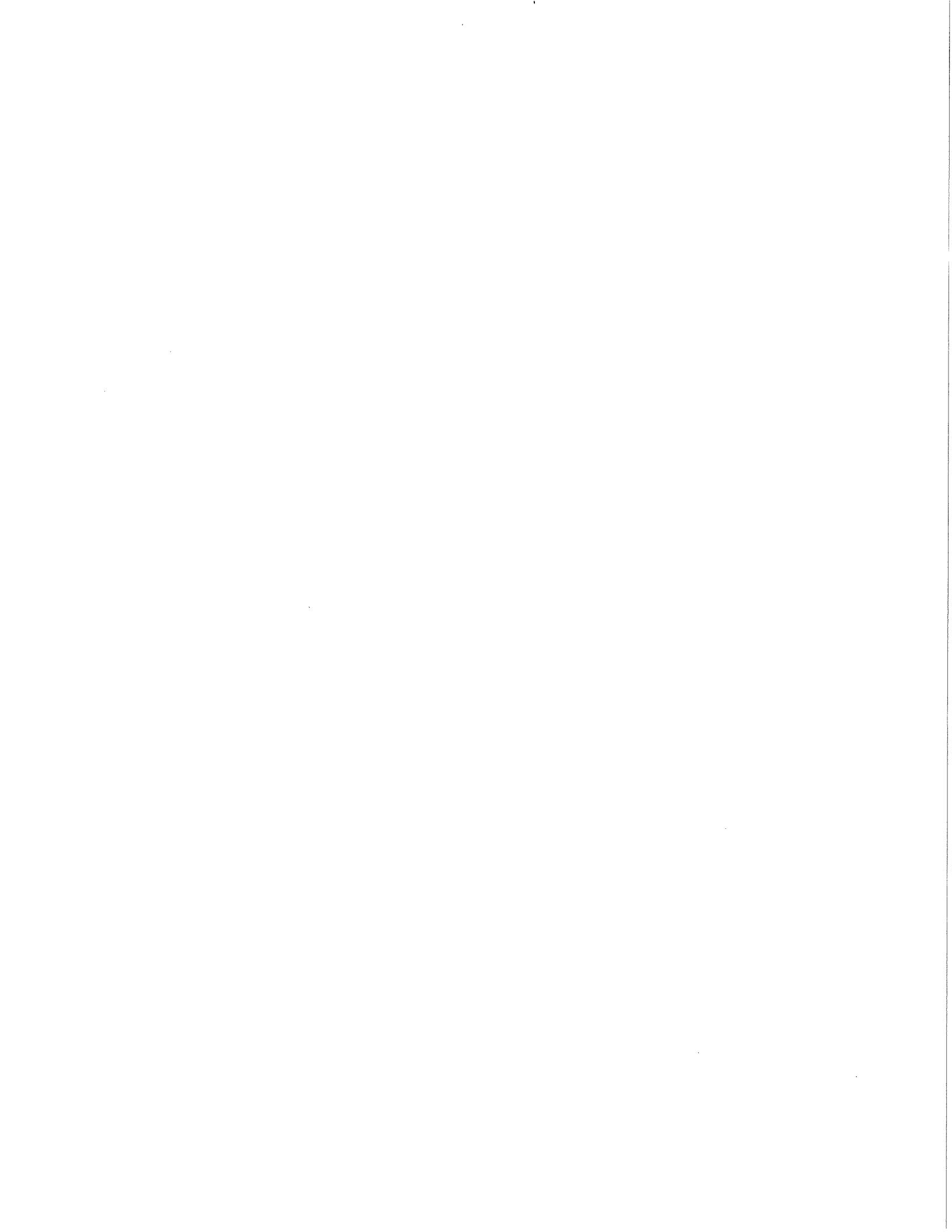


Agenda Item IV (a)





ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: February 1, 2013

To: Sarah Ballard, Respondent
Mark Buell, Respondent
Olive Gong, Respondent
George Wooding, Complainant

From: John St. Croix, Executive Director

Re: **NOTICE – Show Cause Hearing – Ethics Complaint 15-11205**

On December 5, 2011, the Sunshine Ordinance Task Force (“Task Force”) delivered a referral letter and an Order of Determination (“Order”) to the Ethics Commission. The referral was made pursuant to Sunshine Ordinance section 67.34, San Francisco Charter sections 15.105, C3.699-11(5), and C3.699-13(c) and (d), as to Respondents Phil Ginsburg and Sarah Ballard. The referral was also made pursuant to Sunshine Ordinance, section 67.30(c), San Francisco Charter sections 15.105 and C3.699-11(5), and C3.699-13(c) and (d) as to Respondents Mark Buell and Olive Gong.

The Task Force held a hearing on the matter on July 26, 2011. The complaint involved a request for emails and other documents between certain San Francisco Recreation and Parks Department employees and Commonwealth Club representatives that were related to a Commonwealth Club presentation at which employees of the San Francisco Recreation and Parks Department were to attend.

The Task Force concluded that the emails were public documents and should have been released. A written Order was issued on August 8, 2011, stating that the Task Force found that Mark Buell, Phil Ginsberg, Sarah Ballard, and Olive Gong violated Sunshine Ordinance section 67.25 for failure to respond to the Immediate Disclosure Request, section 67.26 for not keeping withholding to a minimum, section 67.27 for failure to justify withholding, and section 67.21(c) for not assisting the requestor. The Order also ordered that the agency release the requested records and appear at the Compliance and Amendments Committee meeting on September 13, 2011.

Because Mr. Ginsberg is a department head and the complaint alleged a violation of Sunshine Ordinance section 67.34, his matter was bifurcated and will be handled under the Ethics Commission Regulations for Violations of the Sunshine Ordinance (“Regulations”), Chapter Three, in a separate hearing. Sarah Ballard, Mark Buell, and Olive Gong are not department heads or elected officials.

The handling of this complaint was postponed until the Ethics Commission adopted regulations for Sunshine related complaints. Those regulations became effective on January 25, 2013. This matter as to Respondents Sarah Ballard, Mark Buell, and Olive Gong will be heard under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations"). Staff has scheduled this matter to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, February 25, 2013**, in Room 400 in City Hall.

Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden to show that the Task Force erred in its determination. (*See* Regulations, Chapter Two, § II.B.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondents nor the Complainant are required to attend. However, if any party fails to appear, and the Commission did not grant that party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, February 8, 2013.

Each Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: each Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and each Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum, as well as a copy of the Regulations.

SUNSHINE ORDINANCE
TASK FORCE
2011 DEC -5 PM 1:21



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

SAN FRANCISCO
ETHICS COMMISSION

December 5, 2011

BY _____

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Sunshine Complaint No. 11049, George Wooding v. Recreation and Parks
Department
Notice and Referral for Willful Failure and Official Misconduct**

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of willful failure and official misconduct findings against Phil Ginsburg and Sarah Ballard of the San Francisco Recreation and Parks Department for failure to comply with the Order of Determination ("Order") issued on August 8, 2011 in Sunshine Complaint No. 11049, George Wooding v. Recreation and Parks Department.

This willful failure and official misconduct finding is noticed for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby the "willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct";
- (2) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (3) San Francisco City Charter Sections C3.699-11(5) and C3.699-13 (c) and (d).

Additionally, the Task Force hereby refers Mark Buell, President of the Recreation and Parks Commission, and Olive Gong of the Recreation and Parks Department for failure to comply with the Order. These referrals are made pursuant to:

- (1) Sunshine Ordinance Section 67.30(c) whereby "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts";

- (4) (2) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (5) San Francisco City Charter Sections C3.699-11(5) and C3.699-13 (c) and (d).

Background

George Wooding filed a complaint with the Task Force on June 22, 2011 alleging the Recreation and Parks Department failed to provide records responsive to two document requests, one dated June 3, 2011 and another dated June 10, 2011.

Task Force Hearings on Complaint

On July 26, 2011, the Task Force held a hearing on the complaint. The Task Force found respondents in violation of the Sunshine Ordinance and ordered disclosure of the requested records no later than August 15th. A description of the hearing, violations found, and the Task Force decision are described in the attached Order.

Mr. Wooding subsequently requested respondents review Recreation and Parks Department back up files for the improperly deleted email correspondence. Respondent Olive Gong agreed to accommodate the request, and the matter was continued by the Task Force.

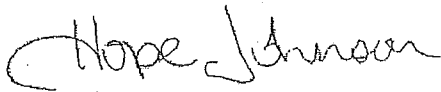
On October 11, 2011, the Task Force's Compliance and Amendments Committee held a hearing to monitor compliance with the Order and agreement to review back up files for responsive records. Ms. Gong had provided Mr. Wooding with nonresponsive department promotional materials she said were discovered in files created by an intern no longer working with the Recreation and Parks Department.

Although the original records request had been submitted four months prior to the Committee hearing, Ms. Gong requested additional time for the technology departments to review back up files. She could not provide a reason the technology departments required additional time.

The Compliance and Amendments Committee referred the matter to the full Task Force regularly scheduled meeting on October 25, 2011 for action on the failure to comply.

On October 21, 2011, two business days before the Task Force was to consider action on the failure to comply with its Order issued on August 8, 2011, respondents finally produced responsive records to Mr. Wooding.

Thank you for your attention to this matter. A copy of the Order is attached. Please contact the Task Force Administrator at sotf@sfgov.org or (415) 554-7724 for any additional information

A handwritten signature in cursive script that reads "Hope Johnson".

Hope Johnson, Chair
Sunshine Ordinance Task Force

Encl.

cc: George Wooding, Complainant
Mark Buell, Respondent
Phil Ginsburg, Respondent
Sarah Ballard, Respondent
Olive Gong, Respondent
Jerry Threet, Deputy City Attorney

SUNSHINE ORDINANCE
TASK FORCE

2011 DEC -5 PM 1:21

SAN FRANCISCO
ETHICS COMMISSION



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

BY _____ August 8, 2011

DATE THE DECISION ISSUED

July 26, 2011

GEORGE WOODING v RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)

FACTS OF THE CASE

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

COMPLAINT FILED

On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

HEARING ON THE COMPLAINT

On July 26, 2011, Mr. Wooding presented his case to the Task Force. Olive Gong represented Rec and Park as its Custodian of Records.

