requester was seeking were not documents collected or maintained by his department. This matter was set over from the May PEC meeting for follow-up. Staff has completed the follow-up request and recommends that the Commission close the mediation. Enforcement Staff will open an investigation into the violation of the California Public Records Act and the Oakland Sunshine Ordinance. (See Action Items)
3. *In the Matter of The City of Oakland Police Department;* (Case No. 16-15) [Mediation Summary]. On August 24, 2016, the Commission received a complaint alleging that the Oakland Police Department (OPD) failed to disclose records in response to multiple public records requests made by the Requestor. On November 10, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. Once Staff initiated mediation, the Requestor received several responsive documents from OPD. However, upon conclusion of the mediation program on July 16, 2018, the requester had not received responsive documents to PRR No. 14437. This request remains open in NextRequest with relevant records still unproduced by OPD, even though this public records request was made on March 10, 2016. Commission Staff attempted to resolve this matter through mediation for two years with little success. However, OPD has not released responsive documents to PRR No. 14437 and the Staff has exhausted all avenues in attempting to facilitate production of the documents. This matter was removed from the PEC Agenda in March 2020 to gather follow-up information. After the conclusion of the follow-up investigation, Commission Staff recommends that the Commission close this matter. (See Action Items)
4. *In the Matter of Dorian Gray;* (Case No. 18-03) [Proposed No Contest Stipulation]. In February 2018, the Public Ethics Commission opened a pro-active investigation into the alleged bribery and unlawful offer of a gift of an Oakland City Councilmember, Larry Reid and City Employee Gregory Minor by Dorian Gray, the Respondent. The Respondent, to secure a marijuana permit

for a business associate, offered to pay the City Councilmember \$10,000 and provide and all-expense paid trip to Spain for Gregory Minor. After investigation and cooperation with the Alameda County District Attorney's Office, Staff determined that there was evidence to establish that Dorian Gray, violated Oakland Municipal Code section § 2.25.070 (A) (Bribery) and 2.25.060 (C)(1) (Gift Violation). Staff, the Alameda County District Attorney and the Respondent reached a No Contest stipulated settlement agreement. Staff recommends that the PEC approve the No Contest Stipulation and impose an \$8,000 penalty. (See Action Items)

Item #12 - Enforcement Report



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

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

May 18, 2020

Gene Hazzard

██████████
Oakland, CA 94610

Re: PEC Complaint No. 20-09; Dismissal Letter

Dear Mr. Hazzard:

On April 15, 2020, the City of Oakland Public Ethics Commission (PEC) received your complaint (#20-09) that alleged on April 9, 2020, the City Council held a Special Closed Council meeting by teleconference at which one of the “Special Closed Agenda Items” was the appointment of a new City Administrator. The complaint alleged that the City Council did not supply an appropriate label/description of the item to be discussed in the closed session on the Agenda and that the Council discussed executive salary and benefits during the closed session in violation of the law.

We have reviewed the complaint, the facts and the law. The allegations raised in the complaint do not provide sufficient facts to establish a violation of The California Public Records Act, the Brown Act, Oakland Sunshine Act or a violation within the PEC’s jurisdiction. Therefore, we are dismissing this complaint.

Your complaint asserts that when the City Council held a Special Closed Session meeting on April 9, 2020, that the City Attorney and the President of City Council violated California Government Code(s) § 54953.3(a); 54954.3; 54956(a); and 54956 (b). The California Government Code does provide specific requirements for legislative bodies seeking to hold Special Closed Session meetings as discussed below.

City Council Special Closed Session Agenda

Meetings called by the presiding officer or majority of the City Council to discuss only discrete items on the agenda under the Brown Act’s notice requirements for special meetings and are subject to 24-hour posting requirements, are called “Special Meetings.”¹

¹ California Government Code (CGC) §54956

A “Closed Session meeting” is a meeting of the City Council conducted in private without the attendance of the public or press. A City Council is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.²

Generally, the purpose of the closed session provisions in the Brown Act are to avoid revealing confidential information.³ Generally, closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption that applies.⁴ Most often, agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline. The City Council is required to include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.⁵

The complaint alleged that the City Attorney did not supply enough or the correct label of the agenda item. And that the Agenda item cited the incorrect statutory exemption.

