

# CITY OF OAKLAND

## MEMORANDUM

**TO:** Mayor Quan, President Reid and Members of the City Council,  
City Administrator Santana, City Auditor Ruby and City Agency  
and Department Heads

**FROM:** Barbara J. Parker, City Attorney

**DATE:** December 7, 2011

**RE:** Urgent Notice re: Compliance with California Public Records Act

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In recent weeks, members of the public and the press have filed a large number of public records requests related to the "Occupy Oakland" protests. Many staff members have been working long hours to compile and sort through these records. I particularly want to recognize the hard work of the OPD team that is responding to many of these requests.

Unfortunately, despite hard work and good faith efforts by many departments, in a number of cases the City is failing to comply with the California Public Records Act ("Act" or "Public Records Act"), the state's open records law. This is not acceptable. Not only does the City's failure to comply with the Act expose the City to significant financial liability (cost of defending litigation and attorney's fees), it also violates our fundamental responsibility to operate transparently and make records available to the public promptly.

The purpose of this letter is to summarize the advice my Office has provided on an ongoing basis and answer some frequently asked questions. As always, please contact Open Government Coordinator Arlette Flores-Medina in my Office when you have questions about responding to Public Records Act requests.

I also want to clarify that our Office does not produce the records or prepare the responses on behalf of the City's departments except in unusual circumstances when we make arrangements to do so. We have provided templates and are available to review letters and review records when you have questions about whether they are exempt from disclosure. Because of the importance of providing public records to members of the public who request them, we enter requests in our data base, track compliance, and coordinate with departments.

I. Initial Response Letter

Responding appropriately under the law to Public Records Act requests is not optional. The City's clear duty under the Public Records Act is to immediately provide disclosable records (no longer than 10 **calendar** days following the date the City receives the request).

Within that 10-day period, the City must send a response letter that does one of the following:

- provides the requested records – with redactions if necessary
- states that no such records exist
- denies the request based on specific legal exemptions that must be identified in the response
- gives a date by which the department/agency anticipates it will provide the records and explains the reason for the delay
- based on "unusual circumstances," tells the requestor that an extension of up to 14 **calendar** days is required to determine whether the records or portions of the records are exempt. By the end of the 14 days, the City must send the requestor a determination about whether the records exist, whether they are exempt and when the City will provide any public records.

The Public Records Act provides only four reasons that justify a 14-day extension. You must cite one of the following reasons in the extension letter:

1. The City needs to search for, collect or examine a voluminous amount of records.
2. The City needs to search for and collect the requested records from a separate facility.
3. The City needs to consult with another agency with an interest in the records.
4. The City needs to compile data or construct a computer report to extract data.

II. What if I have some responsive records, but not others?

The law expressly states that the City must provide all available records promptly. If you are able to immediately provide some records but not others, it is very important to do so. Often the City can avoid litigation if it promptly produces

records that it can produce, keeps the requestor apprised of the City's progress and sends a letter requesting an extension of time.

### III. Withholding/Redacting

If the City plans to withhold any records or redact any documents, the City must send the requestor a letter indicating the specific code section that authorizes exemptions from disclosure. Many of the exemptions are specified in sections 6254 and 6255 of the Public Records Act, which is posted on the City Attorney's Web site.

Examples of exemptions are as follows:

- personnel related material, the disclosure of which would constitute unwarranted invasion of privacy
- attorney-client privilege
- pending litigation
- privacy (social security numbers, credit card numbers, personal phone numbers, home addresses, drivers license numbers, etc.)
- preliminary drafts/notes that are not retained in the ordinary course of business **if** public interest in withholding clearly outweighs public interest in disclosure.

The rule of thumb is that everything is public unless an exemption applies. The City Attorney's Office will advise whether the City can withhold or redact specific documents.

### IV. Text Messages/Email Records

As we advised in a public legal opinion on November 22, the Public Records Act requires disclosure of email and text messages that concern City business unless a particular message or portion of a message is exempt from disclosure under applicable law (e.g. attorney-client privilege, privacy laws).

Email and text messages relating to the conduct of the public's business are writings and, therefore, within the Act's definition of "public records" and subject to disclosure upon request by any member of the public.

In addition to emails and texts on city equipment, we have concluded that writings related to the business of a public entity on an official's private computer and cell phone are subject to disclosure under the Act. The Act does not limit the

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public's right to access writings concerning the public's business to writings on city equipment.

V. Conclusion

The recent increase in Public Records Act requests arising out of the "Occupy Oakland" protests and encampment presents an opportunity for the City to revisit its processes to assure timely provision of public records. The reality is that past administrations have viewed these requests as a low-priority burden, rather than recognizing their duty to provide information to the public about the City's business which we perform on behalf of public. I have every expectation of working with Ms. Santana to reverse this trend, and to make retention and disclosure of public records a high priority for all City departments.

Again, I would like to express my appreciation to those of you who are working hard with limited resources to fulfill the large volume of recent requests.

Please expect continued emails and phone calls from our Open Government Coordinator about pending requests. Although many of the departments are already doing so, all responsive letters should be cc'ed to Open Government Coordinator Arlette Flores-Medina.

Very truly yours,

A handwritten signature in cursive script that reads "Barbara J. Parker". The signature is written in black ink and is positioned to the right of the typed name.

Barbara J. Parker