

Stamp Date/Time Received:

2003

Complaint Number: 03-02

COMPLAINT FORM

Please Type or Print in Ink and Complete Both Sides of this Form.

This complaint concerns a possible violation of: (please check all that apply)

- The Oakland Sunshine Ordinance, California Public Records Act or Brown Act (Access to public meetings or documents.)
- Oakland Campaign Reform Act
- Oakland City Council's Rules of Procedure/Code of Ethics
- Oakland Limited Public Financing Act
- Oakland Conflict of Interest regulations
- Oakland Lobbyist Registration Act
- I am/We are not sure which specific law, ordinance or regulations apply. However I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s):

See Mr. Morodomi's letter, March 11, 2003, date of refusal.

The alleged violation occurred at the following place:

City of Oakland

Please provide specific facts describing your complaint. (Or attach additional pages as necessary.)

A "public document and information" request was made, by letter, February 6, 2003 to the executive directors of the, East Bay Zoological Society, the Oakland Museum of California, and the Chabot Space and Science Center. To date, long past the 10 day statutory requirement, there has been no response or reply. On On March 3, 2003, by letter, I attempted to enlist the assistance of Michelle Taylor Abney, "Open Government Coordinator" with the City Attorney's Office. Ms. Abney's supervisor, Deputy City Attorney, Mr. Mark

Please provide specific facts describing your complaint. (If additional space is needed.)

Morodomi responded by letter on March 11, 2003, (attached) with what can only be construed to be a direct and blatant refusal to comply with or assist in my public document and public information request. My response to Mr. Morodom is attached and is hereby set forth as, in part, a basis to this complaint.

This complaint is hereby lodged against Mr. Mark T. Morodomi and the three directors of the above named facilities, Zoo, Museum, And Chabot.

David E. Mix

The persons you allege to be responsible for the violation(s) are:

Mr. Morodomi City Attorney's Office, Deputy City Attorney

Mr. Dwayne Oslund Chabot Space and Science Center, Acting Director

Mr. Dennis Power Oakland Museum of California, Director

Mr. Joel Parrott East Bay Zoological Society, Director

Any witnesses who were involved and/or who can provide additional information are: (Please indicate names and phone numbers, if available.)

PLEASE NOTE:

There may be other laws that apply to the violation(s) you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filing this complaint. You should contact an attorney immediately to protect any rights available to you under the law.

By filing this complaint with the Public Ethics Commission it, and all other materials submitted with it, becomes a public record available for inspection and copying by the public.

| | |
|---|---------------------------------------|
| NAME: <u>David E. Mix</u> | PHONE NO. (Day) (510) <u>339 1519</u> |
| ADDRESS: <u>1133 Glencourt Dr.</u> | PHONE NO. (Eve) () _____ |
| CITY: <u>Oakland</u> STATE: <u>Calif.</u> ZIP: <u>94611</u> | FAX NO. () _____ |
| | E-MAIL _____ |

PLEASE RETURN THIS FORM TO:

Public Ethics Commission
One Frank Ogawa Plaza, 4th Floor
Oakland, CA 946121

Phone: (510) 238-3593
FAX: (510) 238-3315

ATTACHMENT 1

Item D-1
Date 10-1-04
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February 6, 2003

East Bay Zoological Society
Director Joel Parrott
P.O. Box 5238
Oakland, Calif. 94605

Re: Measure G
Campaign activity

Dear Mr. Parrott:

It would be appreciated very much if you would provide the following information regarding the Zoological Society's activity and particular use of the Zoo and Park facilities during the Measure G campaign:

- 1) An accounting of the number of patrons who used the Measure G free admission passes and the amount of revenue remitted (paid back) as a result of the use and loss of revenue of those passes. Who were the funds paid to?
- 2) Shortly after the March, 02 election the Zoo sponsored a special tour (a gratuity) for approx. 180 campaign volunteers and families. Please provide an accounting of the cost to the Zoo in lost gate revenue, parking fees, etc.
- 3) The Zoo provided free political promotional tours, (June 16, 01), for the board members of the Museum and Science Center. Please provide an accounting of the cost and lost revenue to the Zoo in entrance fees, parking fees, meals provided (lunch), etc.
- 4) Please provide an accounting of the use of the Zoo patrons membership mailing list as was used by the campaign in promotion of the Measure. Which mailings?
- 5) Please provide an accounting (cost to the Zoo) of all campaign mailings conducted by the Zoo to members and Board members, etc. (solicitation of campaign contributions, etc.). And an accounting of the funds received.
- 6) Please provide a full accounting of the use of the Zoo and Park facility for all campaign activity and use:
 - A) Use of grounds for signature gathering. (at front entrance, etc.)
 - B) Posting of large bill boards on the hill, etc.
 - C) Use of meeting rooms or any part of the facility for campaign rallies, campaign parties, campaign work, campaign material storage (lawn signs, etc.) campaign

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meetings, or any other campaign activity.

D) Facility designated and used as "Campaign Headquarters"

E) Education Center used for "phone banking".

Please show cost of use of all equipment, phones, copy machines, etc., that were not paid for directly by the campaign committee.

Please note that the cost to be assessed in the use of the facility is generally based on what the regular charge would be to an outside party for the same use.

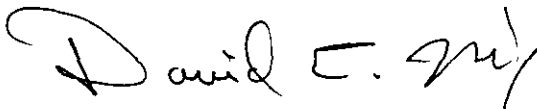
Or, what it would have cost the campaign to rent an office downtown and rent all the necessary equipment needed for the same function, (office machines, phones, fax machines, computers, parking fees, etc.)

It is a matter of record that the Zoo was used for campaign headquarters and a variety of political activities from signature gathering to phone banking and a large bill board on the hill. Any and all political activity is required to be reported. The question is only to the value to be placed on that usage and the amount to be reported as required by the FPPC and Government Code.

Please understand that this request entails items both required to be reported by the FPPC regulations, Government Code, and that of the California Public Records Act.

If you have any questions, please don't hesitate to give me a call. Your anticipated corporation in this matter is greatly appreciated.

Very truly yours.



David E. Mix

1133 Glencourt Dr.
Oakland, Calif. 94611

Ph 339 1519

cc: Michelle Taylor Abney
Open Government Coordinator

ATTACHMENT 2

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Date 10-4-04
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February 6, 2003

Oakland Museum Department
Director Dennis Power
1000 Oak Street
Oakland, Calif. 94607

Re: Measure G

Dear Mr. Power:

It would be appreciated very much if you could provide the following information:

- 1) An accounting of the number of patrons who used the Measure G free admission passes and the amount of revenue related to the use of those passes.
- 2) Shortly after the March, 2002 election the foundation sponsored a "thank you" party for the campaign volunteers with approx. 180 people in attendance.
 - A) What was the cost of this political function?
 - B) Was the cost or expenditure reported as a campaign contribution or as a campaign expense under the FPPC regulations and Government Code?
 - C) Was the event held at a public facility and was the use of the facility paid for? Please show an accounting for the use of the facility.
- 3) Did the Museum provide gratuitous tours of the Museum to political campaign workers and or volunteers? Please provide an accounting - cost to the City and amount to be reported under FPPC.
- 4) Did the Museum provide free political promotional tours (approx. June 16,01) for measure G to the board members of the Chabot Science Center and the Zoological Society? Please provide an accounting of those tours - cost to the City and amount to be reported under FPPC.
- 5) On June 7th, 2001 a Measure G political campaign committee meeting was held at the Museum Learning Center. Please provide an accounting of the rental fee for that use or for a like use (political) at any other time.
- 6) Please provide an accounting of the "membership" mailing list of the three facilities as was used by the campaign in promotion of the measure, as follows.