Mr. Wooding testified he was a panelist on a May 11, 2011 Commonwealth Club forum about Golden Gate Park. He said he contacted Rec and Park on June 3rd and asked for any correspondence related to the forum, including correspondence between Rec and Park employees Sarah Ballard, Phil Ginsburg, Elton Pon, Staci White, Mark Buell, President of the Recreation and Park Commission, and Commonwealth Club representatives. He said Ms. Gong responded on June 8th that staff had searched and found no responsive records. He said he contacted Ms. Gong the next day and asked her to clarify her response. He said Ms. Gong emailed him the same day with the same response. If there were none, he said, Ms. Gong should have directed him to other members of the staff who might have the documents. On June 10th, he asked Ms. Gong for the names of the staff she had contacted and the process Rec and Park uses to determine the presence or absence of responsive records. Ms. Gong, he said, has not responded to this request.

He said the supporting documents he has provided to the Task Force shows Ms. Ballard, as Rec and Park's Director of Policy and Public Affairs, sent an email from her City email account to Commonwealth Club Member Ross Lawley. On April 20th, he said, Ms. Ballard again sent an email from the same account to Commonwealth Club Member Kerry Curtis in

an attempt to discredit the forum's panelists and try to influence the content of the panel discussion. On April 25th, he said, Mr. Buell alleged in an email that the forum's panelists were biased. On April 26th, an email from a Commonwealth Club member was sent to Mr. Ginsberg's private email account, suggesting that Mr. Ginsburg may have additional information about the May 11th forum. Another email was from Susan Hirsch who claimed that the forum's panelists were only representatives of people who oppose change. These five emails, he said, suggest there should be more documents that are not being produced. He asked the Task Force to order Rec and Park to search its email accounts for additional documentation.

Ms. Gong testified she asked staff if they had any documents in response to Mr. Wooding's request and they all came back negative. Those are the only records she has on the subject, she said. Mr. Wooding, she said, was made known of the outcome by email. She said Mr. Wooding's July 19th letter to the Task Force claiming that he had copies of emails to support his claim were those that were deleted under Category 4 of Rec and Park's Record Retention and Destruction policy. Category 4 says: "Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the Commonwealth Club.

DECISION AND ORDER OF DETERMINATION


The Task Force finds that Mark Buell of the Recreation and Park Commission and Phil Ginsburg, Sarah Ballard, and Olive Gong of the Recreation and Park Department violated Sunshine Ordinance Sections 67.25 for failure to respond to the Immediate Disclosure Request before the end of the next business day, 67.26 for not keeping withholding to a minimum, 67.27 for failure to justify the withholding of records, and 67.21(c) for not assisting the requestor.

The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13th, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe)

Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

Excused: Knee,
Absent: Snyder, Chan, Knoebber

A handwritten signature in cursive script that reads "Hope Johnson". The signature is written in black ink and is positioned above the typed name.

Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: George Wooding, Complainant
Mark Buell, Respondent
Phil Ginsburg, Respondent
Sarah Ballard, Respondent
Olive Gong, Respondent
Jerry Threet, Deputy City Attorney



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

Chairperson Hur and Honorable Commissioners
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco CA 94102

**Re: Show Cause Hearing – Ethics Complaint 15-111205
Respondents Sarah Ballard, Mark Buell, and Olive Gong**

February 20, 2013

Dear Chairperson Hur and Honorable Commissioners:

We write on behalf of Respondents Sarah Ballard, Recreation and Park Commission President Mark Buell, and Olive Gong of the Recreation and Park Department (RPD) with regard to the above-referenced matter. As Executive Director St. Croix's February 1, 2013 Report and Recommendation correctly found that RPD General Manager Phil Ginsburg did not violate the Sunshine Ordinance in this case, so too should the Ethics Commission conclude that there is no factual or legal basis to find that Respondents Ballard, Buell, or Gong violated the Ordinance.

In December 2011, the Sunshine Ordinance Task Force ("Task Force") notified the Ethics Commission of "willful failure and official misconduct findings" against Phil Ginsburg and Sarah Ballard¹ for failure to comply with its August 8, 2011 Order of Determination, and also referred Recreation and Park Commission President Mark Buell and RPD staffer Olive Gong for "failure to comply" with the Order. In that Order, the Task Force found these four individuals violated the following sections of the Sunshine Ordinance: (1) Section 67.25 "for failure to respond to the Immediate Disclosure Request before the end of the next business day," (2) Section 67.26 "for not keeping withholding to a minimum," (3) Section 67.27 "for failure to justify the withholding of records," and (4) Section 67.21(c) "for not assisting the requestor."

The facts of this case are straightforward and belie the Task Force's Order. Mr. Wooding submitted a public records request to RPD for correspondence between five RPD personnel and the Commonwealth Club. Upon receiving Mr. Wooding's request, RPD personnel promptly searched their records and did not locate any responsive records. Indeed, in accordance with RPD's Record Retention and Destruction Policy, any potentially responsive records had already been deleted before RPD received or knew of Mr. Wooding's request. Under that Policy, "correspondence not requiring follow-up" constitute "Category 4" records that RPD need not retain. (Exhibit A.) RPD promptly informed Mr. Wooding that it did not have any responsive records. As the facts make clear, RPD did not violate any of the four Sunshine Ordinance sections cited in the Task Force's Order. The Commission should dismiss the complaint.

¹ As explained in Executive Director St. Croix's February 1, 2013 memorandum, the referral of this matter as to Mr. Ginsburg was bifurcated and will be handled separately under Chapter Three of the Commission's Regulations for Violations of the Sunshine Ordinance. RPD submitted its response for the Ginsburg matter under separate cover on February 15, 2013.

FACTUAL BACKGROUND

A. June 3, 2011 Immediate Disclosure Request

On Friday June 3, 2011, Mr. Wooding submitted an “immediate disclosure request” to Olive Gong, custodian of records for RPD. The request asked for correspondence related to a May 11, 2011 Commonwealth Club forum between, to, and/or from five individuals (Mr. Ginsburg, President Buell, Ms. Ballard, and two other RPD employees) and representatives of the Commonwealth Club. Because the request was submitted on a Friday, the Department’s response was due the next business day, Monday June 6, 2011.

Upon receipt of Mr. Wooding’s request on June 3, Ms. Gong immediately forwarded the request that same day to Ms. Ballard and Margaret McArthur, Recreation and Park Commission Secretary, as well as the other persons named in the request. Ms. Ballard promptly searched her email account, and did not locate responsive records. At the time she conducted the search, she had already deleted any emails that may have been responsive to the request in accordance with RPD’s Record Retention and Destruction Policy. These deletions occurred before Ms. Ballard or RPD had received or knew of the request. On Monday June 6, Ms. Ballard informed Ms. Gong that she did not have any records responsive to the request.

As to President Buell, upon receiving Ms. Gong’s inquiry, RPD Commission Secretary Margaret McArthur searched the RPD Commission’s general email account² and did not locate any responsive records. She also called President Buell and asked him to search his personal email account for responsive records. President Buell informed Ms. McArthur that he did not have any responsive records.³ Like Ms. Ballard, at the time President Buell conducted his search, he had already deleted any emails that may have been responsive to the request in accordance with the Department’s Record Retention and Destruction Policy. These deletions occurred before President Buell or RPD had received or knew of the request. Accordingly, Ms. McArthur informed Ms. Gong on Monday June 6 that President Buell did not have any responsive records.

The other RPD staffers named in Mr. Wooding’s request similarly responded to Ms. Gong that they did not have responsive records. On Wednesday June 8, Ms. Gong responded to Mr. Wooding by email stating that RPD did not have any records responsive to his request. Ms. Gong was two days late in responding because she had been waiting for one more RPD staffer to inform her whether he had responsive records, and he did not get back to her until June 8.

B. Mr. Wooding’s June 9 and June 10 Follow-Up Emails

On June 9, 2011, Mr. Wooding emailed Ms. Gong stating that her June 8 response was “unclear” and asking her to “identify the staff who searched and what specific documents were reviewed in their search.”⁴ That same day, Ms. Gong responded again stating that she did not have any responsive records.

² RPD maintains a single SFGOV email account for correspondence to the Commission as a whole, recpark.commission@sfgov.org, which is maintained by the Commission Secretary.

³ We note that the Executive Director’s February 1, 2013 Report and Recommendation as to the complaint against Mr. Ginsburg incorrectly states at page 7 that Ms. McArthur “did not think to ask Mr. Buell to search his personal email account for responsive documents.” That is not correct. Ms. McArthur and President Buell both recall that Ms. McArthur asked him to search his email account, and that he did so but did not locate any responsive records.

⁴ To the extent Mr. Wooding’s June 9th request asked RPD to answer questions and/or generate a list of names, it amounted to an interrogatory, not a request for public records. “A request that a department create a response to a request for information or answer a series of questions is not

The next day, June 10, 2011, Mr. Wooding emailed Ms. Gong an "immediate request to find out how the RPD decided (process) that there were no documents that would adequately respond to my sunshine requests." He asked for the names of all people asked, the question asked, and the response from each person, including "verbal as well as written communications."⁵ Ms. Gong spoke with Mr. Wooding by phone and told him there were no responsive records. In an abundance of caution, Ms. Gong also sent inquiries on June 10, 2011 to other RPD staffers who were not named in Mr. Wooding's request to ask if they might have any responsive records; they did not. On July 20, 2011, Ms. Gong provided Mr. Wooding with copies of emails that she had sent RPD staff asking if they had responsive records, and their responses that they did not.

