

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - MAY 2, 2022 - - - 7:00 P.M.

Chair LoPilato convened the meeting at 7:00 p.m.

ROLL CALL - Present: Commissioners Cambra, Chen, Montgomery, Tilos and Chair LoPilato – 5. [Note: The meeting was conducted via Zoom.]

Absent: None.

[Staff present: Chief Assistant City Attorney Elizabeth Mackenzie; City Clerk Lara Weisiger; Assistant City Attorney Alan Cohen; Police Chief Nishant Joshi]

NON-AGENDA PUBLIC COMMENT

None.

COMPLAINT HEARINGS

3-A Hearing on Sunshine Ordinance Complaint Filed on April 13, 2022

Chair LoPilato made brief comments.

Commissioner Cambra stated the Commission does not have jurisdiction to handle any complaint that would be time barred and may not have to discuss the substance of the claim; suggested organizing discussion around the time-barred portion of the complaint and letting both parties know.

In response to Chair LoPilato's inquiry, the Chief Assistant City Attorney stated she agrees with the approach.

Erin Fraser, Complainant, gave an Opening Statement and Presentation of Facts.

The Assistant City Attorney, City/Respondent, gave an Opening Statement and Presentation of Facts.

Mr. Fraser gave a Reply to the City/Respondent Opening Statement and Presentation of Facts.

Commissioner Montgomery inquired what records the Complainant was missing and why he wanted them in their original formats.

Mr. Fraser responded that he believes texts messages on personal devices are discoverable record; stated the City needs to do a better job of requesting them; he also requested messages from the officer terminals; regarding why he wanted the original format, he wanted the meta data to see when a record had been edited and who created the content.

Commissioner Tilos inquired more information on what types of details could be obtained from meta data.

Mr. Fraser responded meta data is like the envelope in which correspondence is written; it indicates the time it was mailed, where it was stamped, and to whom it was sent; in electronic mail, the meta data will show when, where and to who an email was sent.

Commissioner Montgomery inquired why Mr. Fraser did not respond in a timely manner on some of the time-barred issues.

Mr. Fraser responded that despite his protestations, he believed that the City had reasonable reason to keep things quiet at the time; stated there was no violation until the City made delays excessive or withheld information beyond the reasons for the delay; his complaint was not ripe until March 30th when the release of the District Attorney's (DA) report made it clear that the City no longer had any excuse.

Chair LoPilato inquired whether Mr. Fraser received any notes or calendar appointments outside of the confines of a police report in the records released to him on April 12, to which Mr. Fraser responded in the negative; stated the most responsive part of the records were the Police Department file in PDF form; he intentionally made the request broad with the idea that he would get a call from somebody asking him to please narrow his request, but never received that call.

Chair LoPilato inquired what conversations Mr. Fraser had with the City leading up to the complaint or in the time between the complaint filing and the hearing.

Mr. Fraser responded he submitted a request on the day Mario Gonzalez died, and about every month he would receive an email from the paralegal saying there was still no information and they would get back to him; he would reply angrily that it was "total baloney and just send the records"; this continued for 11 months until April 7th when the paralegal promised to send a status report; he had to request a status which was that the status had not changed; three hours later he received a bcc email stating the report was released so the City would be responding to PRAs regarding the matter; he never received the follow-up on April 12th that was sent to other folks; he heard from a friend that an article linked to the report; he filed his complaint with the City Clerk on April 13th stating he is open to talking about it; he received a call from the Assistant City Attorney around April 15th and had a pleasant conversation; he took on the task to come up with a specific list of things to request and send it to the Assistant City Attorney; he did not compile the list after thinking on it overnight; instead he wrote an email to the Assistant City Attorney stating some of the things he wanted, including text messages; he was not sure they were working toward the same goal and wanted to go before the OGC so that the public could be part of the process.

Chair LoPilato stated it was mentioned that Mr. Fraser received some text messages in response to a completely separate PRA; there were text messages, but they were completely outside of the scope with this issue.

Mr. Fraser concurred, stated he would argue that those text messages were responsive to this request well, though they were never produced in response to a second request sent on April 29th.

Chair LoPilato stated it sounds like some of the texts Mr. Fraser received in response to the April 29th request were potentially responsive to the April 19th one, but at no point did he receive a direct response to the April 19th request.

Mr. Fraser stated Chair LoPilato's statement is 100% correct.

Chair LoPilato stated there was another email in the file in which Mr. Fraser clarified that he was asking for records related to the decision of officers to go door to door regarding the memorial on April 21st; inquired whether Mr. Fraser ever received records like that, from the City at any time.

Mr. Fraser responded in the affirmative; stated the City has been responsive to that request on April 12th ; including an audio file of an officer going door-to-door; whoever directed the officer to go out and conduct those was a communication of sorts, which could have been a direct phone call of which there's minimal records; if it were a terminal message, he believes that would have been a responsive record and that was not produced.

Chair LoPilato inquired whether Mr. Fraser intended to just get police record file of the case or envisioning something broader.

Mr. Fraser responded in the affirmative, stated he was envisioning something broader; the incident just happened and he was concerned he may not receive a response if he requested information on a "murder that occurred in the City" so he referred to the request indirectly by the case number.

Commissioner Cambra inquired a description of the procedure when a California public records act request actually comes in and how documents and records would be identified.

The Assistant City Attorney responded that what happens depends on where a request is submitted; in this case it went to the City Clerk; the City Clerk would then send to the police department and the police department would start gathering the records; to the extent the Police Department had legal questions about what they were gathering, or what would be disclosed, they would then contact him.

Commissioner Cambra inquired how an individual officer or an individual employee would know that there was a records request of a specific nature.

The Assistant City Attorney responded CA staff would work through the Captains and the Captains would then let an officer know whether or not there was a record pertaining to that officer. Commissioner Cambra inquired how does the department cast a net as wide to be able to catch things that may be responsive to a request versus identifying an individual officer.

The Assistant City Attorney responded that he is not able to answer that, but gave an example of a request for text message for an individual officer; in that instance, the officer was asked to produce responsive records which was then provided to the department and the City would then disclose those records.

Commissioner Cambra inquired whether the department issues a statement of due diligence to the CA's office or to the complainant, to which the Assistant City Attorney responded in the negative; stated that is not the practice but the department does a diligent job collecting the records.

