

For Official Use Only

City of Oakland

Public Ethics Commission

Stamp Date/Time Received:

COMPLAINT FORM

Complaint Number: 05-11

2004 NOV 29 P 2:37
PUBLIC ETHICS COMMISSION
OAKLAND

Please Type or Print in Ink and Complete 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

Oakland False Endorsement In Campaign Literature Act

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[] 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)
From June 18, 2004 continuously through November 16, 2004, and still occurring.

The alleged violation occurred at the following place:
City of Oakland, Finance and Management Agency, Administration and the Office of Personnel, 150 Frank H. Ogawa Plaza, Oakland, CA 94612

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

The Finance and Management Agency, where Civil Service Board record keeping takes place, has never responded to the Public Records Request from me that has been submitted in writing on numerous occasions, beginning with my letter of June 18, 2004 and, most recently, by my letter of October 30, 2004. That Public Records Request amends the original request of my letter of April 29, 2004, and specifically requests access to and copying of pages in a Civil Service Board log (or reporting log, or log book). During such period from June 18th through October 30th, Agency Director William Noland has continuously received additional descriptions and clarifications of my Public Records Request, by means of letters from me sent directly to him and/or forwarded to him from the Office of the City Manager/City Administrator or the Office of the City Attorney. Still, no one in the Finance and Management Agency has ever communicated with me regarding that request. Also, there has been no response to my Immediate Disclosure Request that was sent to Agency Director Noland on October 22, 2004 and October 30, 2004, requesting identification of each person whose position has been Secretary to the Civil Service Board during the period of April 29, 2004 to present date.

In the September 8, 2004 letter to me from the City Attorney's Open Government staff, they allege that their "client" is responsible for the denial of my Public Records Request. Yet, the City Attorney and his staff are refusing to identify their "client". Their September 8th letter states "Our client has informed us that the record you requested has never existed". However, it is not credible that the Civil Service Board's administrative staff has ever asserted that the requested Civil Service Board log "has never existed". In any event, no one has been with the Civil Service Board for the past 33 years of its existence until present date, and therefore would not be able to make such determination that the log "has never existed".

My letter of October 4, 2004 to the City Attorney makes a complaint describing unethical acts by his Open Government staff in this matter. No one has responded to that complaint.

Attached pages:

Letters of: June 18, 2004 from me; September 8, 2004 from Open Government staff; September 14, 2004 from me; September 21, 2004 from me; September 22, 2004 from Open Government staff; September 27, 2004 from Open Government staff; October 4, 2004 from me; October 22, 2004 from me; and October 30, 2004 from me.

U.S. Postal Service delivery records: showing signature confirmation for delivery, on October 5, 2005, of my October 4th correspondence to City Attorney Russo, and for delivery, on November 1, 2004 of my October 30th correspondence to Agency Director Noland.

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

John Russo, City Attorney; Barbara Parker, Chief Assistant City Attorney; Mark Morodomi, Supervising Attorney; Michelle Abney, Open Government Coordinator; William Noland, Finance and Management Agency Director;

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

The availability of the witnesses who are City of Oakland employees has not yet been ascertained. Their names and phone numbers will be submitted at a later time if they are available as witnesses for this complaint.

PLEASE NOTE:

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

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

NAME: **Marilyn Bartholomew** PHONE NO.(Day):**(510) 658-5638**

ADDRESS: **2124 Kittredge Street, #735** PHONE NO.(Eve.):**(510) 658-5638**

CITY: **Berkeley** STATE: **CA** ZIP: **94704**

FAX NO.: **(510) 658-5638**

E-MAIL

PLEASE RETURN THIS FORM TO:

Public Ethics Commission
One Frank Ogawa Plaza, 4th floor
Oakland, CA 94612

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

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Marilyn Bartholomew
2124 Kittredge Street, #735
Berkeley, CA 94704
Phone: (510) 658-5638

June 18, 2004

BY FAX to: (510) 238-2223
Attention: Jayne Becker, Assistant to the City Manager
City of Oakland, Office of the City Manager
One Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Public Records Act Request

Dear Ms. Becker:

During our conversation by phone yesterday morning, you confirmed that you are the City Manager's representative in charge of handling Public Records Act requests. This is a revised request, and it is for the purpose of clarifying my previous requests for access to the Civil Service Board's "log (or record book)", as described in my letters to the City Manager dated June 8, 2004, June 1, 2004 and April 29, 2004.

