
City Attorney

City of Oakland
Public Ethics Commission
December 12, 2005

In the Matter of)
) Complaint No. 05-11
)

Marilyn Bartholomew submitted what is now identified as Complaint No. 05-11 on November 29, 2004.

I. ALLEGATIONS AND PROCEDURAL HISTORY

Ms. Bartholomew filed Complaint No. 05-11 alleging that the City's Finance and Management Agency is violating the Sunshine Ordinance and Public Records Act by failing to provide her with relevant pages from a "Civil Service Board log" which she has requested. **Attachment 1.**

Ms. Bartholomew made her request at least as early as April, 2004. After her attempts to obtain the requested records were unsuccessful (see below), Ms. Bartholomew submitted this complaint to Commission staff on November 29, 2004. Commission staff advised her that the Oakland Sunshine Ordinance prohibits any person from filing a complaint over public records until that person has requested and participated in mediation. Commission staff treated Ms. Bartholomew's submitted complaint as a request for mediation and began a series of communications between Ms. Bartholomew and City staff.

On February 1, 2005, Commission staff advised Ms. Bartholomew that it believed that mediation had run its course and that she was free to pursue her initial complaint. Ms. Bartholomew insisted that mediation continue and requested that the City Administrator appoint someone other than the Commission's Executive Director to serve as mediator. On May 19, 2005, Ms. Bartholomew filed Complaint No. 05-08 in which she alleged that the Executive Director was unwilling or unable to act as a mediator and that he failed to assist in the selection of an outside mediator. At its regular meeting of November 7, 2005, the Commission dismissed Complaint No. 05-08 (from which the Executive Director recused himself) and authorized Ms. Bartholomew to proceed with her initial complaint.

On November 9, 2005, Commission staff contacted Ms. Bartholomew to confirm her desire to pursue her initial complaint. While she wishes to proceed, Ms. Bartholomew verbally objected to the Executive Director's preparation of this preliminary report on grounds of bias and conflict of interest.

Copies of the extensive correspondence between Ms. Bartholomew and City staff relevant to this complaint was included in the November 7, 2005, agenda report for Complaint No. 05-08. Additional correspondence received from Ms. Bartholomew since November 7, 2005, is attached. **Attachment 2.**

II. ANALYSIS

Between April and June, 2004, Ms. Bartholomew made requests to the Finance and Management Agency and the Office of the City Administrator for access to what she described as the Civil Service Board's "log or record book." (The Civil Service Board is a charter-created board responsible for the general supervision of the City's personnel system.) Specifically, Ms. Bartholomew requested from various City offices:

"The log or 'reporting log' or log book, maintained for the Civil Service Board, in which there is a chronological record of all letters received that request action or resolution by the Civil Service Board. The information in that log would include some or all of the following: the date on which the Board's staff or office has received each letter that requests Board action or resolution; the date on which the letter is first seen by the Board's chairperson, or the reason the letter is not being forwarded to the Board's Chairperson; the date on which the letter is first presented for review by the full Civil Service Board, or the reason the letter will not be presented to the full Civil Service Board."

At some point Ms. Bartholomew's request was referred to the City Attorney's Open Government Coordinator, Michelle Abney. According to Ms. Abney, she contacted the Office of Personnel numerous times to attempt to obtain copies of the requested records. Ms. Abney said that she spoke with Audrey Eugene in the Office of Personnel who told her that there was no record of the type described by Ms. Bartholomew. This information was communicated to Ms. Bartholomew by letter of September 22, 2004.

During the course of mediation, Commission staff contacted D. Jacqueline Edwards, Principal Human Resource Specialist and staff to the Civil Service Board. Ms. Edwards told Commission staff that the Civil Service Board does not maintain a record of the type described by Ms. Bartholomew or any other record containing the information identified by Ms. Bartholomew. Ms. Edwards said that correspondence sent to the Civil Service Board is typically posted to a specific case file if a hearing file is opened in a matter. She said there is not a record that assembles and/or tracks the receipt of correspondence sent to the Civil Service Board.

During follow-up for the preparation of this report, Commission staff asked Ms. Edwards if the Civil Service Board ever did maintain such a record as described by Ms. Bartholomew or any record similar to what she described. Ms. Edwards stated that since her association with the Civil Service Board, neither the Board nor staff has maintained such a document. This statement was corroborated by Ms. Eugene, who

served as administrative staff to the Civil Service Board since approximately 1996. Commission staff asked if there was any person whose experience or recollection of Civil Service Board practices dated back earlier than the mid-1990s. Ms. Eugene suggested that Commission staff contact Gwen McDonald, who served as staff to the Civil Service Board at least as far back as the 1980s. Ms. McDonald currently works as personnel manager for the East Bay Municipal Utility District and is a current public member of Oakland's Civil Service Board.

Ms. McDonald told Commission staff that at one time the Civil Service Board staff did in fact keep a correspondence log of the type Ms. Bartholomew describes. She said a handwritten log was kept and updated in three-ring binders before widespread use of computer files or databases. She said the log kept a detailed record of incoming letters and the Civil Service Board's response. Unfortunately, she believes these and other Civil Service Board records apparently were lost sometime during or after the time the Civil Service Board offices were located at 505 14th Street. (According to various City sources, the City began moving its offices outside of City Hall during the 1980s for remodeling and renovation. After the Loma Prieta earthquake in 1989, City offices and records were further dispersed throughout the City in various locations. City offices did not return to their present locations until approximately 1994-96.) Ms. McDonald said she has received other calls since her departure from the City in August, 1996, inquiring about other personnel records. She has been told over the years that other personnel records cannot be located.

III. STAFF RECOMMENDATION

Without knowing the specific content of the correspondence log it is impossible to determine whether it constitutes a disclosable public record or whether the document is covered by any applicable privilege or exception. Nevertheless, Commission staff recommends that in light of this new information, the Commission should refer this report and Ms. Bartholomew's request to the City's Civil Service Board staff to determine, after a diligent search, whether copies of the correspondence logs can be located and, if so, whether they constitute a disclosable public record. Commission staff recommends that the Commission maintain jurisdiction of Complaint No. 05-11 until the Civil Service Board staff makes a definitive response to Ms. Bartholomew regarding the status of the requested records.

Respectfully submitted,

Daniel D. Purnell
Executive Director

*** City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*