In response to Commissioner Cambra's inquiry regarding records being withheld, the Assistant City Attorney stated that it is important to recognize under the Public Records Act there is a two-step process; first the City has to evaluate whether or not it possesses responsive records and if so, issue a determination; next is producing the records; the PRA does not require creating records; in the case where there is pending investigation, nothing can be released until all investigations are complete.

Commissioner Cambra inquired how a person would know whether information would be exempt if records are redacted.

The Assistant City Attorney responded it would be included in the determination letter; stated that in the case of putting information on the website of Mario Gonzalez; it was explained that some information was redacted to protect the identity and privacy of juveniles.

In response to Commissioner Cambra's inquiry regarding whether the investigation was concluded on March 30th, the Assistant City Attorney stated that the CA's office determined that until the DA had finally issued a report to the public, the City wanted to defer to the DA; once the DA's office released the report to the public, the City would quickly disclose everything it could. Commissioner Cambra inquired what the date was the City disclosed the broad amount of information once the DA's report was released.

The Assistant City Attorney responded the City found out at about 5:00 or 6:00 p.m. on April 7th that the Huffington Post had obtained a copy of the DA's report and was quoting from it; the CA's office determined that the investigation was concluded and released everything to the public on April 12th, the delay was partially caused by the fact that the Public Information Officer (PIO) was on vacation and staff did not know how to upload to the City's website.

Commissioner Cambra inquired whether the Police Department received the records that were eventually given to the PIO to be uploaded, to which the Assistant City Attorney responded in the affirmative.

Commissioner Montgomery stated the bodycam footage of the death of Mr. Gonzalez was released earlier and then suddenly other records could not be released; it did not make sense to her; inquired who makes the decisions about what type of records are released and when, and whether the decisions are reviewed.

The Assistant City Attorney responded it depends on whether it is a discretionary decision or a mandatory decision; a discretionary decision determination rests with the custodian of records, which is the Chief of Police in this case; the decision was to hold production of information until the conclusion of the DA's investigation; in terms of timing of the release of information, there were several discussions but it was ultimately decided that the CA's office would stay out of the way of the DA's investigation; ultimately the decision about what to release and when to release information rests on the shoulders of the City Manager's office and the Chief of Police who were tasked with evaluating public interest concerns.

Commissioner Montgomery stated she found it interesting that there were no emails released regarding the determination, or even notes.

The Assistant City Attorney stated without getting into attorney-client communications, he was not aware of any emails regarding the determination; there were discussions but no emails or notes in this case.

In response to Chair LoPilato's inquiry, the Assistant City Attorney stated he is stepping out of his lane but he wants the public and the Commission to understand what happens in the immediate aftermath of a critical incident; there is a protocol established by Alameda County that is followed; phones are taken, officers are sequestered from one another so they are not sharing perceptions of what happened, they are not allowed to send emails; these policies are in place to preserve the integrity of the investigation.

Vice Chair Chen stated there seems to be no recourse if the custodian of records fails to provide the complete records when requested, and is based on the honor system; inquired whether it has been found that there are some employees that refuse to disclose information on a PRA request. The Assistant City Attorney responded that he has not had that problem as a general rule; stated he has good relationships with his clients and are forthcoming with each other; his expectation is that they will produce records and do a diligent search; the Public Records Act does not require creation of records and doing an attestation could be problematic; he has to believe that the people he is dealing with are operating in good faith.

Commissioner Cambra inquired if the Assistant City Attorney could talk about the officer's obligation of honesty and the consequences of not being honest.

The Assistant City Attorney responded if an officer were to withhold data or are being untruthful, that would be grounds for discipline up to, and including, termination; stated the people who oversee the Police Department's records release policy and the day-to-day management are sworn peace officers who are charged with being completely truthful.

Vice Chair Chen stated the police department requested and got a budget item for a police data analyst last year; it seems that position would be somebody who compiled some of the data for public records requests as well; inquired whether that position was ever filled.

The Assistant City Attorney responded that he does not oversee the police department and does not have any policy role with regard to them and can't speak to that.

Commissioner Montgomery responded that the position has not yet been filled.

In response to Chair LoPilato's inquiry regarding allowing Chief Joshi to participate in the discussion, the City Clerk stated the Chief could be asked questions as a witness in the discussion.

The Chief Assistant City Attorney reviewed the procedures and stated evidence in the form of witness testimony is acceptable.

The Assistant City Attorney stated that in the interest of transparency, he would encourage the Commission to ask questions directly to Chief Joshi.

Commissioner Cambra stated he would ask the same questions asked of the Assistant City Attorney since the Chief has a better understanding of the procedures for securing information; inquired the Chief to briefly describe how officers and staff of the Police Department would respond to a PRA request.

The Police Chief responded that requests come in from the City Clerk and are immediately forwarded to the Records Supervisor, the Captain that oversees the bureau of support services, and himself; also included in the notification is the City Attorney's office, as well as the City Manager; the details of the public records request are logged and entered; the department endeavors to gather all the requests; before information is pushed out, they may consult with the City Attorney's office to ensure they are properly complying with the requests being made and that they are not violating any statutes or ordinances; they then comply with the request appropriately.

Commissioner Cambra stated there has been some questions regarding possible records on mobile terminals and cell phone text messages; inquired how the department would be able to know that those things existed.

The Police Chief responded that when the incident happened he had not started working for the Alameda police department until almost two months later, so he does not know, in this specific incident, exactly how the request came in; the department-issued cell phones are City and Department property; information can be accessed immediately; but as to this specific incident he can't speak directly to it because he wasn't here at the time the incident occurred.

Commissioner Cambra stated it was his understanding that it's the Department policy in one of these incidents that involved staff are put on administrative leave.

Chief Joshi concurred, stated it is correct that the officers were placed on administrative leave in this case and they currently remain on administrative leave.

In response to Commissioner Cambra's inquiry, the Police Chief stated it is still possible that the officers could still communicate using their personal cell phones, however, he does not know what processes occurred here, but from his previous experiences and best practices, officers are sequestered, their cell phones are secured and during the investigation they're asked if they've had any types of communications with anyone regarding the incident that they were involved in. Commissioner Montgomery stated after the body cam footage was released, it seemed a lot of other data was not allowed to be released; inquired who makes the decisions about what records are released and when; also inquired how often the release of data per the request is actually reviewed, and who is the person actually responsible to do those things.