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- A) To what extent was the list used?
- B) Who authorized the use of the list?
- C) Who paid for the actual cost of the mailings?
- 7) Were campaign funds solicited by the Museum or Foundation from members or board members? Please provide an accounting of the cost of the solicitation and an accounting of the amounts and funds received.
- 8) During the course of the campaign, museum volunteers and others were mailed various forms of information, from the museum and by the museum staff, pertaining to the campaign. Please provide a financial accounting of that political activity, staff time utilized, cost of the material, mailing, and use of the museum facility, etc.
- 9) According to campaign filings, the Oakland Museum of California received payments as campaign expenditures of:
- A) \$50.00, coded as POS (postage, etc.) B) \$50.00, coded as OFC (office expense) and C) \$807.00, as LIT (campaign literature and mailing). Please provide an accounting.

Also, the reports show payments made to Museum employees, Jan Berkfeldt (Director of Development) of \$50.00 coded POS and a payment made to John Jennings (Membership Director) of \$130.00, coded CMP (campaign paraphernalia). Please provide an accounting of these funds.

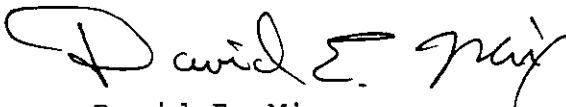
- 10) It is understood that museum employees maned the campaign phone banks at the Zoo. Please account for wages paid, compt time, vacation time, or any other type of remuneration, made to these employees.

Lastly, please provide a complete accounting of all other museum employees (Ming Yeung Lu, Jan Berkfeldt, etc.) who participated in campaign activity while gainfully employed at the Museum or who received any type of compensation (compt time, etc.) for campaign activity while away from the museum.

Please understand that this request entails items both required to be reported by the FPPC regulations, Government Code, and that of the California Public Records Act.

If you have any questions, please don't hesitate to give me a call. Your anticipated corporation in this matter is greatly appreciated.

Very truly yours.


David E. Mix

1133 Glencourt Dr.
Oakland, Calif. 94611
Ph 339 1519 Item 0-1

February 6, 2003

Chabot Space and Science Center
Dwayne Oslund
10000 Skyline Blvd.
Oakland, Calif. 94619

Re: Measure G

Dear Mr. Oslund:

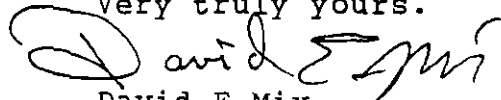
It would be appreciated very much if you would provide the following information:

- 1) An accounting of the number of patrons who used the Measure G free admission passes and the amount of revenue remitted as a result of the use of those passes. Who were those funds paid to?
- 2) Shortly after the March, 2002 election the Center sponsored a "thank you" party (a gratuity) for approximately 180 campaign volunteers (and families) by inviting them to participate in the Center's Haley's Comment event. What was the cost of that political function to the Center? (Lost gate revenue, parking fees, etc.)
- 3) The Center provided free political promotional tours (July 31, 01) for measure G to the board members of the Museum and the Zoological Society. Please provide an accounting of those tours - cost to the Center in lost revenue, gate fees, show fees, parking fees, etc.
- 4) Please provide an accounting of the use of the "membership" mailing list as was used by the campaign in promotion of the measure.
- 5) Please provide an accounting (cost to the Center) of all campaign mailings conducted by the Center to members and Board members, etc. (solicitation of campaign contributions, etc.). And an accounting of the funds received.

Please understand that this request entails items both required to be reported by the FPPC regulations, Government Code, and that of the California Public Records Act.

If you have any questions, please don't hesitate to give me a call. Your anticipated corporation in this matter is greatly appreciated.

Very truly yours.


David E. Mix

1133 Glencourt Dr.
Oakland, Calif. 94611
Ph 339 1519

ATTACHMENT 4

Item D-1

Date 10-4-04

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March 3, 2003

City Attorney's Office
Michelle Taylor Abney, OGC
One Frank Ogawa Plaza 6th Flr.
Oakland, Calif. 94912

Re: Public information request
Museum, Zoo, and Science
Center.

Dear Michelle:

Please find enclosed copies of public information request I sent to the Museum, Zoo and Science Center on February 6, 2003. Unfortunately, as of this date there has been no response from any of the three directors.

It is my understanding the California Public Records Act and the City of Oakland Sunshine Ordinance both provide a 10 day period in which a party is lawfully required to respond. It is obvious that time period has long expired.

I fully realize the particular information requested may involve some research and additional time in which to comply with my request. However, common courtesy dictates that a communication expressing that position should have been extended in a timely manner.

By this letter I ask that you assert your authority as Open Government Coordinator and assist in procuring the documents and information as requested.

Thanking you in advance, I remain, very truly yours.

David E. Mix

ph 339 1519

P.S. Did you have any luck locating the City Attorney Opinion I recently requested (Feb. 5th) concerning ballot measure signature gathering by non resident petitioners?

ATTACHMENT 4

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Date 10-4-04
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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney
Mark T. Morodomi

March 11, 2003

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254
(510) 637-0271

David E. Mix
1133 Glencourt Drive
Oakland, CA 94611

Re:

Dear Mr. Mix:

I have received your letter of March 3, 2003 to Michelle Abney, as well as your letters dated February 6, 2003 to the Chabot Space and Science Center, Oakland Museum Department, and the East Bay Zoological Society.

The California Public Records Act, the Sunshine Ordinance, FPPC regulations and the Government Code do not require these entities to do an accounting on the issues of your choice or answer interrogatories.

Very truly yours,

John A. Russo
City Attorney

By: 
Mark T. Morodomi
Deputy City Attorney

MTM:ww

ATTACHMENT 5

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Date 10-2-04
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March 15, 2003

Office of the City Attorney
Deputy City Attorney Mark Morodomi
One Frank Ogawa Plaza 6th Flr.
Oakland, Calif. 94612

Re: Public information
request

Dear Mr. Morodomi:

I am in receipt of your response and blatant refusal to abide by my "public document" request and plea for assistance made to Michelle Taylor Abney, Open Government Coordinator, by my letter of March 3, 2003. And, just so that we are absolutely clear, your contention that a request for an "accounting" does not constitute a document or public information request, is patently absurd.

As purely a practical matter, rather than unnecessarily erect hurdles in the path of a citizens request, wouldn't it seem more reasonable and pragmatic simply to have extended your cooperation and assistance in honoring the request.

From a legal standpoint, you couldn't be more out of line. The statutes governing the public's right to access information, (written or oral) couldn't be clearer. The introduction to the California Public Records Act more than amply makes the case.

The Legislator finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code, §6250) (emphasis added)

The City of Oakland by its Sunshine Ordinance reflects a very similar finding and purpose with the introduction of the Chapter, at Section 2.20.010, with:

A.) "A government's duty is to serve the public and in reaching its decisions to accommodate those who wish to obtain information about or participate in the process." (emphasis added).

At paragraph "B"

"This chapter is intended to assure that their deliberations and that the city's operations are open to the public." (emphasis added).

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And at paragraph "C"

"This chapter is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the city of Oakland can be fully informed and thereby retain control over the instruments of local government in their city."

The law is not particular as to how a request is made or what words are used, it doesn't even require that the request be in writing. The law merely asks that the records or information sought be reasonably described (§6253(b)). You are engaging in unwarranted contentiousness and arguing semantics over my use of the word or phrase "an accounting". My request is clearly stated under the law as a request for information pertaining to the conduct of the public's business as defined by Section 6252(e) of the Government Code.

" 'Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

Subdivision (f) of the same section even further defines "Writing", in part, "...and every other means of recording upon any form of communication or representation,..." Furthermore, the City of Oakland incorporates Section 6252 into the Sunshine Ordinance under Section 2.20.200, paragraph C as the definition of "Public information" and further clarifies it to be either in documentary form or as an oral communication.