Pursuant to my rights under the California Public Records Act, I am requesting permission to inspect, and obtain a copy of certain pages of, the following, which I understand to be maintained by the Office of Personnel within the Finance and Management Agency:

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 -- including letters from the general public, or from former employees -- that request action or resolution by the Civil Service Board.

The information in that log probably includes 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.*

If you determine that it is necessary to withhold the requested information, please send to me, by fax or mail, a signed notification citing the legal authorities on which you rely. If you determine that I have a legal right to inspect the log that is described in this letter, please have notification

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of your determination sent to me, by fax or mail. You may send a fax to my phone number, (510) 658-5638, after contacting me first by phone to inform me of when the fax will be sent. (Such prior notice to me by phone is necessary because I must arrange to have my phone line open to receive a fax.)

In any event, please have notification of your determination sent to me as soon as possible, within 10 days of your receipt of this letter.

Sincerely,



Marilyn Bartholomew

cc: Deborah Edgerly, City Manager, Fax # (510) 238-2223

William Noland, Director, Finance and Management Agency, Fax # (510) 238-2059

Marcia Meyers, Director of Personnel Resource Management, Fax # (510) 986-2827

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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

September 8, 2004

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-7367

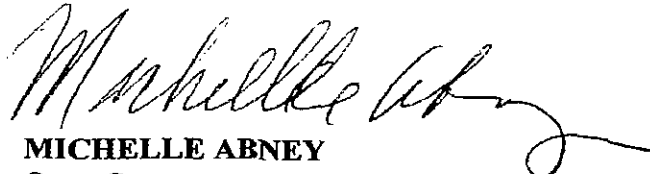
Ms. Marilyn Bartholomew
2124 Kittredge Street, #735
Berkeley, CA 94704

Dear Ms. Bartholomew:

This letter is in response to your letter dated August 2, 2004.

Our client has informed us that the record you requested has never existed.

Sincerely yours,



MICHELLE ABNEY
Open Government Coordinator

cc: PRR File

328934.1

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Date 12-12-05
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Marilyn Bartholomew
2124 Kittredge Street, #735
Berkeley, CA 94704
Phone: (510) 658-5638

September 14, 2004

BY FAX to: (510) 238-6500
Michelle Abney, Open Government Coordinator
Mark Morodomi, Open Government Supervising Attorney
City of Oakland, Office of the City Attorney
One Frank H. Ogawa Plaza
Oakland, CA 94612

SUBJECT: Your letter dated September 8, 2004 regarding a Public Records Act request from me for access to, and copying of, pages in a Civil Service Board log.

Dear Ms. Abney and Mr. Morodomi:

This is in response to your letter of September 8, 2004, signed by Ms. Abney, which states that your (unidentified) client denies the existence of the record I requested.

Prior to April 29, 2004, the date of my initial Public Records Act request for that record, the Office of Personnel had already informed me that the requested record exists (as it is a required record) and is continuously maintained on behalf of the Civil Service Board.

The following is a description of the requested record:

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; and the date on which the letter is first presented to the full Civil Service Board, or the reason the letter will not be presented to the full Civil Service Board.

Within three days of the date of this letter, please inform me in writing of the names and titles or positions of the persons who are responsible for the maintenance of required records for the Civil Service Board and who are claiming that the requested record has never existed. Government Code §6253(d), of the California Public Records Act, states that "The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial."

Sincerely,


Marilyn Bartholomew

Cc: William Noland, Director, Finance and Management Agency, Fax # (510) 238-2059
Marcia Meyers, Director of Personnel Resource Management, Fax # (510) 986-2827

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Marilyn Bartholomew
2124 Kittredge Street, #735
Berkeley, CA 94704 Phone: (510) 658-5638

September 21, 2004

BY PRIORITY MAIL WITH SIGNATURE CONFIRMATION

John Russo, City Attorney
City of Oakland, Office of the City Attorney
One Frank H. Ogawa Plaza
Oakland, CA 94612

Re: This letter repeats and addresses to you certain information that is in my letter dated
September 14, 2004 to Michelle Abney and Mark Morodomi of your Open Government Program.

Dear Mr. Russo:

This is in response to your letter of September 8, 2004, signed by Ms. Abney, which states that your
(unidentified) client denies the existence of the record I requested.

Prior to April 29, 2004, the date of my initial Public Records Act request for that record, the Office of
Personnel had already informed me that the requested record exists (as it is a required record) and is
continuously maintained on behalf of the Civil Service Board.

