

**CITY OF OAKLAND**  
**Public Ethics Commission**

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**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** December 6, 2010

**RE: A Staff Report And Action To Be Taken Regarding Commission Hearings Regarding Public Accessibility To City Records**

At its meeting of October 4, 2010, the Commission considered a supplemental staff report in connection with Complaint No. 09-12. The complainant, Marleen Sacks, alleges that the City failed to produce or failed to timely produce copies of public records that she had requested.

At the October 4 meeting, the Commission adopted a motion to conduct a hearing(s) on the subject of Oakland's policies and procedures regarding public records requests. The Commission also requested its Sunshine Ordinance Committee ("Committee") to provide recommendations on the format, nature and scope of the hearing(s).

On October 19, 2010, the Committee discussed proposals for conducting a series of public meetings regarding the accessibility of public records. The Committee directed staff to develop a specific hearing schedule for subsequent consideration and recommendation addressing the following issues: 1) problems with the current process of providing records; 2) a review of the applicable law and an examination of procedures from other jurisdictions; 3) presentations from City representatives and key stakeholders; and 4) discussion and development of recommendations.

Based on the Committee's direction, Commission staff makes the following proposal for the scheduling and format of Commission hearings on public accessibility to City records:

**First Hearing: Current Public Record Practices From The Outside Looking In**

Commission staff recommends that the first hearing be devoted to an understanding and assessment of Oakland's current public record response practices. Staff will prepare in

advance of the hearing a written briefing on applicable law and any relevant internal protocols pertaining to public record requests. Commission staff recommends that the majority of hearing time be devoted to receiving comments from members of the public regarding their experience with obtaining records from the City. To that end, Commission staff will invite members of the public who routinely seek records from the City, as well as people who have in the past expressed difficulty in obtaining City records. At the Committee's suggestion, staff will invite comments from persons who have filed complaints with the Commission in recent years on public records issues. Commission staff believes this first hearing can be noticed and conducted by January 2011.

### **Second Hearing: Understanding City Challenges And Opportunities**

Commission staff recommends that the second hearing be devoted to receiving comments from those within the City who are responsible for coordinating responses to public records requests. Representatives from the Offices of the City Clerk and City Attorney, as well as from agency and department information officers, would be logical participants. Based on the information obtained from the first hearing, the Commission will be able to suggest in advance specific questions for these representatives to address. Commission staff believes this second hearing can be noticed and conducted by February 2011.

### **Third Hearing: Considering Proposals For Reform**

Commission staff recommends a third hearing to receive suggestions from various "open government" organizations and to review "best practices" from other local agencies to improve Oakland's ability to respond to public records requests. Depending on the response, the Commission can also begin deliberating on which options to recommend to both the City Council and administration. Additional meetings can be scheduled as necessary to complete this task.

### **Additional Hearing On The Citywide Records Management Program**

Commission staff has previously advised the Commission about its upcoming role in the process to develop a comprehensive Citywide Records Management Program. Under City Resolution No. 82908, the Commission will be asked to hold at least one public hearing and to provide the City Council with "a summary of public comments, analysis, and recommendations pertaining to the proposed program." **Attachment 1**. Based on the timetable specified in the Resolution and conversations with the City Clerk's Office, Commission staff anticipates that the Commission will be asked to conduct its public hearing sometime in early 2011.

The relationship between sound records management policies and the ability to respond to public records requests cannot be over-emphasized. Establishing a comprehensive records management program is essential to the City's ability to respond to public records requests. Thus in addition to the three hearings discussed in this memorandum, the Commission will need to accommodate an additional hearing on records management at

some point within the above-proposed hearing schedule. This additional hearing and subsequent report to the City Council may impact the scheduling of any of the above-proposed hearings.

Commission staff notes that at the October 4 meeting, the Commission had expressed a desire to complete its hearings on public records issues within the current terms of several Commission members. However, based on the proposals from the Sunshine Committee and the availability of staff during the month of December, it does not appear feasible that the Commission can meet this timetable. The Commission is also reminded that there will be three and possibly four new Commissioners seated by January 2011. It may be more efficient and effective for the newly constituted Commission to play the lead role in conducting the hearings, formulating the recommendations and advocating their adoption.

Commission staff recommends that the Commission consider the above-proposed hearing schedule and format, consider any alternatives, and direct staff to begin planning and implementing the hearing process.

Respectfully submitted,

Daniel D. Purnell  
Executive Director