The Special Closed Session Agenda Item appeared on the April 9, 2020 Revised Final Agenda in the following format:

3. Pursuant to California Government Code Section 54597:

PUBLIC EMPLOYEE APPOINTMENT

b) Title: Appointment of City Administrator

The Agenda item from the April 9, 2020 Closed Session City Council Meeting, in fact, referenced California Government Code section §54957 that applied to the Closed Session topic of appointment of a public employee and included the descriptor “public employee appointment.” The information on the face of the Agenda included the required information referenced in the body of the Agenda item.

Discussions in Closed Session

The Brown Act provides that the City Council, in a closed session, can “ consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.” The purpose of this exception — commonly referred to as the “personnel exception” — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.⁶

² CGC §54962

³ 61 OPS. Cal. Atty Gen 220 (1978).

⁴ CGC 54954.5

⁵ Id. 54954.5

⁶ CGC 54957.(b)

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PEC Complaint No. 20-09; Dismissal Letter
Page 2

The known, “ personnel exception” specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. As such, there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation.⁷

Although the City Council is required to report non-confidential items discussed in the Closed session, the Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.⁸ An exception would be disclosure of any improper subject that was discussed in closed session.⁹

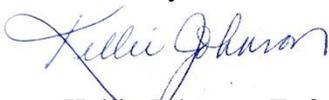
The complaint contends that the City Council discussed “executive salary and associated salary benefit package.” Aside from that assertion, you provide no information or name of a witness, corroborated or otherwise, that the City Council, in fact, discussed salary or benefits for the City Administrator in its closed session.

In the absence of any information, evidence or witness to show that salary of an unrepresented individual or any other improper subject was discussed during the Special Closed Session meeting, there is insufficient evidence to prove that the City Council violated a provision of the Brown Act.

Even if, however, the allegations in the complaint constituted a violation to the Brown Act or California Public Records Act, neither the Act nor the Oakland City Charter provide penalty authority to the Public Ethics Commission to assert jurisdiction over such a violation.

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 June 1, 2020, at 6:30 p.m. by teleconference as will be posted on the Commission’s website in advance of the meeting. 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 call-in to that meeting to listen 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.

Sincerely,



Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission
KJohnson3@oaklandca.gov

⁷ CGC § 54957.(b)

⁸ CGC §54963

⁹ See, 76 OPS. Cal. Atty Gen. 289 (1993).

Item #12 - Enforcement Report



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

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

May 18, 2020

Barbara Parker
Oakland City Attorney

Re: PEC Complaint No. 20-09; Dismissal of Complaint

Dear Ms. Parker:

On April 15, 2020, the City of Oakland Public Ethics Commission (PEC) received the attached complaint(s) against you (#20-09) that alleged on April 9, 2020, the City Council held a Special Closed Session Council meeting by teleconference at which one of the “Special Closed Agenda Items” was the appointment of a new City Administrator. The complaint further alleged that you and the City Council President did not supply an appropriate label/description of the item to be discussed in the closed session on the Agenda and that the Council discussed executive salary and benefits during the closed session in violation of the law.

We have reviewed the complaint, the facts and the law. The allegations raised by the complainant do not provide sufficient facts to establish a violation of The California Public Records Act, the Brown Act, Oakland Sunshine Act or other law within the PEC’s jurisdiction. Therefore, we are dismissing this complaint. No action is necessary on your part; this is just a courtesy notice.

A copy of the dismissal letter to the complainant 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,

A handwritten signature in blue ink that reads "Kellie Johnson".

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

Item #12 - Enforcement Report



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Public Ethics Commission
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(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

May 18, 2020

Rebecca Kaplan
Councilmember

Re: PEC Complaint No. 20-09; Dismissal of Complaint

Dear Councilmember Kaplan:

On April 15, 2020, the City of Oakland Public Ethics Commission (PEC) received the attached complaint(s) against you (#20-09) that alleged on April 9, 2020, the City Council held a Special Closed Session Council meeting by teleconference at which one of the “Special Closed Agenda Items” was the appointment of a new City Administrator. The complaint further alleged that you and the City Council President did not supply an appropriate label/description of the item to be discussed in the closed session on the Agenda and that the Council discussed executive salary and benefits during the closed session in violation of the law.