The following is a description of the requested record:

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;
and the date on which the letter is first presented to the full Civil Service Board, or the reason the letter will
not be presented to the full Civil Service Board.

Within ten (10) days of your receipt of this letter, please inform me in writing of the names and titles or
positions of the persons who are responsible for the maintenance of required records for the Civil Service
Board and who are claiming that the requested record has never existed. Government Code §6253(d), of
the California Public Records Act, states that "The notification of denial of any request for records required
by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial."

I expect this to be my last attempt to resolve this complaint with you. If necessary, this complaint will be
forwarded to the Oakland Public Ethics Commission

Sincerely,


Marilyn Bartholomew

Attachments: Letters, described above, dated September 8, 2004 and September 14, 2004, as copies.

Cc: William Noland, Director, Finance and Management Agency, by Fax # (510) 238-2059
Marcia Meyers, Director of Personnel Resource Management, by Fax # (510) 986-2827

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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

(510) 238-3601
FAX: (510) 238-6500
September 22, 2004
TTY/TDD: (510) 238-7367

Ms. Marilyn Bartholomew
2124 Kittredge Street, #735
Berkeley, CA 94704

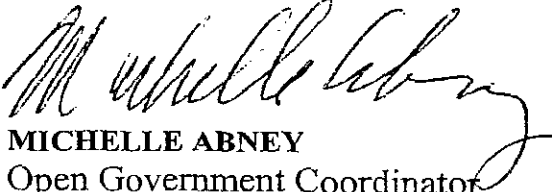
Dear Ms. Bartholomew:

Subject: Public Records Request/Civil Service Board Log

This letter is in response to our telephone conversation on Monday, September 13, 2004 and your letter of September 14, 2004.

During that conversation, you indicated that you knew that the log you requested exists and that Audrey Eugene a Personnel Department employee maintains the log. I placed a call to Ms. Eugene this morning and she indicated that no such log exists.

Sincerely yours,


MICHELLE ABNEY
Open Government Coordinator

cc: Audrey Eugene
PRR File

CITY OF OAKLAND



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

Office of the City Attorney
John A. Russo
City Attorney

(510) 238-3601
FAX: (510) 238-6500
September 27, 2004 TTY/TDD: (510) 238-7367

Ms. Marilyn Bartholomew
2124 Kittredge Street, #735
Berkeley, CA 94704

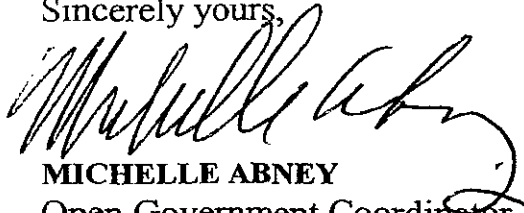
Dear Ms. Bartholomew:

Subject: Public Records Request/Civil Service Board Log

This letter is in response to your letter dated September 21, 2004.

Please see the letter from this office dated September 22, 2004.

Sincerely yours,



MICHELLE ABNEY
Open Government Coordinator

cc: PRR File

ATTACHMENT 1

Marilyn Bartholomew
2124 Kittredge Street, #735
Berkeley, CA 94704 Phone: (510) 658-5638

October 4, 2004

BY PRIORITY MAIL WITH SIGNATURE CONFIRMATION

John Russo, City Attorney
City of Oakland, Office of the City Attorney
One Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Recent acts by your Open Government staff which reflect that your office is making relentless and ruthless efforts to avoid compliance with the California Public Records Act (concerning the resubmitted Public Records Act request of my correspondence to you).

Dear Mr. Russo:

For approximately five months through the current date, staff of your Advisory Division have been colluding in acts that are intended to deter and obstruct me concerning my request for access to (and copying of some pages in) a log containing a record of incoming letters for the Civil Service Board.

That Public Records Act request was initially submitted by letter from me dated April 29, 2004, and further described in subsequent letters from me. Since that time, letters from me addressed to you have been complaints resubmitting that request; such are dated July 15, 2004, August 2, 2004, August 19, 2004 and September 21, 2004. This is the fifth letter/complaint that I have had to write to you to inform you of your Advisory Division's continuous mishandling of that same Public Records Act request.

Most recently, such inappropriate acts by your staff have taken place by means of the letters to me from Open Government staff, signed by Coordinator Michelle Abney, dated September 8, 2004 and September 22, 2004.