Chief Joshi responded that he does not know how the decision was made on releasing body cam footage on this particular incident, however, the decision to release of any information or any data is owned by the Alameda Police Department; those decisions occur in consult with the city attorney's office to ensure that the Department is complying with what's being requested and that no laws are being violated; in general practice, police departments understand that incidents of this magnitude, the public has questions and have interest; there's a balancing act that occurs, meaning the department has to take great caution in looking at and considering what information is going to be released and what information can be released without compromising any ongoing investigations; it's important to consistently be making these reviews every 30 days according to the Statute, to ensure that the that nothing's changed and that they're still an investigative interest; that just means that information or data would be delayed and withholding information permanently is not the intent of the Statute; going back to Commissioner Montgomery's question with regard to how the decision was made to release body cam footage, he can only speculate that the intent was to provide some information, some context of what occurred in this very tragic event; when things were withheld, it was because there was an ongoing criminal and administrative investigation going.

Commissioner Montgomery inquired whether all the data has now been released to Mr. Fraser and that is the end.

Chief Joshi responded that the administrative investigation has not been released.

Commissioner Montgomery inquired whether there is still more coming, to which Police Chief responded in the affirmative.

Vice Chair Chen stated there a few outstanding investigations; inquired what are each of the outstanding investigations looking for and what are they investigating.

Chief Joshi responded that they don't go in any specific order but there are several concurrent investigations that are occurring; the first body that initiates the criminal investigation is conducted by the Alameda County Sheriff's office; they prepare a case packet to conduct a preliminary and follow up investigation for the DA's office to review to consider for charging; there are some delays; at the same time there's an administrative investigation that is done by the Police Department which typically looks for policy violations, training opportunities and whether the officers' conduct was in alignment with departmental policies; another investigation that occurred particular in this case was done by the coroner's office to determine to understand cause of death; those are the four investigations that were occurring.

In response to Vice Chair Chen's inquiry, the Police Chief stated the Alameda County Sheriff's office completed their criminal investigation; they presented it to the DA's office to consider for charging; the DA's office is complete with their assessment of the case; the coroner's report was completed before the criminal investigation and the DA reviewed the case, so the only thing that's outstanding is the administrative investigation, or the internal affairs investigation, the policy review of officers' conduct.

Vice Chair Chen inquired whether Louise Renne was heading the internal affairs investigation, to which the Police Chief responded in the affirmative.

Commissioner Tilos asked the Police Chief to talk more and give a little more detail about the redaction policies regarding the video that Mr. Fraser stated someone went to great lengths to redact every license plate number; stated the Assistant City Attorney also discussed how juveniles should not have their faces in videos; inquired whether there were special things done just for this case because it was high profile, or is it normal policy to redact every single license plate number in the footage.

Chief Joshi responded that the department and best practices look to redact information that could give information on uninvolved people; the intent is to have privacy considerations; the redactions remove specific information that isn't germane to what the public records request is actually asking for; in this particular case, he looked at the things that were redacted and didn't see any of it to be outside of what he has seen in the past; he has been a police officer for 24 years and has overseen investigations for at least the past 10 years; he did not see anything that was out of the ordinary.

Chair LoPilato stated that the Police Chief mentioned the collective decision to defer to the DA as to when she would issue information to the public; inquired when the City's paralegal, Ms. Cooper, was informed of the March 30 decision that the Alameda County DA would not be prosecuting.

The Assistant City Attorney responded that he was present at about six o'clock on April 7th when somebody tweeted that the Huffington Post had released the DA's report that evening.

Chair LoPilato inquired whether that was the first time that Ms. Cooper became aware, not that it was going public, but that the decision had been made not to prosecute.

The Assistant City Attorney responded that he cannot speak for Ms. Cooper but that is when the CA's office became aware that the report had been released.

Chair LoPilato inquired whether the people responsible for responding to the public records request aware that the decision was coming out in a few days or was there just no awareness at all, to which the Assistant City Attorney responded he did not know.

Chair LoPilato stated the link to responsive records went out on April 12 that records had been posted; inquired whether the Assistant City Attorney was able to check if it had been submitted specifically to Mr. Fraser.

The Assistant City Attorney responded the he experienced some technical issues and that Mr. Fraser should have been included in the BCs of his email and he's happy to go back and check; he apologized if Mr. Fraser was not included in the BCs.

In response to Chair LoPilato's inquiry, the Assistant City Attorney stated he is happy to produce Meta data and there was no intent to hide anything, he just honestly couldn't figure out how to print it out.

Chair LoPilato stated she assumes the group of bcc recipients are because they all submitted PRA requests on a similar topic; inquired whether they were identical PRA requests.

The Assistant City Attorney responded that he cannot speak to whether they were identical requests, but that the requestors were all people who had written to the City asking for disclosure of information pertaining to Mario Gonzalez.

In response to Chair LoPilato's inquiry of the volume of requests, the Assistant City Attorney stated in the beginning, there were dozens and dozens.

Chair LoPilato inquired whether anyone directly consult the language of Mr. Fraser's actual request in the analytical process of what to release, to which the Assistant City Attorney responded in the affirmative.

Chair LoPilato stated Ms. Cooper's March 7th email says that the investigation file contained over 1000 files comprising 6.51 gigs of data, inquired whether that was ultimately posted on the website, to which the Assistant City Attorney responded in the affirmative.

Chair LoPilato inquired whether it is the City's position that the records that were ultimately posted on the website were the full and complete extent of disclosable responsive records to Mr. Fraser's request.

The Assistant City Attorney responded in the negative; stated his office released the City's investigation report, but the Alameda County Sheriff's Office's (ACSO) portion of the documents, he advised Mr. Fraser to contact ACSO and get them to produce their information; as mentioned by the Police Chief, the administrative investigation is not complete, and when it is complete, the City will produce everything.

Chair LoPilato clarified her question, inquired whether what was released on the website the full and complete extent of disclosable responsive records that are able to be produced right now that are actually in the City's possession, to which the Assistant City Attorney responded in the affirmative.

Chair LoPilato inquired whether all of the records that could be responsive to Mr. Fraser's request related to the decision to speak to neighbors informing them about a memorial on April 21, 2021

were released on the website, to which the Assistant City Attorney responded in the affirmative, stated records existed related to that were produced; nothing was withheld.

Chair LoPilato inquired whether the records were delayed to be released with the rest of the investigation file or were they released at some earlier time.

The Assistant City Attorney responded that he cannot speak to that, stated he knows that the email was forwarded to the Police Department and they were asked to produce all records that were responsive; he does not believe there were any related records other than the one Mr. Fraser already reviewed.