C. Sunshine Ordinance Task Force Proceedings

On June 22, 2011, Mr. Wooding filed his Task Force complaint. On July 19, 2011, Mr. Wooding submitted to the Task Force five emails he had obtained from an un-named, non-City third party (presumably someone connected with the Commonwealth Club): (1) an April 20, 2011 email from RPD staffer Sarah Ballard's office email account to a Ross Lawley of the Commonwealth Club, (2) an April 20, 2011 email from Ms. Ballard's office email account to a Kerry Curtis of the Commonwealth Club, (3) an April 25, 2011 email from Recreation and Park Commission President Mark Buell's personal email account to a Greg Dalton of the Commonwealth Club, and (4) an April 26, 2011 email from Kerry Curtis to Mark Buell's personal email account, in which Mr. Ginsburg was copied as a "cc" to his personal email account, plus a fifth email between two persons, neither of whom were City officials or employees at the time.

In a July 25, 2011 letter to the Task Force, Ms. Gong explained that at the time Mr. Wooding submitted his June 3 public records request, the emails Mr. Wooding had obtained from a non-City source had already been deleted by RPD personnel in accordance with the Department's Record Retention and Destruction Policy. As Ms. Gong explained, the emails fell under "Category 4" of the Department's Policy, a category of records that the Department is not required to retain. Specifically, the emails constituted "correspondence not requiring follow-up," which the Policy designates as "Category 4" records. (See Exhibit A.)

Notwithstanding Ms. Gong's explanation that RPD did not have any responsive records at the time of Mr. Wooding's request, and that any potentially responsive records had already been deleted at the time of his request in accordance with RPD's Record Retention and Destruction Policy, the Task Force issued its Order finding that Mr. Ginsburg, Ms. Gong, Ms. Ballard and Mr. Buell had violated the following sections of the Sunshine Ordinance: (1) Section 67.25 "for failure to respond to the Immediate Disclosure Request before the end of the next business day," (2) Section 67.26 "for not keeping withholding to a minimum," (3) Section 67.27 "for failure to justify the withholding of records," and (4) Section 67.21(c) "for not assisting the requestor."

Following the Task Force's Order, although RPD was under no legal obligation to do so,⁶ RPD, as a courtesy, asked its IT personnel, as well as the City's Department of Technology, to search electronic

a public records request, and neither the Public Records Act nor the Sunshine Ordinance requires a department to reply to a series of written questions or interrogatories." (City Attorney's Good Government Guide, 2010-11 edition, at p. 81.)

⁵ Mr. Wooding's request for "verbal communications" was also beyond the scope of the Public Records Act and Sunshine Ordinance, which apply only to "public records," which is defined as a "writing." (Cal. Govt. Code § 6252(c).)

⁶ As the City Attorney's Good Government Guide explains, "departments need not search their back-up electronic files in response to a public records request. ... Neither the Public Records

back-up tapes for deleted emails that may be responsive to Mr. Wooding's request. The Department of Technology ultimately located deleted emails responsive to Mr. Wooding's request, which Ms. Gong provided to Mr. Wooding on October 21, 2011.

LEGAL ISSUES

This Show-Cause Hearing is governed by Chapter 2 of the Commission's Regulations. Accordingly, the Commission must conclude that, "based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance." (Chapter 2, Section II(D (2).) That standard is easily met here. As explained below, the evidence clearly establishes that the Respondents did not violate any of the four provisions cited in the Task Force's Order.

A. The Respondents Did Not Violate Section 67.25

The Task Force Order of Determination found Respondents Ballard, Buell and Gong in violation of Section 67.25 of the Sunshine Ordinance "for failure to respond to the Immediate Disclosure Request before the end of the next business day." That section provides that an Immediate Disclosure Request must be responded to "no later than the close of business on the day following the day of the request." (S.F. Admin. Code § 67.25.)

Because Mr. Wooding submitted his request on Friday June 3, 2011, the Department's response was due on Monday June 6, 2011. Ms. Ballard and President Buell (through Commission Secretary Margaret McArthur) timely informed Ms. Gong on Monday June 6 that they had no records responsive to Mr. Wooding's request. As the Executive Director's Report correctly concluded as to Mr. Ginsburg, Ms. Ballard and President Buell "made a good faith effort to timely respond to the requester as required by the Ordinance." (Director's Report, p. 8). Given Ms. Ballard and President Buell's quick and conscientious review of their records, there is no basis to conclude their conduct constitutes a violation of Section 67.25.

Mr. Wooding's June 3 "immediate disclosure" request asked for correspondence to/from five different individuals. Ms. Gong immediately contacted those five individuals on June 3 to ask if they had responsive records. Ms. Gong sent RPD's response to Mr. Wooding two days late on June 8 because she was waiting for one more RPD staffer (not one of the named Respondents in this matter) to respond to her inquiry. Because Mr. Wooding's request was not "simple, routine, or otherwise readily answerable," RPD could have invoked the time deadlines governing standard requests – an initial 10-day period for response, plus a possible extension of up to 14 additional days. (City Attorney's Good Government Guide, 2010-11 at p. 84.)⁷ Given the demanding nature of Mr. Wooding's request, and Ms. Gong's prompt and diligent effort to locate responsive records from the five relevant persons, her tardiness by two days should not be construed as a violation of Section 67.25 that warrants enforcement action by this Commission.

B. Section 67.26 Does Not Apply Here

The Task Force Order also found that the Respondents violated Section 67.26 of the Sunshine Ordinance "for not keeping withholding to a minimum." That section provides that a record shall not "be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute." (S.F. Admin. Code §

Act nor the Sunshine Ordinance requires the City to search the trash for such records, whether paper or electronic." (Good Government Guide, 2010-11 edition, at p. 89.)

⁷ The Good Government Guide explains that "the requester's designation of a request as an immediate disclosure request does not automatically make it so," and "[f]or more extensive or demanding requests, the maximum deadlines for responding to a request apply." (p. 84.)

67.26.) As previously noted, Ms. Ballard, President Buell and Ms. Gong did not withhold records in their possession. Rather, they had no responsive records. Thus, Section 67.26's limitations as to withholding and redacting records are simply inapplicable here and there is no basis to find a violation of this provision.

C. Section 67.27 Also Does Not Apply Here

The Task Force Order also found that the Respondents violated Section 67.27 of the Sunshine Ordinance "for failure to justify the withholding of records." That section states that "withholding of information" must be justified in writing with citation to the specific statutory authority that exempts the requested record(s) from disclosure. Again, as with Section 67.26 discussed above, Section 67.27's requirements are inapplicable here because RPD did not "withhold" any records. Accordingly, there is no basis to find a violation of this provision either.

D. Respondents Did Not Violate Section 67.21(c)

Finally, the Task Force Order found that Ms. Ballard, President Buell and Ms. Gong violated Section 67.21(c) of the Sunshine Ordinance "for not assisting the requestor." Specifically, the Task Force Order stated that RPD "should have told the requestor that copies could be available at the Commonwealth Club."


Section 67.21(c) provides, in relevant part, that a custodian of records "when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person." (S.F. Admin. Code § 67.21(c) [emphasis added].) As the City Attorney's Good Government Guide explains, Section 67.21(c) requires departments to help requestors by directing them to other City departments that may have responsive records:

If a requester has addressed a request to the wrong department, or if the department that received the request knows that another department may have responsive records, the department that received the request typically should inform the requester of the other department(s) that may have responsive records.
Admin. Code § 67.21(c).

(Good Government Guide, p. 82 [emphasis added].) The only reasonable interpretation of the phrase "proper office or staff person" in Section 67.21(c) is that it means City offices and City staff. With narrow exceptions not applicable here, private sector entities have no legal obligation to provide records to members of the public. Hence, by definition, a private sector entity is not a "proper" office or staff person within the meaning of the Ordinance. To our knowledge, this is the first time in the history of the Public Records Act or the Sunshine Ordinance that someone has read into the law a legal obligation to direct a requester to a non-public entity with no legal obligation to respond to a request. It would make no sense to require City departments to refer requestors to private entities like the Commonwealth Club given that such entities are under no legal obligation to disclose their records. Hence, there is no basis for finding that the Respondents violated this provision.

For the foregoing reasons, the Recreation and Park Department, on behalf Respondents Ballard, Buell and Gong, respectfully requests that the Ethics Commission find that the Respondents did not violate the Sunshine Ordinance, and dismiss the complaint forthwith.

Sincerely,


Olive Gong
Custodian of Records

Attachments: Exhibit A (RPD Record Retention and Destruction Policy)

RECREATION AND PARK DEPARTMENT
Record Retention and Destruction Policy

The Recreation and Park Department Record Retention and Destruction Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a records retention and destruction schedule.

This policy covers all records and documents, regardless of physical form or characteristics, which have been made or received by the Recreation and Park Department in connection with the transaction of public business.

PART I: POLICY AND PROCEDURES

A. RETENTION POLICY

The Recreation and Park Department shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference, or to comply with contractual or legal requirements, or for other purposes as set forth below. For record retention and destruction purposes, the term "record" is defined as set forth in Section 8.1 of the San Francisco Administrative Code. Documents and other materials that do not constitute "records" under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified in Part II. The records of the Recreation and Park Department shall be classified for purposes of retention and destruction as follows:

Category 1: Permanent Retention. Records that are permanent or essential shall be retained and preserved indefinitely.

- **Permanent records.** Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed and special measures are followed. Under Administrative Code Section 8.4, once microfilmed, or may be placed on an optical imagery system, the original paper records may be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of this Department. An example of permanent records includes but is not limited to official records of commission action.
- **Essential records.** Essential records are records necessary for the continuity of government and the protection of the rights and interests of individuals. Administrative Code Section 8.9. An example of essential records includes, but is not limited to, the Department Employee Handbook.

Category 2: Current Records. Current records are records which for convenience, ready reference or other reasons are retained in the office space and equipment of the Department. Examples of current records include lease files and personnel files. Current records shall be retained as follows:

- Where retention period specified by law. Where federal, state, or local law prescribes a definite period of time for retaining certain records, the Recreation and Park Department will retain the records for the period specified by law. Examples of records required to be maintained for a specific period are Family Medical Leave Act Records and Workers' Compensation Records.
- Where no retention period specified by law. Where no specific retention period is specified by law, the department must specify the retention period for those records that the department is required to retain. Records shall be retained for a minimum of two years, although such records may be treated as "storage records" and placed in storage at any time during the applicable retention period. Examples of current records include but are not limited to invoices for purchases of supplies and budget documents.