The Sunshine Ordinance (§2.20.220) further details the procedure for access or release of "public information", in that, "...every department... shall designate a person...to **provide information, including oral information to the public about the departments's operations, plans, policies, and positions.**" Mark - What part of this don't you understand?

Additionally, Government Code, Section 6253.1(a), requires the public agency to assist the public in making "a focused and effective request that reasonably describes an identifiable record or records,...". The Code further lists various ways in which the agency is required to assist in the request and most notably, subdivision (3) provides that the agency shall even, "Provide suggestions for overcoming any practical basis for denying access to the records or information sought."

ATTACHMENT 6

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The law clearly requires that you "assist" rather than hamper or interfere with the public's right to obtain public records or information, oral or otherwise. And furthermore, Government Code (§6253) virtually makes all information and records "public" and requires that, unless they are exempt from disclosure by express provisions of the law (§6254), **"...upon a request for a copy of records that reasonably describes an identifiable record or records, (the agency) shall make the records promptly available..."**(emphasis added-§6253)

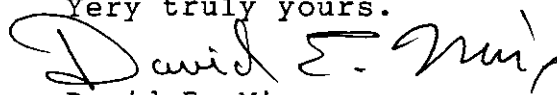
It should be clearly understood that my request for an "accounting" is in fact a request for records, information, or documents which are a result of the activity engaged in by the particular persons or entities. The usage fees, entrance fees, parking fees, etc. for any activity at the facility which were waived, must be recorded and a record kept. All employee activity, and especially payment of extraordinary compensation must be recorded and a record made and kept.

My request for an "accounting" is reasonably construed to mean the record keeping process, the statement of moneys, goods, or services received or expended and a disclosure thereof. My request is for "public records", there is no ambiguity about that. Your characterization of the request as an interrogatory is no more than subterfuge and a blatant and inexcusable attempt to thwart and obstruct a legitimate request and to interfere with the public's right to know.

By your refusal, as Deputy City Attorney and Department Head of "Open Government", to produce or assist in making these "public records", documents or information available as requested I am, by copy of this letter, submitting this matter as a public complaint to the City of Oakland Public Ethics Commission for a resolution.

Additionally, inasmuch as you are the City Attorney's representative and the Commission's legal advisor there is an obvious conflict of interest. Therefore, in accordance with Section 2.20.300, Subdivision C., I request that you recuse yourself from this issue.

Very truly yours.


David E. Mix

P.S. Contrary to your contention the regulatory statutes you named, including the FPPC, certainly do require a public disclosure and an "accounting".

cc: Daniel Purnell
Public Ethics Commission

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Date 10-4-04
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ATTACHMENT 6

SECTION 0.1 JOINT POWERS AGREEMENT TO CREATE
THE CHABOT OBSERVATORY AND SCIENCE CENTER

[By this Agreement the City of Oakland ("City"), the Oakland Unified School District ("District"), and the East Bay Regional Park District ("EBRPD"), (together the "Agency Parties") under the authority granted to them by California Government Code Section 6500 et. seq., join together to create a public entity, separate and apart from the signatories, which is empowered to plan, construct, govern and operate the new Chabot Observatory and Science Center (the "Premises") at Joaquin Miller Park on real estate owned by the City and described in Exhibit B attached (the "Site"). Both the public entity, and the Site and the Premises shall be referred to as the new Chabot Observatory and Science Center (the "Center"). "Center" shall be synonymous with "Joint Powers Agency" as referred to in Government Code Section 6500. The "Effective Date" of this Agreement shall be May 26, 1989. *

SECTION 0.2. THE MISSION OF THE CHABOT
OBSERVATORY AND SCIENCE CENTER

The mission of the Center shall be the pursuit and practice of quality science education. While the Center's focus shall be astronomy, emphasizing the resources of a planetarium and observatory, programs will include the allied, earth, and environmental sciences to take the fullest advantage of its

ATTACHMENT 7

item 0-1

Date 10-9-09

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CITY OF OAKLAND

Office of the City Attorney

Legal Opinion

To: Public Ethics Commission

From: Office of the City Attorney

Date: February 17, 2004

RE: Jurisdiction of the Public Ethics Commission over and Applicability of Local Document Disclosure Requirements to Zoo Society, Chabot Foundation and Museum Foundation

I. Introduction

Complainant David Mix ("Mix") made requests for production of records from three nonprofit organizations, the East Bay Zoological Society ("Zoological Society"), Chabot Space and Science Center Foundation ("Chabot Foundation") and the Oakland Museum of California Foundation ("Museum Foundation"). These nonprofit organizations are among the many nonprofits that do business in Oakland. Mix has asked the Public Ethics Commission's assistance in obtaining the records he requested. On October 29, 2003, the Public Ethics Commission formally requested that this Office provide a legal opinion regarding whether the Sunshine Ordinance applies to the three nonprofit organizations.

II. Questions

1. Does the Public Ethics Commission have jurisdiction over the nonprofit organizations' records disclosure?¹
2. Assuming that the Public Ethics Commission has jurisdiction over the nonprofit organizations' records disclosure, does the Sunshine Ordinance require that these nonprofit organizations give a member of the public their corporate records?²

III. Summary Conclusion

The Public Ethics Commission does not have document disclosure jurisdiction over the Zoological Society, the Chabot Foundation or the Museum Foundation. The

¹ This opinion does not determine the applicability of the open meeting provisions of the Sunshine Ordinance to the three nonprofit organizations.

² The City Attorney's Office asked all persons interested in this matter to submit any evidence or argument on the issues this opinion addresses. Such interested persons included David Mix, all persons who made public comment on this issue before the Public Ethics Commission, a newspaper columnist and each of the nonprofit organizations. Only the Museum Foundation submitted argument and evidence. In researching this issue, the City Attorney's Office contacted the California First Amendment Coalition. At the request of the PEC, the Oakland City Attorney's Office requested the San Francisco City Attorney's Office to review this opinion.

Commission's jurisdiction is limited to "agencies," "departments," and "local bodies" of the city government. The definitions of these terms in the Sunshine Ordinance do not include nonprofit organizations such as the Zoological Society, the Chabot Foundation, and Museum Foundation. We note that because the PEC does have jurisdiction over the City's Museum Department with respect to document disclosure, any Museum Foundation document that the Museum Department has in its used or retained is subject to the Sunshine Ordinance.

II. Background Facts³

A. The Zoological Society

The Zoological Society is a non-profit public benefit corporation whose stated purpose is to "acquire, establish, maintain, operate and control zoological gardens" for the benefit of the public. (Articles of Incorporation Alameda County Zoological Society (1936).) It is authorized to accept, hold and transfer real and personal property to further this purpose. (*Id.*)

The Zoological Society contracts with the City to operate the Oakland Zoo. (Management and Park Agreement (1994).) The City owns the zoo property, the fixtures and the zoo animals. The operating agreement authorizes the Zoological Society to collect and keep all money from "all revenues collected at the zoo and park." The Zoological Society is authorized to set and determine prices for services and to set admission fees "with City Council approval." The City also funds two zookeepers and provides a direct payment of approximately \$130,000 per year. The initial term of the agreement was ten years. The Zoo Society has the option to extend the term of the agreement for an additional five years. The City and the Zoo Society executed the agreement before the City Council passed the Sunshine Ordinance.