In my previous letter to you, which is dated September 21, 2004, I pointed out that the response from Open Government staff by letter dated September 8, 2004 is in violation of Govt. Code §6253(d) of the California Public Records Act. By means of the September 22 response by letter from Open Government staff, that same violation is repeated. Additionally, the City continues to be in violation of Govt. Code §6253(a),(b),(c), and §6253.1(a), concerning that resubmitted Public Records Act request.

By means of their September 22 letter, Ms. Abney and her supervisor Mark Morodomi have purposefully distorted my Public Records Act request. They misquote me in that letter so as to alter, and make utterly senseless, the request that has been clarified in several previous letters from me. Such deliberate distortion of my request is in the following paragraph of their September 22 letter:

... you indicated that you knew that the log you requested exists and that Audrey Eugene a Personnel Department employee maintains the log. I placed a call to Ms. Eugene this morning and she indicated that no such log exists.

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John Russo, City Attorney
October 4, 2004
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Those statements in their September 22 letter show that Ms. Abney and Mr. Morodomi have obstructed my request by replacing it with a fabricated request: a request for a log maintained by Audrey Eugene, who is a clerical staffer (a Human Resources Clerk, according to the City's online directory).

I have never said and never would say that the log I am requesting is maintained by Audrey Eugene. Certainly, I am **not** the source of the misinformation in your staff's September 22 letter which claims that "(I) indicated that" the log is maintained by Ms. Eugene. Your staff misquoted me and is using it to try to stop me from gaining access to the *existing* log.

In any event, your staff would know that Ms. Eugene is a clerical staffer and that her supervisor can determine what is said or not said by Ms. Eugene in response to an inquiry about record keeping procedures. Yet, in order to obstruct the Public Records Act request that I made, your staff has arranged for such request to be denied because of something merely "indicated" by a clerical staffer.

The Office of Personnel has informed me that the *existing* Civil Service Board log, the one that I requested, is maintained by an official who performs the duties of Secretary to the Civil Service Board. By letter to me dated February 18, 2004, City Administrator Deborah Edgerly informed me that D. Jacqueline Edwards, Principal Human Resource Analyst, is the Acting Secretary to the Civil Service Board, and that William Noland, Finance and Management Agency Director, is the Secretary to the Civil Service Board.

Ms. Abney and Mr. Morodomi still have not informed me of the name and title or position of the person(s) referred to, in their September 8 letter, as the client who allegedly informed them that the record I requested "has never existed".

Accordingly, within ten (10) days of your receipt of this letter, please send to me a determination that: 1) has been signed by an official who is chiefly responsible for the maintenance of all Civil Service Board records; and 2) addresses my request for access to and copying of pages in a Civil Service Board log. If such an official determination, or notice of it being in progress, is not sent to me within that ten-day period, I will proceed to forward this complaint to the Oakland Public Ethics Commission.

Sincerely, ..



Marilyn Bartholomew

Cc: William Noland
Marcia Meyers
D. Jacqueline Edwards, c/o Marcia Meyers
Mark Morodomi
Michelle Abney

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IMMEDIATE DISCLOSURE REQUEST

Marilyn Bartholomew
2124 Kittredge Street, #735
Berkeley, CA 94704 Phone/Fax: (510) 658-5638

October 22, 2004

BY FAX TO: (510) 238- 2059

William Noland, Director
Finance and Management Agency, Administration
150 Frank H. Ogawa Plaza, suite 5215
Oakland, CA 94612


Re: This request for disclosure of public information, pursuant to the Immediate Disclosure provision of the Sunshine Ordinance. (References: Oakland Sunshine Ordinance §2.20.220 Non-Exempt Public Information, §2.20.230 Immediate Disclosure Request).

Dear Mr. Noland:

Please immediately inform me of the name and title of each person whose position has been Secretary to the Civil Service Board -- within the Office of Personnel, Finance and Management Agency -- during the period from April 29, 2004 to present date.

Please send the requested information to me by mail or fax within 3 days. Your office may send a fax to my phone number, (510) 658-5638, *after contacting me first by phone to inform me of when the fax will be sent.* (Such prior notice to me by phone is necessary because I must arrange in advance to receive a fax via my phone line.)

Sincerely,


Marilyn Bartholomew

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Marilyn Bartholomew
2124 Kittredge Street, #735
Berkeley, CA 94704 Phone: (510) 658-5638

October 30, 2004

BY PRIORITY MAIL WITH SIGNATURE CONFIRMATION

William Noland, Director
Finance & Management Agency, Administration
150 Frank H. Ogawa Plaza, suite 5215
Oakland, CA 94612

Re: Public Records Act request pertaining to a Civil Service Board log.