Category 3: Storage Records. Storage records are records that are retained offsite. Storage records are subject to the same retention requirements as current records.

Category 4: No Retention Required. Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law. Documents and other materials (including originals and duplicates) that are not otherwise required to be retained, are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed. Examples include materials and documents generated for the convenience of the person generating them, draft documents (other than draft of agreements subject to disclosure pursuant to Administrative Code Section 67.24(a)) which have been superseded by subsequent versions, or rendered moot by departmental action, and duplicate copies of records that are no longer needed. Specific examples include calendars, telephone message slips, miscellaneous correspondence not requiring follow-up or departmental action, notepads, e-mails that do not contain information required to be retained under this policy, and chronological files. With limited exceptions, no specific retention requirements are assigned to documents within this category. Instead, it is up to the originator or recipient to determine when the documents business utility has ended.

B. RECORDS NOT ADDRESSED IN THE RECORD RETENTION SCHEDULE

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for the periods prescribed for substantially similar records. Current or storage records may be destroyed five years after they were created if they have served their purpose and are no

longer required for any public business or public purpose, and destruction of the record has been approved by the Controller (for records pertaining to financial matters), the City Attorney (for records have legal significance) and the Retirement Board (for payroll checks, time cards and relate documents).

C. STORAGE OF RECORDS

Records may be stored in the Recreation and Park Department's office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the Recreation and Park Department's office space or equipment include active chronological files, research and reference files, legislative drafting files, administrative files and personnel files. Inactive records, for which use or reference has diminished sufficiently to permit removal from the Recreation and Park Department's office space or equipment, may be sent to the City's off-site storage facility or maintained in the Department's storage facility.

D. HISTORICAL RECORDS

Historical records are records which are no longer of use to the Recreation and Park Department but which because of their age or research value may be of historical interest or significance. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code section 8.7.

**PART II
RECORD RETENTION AND DESTRUCTION SCHEDULE**

TYPE OF RECORD	RETENTION CATEGORY [e.g., current, permanent]	RETENTION PERIOD			REMARKS/ DISPOSITION INSTRUCTION OR TRIGGER
		Total	Current *	Storage **	
GENERAL AND ADMINISTRATIVE RECORDS					
Administrative records, miscellaneous	2	2 years	X		
Advice Letters	2	Later of 2 years or until superceded	X		
Annual Reports	1	Permanent	3 years	After 3 years	
Audio/Video recordings not specified	2	2 years	X		
Audit Reports	1	Permanent	3 years	After 3 years	
Budget Files	2	2 years	X		
Calendars [other than department head]	4	None			
Calendar [department head]	4	2 years	X		
Chronological files	4	None			
Claims Files	2	Later of 2 years or until claim is disposed.	X		
Code Interpretations	2	Later of 2 years or until superceded	X		
Correspondence, miscellaneous	2	2 years	X		
* files located in house					
** files located in storage in house or off site					

Correspondence not requiring follow-up	4	None			
Correspondence, draft	4	None			
Emergency Response Plan	2	Later of 2 years or until superceded	X		
Employee Handbook	1	Until superceded	X		
Fax Transmittal Sheets	4	None			
Financial Records, miscellaneous	4	None	X		
General Manager Reports	2	5 years	X		
Incident Reports	4	None			
Journals/Magazines/Catalogs	2	Until superceded	X		
Legal Advice	4	None			
Legislative Drafts	4	None			
Memoranda, miscellaneous	2	5 years or until superceded	X		
Memoranda, policy/decisional	2	Later of 2 years after applicable fiscal year	X		
Payables (Invoices)	2	2 years	X		
Publications, reports created by department	2	For life of permit, minimum of 2 years	Located at Log Cabin – permits and reservations office		
Permit Application and Issuance Records	2	3 years	X		
Revolving Funds Records	1	Permanent	For 3 years	After 3 years	
Settlement Agreements	2	2 years	X		
Telephone Logs	2	Later of 2 years after applicable fiscal year	X		
Work Orders and Payments	2	2 years	X		

COMMISSION RECORDS								
Agendas, Notices and Minutes of Commission Meetings	1	Permanent	X					
Audio/Video recording of meetings of policy bodies	1	Permanent	For 2 years			After 2 years		Required by Admin. Code §67.14
Commission Correspondence	2	2 years	X					
Commission Files	2	10 years	X					
Motions and Resolutions	1	Permanent	X					
CONTRACT/GRANT RECORDS								
Bond Documents	2	Duration of Bond	X					
Contracts/Agreements/MOUs	2	2 years after life of agreement ¹	X					
Contract correspondence	2	2 years after life of the agreement	X					
Construction Plans	2	Later of 2 years or until superceded	X					Admin. Code §67.24(a)
Exchanged Drafts of Agreements	2	2 years	X					
Lease Files	2	3 years after expiration	X					
Professional Services Contracts	2	2 years after life of agreement	X					
Purchase Orders	2	2 years	X					
Regulations	1	Current until superceded	X					
Requests for Proposals (RFPs) and Request for Qualifications (RFQs);	2	2 years	X					Admin. Code §67.24(e)

¹ Unless longer retention period required by state or federal law, in which case the type of agreement and applicable retention period should be listed.

Responses to RFPs and RFQs							
RFP Scoring Records	2	2 years	X				
PERSONNEL/HR RECORDS							
ADA Request for Reasonable Accommodation Report	2	5 years	X				
Affirmative Action Plan	2	5 years	X				
Discrimination Complaints	2	5 years	X				
Employee Accident/Incident Reports	2	7 years	X				Title 8, Cal. Code of Regulations, Section 10102
Employment Applications/Resumes	2	2 years	X				
Ergonomic Records	2	2 years	X				Required by Fair Labor Standards Act §11(c)
Family Medical Leave Act Records	2	5 years	X				
Payroll Records	2	5 years	X				
Personnel Files	2	5 years after date of separation	X				
Sexual Harassment Complaints	2	5 years	X				
Time Rosters*	2	5 years	X				
Time Sheets	2	5 years	X				29 CFR 1904.6
Workers' Compensation Records	2	5 years	X				

*These are no longer generated. Prior records will be retained for 5 years.

February 14, 2013

To: Ethics Commission members: Beverly Hayon, Benedict Y. Hur, Esq., Dorothy S. Liu, Esq., Paul A. Renne, Esq., Jamiennne S. Studley, Esq.

From: George Wooding

Re: Ethics Commission Complaint 15-111205. Recommendation, ^{BY} Mark Buell, Sarah Ballard & Olive Gong.

FILED
2013 FEB 15 PM 4:36
SAN FRANCISCO
ETHICS COMMISSION

This is a case about about the RPD, A public agency, abusing the first amendment free speech rights of private citizens and then trying to hide their subterfuge by deliberately deleting all public records relating the RPD's sabotage of a public forum.

Case Overview. The RPD was unhappy that citizens with differing points of view than the RPD's official policy were going to speak at the Commonwealth Club. Ginsburg & Buell were clearly unhappy with this meeting and decided to "unofficially" add Buell as a speaker, change the meeting topic and add Buell to the panel. Ginsburg working in concert with Susan Hirsh, a City Fields lobbyist & Sarah Ballard, a Ginsburg sycophant, changed the meeting by deliberately disparaging the existing citizen panel, influence peddling and coercion. After the Commonwealth meeting, I received some of the RPD's emails through a private source and then filed a document records request. The RPD stated that none of the requested documents existed. After the Commonwealth documents were submitted, the RPD then took a position that they could decide which emails should be deleted. This important free speech case is about 1) the abuse of citizen's free speech by a public agency directed by Phil Ginsburg, 2) the deletion of relevant documents and 3) a cover-up of the RPD's predatory behavior.

QUESTIONS THAT THE RPD NEEDS TO ANSWER

- was Buell, Ballard & Gong acting consistently with the RPD's record retention policy? A policy which required the RPD to retain records for a minimum of two years. Both Buell and Ginsburg had signed a Sunshine Ordinance Document on April 1, 2011.
- Were RPD documents deleted that should have been kept?
- Is the RPD accountable for any of its actions?
- Should Buell, Ballard & Gong, the RPC and sympathetic lobbyist Susan Hirsh be allowed to continue to conspire against citizens free speech rights.

ORDER OF DETERMINATION

August 8, 2011

DATE THE DECISION ISSUED

July 26, 2011

GEORGE WOODING V RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)

FACTS OF THE CASE

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

COMPLAINT FILED

On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

HEARING ON THE COMPLAINT

On July 26, 2011, Mr. Wooding presented his case to the Task Force. Olive Gong represented Rec and Park as its Custodian of Records.

Mr. Wooding testified he was a panelist on a May 11, 2011 Commonwealth Club forum about Golden Gate Park. He said he contacted Rec and Park on June 3rd and asked for any correspondence related to the forum, including correspondence between Rec and Park employees Sarah Ballard, Phil Ginsburg, Elton Pon, Staci White, Mark Buell, President of the Recreation and Park Commission, and Commonwealth Club representatives. He said Ms. Gong responded on June 8th that staff had searched and found no responsive records. He said he contacted Ms. Gong the next day and asked her to clarify her response. He said Ms. Gong emailed him the same day with the same response. If there were none, he said, Ms. Gong should have directed him to other members of the staff who might have the documents. On June 10th, he asked Ms. Gong for the names of the staff she had contacted and the process Rec and Park uses to determine the presence or absence of responsive records. Ms. Gong, he said, has not responded to this request.