B. The Chabot Foundation

The Chabot Foundation was incorporated as a California non-profit public benefit corporation in 1990. Its stated purpose is to provide services and funds to the Chabot Space and Science Center. The Chabot Space and Science Center is a joint powers authority ("Chabot JPA") that was formed in 1989 by the City of Oakland, the Oakland Unified School District and the East Bay Regional Park District. Under state law, a joint powers agency is a separate and independent governmental entity. (Government Code section 6500 et seq.) The Oakland City Council appoints three of the 11 members of the Chabot JPA Board, one of whom is a member of the City Council. Under the joint powers agreement, the Chabot Foundation is identified as a separate legal entity which has no authority or responsibility for operating the science center facility. The Chabot JPA sets and keeps the admission fees for the facility. The City of Oakland owns the land upon which the center sits and leases it to the Chabot JPA.

The same individuals sit on the JPA and Chabot Foundation boards.

³ Many of these facts comes from the PEC staff report in Complaints No. 02-03, 02-08.

C. The Museum Foundation

The Museum Foundation was incorporated as a California non-profit public benefit corporation in 1989. Its Articles of Incorporation state that its purpose is to develop, cultivate and advocate for the Oakland Museum. The Articles of Incorporation authorize the foundation to receive grants, donations and "other funds... for the benefit of" the Oakland Museum reserve for itself all other powers conferred upon nonprofit corporations under state law. The Oakland City Attorney's Office drafted and filed the articles of incorporation for the foundation. At that time, the Oakland Museum Association ("OMA"), a nonprofit corporation that did fundraising for the Museum, transferred all its assets to the Museum Foundation, and the OMA dissolved. The dissolution was part of an agreement with the OMA to create a new framework for the Museum fundraising and governance. That framework included the creation of a Museum Board of Commissioners and further defined roles for the Museum Director. Mayor Wilson presented the plan for the framework to the City Council on April 4, 1989.

The Museum Foundation's Bylaws provide that the Mayor appoints the trustees of the Foundation, subject to confirmation by the City Council and the Foundation's Board of Trustees.

The City owns the land, buildings and artwork that comprise the Oakland Museum. The Museum Foundation provides its own employees to help run the facility who frequently work alongside City staff. The City's Museum Director also is the Executive Director of the Museum Foundation. Most, if not all, of the Museum's marketing, fundraising, membership, and educational departments are staffed by Foundation employees.

According to Museum Foundation staff, the City receives a portion of the annual museum admission fees in an amount equal to the lesser of \$125,000 or 50 percent of the admission fees after deduction of the Foundation's staffing costs.

III. Analysis

A nonprofit organization is not automatically subject to the Public Records Act simply because it supports public institutions or operates public facilities. California State University v. Superior Court 90 Cal.App.4th 810, 829 (2001) (nonprofit California State University Fresno Association, Inc., supporting a state agency, the California State University, Fresno, is not subject to state Public Records Act.)⁴ The California Court of Appeal decision is consistent with the United States Supreme Court's ruling regarding the application of the federal Freedom of Information Act. (Forsham v. Harris, 455 U.S. 169 100 S.Ct. 977 (1980) (even a private organization fully funded by the federal government is not subject to federal Freedom of Information Act).)⁵

In these cases, consistent with the well established rules to determine the meaning and intent of a statute, the courts examined the words of the law to determine whether the

⁴ The Association operates all the University's commercial enterprises, including the University's bookstore, food services, housing and student union. (Id. at 817-818.)

⁵ The American Red Cross, though it receives significant federal funding, is not covered by the federal Freedom of Information Act. (Reporters Committee for Freedom of the Press Webpage, http://www.rcfp.org_fqiact/guide_c.html.)

entity was subject to the applicable government disclosure requirements. "The court's role in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining the Legislature's intent, a court looks first to the words of the statute. It is the language of the statute itself that has successfully braved the legislative gauntlet. When looking to the words of the statute, a court gives the language its usual, ordinary meaning. If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs." (California State University, 90 Cal.App.4th at 829, citations and interior quotation marks omitted.) The courts reasoned that if their respective legislatures had intended to reach auxiliary organizations, they would have said so specifically by using terms such as "state corporation" or "state controlled corporation." (Id.)

Based on this well established methodology, the answers to the questions you asked turn on the language of our City Charter and local Sunshine Ordinance.

A. The Public Ethics Commission's Jurisdiction

City Charter Section 202, gives the City Council the power to define the jurisdiction of the Public Ethics Commission.

(b)(5) Functions, duties, powers, jurisdiction and terms. The City shall by ordinance prescribe the function, duties, powers, jurisdiction and the terms of members of the Commission, in accordance with this Article.

The City Council defined that jurisdiction in Municipal Code section 2.24.020.⁶

It shall be the function and duty of the Public Ethics Commission, for and on behalf of the city, its elected officials, officers, employees, boards and commissions:

...
E. Oversee compliance with any ordinance intended to supplement the Brown Act or Public Records Act.
(*Emphasis added.*)

The Sunshine Ordinance is the "ordinance intended to supplement the Brown Act or Public Records Act." Thus the law grants the PEC jurisdiction over the Sunshine Ordinance and not the Brown Act and Public Records Act themselves. Any examination of these issues must therefore start with the Sunshine Ordinance.⁷

B. The Disclosure Provisions of the Sunshine Ordinance

The issue here is whether the three nonprofit organizations are covered by the Sunshine Ordinance's public disclosure requirements which are set forth in Municipal Code Sections 2.20.180 to 2.20.260. Those provisions apply only to (1) "departments," (2) "agencies," or (3) "local bodies" of the City of Oakland:

⁶ All citations are to the Oakland Municipal Code unless otherwise specified.

⁷ The PEC also asked whether the three nonprofits are covered "local agencies" under the state Public Records Act. Since the PEC only has jurisdiction over the Sunshine Ordinance, it cannot determine whether the entities must comply separately with the state Public Records Act.

Release of public records by a local body or by any agency or department, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in any particulars not addressed by this Article. The provisions of Government Code Section 6253.9 are incorporated herein by reference. (Section 2.20.190, emphasis added.)

By its terms, the Sunshine Ordinance does not apply to organizations such as a "controlled corporation" or "local corporation" of the City of Oakland. (See California State University, 90 Cal.App.4th at 829.)

C. Are the nonprofit organizations "agencies" or "departments" of the City of Oakland?

The Sunshine Ordinance defines "agency" and "department." Agency means "an agency of the City of Oakland." (Section 2.20.180(A).) "Department" means "department of the City of Oakland or a department of the Port of the City of Oakland." (Section 2.20.180(B).) The plain meaning of this language simply does not include nongovernmental organizations. (See California State University, 90 Cal.App.4th at 829.)

Even if the plain meaning of the terms "agency" and "department" were not clear, ambiguities in the language must be resolved by examining the context of the language and construing the language so as to harmonize the law both internally and with related ordinances. (Woods v. Young 53 Cal.3d 315, 323 (1991).) Thus the Sunshine Ordinance must be harmonized with the City Charter and other City ordinances.

The City Charter provides that the City Council creates agencies and departments by passing ordinances. (Charter Section 600.)

Section 600. Administrative Organization Authorized.

The Council shall by ordinance provide the form of organization through which the functions of the City under the jurisdiction of the City Manager are to be administered. Any combination of authorized duties, powers and functions which in the judgment of the Council will provide the most efficient and economical service possible, consistent with the public interest and in keeping with accepted principles of municipal administration, may be authorized by such ordinance. All departments or other administrative agencies so created shall be administered by the City Manager or by a department head or other officer appointed by and responsible to him. (Emphasis added.)

City Council has created the following "agencies" by passing ordinances: Police Services, Fire Services, Financial Services, Public Works, Life Enrichment, and Community and Economic Development. (Sections 2.29.020-2.29.070.) Ordinances have created "departments": Office of Information Technology, Office of Personnel Resource Management, Office Retirement and Risk Administration, Department of Arts and Cultural Affairs, Administration, Aging, Health and Human Services, Library Services, Museum Services, and Parks and Recreation. (Sections 2.29.080, 2.29.060.)