Mr. Fraser stated the records were produced April 12 2022 and it is his understanding that the only manner that the records have been produced has not been any written communication or any terminal messages, but only the audio that he mentioned.

The Assistant City Attorney concurred with Mr. Fraser.

Chair LoPilato stated there is not a dispute at this point but wanted to confirm that the materials posted on April 12 were in their original form, other than redactions to protect personal information, third party, and potentially also medical privacy.

The Assistant City Attorney stated Chair LoPilato's statement is correct.

Chair LoPilato inquired whether it is the City's position that all raw information that could have related to the incident described in the initial police case file was exempt from disclosure because it was part of the investigation file.

The Assistant City Attorney responded that the Department didn't know what facts the DA was going to consider relevant, including regarding Mr. Clemens and the earlier allegation that the DA didn't investigate him; he does not think the Department had any idea; there was a lot of daylight between what the DA was doing and what the Police department was doing and that was to preserve the integrity of the process; the City took a broad brush to let the process play out with anything connected with the Mario Gonzalez incident before disclosing anything; the City searched for the universal records but held records back until April 12, 2022.

Chair LoPilato stated that she is inclined to take a recess after public comment; Commissioners nodded their consensus for the recess.

Speakers:

Stated that she is personally invested in the complaint and this case and is personally affiliated with the Gonzalez family; she does not see use of force is any less egregious if you call a participant a witness, referring to Mr. Clemens; if Mr. Clemens gets to participate as an employee of APD then his records should have been released when the other officers' names were released last April; Jenice Anderson, Alameda.

Stated she experienced some difficulties trying to receive public records from the police department in the past; even with cases she was personally involved in; urged the Commission to make some recommendations and recognize the specifics of the complaint as well as the systemic problem that is distinct and different from other City departments; the issue needs to be addressed and tonight is an opportunity to address it; Jennifer Rakowski, Alameda.

Stated that she echoes everything that Ms. Anderson and Ms. Rokowski said; she does not buy the supposed lack of paper trail and feels more information should have been provided; she supports Mr. Fraser's arguments: Alexia Arocha, Alameda.

Chair LoPilato called a recess at 8:57 p.m. and reconvened the meeting at 9:08 p.m.

Mr. Fraser gave a Closing Statement.

The Assistant City Attorney, City/Respondent, gave a Closing Statement.

Chair LoPilato stated the decision options are: 1) complaint sustained with cure and correct recommendation, 2) complaint sustained without cure and correct recommendation, 3) complaint denied, 4) complaint denied as unfounded, and 5) complaint dismissed on jurisdiction or procedural grounds; the Commission can make the findings with respect to individual claims within the complaint or with respect to the full complaint; there is a procedural issue to deal with and which would bar consideration of some or all of the claims, or certain aspects of the claims potentially; the question of whether any, some, or all of the claims are time barred under the statutory requirement that a complaint must be filed within 15 days of an alleged violation of the sunshine ordinance, the complainant did a good job of delineating conduct within that 15 day window and conduct beforehand; it's something the Commission is going to need to address to decide which of the claims are even properly before the Commission.

Commissioner Cambra stated jurisdiction is a huge issue which could help the Commission arrive at decisions when it's appropriate; there are nine individual allegations to deliberate and nine findings to make; whether or not they are time barred, it might be good to understand the 15-day limitation, because it can sometimes seem like this is just an easy way for the City to get out of being held accountable, policies and procedures do need to be followed; there's a lot of people that don't quite understand the distinction between a violation and a continual violation that would allow the Commission to hear a case, even though it was a violation a year ago, but the Commission does not have jurisdiction to hear it now.

Chair LoPilato stated another issue to consider is when does a claim ripen; there is a jurisdictional barrier on what the Commission can consider and at the same time, things that happen on one calendar date doesn't actually ripen until a later date.

Vice Chair Chen stated she wanted to mention that this was the basis of the meeting last month, which was the whole thing about when the clock starts ticking on 15 days; staff and the complainant could agree on extending the time, but this is going to be a consistent problem with public records act requests and should go to a higher level; she feels the Commission is constrained by the Sunshine Ordinance on the 15 days, which prohibits them from ruling in one direction, but it doesn't stop them from making recommendations to City staff, as well as asking City Council to take a good close look at the issue; this is the third complaint the Commission has received regarding timeliness on complaints filed with the Police Department.

Chair LoPilato stated it would be great if there was more time in there to encourage the parties to resolve informally; she concurs with Vice Chair Chen's comments as something the Commission should be considering in terms of recommendations.

In response to Chair LoPilato's inquiry, the Chief Assistant City Attorney stated that Commissioner Cambra is on point with 2-93.2 Part A which states that says any person may file a complaint against any violation of the Sunshine Ordinance no more than 15 days after the alleged violation; that is the specific issue; looking at alleged violation and this issue of ripening I think the issues presented in some of the other complaints that are not as apparent here; the difficulty is most of the claims do have some point at which the complainant arguably knew the City's position and acknowledged that he disagreed with a certain decision the City was making; a good threshold question to ask for each of the claims is was there a point at which the complainant was aware that the city was either doing something or had decided not to do something or had done something that he disagreed with; with some of these claims, there is a point at which he was aware of that and just because of the nature of the sequence of this petition and the particular issue and the circumstances surrounding it there's almost a year dividing those events; several of the events arguably happened in April of 2021 or May of 2021; other claims or alleged violations have happened almost a year later in March or April of 2022; she advised the Commission to grapple with that question as they encounter and deliberate each claim.

Chair LoPilato stated it would make sense to do claim by claim and take them in order; regarding the first issue, the complainant requested materials within 30 and then those 30 days elapsed, without any materials being provided, despite the fact that there was a response in between.

In response to Chair LoPilato's inquiry, the Chief Assistant City Attorney stated that for the purposes of drafting a decision, she would prefer to have a motion; to just confirm the actual vote, the Commission does not need to make a motion for each claim, however, she would prefer a lot of specificity as to the reasoning and decision on each claim, so she has really complete notes at the very end.

Claim No. 1: Did the City make a good faith effort to comply with Mr. Fraser's request for a shortened timeframe?

Commissioner Tilos stated the City did provide an answer, even though it was a generic one, that there was an ongoing investigation and some records could not be released.