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A copy of the dismissal letter to the complainant 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,

A handwritten signature in blue ink that reads "Kellie Johnson". The signature is fluid and cursive.

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

Item #13 - Executive Director's Report



James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice-Chair
Jill M. Butler
Michael B. MacDonald
Janani Ramachandran
Joe Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: June 26, 2020
RE: Executive Director's Report for the July 6, 2020, PEC Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities completed or in progress since the Commission's last regular meeting that are not otherwise covered by other program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and activities for 2019-20 for each program area.

Public Ethics Commission Budget for Fiscal Year 2020-21

On June 23, 2020, City Council adopted a budget that included, among cuts across departments, minor reductions to the PEC's operating budget. However, the Commission's salary budget, positions, and the \$100,000 one-time allocation that was provided in the adopted FY 2019-21 two-year budget plan remain intact with the newly adopted City budget.

Campaign Finance Project Summary

Commissioner Nayeli Maxson and PEC staff have been jointly working to finalize a report of the Commission's work to review outcomes of the City's campaign finance system and make recommendations for improvement. The report is close to completion and will be presented to the Commission for review in July.

Sunshine Review Subcommittee

Chair Jackson created an ad hoc Sunshine Review Subcommittee on May 8, 2020, and appointed Michael MacDonald (Chair), Jill Butler, and Joe Tuman as members. The Sunshine Review Subcommittee met by teleconference on June 17, 2020, to begin outlining the project scope and steps for evaluating departmental performance in responding to public records requests.

State Behested-Payments Regulation Amendments

The California Fair Political Practices Commission (FPPC) is discussing potential amendments to Regulation 18215.3 and Government Code Section 84224 that together establish behested payment rules and reporting requirements. PEC staff participated in a teleconference meeting with FPPC lawyers and staff from other local ethics commissions to discuss concerns related to elected official solicitation and reporting of payments made to nonprofit organizations. Staff will continue to monitor and participate in the FPPC's discussion and review of the regulation.

Attachment: Commission Programs and Priorities

PUBLIC ETHICS COMMISSION
Programs and Priorities 2019-20

Program	Goal	Desired Outcome	Key Projects for 2019-20
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. Adoption of PEC-drafted City Ticket Distribution policy and process changes 2. Campaign Finance/Public Financing Act Project to expand participation in the campaign process 3. Government Integrity Data partnership
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> 1. Online ethics training for Form 700 filers – ensure training delivered to a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 2. Board/Commission member/liaison support/guidance; Sunshine/Meeting agenda posting Compliance Review v 3. Ongoing: advice calls, in-person trainings, ethics orientation for new employees (12), supervisor academy (3-4), and PEC newsletter (2) 4. Sunshine and Lobbyist education materials
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> 1. Outreach to client groups: -City staff/officials -people doing business with the City 2. Sustain/enhance general PEC social media outreach 3. PEC Roadshow – focus on CF project outreach (Commissioners) 4. Engage Boards/Commissions regarding Sunshine requirements (ensure/review agenda postings online)
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> 1. Lobbyist Registration – pilot new e-filing system, create online open data format for public accessibility 2. Form 803 Behested Payments – implement e-filing process, create online open data format for public accessibility 3. Initiate/develop project plan to establish contractor database 4. Open Disclosure 2020 – campaign data visualization project 5. Government Integrity Data Project planning and development
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> 1. Focus on ethics violations, proactive investigations 2. Conduct complaint intakes within 2 weeks 3. Collaborate with other government law enforcement agencies

Item #13 - Executive Director's Report

	compliance with laws within the PEC's jurisdiction.	the laws within the PEC's jurisdiction.	4. Conduct audits to identify common, across-the-board compliance issues
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Conduct hearings as needed 2. Complete City ticket cases 3. Expedite Sunshine Mediations ✓ 4. Amend Complaint Procedures ✓ 5. Resolve all 2014 and 2015 cases ✓ 6. Streamline and expand enforcement systems to incorporate broader tools
Administration/ Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Revise PEC Enabling Ordinance 2. Publish performance goals and data on PEC website – dashboards 3. Review data to adjust activities throughout the year 4. Ongoing: professional development and staff reviews