

## **Response to OGC Complaint: City's Response Fails to Accept Accountability**

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November 29, 2021

The City's response to my complaint makes three points with five arguments:

- The complaint is late
- Nextdoor content not "public records"
- The City make a mistake, but did what it could to respond

I will respond to these five arguments:

### **1. Complainant's Sunshine Ordinance Complaint Is Time Barred**

The City argues that my complaint should be dismissed because I "waited" for "five months and 22 days" to file a complaint ("on a Saturday"). As the City did not respond to my request until October, I argue the violation continued. Is a requestor supposed to file PRA, and start the clock and await a response? For example, file a request on day 1, then when day 10 comes along, start a new clock to file a complaint? I am not that litigious.

Incidentally, as many of you know, I had a few life changing events happen in May and badgering the City to fulfill its legal obligations to respond to a PRA was not one.

In 2019, I filed a similar complaint for a lack of a response. My request was made in January and I filed a complaint months later. Why didnt City use the same argument then? This is an attempt to avoid accountability for a mistake, that could have been excusable.

4. The City's alleged failure to timely respond to Complainant's records request was the product of excusable neglect."

If the law requires 10 days and it took nearly six months to respond, is that "alleged failure"? If the City's initial or eventual response had been, "Sorry we didnt respond five months ago or thanks for the reminder. We had a communications challenge," i wouldnt have tripped. Its not a "ah ha! Gotcha now." But the response suggesting i contact Nextdoor, a private corporation is a problem. And Instead of just acknowledging the violation, City is putting the burden on me to hold them accountable for their failure. That's what makes this complaint necessary.

The City makes two other arguments about social media;

- **No controlling legal authority has held that private social media posts to be "public records" as that term is defined in the CPRA.**

- **In general practice, social media content on NextDoor is unlikely to be a public record.**

Comparing two precedents this year, it seems contradictory for City to take this position. In xxx, CM Herrera Spencer requested emails from the “private” gmail account of apdreforms@gmail.com, the email addressed used by volunteers. In October, the City contacted me to request my OGC related emails. I responded.

In fact, after the unnecessary arrest of Mali Watkins, I received text messages of City officials.

So, it seems contradictory that the email addresses of private citizens could be subjected to more scrutiny than the social media account of a public official who is posting about City-related matters.

Finally, the City claims it went above and beyond.

- In the end, the City went beyond its legal obligations under established law of how to fulfill a records request for personal social media content and produced what records it did have under its possession, custody or control.

The City states that it contacted Councilmember Herrera Spencer (“twice”) to request records and received no response. When did the City contact the CM—before and/or after my complaint?

The records shared by City seem to have a glaring omission. What happened to CM Spencer’s posting of the names of individuals on the Nextdoor crime post in which she included names of individuals “associated” with Police Reform and Jackson Park Renaming Committees? It is plausible considering multiple people complained at City council meetings regarding her behavior that the City was aware of this particular post.

If the City had simply acknowledged the error and said, “We’ll look into it,” I would not have filed a complaint. Instead, the City declined to produce materials and only did so *after* I filed a complaint.

Please see the City’s response to its failure to produce records in a timely manner for what it is: a failure of accountability.