Chair LoPilato inquired whether it was Commissioner Tilos's position that claim number one about the shortened timeframe, the request for 30 days, would be time barred because the City gave the complainant a response and he knew the response was that the City could not produce records, to which Commissioner Tilos responded in the affirmative.

Chair LoPilato tool a quick poll around of who is in agreement with Commissioner Tilos.

Vice Chair Chen stated that she does not agree with the reason because his claim, whether or not the City made a good faith effort, is moot because he didn't file the complaint in time; it is time barred and it's not that the City actually complied and that is not what the Commission is being asked in that question; it is stopped before even leaving the gate because it is time barred.

In response to Chair LoPilato's inquiry, Vice Chair Chen stated the complainant only filed the complaint recently, so certainly he was probably aware that the City was not in compliance with the shortened timeframe; that is an assumption, but it basically sets it up to say he did not file the complaint in time and the Commission cannot consider it.

Chair LoPilato stated she is envisioning having some discussion about each claim and see if the Commission is generally in agreement about what is time barred or not, and then make a motion

to wrap up; the motion could be to find that claims are time barred on the basis that the complaint was not brought within 15 days of the alleged violation; that could be section one and then head into any remaining substantive issues.

Commissioner Cambra stated that he thinks some are going to be time barred for the initial request, but not time barred for closer to the actual event; suggested writing down so it is all straight; concurred with Chair LoPilato's point of handling all of the completely time barred, and then discuss the validity of certain aspects of an issue to identify parts that are time barred versus substantive

Chair LoPilato stated that she liked the distinction of time barred in full and time barred in part and can be framed in that manner.

Chair LoPilato moved that claim number one regarding the shortened timeframe is time barred in full such that the Commission cannot consider the complaint, because it was not brought within 15 days of the alleged violation.

Commissioner Tilos seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

Claim No. 2: Was the City required to make the information provided available in a particular electronic format?

Chair LoPilato stated the Commission needs to address the question of whether the complaint is time barred; she noted there were productions at various timeframes, including a YouTube video, release of body cam footage, other things that sprinkled out through December 2021, and then the release of the big batch of records on April 12th.

Commissioner Montgomery stated she would like to see the data pulled apart; the data about the early date, up through 2021, is time barred in her opinion, but the rest can be reviewed because of the timeframe the complainant submitted his complaint.

Chair LoPilato clarified that the only documents produced in 2022 was the April 12, 2022 massive release; inquired whether claim number two would be time barred with respect to any claims related to information provided prior to the April 12 2022 disclosure of records, but the Commission can consider the substance from that point forward, to which Commissioner Montgomery responded in the affirmative.

Commissioner Cambra stated the specific date is March 29, 2022, counting back from the 15 days for the complaint filed; work backwards and that would cover anything that happened.

Commissioner Montgomery moved that the complaint and all the data from up until March 29th is time barred, however, the Commission will look at the information past that date.

Commissioner Tilos seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

Claim No. 3: Did the City comply with the requirement to acknowledge Mr. Fraser's CPRA request?

Chair LoPilato stated it looks like the claim appears to articulate there may have been multiple requests, all within that April 2021 timeframe.

Commissioner Cambra stated that, because there were multiple communications, the acknowledgement of each of them could be construed as a public records act request; the Commission needs to make sure to understand which ones are actual public records act request and which ones were repetitive or affirmations of an original one, so the exact time could be determined; it seems like the initial public records act request and one follow up occurred in April 2021; the City did acknowledge it and there were no new public records request going forward. Commissioner Montgomery stated she concurs with Commissioner Cambra.

Commissioner Tilos stated he also agrees with Commissioner Cambra's comments; there was one initial request, which was April of 2021, then two other requests were made within weeks but still in the April timeframe, so he would say it was time barred.

Commissioner Montgomery stated she is looking where it says the first request was April 19 and then there was another one that argues April 22nd and 24th were additional request; inquired whether it is the Commission's job to figure out whether those were additional requests or just clarifications of the first request.

Commissioner Cambra stated all the requests were time barred anyway; it is important that the Commission make a finding to make sure to know which one was the complaint, because it had to be acknowledged, otherwise all requests are time barred no matter what; it is more technical than anything else, but still should dot the I's and cross the T's.

In response to Chair LoPilato's inquiry, the Chief Assistant City Attorney stated the Commission could frame a motion in a way that encompasses Commissioner Cambra's concerns by saying the April 22 and 24, 2021 emails were additional requests and are not before the Commission because they would also be time barred; going into the substances of whether or not those additional emails are actually separate requests is unnecessary.

Commissioner Montgomery moved that claim number three is time barred since the Commission can't see it or talk about it.

Chair LoPilato made a friendly amendment to address the language; moved that claim number three is time barred with respect to the original public records request to the extent the emails on April 22 and 24th 2021 constitute a request and would be time barred as well.

Vice Chair Chen seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

Claim No. 4: Did the City disclose law enforcement records consistent with the Sunshine Ordinance?

Commissioner Montgomery stated this one also has pieces that are time barred and ones that are not time barred; the data that comes in April 2022 and up to March 29th is something the Commission can look at; anything previous to that seems to be time barred.

Commissioner Tilos concurred with Commissioner Montgomery.

Commissioner Cambra inquired whether each time the City responds to Mr. Fraser that there is this reason for not disclosing data, is it a valid exemption, and in that case, each time the City used it would that, in fact, then, be a violation.

Chair LoPilato stated it is interesting because the erroneous April 7 email includes that statement; Commissioner Cambra stated if it is framed from the point of the complainant, it is hard to say they are not cooperating because they don't know what they're supposed to be getting; they're definitely the disadvantage.

Chair LoPilato stated it seems the debate is whether the claim needs to be delineated as time barred in part or if there's another avenue to address the full question since there was no real notice of what was going to be disclosed.

The Chief Assistant City Attorney stated it would be helpful to view the issue from Mr. Fraser's perspective going back to May of 2021; he received communication from the City saying they are not going to be producing any records other than what was disclosed on April 27, with the reason that there is a pending investigation and everything else that was included in the email; at that point, Mr. Fraser is aware of the fact, and apparently believes, that the City's response was not consistent with the Sunshine Ordinance and that there should have been a variety of different actions taken by the City, including but not limited to, disclosure of more records and more substantive description of what was being withheld; there is a very good argument that Mr. Fraser was on notice that the City was taking a certain position which stayed relatively consistent until April 2022; she understands the argument of a continuing violation, but there is definitely a very strong argument that the alleged wrong in this case had ripened and had become something that Mr. Fraser was aware of at the earliest in April of 2021; she can appreciate the Commission concluding for this particular claim that it is perhaps a hybrid where part of part of the ultimate document production finally done in April 2022 would be timely considered by the Commission. Commissioner Cambra stated he concurred with the Chief Assistant City Attorney's comments; it would mean that any disclosure before the March 29 date would be time barred but the Commission could move forward with the April 2022 disclosure discussion.