He said the supporting documents he has provided to the Task Force shows Ms. Ballard, as Rec and Park's Director of Policy and Public Affairs, sent an email from her City email account to Commonwealth Club Member Ross Lawley. On April 20th, he said, Ms. Ballard again sent an email from the same account to Commonwealth Club Member Kerry Curtis in

11049_George Wooding v Recreation and Park Department

CITY AND COUNTY OF SAN FRANCISCO SUNSHINE ORDINANCE TASK FORCE

an attempt to discredit the forum's panelists and try to influence the content of the panel discussion. On April 25th, he said, Mr. Buell alleged in an email that the forum's panelists were biased. On April 26th, an email from a Commonwealth Club member was sent to Mr. Ginsberg's private email account, suggesting that Mr. Ginsburg may have additional information about the May 11th forum. Another email was from Susan Hirsch who claimed that the forum's panelists were only representatives of people who oppose change. These five emails, he said, suggest there should be more documents that are not being produced. He asked the Task Force to order Rec and Park to search its email accounts for additional documentation.

Ms. Gong testified she asked staff if they had any documents in response to Mr. Wooding's request and they all came back negative. Those are the only records she has on the subject, she said. Mr. Wooding, she said, was made known of the outcome by email. She said Mr. Wooding's July 19th letter to the Task Force claiming that he had copies of emails to support his claim were those that were deleted under Category 4 of Rec and Park's Record Retention and Destruction policy. Category 4 says: "Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the Commonwealth Club.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Mark Buell of the Recreation and Park Commission and Phil Ginsburg, Sarah Ballard, and Olive Gong of the Recreation and Park Department violated Sunshine Ordinance Sections 67.25 for failure to respond to the Immediate Disclosure Request before the end of the next business day, 67.26 for not keeping withholding to a minimum, 67.27 for failure to justify the withholding of records, and 67.21(c) for not assisting the requestor.

The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13th, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe) □ Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

11049_ George Wooding v Recreation and Park Department

Ginsburg hides from all sunshine laws and a compliant Ethics Department finds him—of course---Innocent. Will Buell, Ballard & Gong be found guilty of any violations?

RECOMMENDATION

Based on the above reasons and Ethic's staff recommendations, please find that Buell, Ballard & Gong violate Sunshine Ordinance sections 67.25, 67.26, 67.27, or 67.21(c)

For the foregoing reason's, I respectfully request that the Ethics Commission find that Buell, Ballard & Gong violated the Sunshine Ordinance and cite them accordingly.

Sincerely,

George Wooding

February 14, 2013

FILED

To: Ethics Commission members: Beverly Hayon, Benedict Y. Hur, Esq., Dorothy S. Liu, Esq., Paul A. Renne, Esq., Jamiennne S. Studley, Esq.

SAN FRANCISCO
ETHICS COMMISSION

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BY _____

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11049_George Wooding v Recreation and Park Department

CITY AND COUNTY OF SAN FRANCISCO SUNSHINE ORDINANCE TASK FORCE

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11049_George Wooding v Recreation and Park Department

Ginsburg hides from all sunshine laws and a compliant Ethics Department finds him—of course---Innocent. Will Buell, Ballard & Gong be found guilty of any violations?

RECOMMENDATION

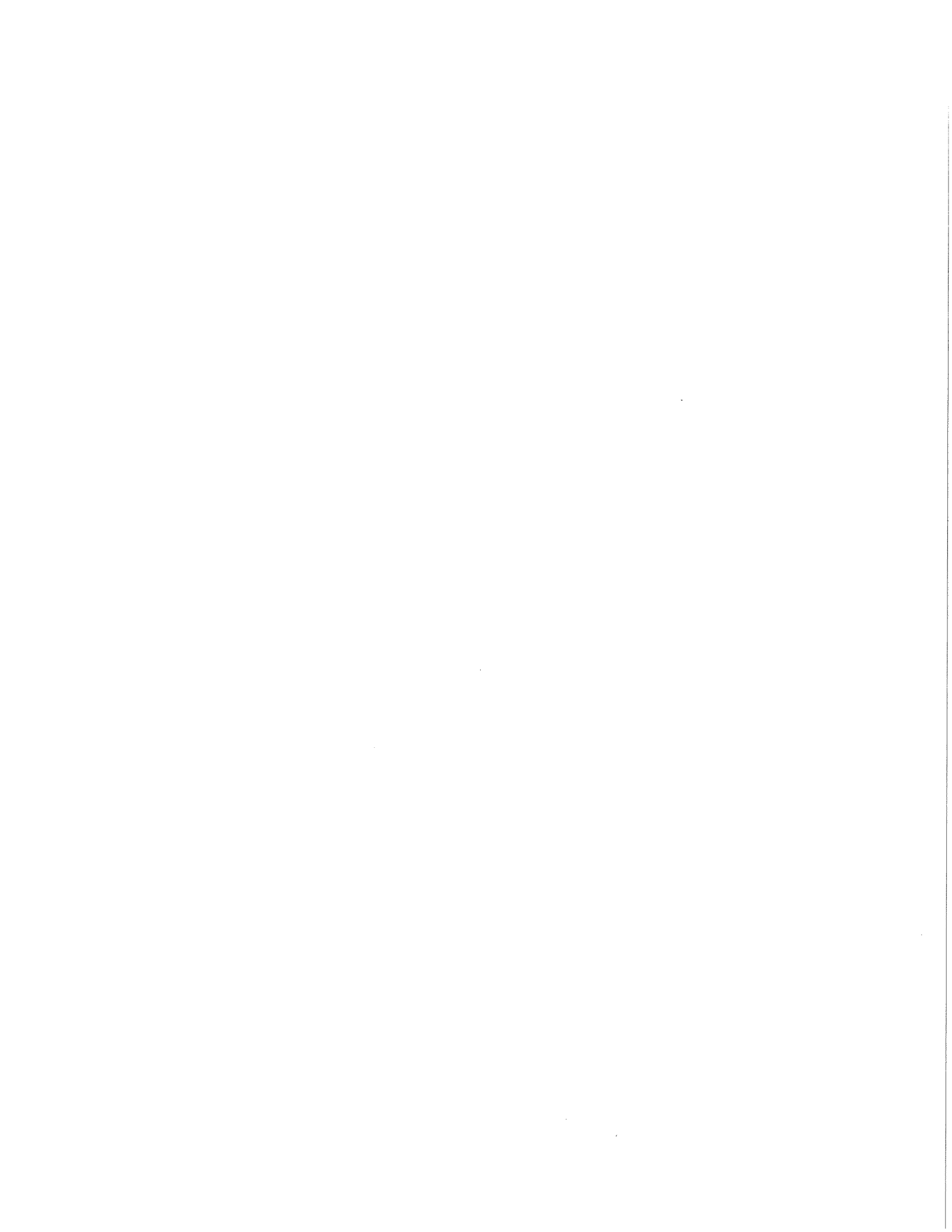
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For the foregoing reason's, I respectfully request that the Ethics Commission find that Buell, Ballard & Gong violated the Sunshine Ordinance and cite them accordingly.

Sincerely,

George Wooding

Agenda Item IV (b)





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL. A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: January 31, 2013

To: Caroline Celaya, Respondent
Cynthia Carter, Complainant

From: John St. Croix, Executive Director

Re: **NOTICE - Show Cause Hearing – Ethics Complaint 04-120507**

On April 30, 2012, the Sunshine Ordinance Task Force (“Task Force”) delivered a referral letter and Order of Determination (“Order”) to the Ethics Commission. The referral was made pursuant to Sunshine Ordinance sections 67.30(c) and 67.35(d), and San Francisco Charter section 15.102. The named Complainant is Cynthia Carter. The named Respondent is Caroline Celaya from the San Francisco Municipal Transportation Authority for “continued violation of Sunshine Ordinance Sections 67.21(b) and (c) and failure to comply with the [Order] issued on September 2, 2011, in Sunshine Complaint No. 11042.”

The Task Force concluded that Ms. Celaya violated section 67.21(b) for failing to provide documents in a timely manner, section 67.21(c) for failing to direct the Complainant to the appropriate contacts for locating certain documents, and section 67.21(e) for failing to send a knowledgeable person to the Task Force hearing.

The handling of this complaint was postponed until the Ethics Commission adopted regulations for Sunshine related complaints. Those regulations became effective on January 25, 2013. This matter will be heard under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance (“Regulations”). Staff has scheduled this matter to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, February 25, 2013**, in Room 400 in City Hall.

Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden to show that the Task Force erred in its determination. (*See* Regulations, Chapter Two, § II.B.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, February 8, 2013.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum, as well as a copy of the Regulations.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

April 30, 2012

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Referral for Failure to Comply with Order of Determination
Sunshine Complaint No. 11042, Cynthia Carter v. San Francisco Municipal
Transportation Agency**

The Sunshine Ordinance Task Force ("Task Force") hereby refers Caroline Celaya from the San Francisco Municipal Transportation Authority ("SFMTA") for continued violation of Sunshine Ordinance Sections 67.21(b) and (c) and failure to comply with the Order of Determination ("Order") issued on September 2, 2011 in Sunshine Complaint No. 11042, Cynthia Carter v. San Francisco Municipal Transportation Agency.

This referral is made for enforcement and appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.30(c) whereby "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts";
- (2) San Francisco City Charter Section 15.102 which provides that the Ethics Commission "may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records"; and
- (3) Sunshine Ordinance Section 67.35(d) whereby "any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed.

Background

Cynthia Carter filed a complaint with the Task Force on May 31, 2011 alleging that the SFMTA failed to adequately respond to her public records request made on May 12, 2011.

Task Force Hearing on Complaint

On August 23, 2011, the Task Force held a hearing on the complaint, finding Caroline Celaya in violation of Sunshine Ordinance public records provisions. Ms. Celaya and the SFMTA were ordered to produce the requested records to Ms. Carter no later than September 9, 2011.

On October 11, 2011, the Task Force's Compliance and Amendments Committee held a hearing on compliance with the Order to produce the records, finding that Ms. Celaya and the SFMTA had failed to comply. The matter was returned to the Task Force for further action with a recommendation that the Task Force refer the matter to the Ethics Commission.

On October 25, 2011, the Task Force held a hearing to further monitor compliance and consider the committee's recommendation. The Task Force found that Caroline Celaya and the SFMTA continued to fail to produce the records and had not referred Ms. Carter to appropriate department contacts with relevant information.

A description of the first Task Force hearing, violations found, and decision are described in the attached Order.

