

**BEFORE THE OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA**

In Re The Complaint of	DECISION OF THE
Jay Garfinkle,	OPEN GOVERNMENT COMMISSION
Complainant	OF THE CITY OF ALAMEDA
The City of Alameda,	
Respondent	

The above entitled matter came on for hearing and a decision by the Open Government Commission of the City of Alameda (“OGC”) under the Sunshine Ordinance of the City of Alameda, Section 2-93.2 (b), Alameda Municipal Code (“AMC”).

Facts

On June 16, 2021, the Complainant, Jay Garfinkle, submitted a request to the City of Alameda (“City”) seeking copies of communications from or to City officials (including City staff, the Mayor and members of City Council) regarding the City’s lobbying efforts.

The City acknowledged receipt of Mr. Garfinkle’s request on June 17, 2021 by email. The City sent Mr. Garfinkle an email on June 24, 2021 estimating that it would produce the requested documents in six to twelve weeks.

The City produced responsive documents to Mr. Garfinkle on a rolling basis on five dates: August 18, 2021, August 19, 2021, August 23, 2021, September 15, 2021 and September 20, 2021. The City produced 1,164 pages of documents. The City redacted some portions of some of those documents (denoted with the term “Redacted” in the document). The cover email

for each batch of the document production noted whether any material was redacted, and if redactions were made, the email specified the legal exemption justifying the redaction.

Mr. Garfinkle filed a complaint with the OGC, alleging both that the City had failed to produce the documents on a timely basis and that the City was obligated to provide additional information about the material that was redacted.

Procedure

Under the Sunshine Ordinance, when an official complaint has been filed, the OGC hears the complaint and renders a formal written decision. The Complainant and the City shall appear at a hearing, during which the OGC considers the evidence and the arguments of the parties before making its decision. AMC §2-93.2 (b), (c). The parties have the opportunity to file written materials and present evidence.

In this case, both parties filed written materials prior to the hearing, which was held on November 1, 2021 before all five OGC commissioners. The parties both appeared at the hearing, which was held via teleconference, pursuant to Section 54953 of the California Government Code. Jay Garfinkle spoke on his own behalf. Attorney Bradford Kuhn spoke on behalf of the City.

Discussion and Decision

Prior to the hearing, Mr. Garfinkle withdrew the first allegation of his complaint (i.e. that the documents were not timely produced). The OGC, therefore, considers only Mr. Garfinkle's allegation that the City violated the California Public Records Act ("CPRA") and/or the Sunshine Ordinance in failing to provide additional information about the redacted material.


The OGC finds that neither the CPRA nor the Sunshine Ordinance required the City to provide additional information about the redacted material. The OGC finds that Mr. Garfinkle is demanding in essence a "privilege log," and that neither the CPRA, the Sunshine Ordinance, nor

any relevant case law, require a city to prepare such a log. Further, the OGC finds that the cover emails that accompanied each batch of documents complied with the CPRA and the Sunshine Ordinance, as these emails identified the legal exemptions justifying the redactions.

For all of the above reasons, the complaint is rejected. The OGC also finds that the complaint was unfounded. Because Mr. Garfinkle made an earlier complaint with the OGC that was determined to be unfounded at an April 5, 2021 hearing, pursuant to Section 2-93.8(c), Mr. Garfinkle is prohibited from making any complaints with the OGC for the next five years.

Dated: November 15, 2021

Commissioners Voting to Reject Complaint as Unfounded:

DocuSigned by:


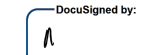
Ruben Tilos, Chair

DocuSigned by:


Serena Chen, Commissioner

DocuSigned by:


Krystal LoPilato, Commissioner

DocuSigned by:


Melodye Montgomery, Commissioner

Commissioner Voting to Affirm Complaint:

DocuSigned by:


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Carmen Reid, Commissioner