Commissioner Cambra moved that any of the disclosures prior to March 29, 2022 would be time barred and the rest of it would remain open.

Commissioner Montgomery seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Abstain. Ayes: 4, Abstentions - 1.

Claim No. 5: Did the City comply with the requirements for disclosing arrest log and records concerning calls for service?

Vice Chair Chen stated she did not read the DA's decision and is unclear whether the information Mr. Fraser is requesting is in the decision or not.

Chair LoPilato stated Vice Chair Chen's comment brings out that the information did not come out until the DA's decision not to prosecute and subsequent release with the investigative file in April 2022 which would indicate one would need to see those records to be able to evaluate this claim; a complainant would not know if the City had acted in compliance with this Government code section until they saw what the actual records were going to be produced; it is a similar hybrid situation; inquired whether there is any reason the Commission should analyze claim number five differently than claim number four.

The Chief Assistant City Attorney responded in the negative; stated she sees claim number five as being a subsection of claim number four.

Commissioner Tilos stated it is sounding like everything before March 29 is time barred and anything after it is okay to make a decision; inquired whether it would be efficient to make that determination on the subsequent claims at once.

Chair LoPilato responded that the claims should be taken claim by claim for the reasons stated earlier; stated she loves suggestions for streamlining and to keep them coming.

Commissioner Cambra moved that any of the disclosures prior to March 29, 2022 would be time barred and the rest of it would remain open.

Commissioner Montgomery seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

Claim No. 6: Did the City improperly withhold entire records?

In response to Chair LoPilato's inquiry, Commissioner Cambra stated Claim 6 is a similar situation to Claims Four and Five.

Commissioner Tilos stated that he agrees because the claim included redactions and everything that came out on April 12, 2022.

Commissioner Cambra stated the City did not release any information prior to March 30, which has been the Commission's basis; it is also partially time barred.

Chair LoPilato stated there's the act of withholding entire records being justified on the basis of there is an ongoing investigation.

Chair LoPilato questioned how it is that a complainant could be on notice of whether entire records were improperly withheld until that investigation concludes and then everything comes out and perhaps the complainant looks at it and says the basis for withholding the entire record was completely bogus; she does not actually think that happened here; it's just something that makes the jurisdictional question a little murky; but it sounds like there is a majority already in place. Commissioner Cambra stated he grapples with the same thing; something could have been disclosed, as opposed to withholding everything; that's the determination that the Police Department and the City Attorney make based on some fairly broad language in the penal code. Commissioner Montgomery stated the Complainant could not have made his complaint until April 22nd because he could not know that the City was improperly withholding entire records until he was able to see the records finally given; Mr. Fraser had no idea what the City was going to release until they actually did.

Vice Chair Chen stated there are more records to be presented because the civil investigation has not yet been completed.

Chair LoPilato stated how can the claim be time barred if, arguably, it hasn't even fully ripened.

Vice Chair Chen stated the City has a chance to properly release the entire record at some future date.

Commissioner Cambra read Penal Code 837.7 that the City is relying on; it has really broad language, specifically, “during an active criminal investigation disclosures may be delayed for up to 60 days from the date of the misconduct or use of force occurred until the DA determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner”; there is some earlier language that gives the City broad authority to make that determination; even after 60 days the Agency can continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with the criminal enforcement proceeding against an officer who engaged in misconduct or use of force; it's just awful broad language that the City would be bound by.

In response to Chair LoPilato's inquiry, Commissioner Cambra stated it is clear that anything before April 7 or March 30, the City's reliance on 837.7 is at least reasonable.

The Chief Assistant City Attorney stated the argument that the complainant makes in support of claim number six seems to focus on the fact that the respondent (the City) failed to produce records in response to the April 19, 2001 original request and failed to produce any written explanation for the withholding other than the general recitations of supposed exceptions these general recitations do not explain the redacted or withheld information; she viewed basis of his complaint as to claim number six as saying that the City was not permitted to simply send an email periodically just saying they're not going to give any more records; his argument is that the City was required Section 2-92.1 that the City was supposed to explain any withheld information in writing; she understood that his concern or his alleged violation in this regard, was the fact that the City just sent this email periodically, summarily saying he's not getting any more records, for this reason, and it should have been a more detailed nuanced analysis; it does go to the time barred consideration because he did get that first email, of which he complains, in April of 2021, and then got it periodically thereafter.

Commissioner Cambra inquired whether the City refer to penal code 837.7 in their response, to which the Chief Assistant City Attorney responded in the affirmative.

Chair LoPilato stated the City did not respond with the correct citation until many months into it, but the intention was there; she is getting a little more convinced that perhaps the time bar question here is the distinction without a difference.

Commissioner Cambra moved that any of the disclosures prior to March 29, 2022 would be time barred and the rest of it would remain open.

Commissioner Tilos seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Abstain. Ayes: 4; Abstentions: 1.

Claim No. 7: Did the City comply with Section 6253(c) of the CPRA to respond to Mr. Fraser's request?

In response to Chair LoPilato's inquiry, the Chief Assistant City Attorney read the key component of subsection C, “ Each agency upon a request for a copy of records shall within 10 days from receipt of the request determine whether the request in whole or in part seeks copies of disclosable public records in the possession of the Agency and shall promptly notify the person

making the request of the determination and the reasons, therefore in unusual circumstances the time limit prescribed in the section may be extended by written notice by the head of the Agency” Chair LoPilato stated it sounds like it relates to a frame of time much closer to when the original request is made.

Commissioner Cambra stated that he believes it is time barred under the same analysis as the others; moved that any of the disclosures prior to March 29, 2022 would be time barred and the rest of it would remain open.

Commissioner Tilos seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

Claim No. 8: Did the City respond in a “timely” manner?

Vice Chair Chen stated that it just seems too late to complain about it now since it is a year later; she is not saying whether it was timely or not; when she reads this, she wondered if it meant the original.