The Chabot Space Foundation, the East Bay Zoological Society, and the Museum Foundation are not agencies or departments of the City; nor were they created by ordinance. Thus, construing the language of the Sunshine Ordinance in harmony with Section 600, nongovernmental entities such as the Zoological Society, the Chabot Foundation, and the Museum Foundation are not agencies or departments of the City of Oakland.

D. Are the nonprofit organizations "local bodies?"

If the nonprofit organizations are "local bodies" they would be covered by the Sunshine Ordinance. (Section 2.20.190.) The Sunshine Ordinance defines "local body" as follows:

- (1) the Oakland City Council, the Oakland Redevelopment Agency, and the Board of Port Commissioners;
- (2) any board, commission, task force or committee which is established by City Charter, ordinance, or by motion or resolution of the City Council, the Oakland Redevelopment Agency or the Board of Port Commissioners;
- (3) any advisory board, commission or task force created and appointed by the Mayor and which exists for longer than a 12-month period; and,
- (4) any standing committee of any body specified in subsections (E)(1)(2) or (3). (Section 2.20.030(D).)

1. The Zoological Society and Chabot Foundation

Clearly, the Zoological Society and the Chabot Foundation are not "local bodies" as that term is defined in the Sunshine Ordinance. They are not the Oakland City Council, Redevelopment Agency or Board of Port Commissioners. They were not created by ordinance, motion or resolution of the council and they are not advisory boards, commissions or task forces appointed by the Mayor.

2. The Museum Foundation

Because of the unique history of the Museum Foundation, we discuss the application of the disclosure obligations separately,

The Museum foundation is certainly not the "Oakland City Council, the Oakland Redevelopment Agency, and the Board of Port Commissioners." (Section 2.20.030(D)(1).)

The Museum Foundation is not a "board, commission, task force or committee." (Section 2.20.030(D)(3).) The Museum Foundation was not created by City ordinance. Boards and commissions are generally created by ordinance. (City Charter section 601.)

Section 601. Boards and Commissions.

The Council may create by ordinance such operational, advisory, appellate or rule-making boards and commissions as may be required for the proper operation of any function or agency of the City and prescribe their function, duties, powers, jurisdiction and the number of board and commission members, their terms, compensation and reimbursement for expenses, if any, subject to the provisions of this Article. Members of

boards and commissions shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council. Vacancies shall be filled for any unexpired term in the same manner as the original appointments were made.

In addition, looking at the framework of city law, the City does have a number of "boards" that have been "established" by the City Council: City Planning Commission and Landmarks Preservation Advisory Board. Civil Service Board Oakland Taxation and Assessment Board of Review (Section 5.04.550), Business Improvement District Advisory Board (4.48.190), Residential Rent Adjustment Board (Section 8.22.040), Driveway Appeals Board (12.04.310) Housing Residential Rent and Relocation Board (Section 15.08.100) Vision Obscurement Appeals Board (Section 10.60.040), and Driveway Appeals Board (Section 12.04.290).

The Museum Foundation is not like any of these other boards. These boards are responsible to the City of Oakland; the board of directors of the Museum Foundation have no fiduciary duties toward the City of Oakland. Their fiduciary duties lie solely with the nonprofit organization. The City boards are creatures of local law; the Museum Foundation exists and is a separate person under state law. Members of the City boards may be removed by the City Council; the City Council has no power to remove the directors of the Museum Foundation.

Finally, the legislative history of the Sunshine Ordinance indicates that the Ordinance specifically intended that nonprofit organizations may follow the open meeting provisions of the Sunshine Ordinance but not the document disclosure provisions. The original version of the Sunshine Ordinance provided that nonprofit organizations involved with City functions comply only with the Brown Act, the state's open meeting law.

A contract between any body covered by the Sunshine Ordinance and a multimember body which has been transferred governmental authority must require that any meeting of the multimember body concerning the subject matter of the transferred authority be conducted pursuant to the Brown Act. (Former Section 2.20.040 (A).)⁸

⁸ The current version of that section reads: "(A) To the extent not inconsistent with state or federal law, a local body shall require, as a condition of any express delegation of power to any public agency, including joint powers authorities, or other person(s), whether such delegation of power is achieved by legislative act, contract, lease or other agreement, that any meeting by such a public agency or other person(s) at which an item concerning or subject to the delegated power is discussed or considered, shall be conducted pursuant to the Ralph M. Brown Act (Government Code Section 54950 et seq.).

(B) To the extent not inconsistent with state or federal law, a private entity that owns, operates or manages any property in which the City, Redevelopment Agency, or the Port Department has or will have an ownership interest, including a mortgage, and on which property the private entity performs a governmental function or service, shall conduct any meeting of its governing board at which an item relating to the administration of the property or the public function or service is discussed or considered subject to the following conditions:

(1) Such meetings need not be formally noticed, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the meeting be made available upon request;

(2) Such meetings need not be conducted in any particular location to accommodate

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The recent amendments to the Sunshine Ordinance did not change this dichotomy. In other words, where the Sunshine Ordinance intended to apply to nonprofit organizations, it did so expressly. It did not do so for the document disclosure requirements.

While the members of the foundation board are appointed by the Mayor, (Museum Foundation Bylaws Section 5.04.) the Museum Foundation is not an "advisory board, commission or task force." (Section 2.20.030(D)(3).) The foundation does not exist to provide advice to the Mayor or act as a task force to tackle a specific City problem or project.

In sum, the Museum Foundation is not a "local body."

E. Does a nonprofit organization's contractor status with the City cause application of the document disclosure provisions of the Sunshine Ordinance?

1. The Zoological Society

Although the Zoological Society contracts with the City to operate the City's Zoo facilities, no authority extends unconditionally the Sunshine Ordinance's document disclosure provisions to contractors of a government agency.⁹ The Sunshine Ordinance incorporates the definition of "public record" in state law, whose reach extends to documents "prepared, owned, used or retained" by a local agency.

"Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (Government Code section 6252(e), emphasis added.)

As discussed earlier, the Sunshine Ordinance did contemplate "openness" with regard to private contractors who operate City assets or exercise governmental authority. The Sunshine extended existing law to require those contractors to comply with the open meeting

spectators, although spectators shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy;

(3) Such business meetings need not provide opportunities for comment by spectators, although the governing board may, in its discretion, entertain questions or comments from spectators as may be relevant to the item considered; and,

(4) The private entity or persons may restrict the attendance of spectators only to the specific item(s) directly relating to the administration of the property or of the public function or service and, as to such specific item(s), may prohibit the attendance of spectators during the discussion or consideration of any item that would be the permitted subject of a closed session hearing under the Ralph M. Brown Act.

⁹ For the purposes of analysis, this is not a situation where the government body creates a document and gives the document to an agent. Mr. Mix seeks documents created by the foundations, not documents created by the City then turned over to the foundations. "Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter." (Government Code § 6270 (a).)

provisions of the Sunshine Ordinance. (Section 2.20.040.) That extension did not include the document disclosure provisions.

The definition and case law interpreting the definition of a "public record" under the Sunshine Ordinance has not extended to contractors. However, please note that the contract between the City and the Zoological Society does require that the society provide reports to the City. Those documents are subject to the jurisdiction of the PEC.

2. The Museum Department

The Museum Services Department is a department of the City and therefore covered by the disclosure provisions of the Sunshine Ordinance and subject to the jurisdiction of the PEC.

If a Museum Foundation document is "used" by a City employee or "retained" in a City owned computer or filing cabinet, that document would be a public record of the Museum Department. This is a question of fact and can only be determined on a document by document basis and which could be addressed by the PEC.