Thank you for your attention to this matter. Please contact the Task Force Administrator at sotf@sfgov.org or (415) 554-7724 for any additional information needed.



Hope Johnson, Chair
Sunshine Ordinance Task Force

Encl.

cc: Cynthia Carter, Complainant
Caroline Celaya, SFMTA, Respondent
David Hill, SFMTA, Respondent
Jerry Threet, Deputy City Attorney

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
September 2, 2011

DATE THE DECISION ISSUED
August 23, 2011

*CYNTHIA CARTER v SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (CASE
NO. 11042)*

FACTS OF THE CASE

Cynthia Carter alleges that the San Francisco Municipal Transportation Agency ("SFMTA") violated public records laws by failing to adequately respond to her May 12, 2011 request for public documents and her own employment records.

COMPLAINT FILED

On May 31, 2011, Ms. Carter filed a complaint with the Task Force against the SFMTA, alleging violation of Section 6254(c) of the California Public Records Act.

HEARING ON THE COMPLAINT

On August 23, 2011, Ms. Carter presented her case to the Task Force. Kathy Fowlis responded for the SFMTA.

Ms. Carter testified that she requested her entire file from SFMTA. She opened a sealed envelope before the Task Force, announcing she received it two weeks ago from the SFMTA but was now opening it for the first time. After going through its contents, she said some of the documents that she asked for were not provided. She said the missing documents included write-ups from supervisors, Central Control reports, and mechanical reports on defective buses. The write-ups from supervisors related to a sexual harassment claim filed by Ms. Carter against her supervisor, who then, she said, began to write up reports against her for use in discharging her from the SFMTA in retaliation for her filing the claim. She said she requested the documents from Caroline Celaya, who was not present at the Task Force hearing, and not from Ms. Fowlis. She said she would not have lost her civil service hearing if she had been provided with all the documents she requested to prove her case. She also said no one told her that she needed to go to different offices for certain documents. When she called Central Control or Street Operations, she was never directed to an appropriate contact person and was told only a lawyer could have access to some documents she was requesting.

Ms. Fowlis testified she is the custodian of records for the SFMTA's Human Resources division only, and that her division keeps the official personnel files for employees.- She said Ms. Carter had been provided with a copy of all the documents that were in her official personnel file. She said she does not know if other documents exist but if Ms. Carter had made a sexual harassment claim, that paperwork would be filed with the Equal Employment Opportunity office and not with Human Resources. She said paperwork on defective buses would be maintained by Central Control and those documents would not be in the personnel files. Ms. Fowlis several times indicated in response to Task Force questions that she did not have the necessary information and that Ms. Celaya would be the appropriate person to answer. She further indicated that Ms. Celaya had directed her to represent the SFMTA, probably because the description of the Task Force agenda item for this complaint referred to the failure of the SFMTA to provide Ms. Carter with her personnel file.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that although the SFMTA properly invoked several time extensions, they were nevertheless late in providing the documents to Ms. Carter, who should have received the documents on June 14th but did not receive them until June 23rd. The Task Force also found that although SFMTA officials knew where to direct Ms. Carter to find certain documents, they did not provide assistance to the requester, as required under the Sunshine Ordinance, to help her understand where the documents she sought were located.

DECISION AND ORDER OF DETERMINATION

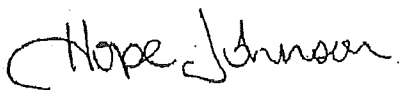
The Task Force finds Caroline Celaya in violation of Sections 67.21(b) for not providing the documents in a timely manner, 67.21(c) for failure to direct the complainant to the appropriate contacts for locating specific categories of documents, and 67.21(e) for failing to send a knowledgeable person to the Task Force hearing on the complaint.

The SFMTA is ordered to provide Ms. Carter with copies of the write ups she received from her supervisors, mechanical reports on defective busses, and the complete Central Control reports relative to her case within 5 business days of the issuance of this Order of Determination and is instructed to appear at a hearing on compliance with this Order before the Compliance and Amendments Committee on Tuesday, September 13, 2011 at 4 p.m. in Room 406 at City Hall.

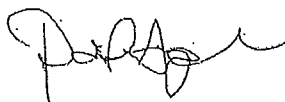
This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011, by the following vote: (Johnson/Knee)

Ayes: Snyder, Knee, Washburn, Costa, West, Johnson

Excused: Cauthen, Manneh, Knoebber, Wolfe, Chan



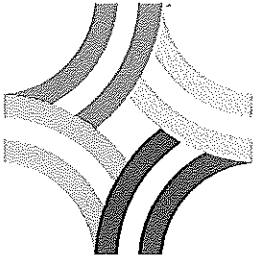
Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

c: Cynthia Carter, Complainant
Caroline Celaya, Respondent
Kathy Fowles, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.



February 20, 2013

Mr. John St. Croix
Executive Director
Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: NOTICE: Show Cause Hearing –
Ethics Complaint 04-120507

Dear Mr. St. Croix:

I am writing in response to Ethics Complaint #04-120507 referred to you by the Sunshine Ordinance Task Force ("SOTF"). The SOTF concluded that the SFMTA violated subsections 67.21(b),(c), and (e) of the San Francisco Sunshine Ordinance by (1) failing to provide documents in a timely manner, (2) failing to direct the complainant to the appropriate contacts for locating certain documents, and (3) failing to send a knowledgeable person to the Task Force hearing on the complaint. Further, the SOTF ordered the SFMTA to provide Ms. Carter with copies of "the write ups she received from her supervisors, mechanical reports on defective buses, and the complete Central Control reports relative to her case."

Summary of the SFMTA's Responses to the Complaint

1. Failure to Provide Documents in a Timely Manner. The SFMTA acknowledges that the agency was late in providing copies of some of the nonprivileged records requested by Ms. Carter; however, the agency did, in fact, produce all responsive nonprivileged records by October 24, 2011, including copies of mechanical reports for defective buses and redacted Central Control reports related to her case. The SFMTA has made internal improvements to its public records requests process including designating SFMTA staff within each division to be responsible for compiling responsive documents and creating an online tracking database to insure a timely response for all public records requests.

2. SOTF Order to Produce Records. In addition to its findings, the SOTF ordered the SFMTA to provide Ms. Carter with copies of "the write ups she received from her supervisors" as well as "complete Central Control reports relative to her case." As discussed further below, since Ms. Carter has failed to provide the SFMTA with a full and complete waiver of her privacy interests in these records, the SFMTA continues to decline to provide her either copies, or unredacted copies, of these documents until such a waiver has been submitted to the SFMTA. In a prior SOTF Order of Determination

SFMTA
Municipal Transportation Agency

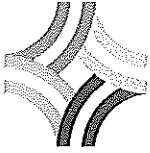


Edwin M. Lee, *Mayor*
Tom Nolan, *Chairman*
Cheryl Brinkman,
Vice-Chairman
Leona Bridges, *Director*
Malcolm Heinicke, *Director*
Jerry Lee, *Director*
Joél Ramos, *Director*
Cristina Rubke, *Director*
Edward D. Reiskin
Director of Transportation

One South Van Ness Avenue
Seventh Floor
San Francisco, CA 94103

Tele: 415.701.4500

www.sfmta.com



issued to the SFMTA, on March 27, 2007, the SOTF directed the SFMTA to use the same waiver procedure.

3. Failure to Direct the Complainant to the Appropriate Contacts. The SFMTA disagrees with this finding because the agency has adopted a procedure for responding to public records requests designating Caroline Celaya as the staff person to receive and respond to such requests. With respect to Ms. Carter's two public records requests, Caroline Celaya coordinated the SFMTA's response among its various divisions and responded to these two requests on behalf of the agency. There was no need to refer Ms. Carter to any other SFMTA staff person or division to obtain the public records she sought. Further, the SFMTA informed Ms. Carter that a complete copy of her official personnel file could be obtained by contacting Kathy Fowlis. .

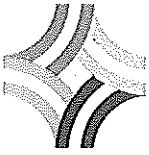
4. Failing to Send a Knowledgeable Person to the Task Force Hearing. The SFMTA disagrees with this finding because Ms. Carter originally submitted her written request for records to Kathy Fowlis in the SFMTA Human Resources division. Since most of the records Ms. Carter sought were personnel or employment records, the SFMTA sent Ms. Fowlis to the SOTF hearing as the person most knowledgeable about the records in question.

SFMTA's Requirement that the Complainant Sign a Full and Complete Waiver

Before summarizing the complainant's public records requests and the SFMTA's responses, we note the circumstances that gave rise to the SFMTA's requiring the complainant to sign a waiver of her right to privacy in records that she had requested.

The complainant's two public records request sought predominately her own personnel and employment records while she was employed at the SFMTA as well as other maintenance and vehicle records.

As an initial matter, Ms. Carter was provided a copy of her official SFMTA personnel file by certified mail in compliance with California Labor Code §1198.5. For those personnel or employment records that were not included in the documents provided as part of Ms. Carter's official personnel file, disclosure of these records would constitute an invasion of her right to privacy guaranteed by the California Constitution since they are confidential personnel records. [Calif. Const. Art. 1, Sec. 1; California Government Code §6254(c) and (k)]. The Sunshine Ordinance recognizes this exemption provided by state law. S.F. Admin. Code §67.1(g). As a result, local agencies can generally rely on Government Code Section 6254(c) to withhold records that would constitute an unreasonable invasion of an employee's right to privacy. Because the requested records contained private information



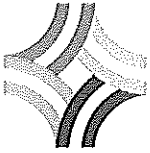
regarding Ms. Carter's employment with the SFMTA, the SFMTA required her to sign a full and complete waiver of her privacy rights, for the reasons we now address. We note that there may be cases when a waiver by an employee is not enough to warrant disclosure of a personnel or employment record but we do not need to reach that question here.

