

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

ccaro@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

MILA A. BUCKNER
DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
RACHAEL E. KOSS
NATALIE B. KUFFEL
LINDA T. SOBCZYNSKI

July 27, 2017

VIA EMAIL AND U.S. MAIL

Heather Klein
Planner IV
City of Oakland
Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612
Email: hklein@oaklandnet.com

Arlette Flores-Medina
Open Government Coordinator
1 Frank Ogawa Plaza, 6th Floor,
Oakland, CA 94612
E-mail: aflores@oaklandcityattorney.org

LaTonda D. Simmons
City Clerk
City of Oakland
One Frank H. Ogawa Plaza
First and Second Floors
Oakland, CA 94612
Email: lsimmons@oaklandnet.com

Heather Lee
Supervising Deputy City Attorney, Land
Use Division
Oakland City Attorney
City Hall, 6th Floor
1 Frank Ogawa Plaza
Oakland, California 94612
Email: hlee@oaklandcityattorney.org

**Re: Response to June 29, 2017 Request for Immediate Access to
Public Records - Oak Knoll Mixed Use Community Plan Project**

Dear Ms. Klein, Ms. Flores-Medina, Ms. Simmons, Ms. Lee:

We are writing on behalf of **Oakland Residents for Responsible Development** ("Oakland Residents") to advise the City of Oakland ("City") that it has failed to provide a timely and legally sufficient response to this office's June 29, 2017 Public Records Act ("Act") request ("PRA Request"), and to request an immediate response that complies with the Act.

The PRA Request sought immediate access to the following records related to the Oak Knoll Mixed Use Community Plan Project ("Project") proposed by Oak Knoll Venture Acquisition, LLC ("Applicant"):

3426-021acp

July 27, 2017

Page 2

1. Development Agreement for the Project, including any and all drafts of the Agreement, outlines and summaries of the Agreement, and all correspondence related to the Agreement and its proposed terms.
2. All documents, supporting data, and calculations prepared, referenced in, and/or relied upon in preparing the City's June 13, 2017 Economic Benefit Report¹ for the Oak Knoll Project.²

The City failed to provide responsive documents or a written response to this request in a timely manner.³ As of the date of this letter, the City has failed to provide a copy of the draft Development Agreement (Item #1), and has failed to provide a written response stating either that it does not exist, or explaining the City's basis for withholding it from disclosure. After several follow up email requests, Ms. Klein finally responded by email on July 25, 2017, almost a month after the PRA Request was filed, stating that the City has no supporting documents, data, or calculations pertaining to the Economic Benefit Report (Item #2). However, the City has refused to respond to our inquiries regarding the Development Agreement.⁴ This fails to comply with the City's duties of disclosure under the Public Records Act,⁵ the City's Sunshine Ordinance,⁶ and the City's Open Government Bill of Rights.⁷

¹ The Economic Benefit Report was attached to the City's June 21, 2017 Planning Commission Staff Report for the Project, which was posted on the City's website prior to the hearing. However, no supporting documents were attached.

² A true and correct copy of the June 29, 2017 PRA Request is attached hereto as Exhibit A.

³ The Public Records Act requires immediate disclosure of requested records where, as here, a request seeks *inspection only*, and not copies of records. Gov. Code §6253(a). Written responses by the City must be provided within 10 days of the date of the request. Govt.C. 6255(b), (c). Under exceptional circumstances, the agency may take an additional 14 days to respond to requests for copies of records, if additional time is needed to search for those records. Gov. Code § 6253(c). The Sunshine Ordinance contains similar requirements, mandating a 3-day response to immediate record disclosure requests, and a written response within 7 days if additional time is required to search for responsive records. Oak. Muni. Code §§ 2.20.230(A), (B).

⁴ See July 25, 2017 email correspondence between C. Caro and H. Klein, attached hereto as Exhibit B.

⁵ Gov. Code § 6250 et seq.

⁶ Ordinance No. 12483, Oak. Muni. Code § 2.20.010.

⁷ See Oakland City Attorney, Your Guide to Open Government (July 2003), available at <http://www.oaklandcityattorney.org/PDFS/Guide-English.pdf>.