Dear Mr. Noland:

Please see the attached copies of letters from me to which no one has responded, dated October 4, 2004 and October 22, 2004, that pertain to my request for access to and copying of pages in a Civil Service Board log. The Finance and Management Agency, including the Office of Personnel, has not yet communicated with me regarding that Public Records Act request.

Pursuant to the **California Public Records Act Government Code §6253.1, "Agency must be helpful"**, I expect assistance from your agency in this matter. I ask that you, or an official who is chiefly responsible for Civil Service Board record keeping, communicate directly with me to help me identify the public record which I have been describing as follows: *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; and the date on which the letter is first presented to the full Civil Service Board, or the reason the letter will not be presented to the full Civil Service Board.*

Please send to me, within ten (10) days of your receipt of this letter, a communication from your agency regarding that Public Records Act request.

Sincerely,


Marilyn Bartholomew

Attachments (three pages)

ATTACHMENT 1

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FAX TRANSMISSION

TO: Daniel D. Purnell, Executive Director
Public Ethics Commission
Fax #: (510) 238-3315

FROM: Marilyn Bartholomew
Home Phone/Fax: (510) 658-5638
(The fax machine at this number is usually unavailable for receiving faxes.)

RE: Your phone call to me on November 9, 2005 regarding my Complaint No. 05-11.

DATE: November 10, 2005

PAGES: Two pages, including this one.

COMMENTS:

This is to respond to the advice you gave me by phone, yesterday, November 9, 2005, which is that I may provide additional information for your report regarding my Complaint No. 05-11.

This communication is to provide some additional information from me for your report that will contain the results of your investigation regarding my Complaint No. 05-11.

After I faxed to you my answer to your question, yesterday, I later found on the City's website that Marcia Meyers is currently the "staff to the commission" for the Civil Service Board. Therefore, it appears that in addition to D. Jaqueline Edwards, Marcia Meyers might be able to provide information as to the existence of the public record that I am seeking.

In any event, since Ms. Edwards has been an acting Secretary to the Civil Service Board, I believe that she should be able to obtain and provide the information that would facilitate identification of the public record that I am seeking. I am seeking the information that I describe to be the following:

1. The current and former name(s) of each and every cumulative file of complaints and/or appeals and/or requests that has been a record maintained by the Secretary to the Civil Service Board.
2. Whether a log, of some kind, has ever been maintained for the Civil Service Board.
3. The current and former name(s) of each and every record that has served to be a means of organizing or documenting, by date received, any appeals or requests for Civil Service Board review/hearing or any requests for a continuance.

ATTACHMENT 2

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Daniel D. Purnell, Executive Director
Public Ethics Commission
November 10, 2005
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- 4. The current and former name(s) of each and every record that has served to be a means to identify a group of complaints and/or appeals and/or requests that have been submitted for Civil Service Board review or hearing.
- 5. The current and former name(s) of each and every Civil Service Board record that has provided a description of, and/or a report on the status of, requests for Board action or requests for Board review or requests for reconsideration.

I am requesting that the agency provide the above-described information pursuant to the agency's duties as specified in the **California Public Records Act Government Code §6253: "Procedure for Public Record Requests"**, and **§6253.1: "Agency must be helpful"**.

Please make these pages an attachment to my Complaint No. 05-11.

From: Marilyn Bartholomew
Marilyn Bartholomew

FAX TRANSMISSION

TO: Daniel D. Purnell, Executive Director
Public Ethics Commission
Fax #: (510) 238-3315

FROM: Marilyn Bartholomew
Home Phone/Fax: (510) 658-5638 (The fax machine at this number is usually
unavailable for receiving faxes.)

RE: Your phone call to me on November 9, 2005 regarding my Complaint No. 05-11.

DATE: November 9, 2005

PAGES: This page only.

COMMENTS:

In response to your phone call to me, I asked that I be allowed to state in writing, rather than orally, my answer to the one question that you have for me. You agreed to allow me to make only a written response to your question, which you stated to me as quoted below, and my answer is written below.

Your Question:

Do you know anyone who might have information about the existence of the Civil Service Board log that you are seeking?

My Answer:

D. Jaqueline Edwards, who was the City's representative in the mediation for this complaint.

Please make this page an attachment to my Complaint No. 05-11.

From: 
Marilyn Bartholomew

ATTACHMENT 2

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