Very truly yours,

John Russo
City Attorney

By: 
Mark Morodomi
Supervising Attorney

MTM:ww

ZOO SOCIETY
Bylaws

a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

6.7 Any member in good standing may nominate himself or any other member in good standing for election to the Board at the next annual meeting of members by making such nomination, in writing, to the Nominating Committee not less than sixty (60) days prior to the date of the annual meeting, and the Nominating Committee shall present all such nominations to the members at the annual meeting. Nominations to fill vacancies on the board at any special meeting of members called for such purpose may be made in writing to the Nominating Committee at least five (5) days prior to the date of such meeting.

7. BOARD OF TRUSTEES

7.1 Powers. Subject to the provisions of the Nonprofit Public Benefit Corporation Law and any limitation in the Articles of Incorporation and Bylaws of the Society, the activities and affairs of the Society shall be conducted and all corporate powers shall be exercised by or under the direction of a board of directors which shall be denominated the "Board of Trustees" (hereafter, the "Board"). The Board may delegate the management of the activities of this corporation to any person or persons, management company, or committee however composed, provided that the activities and affairs of this corporation shall be managed

and all corporate powers shall be exercised under the ultimate direction of the Board.

7.2 Composition of Board; Responsibilities. The Board shall consist of twenty-five (25) members, one of whom shall be the Executive Director of The Oakland Zoo and one of whom shall be a representative of the Docent Council. The remaining members shall be selected from a board cross section of the people of the Bay Area. Except for the Executive Director, all Board members shall serve on at least one (1) of the Standing Committees of the Board; the Executive Director may, but shall not be required to, serve on one or more committees of the Board. No member of the Board (other than the Executive Director) may be an employee of the Society and no Board member shall receive remuneration from it for service in fulfilling his or her duties as a Board member.

7.3 Term of Office. Except for the President of the Docent Council, who shall remain as a Board member for so long as he or she is President of the Docent Council, the Trustees shall serve a three (3) year term, with no fewer than eight (8) Trustee positions expiring at the annual meeting of members following the end of each calendar year. A Trustee shall be limited to two (2) full, consecutive terms of office, after which the Trustee will not be eligible for reelection to the Board until he or she has been off the Board for at least one (1) year.

7.4 Vacancies. Subject to the provisions of Section 5226 of the California Nonprofit Public Benefit Corporation Law, any Board member may resign effective upon giving written notice to

March 9, 2003

Oakland Museum of California
Executive Director Dennis Power
1000 Oak Street
Oakland, Calif. 94607

Re: Measure G, Public
Records request.

Dear Mr. Power:

The following is an additional public records and information request to that of February 6, 2003. My apologies for not having included these items in that earlier request.

- 1) Please provide a copy of the following:
 - A) The agreement (contract) entered into with the Tramutola Company for the promotion of Measure G.
 - B) The agreement (contract) entered into with the Evans/Mc Donough Company for the political survey relating to the bond measure, known then as "Education for a New California"
 - C) The "Concept Paper" for the then proposed bond measure, Education for a New California (Measure G).
 - D) The "workbook" distributed at the May 24, 2001 Board Meeting (as reported at the meeting) containing information on the proposed bond measure.
- 2) Were signatures, to qualify the measure for the ballot, gathered at the 2001 "Black Expo" held at the Kaiser Events Center, (city property) in the summer of 2001.
- 3) Where were the bond measure meetings held, Dick Spees office at City Hall or other?
 - A) Which employees or Department Directors participated in and attended those meetings.
 - B) How many meetings took place or were held?
- 4) According to Director Richard Griffoul, (following the election) an ad was placed in the news paper thanking Oakland voters for supporting Measure G. Who authorized or directed the ad to be placed, what was the cost of the ad and from which museum account was it paid? Please provide a copy of the ad.

ATTACHMENT 10A

- 5) It was reported in the "news" on several occasions preceding the election and in Mr. Giffoul's March 11, 02 letter that, a nonprofit foundation is supposedly allowed to make campaign contributions up to 10% or 20% of its general funds. Additionally, there are references in the museum minutes regarding this notion.

Who advised you or indicated that, that contention (as above) was lawful or correct. Was it the City Attorney, s Office or an outside federal tax attorney? Was it derived from Dick Spees' Office or someone else in Oakland City Government? **Who** created this contention or notion?

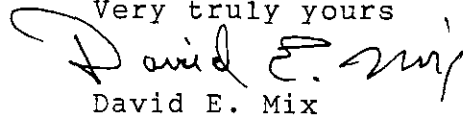
- 5) It is reported in the Executive Committee Minutes (May 17, 01) that, "Donations from individuals isn't tax deductible, which might make it harder to solicit funds." Also, the last line of the "Action" motion to contribute to the campaign (same meeting) reads, **"Every effort will also be made to solicit funds from donors"**

Inasmuch as no funds (only one exception) were reported as coming from donors, this begs the obvious question. Were in fact funds solicited and received but not reported as "campaign contributions" but instead, received and reported as merely Museum donations?

- 7) In consideration of the tremendous amount of work and activity as reported in the various minutes and by other sources involving museum officers and employees working on and participating in the Measure G campaign during regular business hours and non-business hours whereby they received other remuneration for their activity, please provide a comprehensive report and accounting of all hours and time involved.

Once again, your anticipated cooperation in this matter is greatly appreciated. Should you have any questions regarding this matter or this public document and information request, please do not hesitate to contact me. Also, since a great deal of this information can simply be expressed verbally, in the interest of time, I would be more than happy to meet with you or your representative in order to facilitate this request. I await your invitation.

Very truly yours


David E. Mix

Ph 339 1519

cc: Michelle Taylor Abney
Open Government Coordinator

ATTACHMENT 10A

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March 9, 2003

Oakland Museum of California
Executive Director Dennis Power
1000 Oak Street
Oakland, Calif. 94607

Re: Campaign contribution
Proposition 40

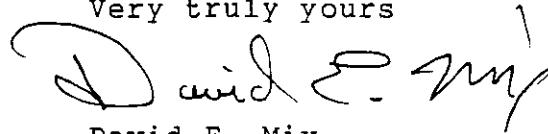
Dear Mr. Power:

As was reported in the Board Meeting minutes of February 28, 2002, the Oakland Museum of California made a political campaign contribution in the amount of twenty five thousand dollars (\$25,000.) to the "Yes on Proposition 40" campaign. (State - clean water, clean air, etc. bond measure).

Please provide me with a copy of the check representing the contribution and a verification as to which museum account the check was drawn.

Your assistance in this matter is greatly appreciated.

Very truly yours



David E. Mix

Ph 339 1519

ATTACHMENT 10B

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March 13, 2003

Oakland Museum of California
Executive Director Dennis Power
1000 Oak Street
Oakland, Calif. 94607

Re: Public document
request

Dear Mr. Power:

Under item #9 of my February 6, 2003 document request I asked for an accounting of funds paid to various employees by the Measure G campaign committee.

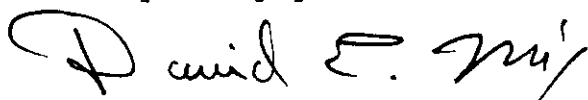
Unfortunately an employee, Ming Young Lu, who also received a payment from the campaign committee was overlooked. The reports filed indicate he received \$122.00, coded CMP, (campaign paraphernalia). Please provide an accounting of the funds he received as well as the others previously requested.

Also, should there be other employees of the Museum or the Foundation or employees of the other two entities of which you may be aware, who also received payments from the campaign committee, please include an accounting of their payments as well.

In order to expedite and simplify this request I have enclosed a list of the reported payments made to various individuals by the campaign committee. It is simply a matter of whether or not any of these individuals are employees or by what means were they connected with the campaign.

Your anticipated cooperation in this matter is greatly appreciated.

