

CITY OF OAKLAND
Public Ethics Commission

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: February 2, 2004

RE: A Report And Action To Be Taken Regarding Waiver Of The Attorney-Client Privilege For Written Communications On The Oakland Sunshine Ordinance And Complaint No. 03-04 (Mix)

I. BACKGROUND

At its regular meeting of September 8, 2003, the Commission requested the Oakland Office of the City Attorney to request a legal review of the staff report prepared in connection with Complaint No. 03-04 (Mix). The complaint raised issues involving the attorney-client privilege in response to a request for public records from the Oakland City Attorney. Because the Oakland City Attorney's Office is a respondent to that complaint, it declined to perform its usual review of the staff report for "form and legality." The Commission requested that the City Attorney's Office arrange a legal review of the staff report before taking action on the complaint. The Oakland City Attorney's Office arranged for the San Francisco City Attorney's Office to perform the review.

At its regular meeting of October 6, 2003, the Commission directed staff to request a written opinion from the Oakland Office of the City Attorney regarding the applicability of the Sunshine Ordinance to three non-profit corporations, the Oakland Museum of California Foundation, East Bay Zoological Society, and Chabot Space And Science Center Foundation. The request was made because of a relatively large number of complaints and requests for mediation filed with the Commission involving the three corporations.

II. DISCUSSION

Commission staff is advised that it will soon receive copies of the written opinion and legal review. Since both documents constitute "information transmitted between a client and

attorney in the course of their relationship," the Oakland Office of the City Attorney has asked whether the Commission would be willing to waive any claim of attorney-client privilege in connection with the two documents and permit public disclosure.

With respect to the written opinion involving the non-profit corporations, Commission staff notes there is a high degree of interest in the opinion by the corporations, certain members of the public, and City staff. Several Commissioners stated at the time the request for the opinion was made that they would like to discuss the opinion at a subsequent Commission meeting after it was prepared.

With respect to the legal review of Complaint No. 03-04, the Commission deferred action on the complaint until it received the legal review it requested. It would be consistent with the Commission's public deliberation of complaints that the San Francisco City Attorney's written review be made part of the public record.

Commission staff cannot contemplate any legal or policy reasons why the written communications should remain confidential.

III. STAFF RECOMMENDATION

Commission staff recommends that the Commission authorize the Executive Director to receive the above two communications from legal counsel and thereafter make the two communications available for public distribution, inspection and copying.

Respectfully submitted,

Daniel D. Purnell
Executive Director