The Public Records Act requires that all public records be open for inspection by the public during the City's regular office hours and provides that "every person has a right to inspect any public record."⁸ The Act mandates disclosure unless the requested record is specifically exempted from disclosure under the Act. The City bears the burden of justifying why any requested records cannot be disclosed and is responsible for providing similar information after deleting any portions which it claims are exempt from disclosure.⁹

The City may not "obstruct the inspection or copying of public records."¹⁰ If a decision about whether to grant access to a requested document is required (in the case of information which the City reasonably believes is exempt from public disclosure), the requestor is entitled to a *prompt decision on disclosure*. Moreover, where a request for inspection or copies of public records is made in writing, and a determination is made to deny the request in whole or in part, the denial must be provided in writing within the time allowed by law to respond to the request.¹¹ The Act further requires that, if the City elects to withhold a record, or a portion of it, from disclosure, the written response must explain the City's justification for the withholding.¹² In order to withhold a requested record, the City must demonstrate that the record is specifically exempt from disclosure or that the public interest in confidentiality outweighs the public interest in disclosure.¹³

The Sunshine Ordinance similarly requires prompt disclosure of all public records, and reasonably segregable public portions of exempt records.¹⁴ The Ordinance also requires that the City provide a written explanation to the requestor for any records that are withheld from disclosure, including citations to the legal authority relied on for the withholding and an explanation "in practical terms" of how the public interest would be harmed by disclosure of the record.¹⁵ The City's Bill of Rights explains that members of the public "have a right to inspect and

⁸ Gov. Code § 6253(a).

⁹ Gov. Code §§ 6254, 6255; *Citizens for a Better Env't v. Dep't of Food & Agric.* (1985) 171 Cal. App. 3d 704, 716.

¹⁰ Govt.C. 6253(d), (e).

¹¹ Govt.C. 6255(b).

¹² *Id.*

¹³ *American Civil Liberties Union of Northern Calif. v. Super. Court* (2011) 202 C.A.4th 55, 82, 86.

¹⁴ 2.20.230 Immediate Disclosure Request, 2.20.240 Minimum Withholding.

¹⁵ See Oak. Muni. Code § 2.20.250 (Justification For Withholding).

July 27, 2017
Page 4

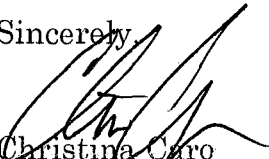
obtain a copy of public records” and “have a right to know the reason why a City agency refuses to provide a record to you.”¹⁶

This written response was due on July 10, 2017. No such written explanation has been provided to Oakland Residents as of the date of this letter, and no draft Development Agreement or related documents have been provided by the City. The City is therefore in violation of the Public Records Act and the Sunshine Ordinance.

Moreover, the Project’s Development Agreement, and any drafts of the Agreement, are not exempt from disclosure under the Public Records Act or any other law. The Act creates “a presumptive right of access to any record created or maintained by a public agency that relates in any way to the business of the public agency.”¹⁷ The only allowable exemptions are statutory exemptions enumerated under Gov Code Sections 6524, 6255. None of these exemptions apply to the draft or final Development Agreement in this case because it is a public contract and land use entitlement identified in the Project’s environmental impact report (“EIR”).¹⁸ The Development Agreement a also part of the ongoing pre-approval Project negotiations between the City and the Project Applicant. These negotiations, and their related communications, are not subject to any nondisclosure privileges that might otherwise apply to other contractual negotiations with the City.¹⁹

Oakland Residents requests an immediate response to this letter, and again requests immediate access to the Development Agreement records identified in Item #1 above. Thank you for your attention to this matter.

Sincerely,



Christina Caro

CMC:acp

¹⁶ See Bill of Rights. Nos. 4 and 5.

¹⁷ *Sander v. State Bar of California* (2013) 58 Cal.4th 300, 323.

¹⁸ Public Resources Code (“PRC”) § 21092(b)(1) and 14 Cal. Code Regs, 15087(c)(5) require “all documents referenced in the environmental impact report” to be available for review and “readily accessible” to the public; *see also* PRC § 21167.6(e)(10).

¹⁹ *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 306; *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 898.

Alisha C. Pember

From: Alisha C. Pember
Sent: Thursday, July 27, 2017 4:46 PM
To: 'hklein@oaklandnet.com'; 'aflores@oaklandcityattorney.org'; 'lsimmons@oaklandnet.com'; 'hlee@oaklandcityattorney.org'
Cc: Christina Caro
Subject: Response to June 29, 2017 Request for Immediate Access to Public Records - Oak Knoll Mixed Use Community Plan Project
Attachments: 3426-021acp - 2017 07 27 Ltr to City re Failure to Respond to PRA Request (Oak Knoll).pdf

Tracking:	Recipient	Recall
	'hklein@oaklandnet.com'	
	'aflores@oaklandcityattorney.org'	
	'lsimmons@oaklandnet.com'	
	'hlee@oaklandcityattorney.org'	
	Christina Caro	Succeeded: 7/27/2017 4:48 PM

Good afternoon,

Please see the attached.

If you have any questions, please contact Christina Caro.

Thank you.

Alisha Pember

Alisha C. Pember
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 voice; Ext. 24
apember@adamsbroadwell.com

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