Very truly yours



David E. Mix

ph 339 1519

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1 FRANK H. OGAWA PLAZA, 9TH FLOOR • OAKLAND, CALIFORNIA 94612
 CULTURAL ARTS AND MARKETING DEPARTMENT

(510) 238-2103
 FAX (510) 238-6341
 TDD (510) 839-6451

November 4, 2003

Mr. David E. Mix
 1133 Glencourt Drive
 Oakland, CA 94611

Dear Mr. Mix:

This is to respond to your request for information in your letter dated October 1, 2003, addressed to Jayne Becker. Ms. Becker responded to you in her letter of October 28, indicating she and I had met and that I would provide what information I could. In your request you attached what you referred to as "revised versions of . . . previous records requests." That list is titled "Public Records Request, Oakland Museum of California," and dated September 30, 2003. Therefore, upon completion of this request there are no outstanding requests regarding the museum. I, of course, have no information on the Oakland Zoo. In the body of this letter I will be referring to the City of Oakland ("city"), the Oakland Museum of California ("museum"), and the Oakland Museum of California Foundation ("foundation").

Your letter goes on to reference several other requests to various people and with various dates. I can only respond to requests sent directly to me or asked for by the city associate to whom you sent your request. I will search my files for any outstanding requests and report on those toward the end of this letter.

I also want to go on record that I honored your request to visit the museum and examine files and records in storage. You did so on October 7 and, over about a four-hour period, examined the contents of nine boxes of old administrative records, all from the late 1980s and early 1990s. You asked us to photocopy approximately 130 pages, which you believed relevant to your requests, and you took those documents with you. You asked for no additional information at that time.

You asked again if you could visit the museum and examine certain file boxes in more detail and did so on October 27. Again, over about a three-hour period you extracted approximately 283 pages you believed relevant to your search. We could not make copies for you at the time. The copies you requested, in their entirety, are enclosed and the packet is marked "October 27, 2003, Records Request."

Also on the 27th you requested a copy of the foundation's 2001/02 and 2002/03 financial reports and audits. I gave those to you at the time and you took those copies with you.

**Response to October 1, 2003, Public Records Request
 And List Dated September 30, 2003**

- A. Contracts and operating, management, or service agreements between the city and the entities listed below.
 - 1. Museum Foundation. There is no operating contract or agreement between the city and foundation. Creating a city commission or board requires an ordinance being passed by city council. A search of city and foundation records indicates that all potentially relevant ordinances

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by the city relate to the Oakland Museum/Museum of California Commission and not the foundation. The only connection that can be found between the city and foundation is owing to the foundation's bylaws, which you have, and which give the mayor and city council the authorization to appoint trustees and to approve changes in the bylaws specifically as it regards election, terms, and number of trustees. All other amendments may be made by the trustees alone.

2. Women's Board. The only existing document between the city and the Oakland Museum Women's Board is enclosed and titled "Collector's Gallery Management and Operating Agreement." It has expired and the city and Women's Board are still operating under the same terms as in the original agreement.
 3. Gift Shop/Bookstore. There is no operating agreement between the city and Museum Store, or between the city and foundation in regard to the Museum store.
 4. Restaurant. The Museum Restaurant is operated through an agreement between the city and Grace Street Catering. The documents between the city and the restaurant operator are attached. The first is titled "Resolution Authorizing a One-Year Contract with Grace Street Catering to Provide Food Services at the Oakland Museum Commencing January 1, 1990." The resolution is followed by a staff memo relating to the resolution, and that is followed by the agreement itself titled "Food Services Concession Agreement." The agreement was extended on a month-to-month basis and the city and service provider are operating under the same terms as in the original agreement. The documents giving the extension are provided, titled "Resolution Authorizing a Month-to-Month Contract Extension to Grace Street Catering for Food Services at the Oakland Museum."
 5. Parking Garage. Operation of the museum parking garage is through an agreement between the city and Douglas Parking Company. The relevant document is attached and has the lead line "Article I: Off-Street Parking Facilities," followed by agreement attachments and relevant memos.
 6. Vending Machine Company or Service Provider. Vending machine contracts citywide are handled by the city's department of Parks and Recreation. I have no contracts and agreements.
 7. Public Telephone Service Provider. Pay telephones are provided as a service to visitors. A copy of the agreement with SBC is enclosed.
 8. Any and All Others.
 - a. Conservation Lab. The city has an agreement with the foundation to occupy and use the foundation's Conservation Laboratory located at 9th and Fallon streets. The city resolution and lease agreement are enclosed; see documents beginning with the title "Resolution No. 76916" and the "Basic Lease Information" following.
 - b. ATM Machine. As a service to visitors the foundation provides an ATM machine near the museum restaurant because the restaurant does not take credit cards. A copy of the agreement is enclosed and titled "Automatic Teller Machine Placement Agreement."
- B. Financial reports for five years for the entities listed below, with the intention of determining whether the city or foundation receives revenues. (Since the intention is to determine whether the city or foundation receives the revenue, no justifiable purpose is served by providing the information on a monthly basis. Knowing the ups and downs of monthly variation provides no insights, would be costly and time consuming to produce, and would cause significant hardship on the small museum

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staff devoted to accounting. Therefore, with the exception of the restaurant and parking garage, for which data exist and only photocopying is necessary, I provide the financial information requested on an annual basis.)

The city budget and follow-up financial reports are developed by city staff and approved by city council. Details on how that is done would have to be obtained from the city's Budget and Finance Department. In the case of the foundation, budgets and follow-up reports are prepared by foundation staff, with oversight by a city staff member who is appointed by the director for that purpose, and approved by the foundation's board of trustees. An annual audit and financial statement by an independent accounting firm are done for, and paid for, by the foundation.

All revenue taken in by the foundation is for the restricted purpose of museum operations. It goes primarily for temporary exhibitions, education programs and community events, promotion and advertising, fund raising, and support for curatorial work in cases where city staff have been lost owing to budget cutbacks.

In some cases cited below the data for 1998/99 are reported as "missing." This is owing to conversion to a new computerized accounting system in 1999/2000. The data are not actually gone, but instead have been commingled in a larger category and not separated into the specific category you have asked for. The data are separable for 1999/2000 and in following years.

1. Collectors Gallery. The Collectors Gallery is a project of the Oakland Museum Women's Board, a separate nonprofit corporation operating at the museum. Revenue is from artworks and crafts rented and sold and is received directly by the Women's Board. Expenses (including their staff salaries) are paid directly by the Women's Board. Monthly financial reports, if any exist, are not received by the museum. I cannot see how monthly statements serve you any better than annual ones. However, to obtain monthly records, if you truly need them, contact the Collectors Gallery Manager Mary Ellen Landes at the museum address. I provide an annual accounting below.

Once each year the net profit from sales and rentals is contributed by the Women's Board to the museum foundation by means of a check drawn on the Women's Board's own bank account. That check is deposited to the foundation's Art Acquisition Fund, meaning it is commingled with other grants and contributions received for the purpose of acquiring works of art for the city's collection. The decision as to what works of art are purchased rests with the city's curatorial staff. Once purchased, the works of art become the property of the city. The amounts received by the foundation from the Women's Board for the purchase of artworks in each of the last five years, is as follows (information provided by the Collectors Gallery manager):

| | | |
|------|----|--------------------|
| 1998 | \$ | 28,347 |
| 1999 | | data missing |
| 2000 | | 16,903 |
| 2001 | | 19,007 |
| 2002 | | 4,427 |
| 2003 | | not yet determined |

If you read the Collectors Gallery agreement (provided in response to section A above), you will note that the Women's Board is to provide the museum director with quarterly progress reports and an annual operating budget. I waived receiving those reports. Please do not ask for copies as they do not exist.