Commissioner Cambra stated it wasn't clear whether the complaint was for the original April 2021 submission, or if the complaint was that the City was aware on March 30 that there was not going to be a criminal investigation, at least informally, and then the time it took to disclose the remaining information.

Commissioner Montgomery stated she seems to remember the Complainant responding to that directly.

Chair LoPilato stated there was definitely discussion of whether disclosure was prompt after the intervening event which changes everything which is the DA's decision not to prosecute; her read was that this was a partial hybrid scenario where there's room for discussion over whether information was produced in a timely manner, after the shield was lifted.

In response to Commissioner Tilos's inquiry whether Commissioner Cambra's motion on the previous claims would apply, Chair LoPilato stated that with respect to whether information was produced in a timely manner after the DA's decision not to prosecute, the claim seems live and not time barred; to Vice Chair Chen's point, any complaints about whether information that is produced in a timely manner from that scope of time, April 2021 through March 29, 2022.

Commissioner Cambra concurred, stated the timeliness was only for the March 30, but if it applied before that then, it would be the same motion.

Commissioner Cambra moved that any of the disclosures prior to March 29, 2022 would be time barred and the rest of it would remain open.

Commissioner Tilos seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

Claim No. 9: Does the City owe Mr. Fraser his costs and attorney's fees?

Chair LoPilato stated a time barred analysis is not needed as this claim is a completely different jurisdictional bar.

Commissioner Montgomery concurred, stated it is not in the Commission's purview.

Commissioner Cambra stated the Sunshine Ordinance Section 6259 talks about a court awarding fees; the Commission is not a court.

Commissioner Cambra moved to deny the claim.

Vice Chair Chen stated the Sunshine Ordinance gives the Commission the purview if found on in the complainant's behalf to recommend a cure and correction.

Chair LoPilato stated it would not be attorneys fees and costs.

The Chief Assistant City Attorney stated that without even getting into whether the Commission has the authority to order a fine in the form of attorneys fees and costs, Sunshine Ordinance Section 6259-D, the complaint number nine is specifically related to the outcome of a Superior Court trial case brought under the CPRA and that the Court shall reward court costs and reasonable attorney's fees to the requestor should the requestor prevail and litigation filed pursuant to the section; without even getting into whether this Commission has the authority to make recommendations for cure and correct, this talks about a process that hasn't happened yet, so there hasn't been litigation filed and is not something before the Commission.

Commissioner Cambra moved approval of dismissing the claim as the Commission does not have jurisdiction to assess attorney's fees and costs.

Commissioner Montgomery seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

(22-) Commissioner Tilos: motion not hear additional items after 10:30 p.m.

Commissioner Cambra seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

Chair LoPilato called a recess at 10:21 p.m. and reconvened the meeting at 10:26 p.m.

Chair LoPilato stated Claim No. 2 is whether the City was required to make the information available in a particular electronic format and failed to do so.

Commissioner Tilos stated that the main piece missing from the original format versus what was put out there is the metadata; the City said that the reason for that is due to the redactions; he thinks that is the proper way to do it.

Vice Chair Chen stated that she would agree that the City was required to make the information provided in a particular electronic format; when the complainant explained metadata she could see how it is like taking a look behind the curtain and see what was done to the data, even if it is redacted; she believes records should be presented that way but is not sure whether the City failed to provide it to the Complainant in that format; she cannot remember the facts of the case after March 29th.

Chair LoPilato stated one resource for the Commission to potentially be consulting is the response by the City which was a records releases offered as a hyperlink of the updated press release and other records.

In response to Commissioner Cambra's inquiry, the Chief Assistant City Attorney stated Government Codes 6259.9 Subsection A says unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record non exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person; and when applicable the agency shall make the information available in any electronic format, in which it holds the information; each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the Agency to create copies for its own use or for provision to other agencies. Commissioner Cambra stated the request was very broad with all kinds of different media; without seeing what the City provided through the hyperlink he does not have the technical expertise to know one way or the other whether the metadata was available on the link.

Chair LoPilato stated the link included Dropbox files including jpeg (image) files, MP4 files, a PDF of a police report, which all appeared to be original format, and to which the complainant actually concedes; the files are not edited other than redactions; emails can be printed or get a pst file, which shows the bcc recipients but there were no emails, text messages or electronic data that would contain that sort of metadata included in these records; the metadata question is a tricky one; it does say in the Dropbox the date it says date created but one doesn't know if that's the date the file was created or was added to the Dropbox; there may be a theme that moves through many questions; it sounds like the Complainant had a view of what he was requesting that was broader than what was ultimately produced in this records released and that there really wasn't a back and forth about the nature of the Complainant's specific request, which would have eliminated what types of electronic formats might be available in general; a meet and confer process didn't really occur here and it also sounds like there are ongoing records not yet available for disclosure; with many of these substantive claims the Commission may end up in a spot in which we say Yes, there were many original format records provided but we don't yet even know the full scope of records that are required to be given to this individual because that analysis has not been conducted; the Commission could make findings that so far no violation occurred but it also feels like the request is still live.

Commissioner Cambra stated the City has already released some documents that are not in the original form.

Chair LoPilato stated that she read the complaint as that the YouTube video, which was a compilation of a bunch of original form videos, was inappropriate and wasn't in original format that is in that time barred window; it is now a little unclear whether there is an ongoing complaint that any of the records that were actually released whether there is a dispute about the format of those or if the dispute is over the fact that there weren't things produced with meta data, but those things weren't produced at all.

In response to Commissioner Cambra's inquiry, Chair LoPilato stated it sounds like the complainant wanted a different type of video so that he would be able to see what type of blurred out redactions occurred that came up during the hearing.

Vice Chair Chen stated that if Mr. Fraser gets the video in the original form whatever's been redacted is gone; but one could look behind the curtain and see the coding to see where it was taken out; then of course the City is required to explain why it was redacted; looking at the cleaned up version of the video, no one would even have the curiosity to say what happened between this timeframe and the 18 minutes; there is a coding that can be discovered in the original format.

Chair LoPilato stated that providing raw data of the back end coding of a video seems to go beyond what she would imagine any governmental entity does in terms of production of records. Commissioner Cambra stated an MP4 file has an audio track and a video track, with a metadata track along with it; he does not know the technology between body cam footage, but there is usually underlying information on a typical video file; if the file is exported, not all the data may be there but if it was edited somehow and a 10th of a second removed, it would probably show in the metadata and not seen with the eyes; whatever was uploaded to YouTube had to have some original content on it.

