BEFORE THE OPEN GOVERNMENT COMMISSION

OF THE CITY OF ALAMEDA

In re: The Complaint of Rasheed Shabazz Rasheed Shabazz, 　　　　Complainant The City of Alameda, 　　　　Respondent	Case No. 19-02 DECISION OF THE OPEN GOVERNMENT COMMISSSION OF THE CITY OF ALAMEDA

The above entitled matter came on for hearing by the Open Government Commission of the City of Alameda (Commission) under the Sunshine Ordinance of the City of Alameda, Section 2-93.2 (b), Alameda Municipal Code on July 23, 2019, at which time the Commission rendered an oral decision to sustain the complaint but declined to adopt the proposed Decision that had been included in the Commission's agenda materials. Instead, the Commission directed the proposed Decision be redrafted for further consideration at the Commission's October 2019 meeting. The Commission did not have a quorum at its October 2019 meeting so consideration of the proposed Decision came before the Commission at a special meeting on December 18, 2019. (All further references to Section numbers are to the Alameda Municipal Code.)

Facts

This complaint concerns an alleged violation of the Alameda Municipal Code (AMC), section 2-92 (PUBLIC INFORMATION) by complainant Rasheed Shabazz (Complainant), a current member of the Open Government Commission.

The complaint alleges the following facts:

- On January 22, 2019, Complainant submitted a records request to the Chief of Police and the City Clerk via email. The Chief of Police responded the same day, forwarding the request to the City Attorney's Office.

- On March 22, 2019 and April 30, 2019, Complainant sent follow-up emails to the City Attorney's Office concerning the request.

On May 29, 2019, Complainant visited the City Attorney's Office in person. Later that day, he filed the current complaint with the Clerk's Office. Complainant sought records governed by California Penal Code section 832.7, as amended by SB 1421 (e.g., incidents involving the discharge of a firearm at a person, etc.). That same day, after the current complaint was filed, Complainant received an email response from Alan Cohen, Chief Litigation Counsel of the Alameda City Attorney's Office stating no responsive records were available ("[T]here are no responsive records to your request during the period encompassing January 1, 2014 to the present…"). *See* Exhibit 1.

On June 10, 2019 (after the complaint was filed, but before the hearing was set), the City Attorney's Office reached out via email to the Complainant to informally resolve the matter in light of the facts, but did not receive a response. Accordingly, the matter was set for hearing.

Discussion

In relevant part, subdivision (c) of section 2-93.2 (Responsibilities of Staff) of the
Sunshine Ordinance provides:

> Every "Custodian of Records" shall, as soon as possible, and within ten
> (10) days following receipt of a request for a Public Record, comply
> with such request. In unusual circumstances, the time limit prescribed
> by this subsection may be extended by written notice by the Custodian
> of Records to the person making the request, setting forth the reasons
> for the extension and the date on which a determination is expected
> to be dispatched provided that no notice shall specify a date that
> would result in an extension for more than fourteen (14) days.

As similar provision exists in subdivision (a) of section 2-92.9 (Disclosure Requests)
of the Sunshine Ordinance.

In an email to the Complainant after the complaint was filed, Alan Cohen, Chief
Litigation Counsel of the Alameda City Attorney's Office, attempted to the explain
the reason for the delay, including a mistaken belief that a formal response had
already been dispatched ("I was under the apparently mistaken impression that a
formal written response to your email was sent out in early February…"), that the
internal system for tracking records request incorrectly indicated a response email
was sent to the Complainant ("our tracking system indicated that we had formally
responded"), and that the City Attorney's Office could not locate an email from
Complainant indicating he had not received a response from the City Attorney's
Office ("[W]e also could not locate any emails from you to our office indicating that
you had not received a response."). *See* Exhibit 1.

The parties do not dispute that the response from the City Attorney's Office was not timely—*i.e.*, was produced outside of the ten (10) days required for a response. Accordingly, the evidence supports a finding there was a violation of Section 2-92.2(c).

When there is a violation the principal remedy is an order to cure or correct. The City has provided a response to the request so the violation has been cured. For violations of this nature, the Open Government Commission may also issue a fine but only for "subsequent similar violations". *See* AMC, subd. (b) of section 2-93.8 (Penalties). As there is no evidence in the record of the existence of a subsequent similar violation, no further remedy is required.

<u>Decision</u>

1. The Commission SUSTAINS the complaint concerning a violation of sections 2-92.2(c) of the Alameda Municipal Code. However, since the violation has been cured, no other remedy is necessary.

2. The Commission emphatically reminds all City Departments and their respective Custodians of Records that the community and this Commission expect that there will be strict adherence to acknowledging the receipt of a request for public records and producing records in response to a public records request in a timely manner as provided in the Sunshine Ordinance.

3. In addition, the Commission recommends that it be provided with a report and spread sheet at its annual meeting that shows the number of Public Records Act requests received by, or referred to, the City Attorney's Office,

whether records were produced in response thereto, and the timing of such responses.

Signatures are on the following page.

Dated: _____, 2019

_____
Mike Henneberry, Chair

_____
Heather Little, Member

ABSENT [at the meeting on July 23, 2019]
_____
Bryan Schwartz, Member

RECUSED
_____
Rasheed Shabazz, Member

_____
Ruben Tilos, Member