The California Public Records Act and the Sunshine Ordinance establish a right of access to public records for *members of the public*. Neither law gives a City employee any right of access to records greater than the right held by a member of the public. *Los Angeles Police Department v. Superior Court* (1977) 65 Cal.App.3d 661; *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645. In *Los Angeles Police Department*, the court stated that "(i)n this connection, it should be noted that if the record is a public record all persons have access thereto as permitted by Act and a person who may be the subject of the particular record sought does not, because he is personally affected, have any greater right than any person to examine the record. Conversely, a subject person has no right under Act to prevent disclosure of the record to any other person." *Id.* at 668. In the *Black Panther Party* case, the court stated that "(t)he term public inspection necessarily implies general, nonselective disclosure. It implies that public officials may not favor one citizen with disclosure denied to another. When a record loses its exempt status and becomes available for public inspection, section 6253, subdivision (a), endows every citizen with a right to inspect it. By force of these provisions, records are completely public or completely confidential. The Public Records Act denies public officials any power to pick and choose the recipients of disclosure. fn. 9 When defendants elect to supply copies of complaints to collection agencies, the complaints become public records available for public inspection. *Id.* at 656-657.

Moreover, when a local agency discloses a record to the public that would qualify as exempt under Government Code Section 6254 (among others statutes), the disclosure constitutes a waiver of exemption. Government Code Section 6254.5 provides that "... whenever a . . . local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law . . ."

Absent Ms. Carter executing a waiver of her privacy rights, if the SFMTA would have disclosed these records to her, it would arguably have waived its right to rely on this exemption as to anyone else because of the Section 6254.5. The second requester could argue that the SFMTA, by already having disclosed these records to the employee, has waived the right to rely on the exemption as to any other requester.

In a similar situation in which another SFMTA employee sought personnel and employment records regarding her employment status with the SFMTA,



the SOTF directed the SFMTA to produce the requested records after receiving a signed waiver from the complainant. (A copy of the SOTF's March 27, 2007 Order of Determination is attached.) As a result of this decision, the SFMTA has, with the assistance of the City Attorney's Office, established a procedure for offering personnel and employment records that are not part of an employee's official personnel file to an employee but only upon that employee signing a full and complete waiver acknowledging that the employee waives her right to privacy in the records sought. This procedure provides notice to the employee that she may have a privacy interest in the record and that the SFMTA has found that disclosure to the employee may remove the SFMTA's ability under State law to withhold the record from another requester. This procedure protects the City from liability if a third party requests the same record and the SFMTA discloses it, and is consistent with the SOTF's March 27, 2007, Order of Determination.

In this matter, the complainant declined to sign such a waiver without conditions that undermined its effect.

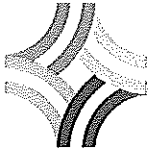
We now turn to the Ms. Carter's requests and the SFMTA's responses.

Chronology of Ms. Carter's Requests and SFMTA's Responses

On May 13, 2011, Ms. Cynthia Carter submitted a request to Ms. Kathy Fowlis, Employee Services Manager, Human Resources, in which she requested "my records from 2/1/99 - 8/11/10 I would like all side letters, faxes correspondence between management etc. emails, notes, Arbitrators reports investigations." (See attached.)

The SFMTA responded to Ms. Carter on May 20, 2011, by invoking a 14 day extension. On June 6, 2011, the SFMTA responded to Ms. Carter stating that: 1) some of the documents that she sought were exempt from disclosure because they are privileged; 2) some of the documents contained recommendations of SFMTA staff which SFMTA declined to disclose; 3) With respect to access to her official personnel file, she could contact Kathy Fowlis to schedule a time to inspect the file and 4) In order to provide her with some of the records requested she needed to sign and return a waiver of privacy interests. (See attached letter.)

Ms. Carter made a second request for public records on May 19, 2011, seeking "my files from SFMTA (my entire file please) as well as central control logs. Logs from the Flynn Mechanic shop, from reports of buses that I was driving and required service from road call, all insp. Reports concerning me and emails, side letters, letters mailed to me referring to the supervisor test and station agent test as well as the actual dates of these tests." The SFMTA responded on May 31, 2011 and invoked a 14 day extension to respond to her request. (See attached letter)



On June 14, 2011, the SFMTA provided Ms. Carter with a response. With respect to her official personnel file, she was again asked to contact Ms. Kathy Fowlis. She was provided with the Central Control Logs as requested and she was informed that there would be a second redacted document that would be provided. She was again informed that if she wanted an un-redacted version of the record, she would need to sign the waiver the SFMTA had previously sent her. She was provided with another copy of this waiver. With respect to her request for central control logs and maintenance records associated with the vehicles she had driven, she was informed that the SFMTA was continuing to locate additional responsive documents. (See attached letter.)

On June 23, 2011, Ms. Carter met with Ms. Clare Leung, SFMTA-HR staff, to review her file. At that meeting, she requested copies of certain documents. On June 28, Ms. Fowlis called Ms. Carter to inform her that the copies were ready for pick up. Additionally, phone messages were left for her on June 29 and on July 15. Since she had not picked up the copies by July 29, 2011, staff sent the file to her via certified mail (See attached).

On June 29, 2011, Ms. Carter sent an email to Caroline Celaya that she had reviewed her records and records for years 1999-2007 were missing.

On June 30, 2011, the SFMTA responded and again advised Ms. Carter that she needed to sign the waiver form to obtain copies of personnel and employment records related to her that were not included in her official personnel file. (See attached.)

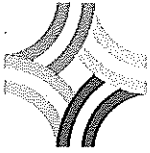
On July 2, 2011, Ms. Carter stated in an email that she didn't care if the public saw her information but failed to submit a signed waiver.

On July 13, 2011, the SFMTA advised Ms. Carter that her email was insufficient for the SFMTA to be able to release the files and that the SFMTA needed a signed waiver which was again provided to her. (See attached.)

On October 12, 2011, Ms. Carter emailed the SFMTA and stated that she did not have the mechanical records but had received the Central Control logs.

On October 12, 2011, the SFMTA advised Ms. Carter that she need to sign a waiver to obtain an unedited copy of the Central Control (CCTAG) search log.

On October 24, 2011, the SFMTA provided Ms. Carter with additional documents responsive to her request including, commendations, yard assignments, central control log search, passenger service reports, and again provided her with a waiver form to sign and return. (See attached.)



On November 2, 2011, the SFMTA notified Ms. Carter via email that there would be a cost for copies of the mechanical reports on defective buses and asked that she either agree to pay the cost or narrow the scope. (See attached.) The SFMTA did not receive a response to this email from Ms. Carter.

On November 21, 2011, the SFMTA advised Ms. Carter that the signed waiver she submitted which included the statement "I Cynthia Carter would also like to note that if any of these documents are released to other employers in maliciousness to prevent me from getting another job. The SFMTA will be held accountable. No Holds Barred" rendered Ms. Carter's waiver illusory since she had made it clear that she was not authorizing release of her personnel or employment records to the public. She was again provided another copy of the waiver form to sign. (See attached.) In response, the SFMTA never received any further signed waiver from Ms. Carter.

SFMTA's Response to SOTF's Finding that the Agency Failed to Provide Documents in a Timely Manner

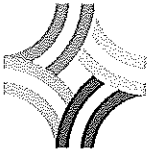
The SFMTA responded to Ms. Carter's requests within the time required by the Public Record Act and Sunshine Ordinance and advised her of the necessary steps, including submitting full and complete signed waiver, to obtain some of the documents she sought.

The SFMTA acknowledges that the agency was late in providing copies of some of the nonprivileged records requested by Ms. Carter; however, the agency did, in fact, produced all responsive nonprivileged records by October 24, 2011, including copies of mechanical reports for defective buses and redacted Central Control reports related to her case. The SFMTA has made internal improvements to its public records requests process including designating SFMTA staff within each division to be responsible for compiling responsive documents and creating an online tracking database to insure a timely response for all public records requests.

SFMTA's Response to SOTF's Finding that the Agency Failed to Direct the Complainant to the Appropriate Contacts For Locating Certain Documents

At the August 23, 2011 SOTF hearing, Ms. Carter states that "no one told her that she needed to go to different offices for certain documents. When she called Central Control or Street Operations, she was never directed to an appropriate contact person."

The process the SFMTA has for handling public records is that all requests are provided to Caroline Celaya who then coordinates the collection of records from various SFMTA divisions to ensure a proper and timely



response to the requestor. In this way, the requestor isn't expected to ask each SFMTA division for records.

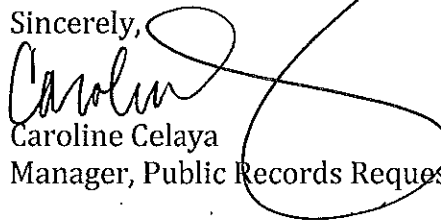
During this same time period, Ms. Carter did make contact with various staff at several different divisions directly. Once Ms. Fowlis and Ms. Celaya received the request, they acted to coordinate the collection of the records which obviated the need to direct her to other contacts.

As a result, the SFMTA disagrees with this finding because the agency has adopted a procedure for responding to public records requests designating Caroline Celaya as the staff person to receive and respond to such requests. Further, the SFMTA informed Ms. Carter that a complete copy of her official personnel file could be obtained by contacting Kathy Fowlis.

SFMTA's Response to SOTF's Finding that the Agency Failed to Send a Knowledgeable Person to the Task Force Hearing

The SFMTA disagrees with this finding because Ms. Carter originally submitted her written request for records to Kathy Fowlis in the SFMTA Human Resources division. Since most of the records Ms. Carter sought were personnel or employment records, the SFMTA sent Ms. Fowlis to the SOTF hearing as the person most knowledgeable about the records in question.

Sincerely,



Caroline Celaya

Manager, Public Records Requests

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
March 27, 2007

March 29, 2007

Debra Ward
P.O. Box 590395
San Francisco, CA 94118

Sonali Bose
Municipal Transportation Agency
One South Van Ness Ave,
Seventh Floor
San Francisco, CA 94103

Re: Complaint #07001 filed by Debra Ward against the Municipal Transportation Agency for alleged failure to provide records requested.

Based on the information provided to the Task Force from the complainant Debra Ward and supporter Allen Grossman, respondent Rumi Ueno, Municipal Transportation Agency and supporter Micki Callahan, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds that the Municipal Transportation Agency violated Section 67.21 of the Sunshine Ordinance for failure to disclose the requested documents, even though Ms. Ward agreed to waive any personnel or privacy exemptions to disclosure that she may otherwise have.