Chair LoPilato concurred, stated what was ultimately produced on the 12th is a Dropbox file of many individual video files which ultimately constituted what earlier had been uploaded on YouTube which is time barred; the question is whether the records released on April 12th were produced in a proper format.

Commissioner Montgomery stated she does not think Mr. Fraser received the data in the original format, which is what he asked for; the records in the links were obviously edited and changed; the law is very specific in saying that agencies should make the information available in any electronic format in which it "holds" the information, not in which it "distributes" the information; those are two separate things.

Commissioner Cambra inquired whether a scanned document of a handwritten report would be considered an original document if that is the method in which the City maintains and stores scanned documents.

Commissioner Montgomery responded that oftentimes people have been asked in hearings and other trials for handwritten notes; the written notes are the original format; when they are scanned and uploaded to the computer for storage, the scanned document is not the original, the handwritten document is considered the original; unless the original is being held onto and not destroyed somehow after uploading the scan, it is the original; there is a difference between the original note and what's uploaded to that file.

Commissioner Cambra inquired whether it is any different than making a copy of an original and giving it to somebody; stated that on a public records request, the requestor will receive a copy of handwritten notes and will not get the original.

In response to Chair LoPilato's inquiry, the Chief Assistant City Attorney responded Government Code section 6253.9 makes a distinction between making information available for inspection and receiving copies; Subsection A indicates that if an agency has information that is public record and it's not exempt and it's an electronic format, then the Agency shall make the information available in an electronic format and shall make the information available in any electronic format in which holds the information; she would argue that if someone is coming in to inspect public

electronic information, each agency shall provide a copy of the electronic record and the format requested if the requested format is one that's been used by the Agency to create copies for its own use or for provision to other agencies; it's possible that a public agency could comply with this if, upon inspection they show the information in the electronic format in which the City holds it, but then, if there's a copying process that the City uses for making copies for its own use, the Agency is required to provide a copy; she does not recall any specific evidence either way that was presented to the Commission this evening, as to how the City creates copies of this type of information.

The City Clerk added that most records are converted to, and provided in, PDF format; but, for example, one of the more common original formats requested is in Excel; sometimes the requestor prefers and asks for the Excel format up front.

Chair LoPilato stated this is a situation where an email was sent that includes a link and an update to a press release; the complainant says he never received that email and the City didn't have any evidence to show that they ever sent him that email; the question is whether there was such a foundational violation that occurred or never even getting the records in the first place that would then have initiated discussions between the City and the requestor; perhaps because of this fundamental failure to actually convey the records to the requestor in a direct way, none of the conversations occurred; if there is some kind of finding the Commission could make acknowledging the fundamental violation that resulted in that conversation never occurring, and make a recommendation for the conversation to occur with a very specific focus on what formats are being requested and what are available; if there's an ongoing dispute over it then maybe the issue should come back to the Commission.

Commissioner Cambra stated he concurs with Chair LoPilato; that is where the struggle is; inquired whether it is an option to send an issue back for to the parties to have further discussion. Chair LoPilato responded that she does not think it is built into the procedures, but that the Commission can make no finding on certain claims.

In response to the Chief Assistant City Attorney's inquiry, Chair LoPilato stated that in this instance, the City didn't make the information available to the requestor, at any point in any format; he said he didn't receive the email and then later becoming on notice that there are materials out on the Internet because a friend informed him; there is still a violation of not providing the materials to the requestor; the finding could be that there was a failure to provide the materials to the requestor in an electronic format and the parties are encouraged to directly engage on the records and determine what formats are requested and what are available.

Commissioner Montgomery inquired why the Commission would not find in favor of Mr. Fraser on this one; he didn't get the email.

Chair LoPilato stated the only reason to not make a finding with respect to the exact type of format was because no one knows what the format even is; Mr. Fraser is actually taking issue with it because it was never provided directly to him and there were no conversations; the Commission would make a finding of a violation, but not a specific finding as to the type of format that was required to be produced.

Vice Chair Chen stated she concurs with Commissioner Montgomery; if the Commission sustains that portion of his complaint, anything sustained is just a recommendation to City Council, staff or Board or Commission that improvements are needed; she feels like it is a valid complaint; even if

the Commission cannot be specific as to how badly it went, it can make recommendations on how it can be fixed.

Commissioner Cambra moved approval of hearing items past 11:00 p.m.

Commissioner Montgomery seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

Commissioner Montgomery moved approval of continuing the hearing to May 18, 2022 at 7:00 p.m.

Commissioner Tilos seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

Commissioner Cambra stated the Commission may want to make a request for additional information given the hour of discussion had on Meta data and the proper format.

Chair LoPilato stated perhaps some clarification from the complainant on specifically the records that were released, and what issues or disputes are there with respect to the format in which they will release; the question could be framed as follows: The Commission would appreciate further information regarding the specific items and formats and dispute from the complainant and then would appreciate clarification from the City on the types of formats available for the records that were released on April 12th.

In response to Chair LoPilato's inquiry regarding a request for supplemental information, the City Clerk stated she could always add additional correspondence into the agenda file.

The Chief Assistant City Attorney stated she does not see any problem with the approach as it is not barred and as long as both sides are being given the option.

Chair LoPilato stated there is agreement to have a maximum two-page limit on the supplemental briefing should the parties choose to submit it.

In response to Vice Chair Chen's inquiry, Chair LoPilato stated that when the Clerk sends out the information on the continued hearing she could transmit the questions related to Claim No. 2 and also advise them that due to the complexity of the issues, the Commissioners would like a brief window of time in which to submit supplemental questions to the parties; the deadline for any supplemental questions is May 4th at close of business; the parties would have one week to respond to those supplemental questions so they would be due on May 11th.

In response to Commissioner Cambra's inquiry, the City Clerk stated she will put up the revised agenda tomorrow, just to make it clear in case anybody missed the hearing tonight, that it is continued; they have another chance to watch the deliberations continue, I will note on the agenda that public comment has been closed.

REGULAR AGENDA ITEMS

4-A. Minutes of the April 4, 2022 Meeting

Not heard.

4-B. Discussion of the Unfounded Determination

Not heard.

STAFF UPDATE

None.

COMMISSION AGENDA REQUESTS

None.

COMMISSION COMMUNICATIONS

Not heard.

NON-AGENDA PUBLIC COMMENT

Not heard.

ADJOURNMENT

Chair LoPilato adjourned the meeting at 11:26 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.