2. Gift Shop/Bookstore. Operating the Museum Store is an activity of the foundation. Revenue and expenses for the Museum Store flow through the foundation's books. Store staff is made up

entirely of foundation employees. The store is operated as a service to visitors. Profits and losses become part of the foundation's general operating budget. The revenue and cost of concession sales in 1998/99 is \$378,531 and \$332,576, respectively, and for the remaining four years is provided in the attachment titled "Income Statement All Revenue Sources."

3. Restaurant. The restaurant is operated by Grace Street Catering in agreement with the city. Expenses are paid by Grace Street Catering and agreed-upon revenue is deposited directly with the city. See the enclosed monthly statements from Grace Street Catering and, in some cases, copies of checks beginning July 1997 through May 2003. We are aware data for several months are missing and not in our files. For additional information I direct you to the city's Budget and Finance Department.
4. Parking Garage. The museum parking garage is operated by Douglas Parking Company through an agreement with the city. Expenses are paid by the contractor and agreed-upon revenue is deposited directly with the city. See the enclosed monthly statements from Douglas Parking beginning August 10, 1999, through June 10, 2003. We are aware data for a few months are missing and not in our files.
5. Vending Machines. No reports or data exist in our files. I suggest you contact the Parks and Recreation Department.
6. Entrance Fees. The revenues and expenses from entrance fees are part of the foundation's annual operating budget. This revenue is used to cover the expense of gathering admission and a portion of the proceeds is shared with the city. The revenue and cost in 1998/99 is \$378,531 and \$332,576, respectively, and for the remaining four years is provided in the attachment titled "Income Statement All Revenue Sources."

The foundation provides a portion of the admission revenue to the city each year. The amount is agreed upon in advance by the city's Budget and Finance Office and is credited to museum expenses. Over the last five years the admission fee amounts paid to the city by the foundation are as follows:

| | | |
|------|----|---------|
| 1999 | \$ | 77,000 |
| 2000 | | 72,000 |
| 2001 | | 125,000 |
| 2002 | | 83,945 |
| 2003 | | 46,294 |

7. Membership Fees. Revenue and expenses associated with membership in the museum are part of the foundation's operating budget. The gross amount received in 1998/99 is \$558,632, and for the remaining four years is provided in the attachment titled "Income Statement All Revenue Sources."
8. Facility and Other Rentals. Data on revenue for facilities and other revenue is missing for 1998/99, and for the remaining four years is provided in the attachment titled "Income Statement All Revenue Sources."
9. Special Events, Lectures, etc. Data on revenue for events is missing for 1998/99, and for the remaining four years is provided in the attachment titled "Income Statement All Revenue Sources."
10. Usage Fees. Data on usage fees is missing for 1998/99, and for the remaining four years is provided in the attachment titled "Income Statement All Revenue Sources."

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11. Conservation Projects. The Conservation Laboratory handles object restoration, preservation, and pest control management. Primary work is on city-owned artifacts and artworks. From time to time work is taken in from other municipalities, other museums, or individuals. Profit, if any, goes back in to conservation of museum objects. With the exception of one employee who is a city employee, staff is with the foundation. Data on revenue is provided in the attachment titled "Income Statement Conservation Lab."
12. Education Division. Data on revenue for education and program fees is missing for 1998/99, and for the remaining four years is provided in the attachment titled "Income Statement All Revenue Sources."
13. Professional Services. Professional Services staff does exhibits in off-site locations in order to broaden the outreach of the museum and provide a public service. Data on revenue is missing for 1998/99, and for the remaining four years is provided in the attachment titled "Income Statement Professional Services." Staff is with the foundation.
14. Docents and Guilds.
 - a. Docents. Docent revenue is included in education and program fees.
 - b. Guilds. Guilds conduct field trips and tours and occasionally host special receptions for exhibit openings. Revenue and expenses are part of the foundation's operating budget. Gross revenue from the guilds for 1998/99 is \$1,084,701, and for the remaining four years is provided in the attachment titled "Income Statement All Revenue Sources."
15. Investment Income. Over the years the foundation has acquired funds that are either restricted by the donor to be held in perpetuity (true endowment) or designated by the board for investment (quasi-endowment). Such funds come in through direct contributions, special grants, and bequests. The foundation's board of trustees determines the investment policy, the types of investments, and the investment managers. Presently, the total invested fund (long- and short-term investments totaling approximately \$8.1 million at the end of the 2003 fiscal year) is divided equally between two investment firms. Investment earnings are part of the foundation's operating budget and in years when there is a surplus they are reinvested. Revenue for 1998/99 is \$259,706, and for the remaining four years is provided in the attachment titled "Income Statement All Revenue Sources."
16. Other.
 - a. Contributions, grants and bequests. This category combines contributions from individuals, private operating foundations, corporations, and government granting agencies such as the National Endowment for the Arts. Expenses associated with obtaining that support, and the grants themselves, are part of the foundation's operating budget. The total amount received in 1998/99 is \$4,033,881, and for the remaining four years is provided in the attachment titled "Income Statement All Revenue Sources."
 - b. Miscellaneous. See the attached "Income State All Revenue Sources."

Other Pending Requests

In previous correspondence you have requested, in the aggregate, extensive information about the city, museum, and foundation. Below I attempt to bring that information up to date and do so by referencing the date of your original request. Requests not referenced here have already been answered, according to my records.

Letter of July 12, 2003, to Deputy City Attorney Mark Morodomi. You request access to documents relating to the creation and operation of the foundation. I provided articles of incorporation and bylaws to Michelle Abney in response to your request of April 4, 2002. Additionally, you combed through boxes of files and had hundreds of copies made following your visits here on October 7 and 27, 2003. I assume that this request is therefore answered.

Letter of July 29, 2003. You provide a list of seven items and request financial documents relating to the Measure G campaign. The only relevant documents we can find are enclosed and labeled "Response to July 29, 2003, Request" (two packets). Some of the purchase authorizations and invoices I provide may not relate to specific requests you made. I send them along simply because they were all in a file that related to campaign expenses.

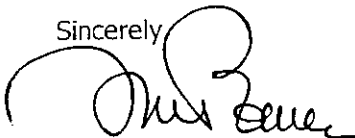
Letter of August 1, 2003. You requested copies of receipts and other material "to properly account for expenditures made" of six expenses listed in the August 1st letter. These same expenses were listed in your request of March 13, 2003, and I responded on July 24, 2003, by summarizing for each item what the expenses are for. Should a court order additional back-up we shall do what we can to find to it. Otherwise, however, the request is frivolous. In reference to postage for campaign material, you also ask for copies of material mailed, the list used for mailing, and a reduced replica of a sign. None of these documents is available to me. You also request a cancelled check to Bay Area World Trade Center for \$136.00. As with the other modest expenses I reference above, this is clearly a frivolous request and we will not spend the time trying to find it unless so ordered by the court.

Invoice for Photocopying and Other Costs

The city's Master Fee Schedule specifies \$.05 per page for photocopying documents requested by members of the public. You are receiving 425 copied pages. Please send a check made payable to "City of Oakland" in the amount of \$21.25 to Mr. Bill Milny at the museum address: 1000 Oak Street, Oakland, CA 94607.

Also, the cost to the foundation for producing additional bound copies of the annual financial statement is \$15 each. I erroneously quoted you \$10, but will stick by that. You took copies for two fiscal years when you visited on October 27. The total cost is \$20. Please make your check payable to "Oakland Museum of California Foundation" and send that as well to Mr. Milny.

Sincerely



Dennis M. Power
Executive Director

Encl.

cc. (all without enclosures)
Alix Rosenthal

Jayne Becker
Bill Milny

Mark Morodomi
Jan Berckefeldt

Dan Purnell
Jackalyne Pfannenstiel

ATTACHMENT 11

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