MTA is directed to produce the requested records within five (5) days of receiving this Order of Determination and a signed waiver from Ms. Ward.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 27, 2007 by the following vote: (Pilpel / Craven)
Ayes: Craven, Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Chan, Goldman
Excused Absent: Williams

A handwritten signature in cursive script, appearing to read "D. Comstock".

Douglas Comstock, Chair
Sunshine Ordinance Task Force

cc: Ernie Llorente, Deputy City Attorney
Diana Hammons, Acting Director External Affairs
Rumi Ueno, Employee Relations Manager

Kathy Fowles

today is 5-13-2011

This is a request for my records
from 2-1-99 - 8-11-10

I would like all side letters,
taxes correspondence, between Management
etc. Emails, Notes, Arbitrators reports
investigations.

You have 10 days to supply these
files to me or I will take further
action

Thank you & God Bless
Cynthia Carter

415 286 2769

DimpleSCARTER1963@ATT.NET

Celaya, Caroline

From: Celaya, Caroline
Sent: Friday, May 20, 2011 3:17 PM
To: 'dimplescarter1963@att.net'
Subject: SFMTA response
Attachments: Stubbed Attachments.htm

This message's contents have been archived by the Barracuda Message Archiver,
Carter, Cynthia 5/20/11 3:17 PM (100.4K)

Please see the attached response from the SFMTA

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
415.701.4670

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jorry Lee | Vice-Chairman
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oka | Director
Nathanel P. Ford Sr. | Executive Director/CEO

May 20, 2011

SENT VIA EMAIL

Cynthia Carter
Dimplescarter1963@att.net

RE: Public Records Request dated May 13, 2011

Dear Ms. Carter:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 13, 2011.

Please be advised we are hereby invoking an extension of an additional fourteen (14) calendar days from May 23, 2011, to respond to your request.

Under the California Public Records Act and the San Francisco Sunshine Ordinance, the deadline can be extended for an additional fourteen days due to "the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request," and "the need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein." Cal. Gov't Code §6253(c)(2) and (3). The SFMTA is invoking the extension on these grounds because staff must (1) collect and examine a voluminous amount of material, and (2) consult with another City agency having substantial subject matter interest in the request. We will endeavor to respond to your request as soon as possible, but not later than June 6, 2011.

Please do not hesitate to contact the Sunshine Request line at 415-701-4670 or sfntasunshinerequests@sfmta.com if you have any questions.

Sincerely,


Caroline Celaya

Celaya, Caroline

From: Celaya, Caroline
Sent: Monday, June 06, 2011 4:34 PM
To: 'dimplescarter1963@att.net'
Subject: SFMTA response
Attachments: Stubbed Attachments.htm

This message's contents have been archived by the Barracuda Message Archiver.

Carter, Cynthia 6.6.11.doc (249.9K)

Carter, Cynthia Waiver form.doc (30.5K)

Please see the attached response from the SFMTA.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oka | Director
Joel Ramos | Director
Nathaniel P. Ford Sr. | Executive Director/CEO

June 6, 2011

SENT VIA EMAIL

Cynthia Carter
DimpleSCarter1963@att.net

RE: Public Records Request dated May 13, 2011

Dear Ms. Carter:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 13, 2011. On May 23, 2011, the SFMTA invoked a fourteen day extension – until June 6, 2011 – to respond to your request.

The Records Requested

You have submitted a request "for my records from 2-1-99 – 8-11-10 I would like all side letters, faxes correspondence between management etc. emails, notes, arbitrators reports investigations."

Please note that we do not understand your request to seek only your official MTA personnel file. If we are mistaken and you are requesting access to only records in that file, you are entitled to reasonable access. Cal. Labor Code §1198.5. To access a copy of those records, please contact Kathy Fowles at (415) 701-5037 to schedule a time to inspect the file.

We now respond to your request insofar as it appears to be a public records request for documents. As an initial matter, both the California Public Records Act and the San Francisco Sunshine Ordinance establish a right of access to public records for *members of the public*. Neither the Public Records Act nor the Sunshine Ordinance gives a City employee any right of access to records greater than the right held by a member of the public. As a result, you are entitled to the same rights of access to these records that a member of the public would have and no greater rights, even though the records pertain to you as a MTA employee. *Los Angeles Police Department v. Superior Court*, (1977) 65 Cal.App.3d 661; *Black Panther Party v. Kehoe*, (1974) 42 Cal.App.3d 645.

Exemptions and Privileges

The SFMTA is withholding records requested by you for one or more of the following exemptions.

First, the disclosure of these records in response to a public records request would constitute an unwarranted invasion of personal privacy under state law. [California Government Code

§6254(c) and (k) (protecting records which are "exempted or prohibited pursuant to provisions of federal or state law" from disclosure); *see also*, Cal. Const. Art. I §1.] The records you seek are confidential personnel records: California courts have held that confidential personnel records are protected by the California Constitutional right of privacy. *See, Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal.4th 1, 35 (identifying privacy interest in precluding dissemination of sensitive, confidential information); *Teamsters Local 856 v. Priceless, LLC*, (2003) 112 Cal.App.4th 1500, 1512 (public employees have a right to privacy in their personnel files).

The Sunshine Ordinance recognizes this exemption provided by state law. *See*, S.F. Admin. Code §67.1(g) (City employees have a right of privacy). Further, the records in question are quintessential examples of records that should not be disclosed for reasons of privacy.

Second, the California State Constitution protects the privacy rights of individual members of the general public, including third parties, and disclosure of personal information such as home address information, telephone numbers, and email addresses would violate these privacy rights. [California Constitution, Article I, §1, Government Code §6254(c) and (k) (protecting records which are "exempted or prohibited pursuant to provisions of federal or state law" from disclosure).] (California Constitution, Article I, §1 and Government Code §6254(c); *Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal. 4th 1, 35 (identifying privacy interest in precluding dissemination of sensitive, confidential information); *City of San Jose v. Superior Court*, (1999) 74 Cal.App.4th 1008 (court denied media's request for names and contact information of complainants).) The City has a duty to protect the personal privacy of third parties. Where privacy rights are involved, nondisclosure is not just a privilege, but a legal requirement. As a result, the SFMTA is withholding any personal information for individual third parties.

Third, the Public Records Act allows an agency to decline to disclose "records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." *See* Gov. Code §6254(k); *see also*, S.F. Admin. Code §67.21(k). California Evidence Code §954 protects from disclosure communications between attorneys and their clients. The California Supreme Court has confirmed that Government Code §6254(k) authorizes a public entity to deny a member of the public access to a document by asserting the attorney-client privilege. *See Roberts v. Palmdale*, (1993) 5 Cal.4th 363. Similarly, California Code of Civil Procedure ("CCP") §2018 protects "any writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories." CCP §2018 protects the work product, not just attorney work product, generated by a public agency in anticipation of litigation. *Fairley v. Superior Court of Los Angeles County*, (1998) 66 Cal.App.4th 1414, 1422 fn. 5.

Some of the documents you have requested are exempt from disclosure under either the attorney-client privilege or the attorney work product privilege. Disclosure of the communications you have requested would impede the ability of the SFMTA to receive legal

advice. Accordingly, we will not produce privileged attorney-client communications and attorney work product.

Fourth, S.F. Administrative Code §67.24(a)(1) provides that draft documents containing recommendations of the author may be withheld from disclosure. Since several of the responsive documents you have requested contain recommendations of SFMTA staff in their entirety, the SFMTA declines to disclose these documents.

Fifth, California Government Code §6254(b) provides that records pertaining to pending litigation or claims to which the City is a party are exempt from disclosure until the pending litigation or claim has been finally adjudicated or otherwise settled. Further, California Government Code §54956.9, which permits closed sessions by local agencies to discuss pending litigation, defines "litigation" to include any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. Since there is matter pending before an arbitrator regarding the records you have requested, the SFMTA declines to disclose these documents.

Document Production

Regarding the records being withheld due to the first exemption, since you requested personnel related records that pertain to you as a SFMTA employee, you must waive your privacy interest with respect to these documents before the SFMTA can provide you copies. Attached is a full and complete waiver we have prepared for you. Please complete the waiver and return the original document to us. Please be advised that if you waive your privacy interest in these documents, any member of the public who subsequently submits a public records request for these same documents will be provided copies.

Please contact the Sunshine request line at (415) 701-4670 or at sfntasunshinerequests@sfmta.com if you have any further questions regarding this matter or if you would like additional information.

Sincerely,


Caroline Celaya

WAIVER OF PRIVACY RIGHTS

I, CYNTHIA CARTER, submitted a request for disclosure of documents pursuant to the San Francisco Sunshine Ordinance in a letter to the San Francisco Municipal Transportation Agency ("SFMTA") dated May 13, 2011 (copy attached for reference).

I understand that the SFMTA has objected to providing these documents, in part, because those documents are protected by my right of privacy. I also understand that I have the option to waive my right to privacy with respect to the requested documents.

I hereby waive any and all rights to keep private or confidential each and every document that is being withheld on account of privacy in response to my request contained in my letter dated May 13, 2011 to the SFMTA (copy attached for reference).

I understand that I am waiving any and all rights to privacy that I now have or may have in the requested documents. I make this waiver knowingly and voluntarily. I also understand that I am not entitled to receive the requested documents under the Sunshine Ordinance until I have made this waiver. Therefore, I make this waiver knowing that it will apply to documents that I have not yet seen and do not yet know the content of.

I further understand that as a result of my knowing and voluntary waiver, the documents I have requested may be provided to anyone, including members of the general public, and that I consent to such disclosure.

Date

CYNTHIA CARTER

Celaya, Caroline

From: Celaya, Caroline
Sent: Friday, May 20, 2011 4:11 PM
To: 'dimplescarter1963@att.net'
Subject: C.Carter request
Attachments: Stubbed Attachments.htm

This message's contents have been archived by the Barracuda Message Archiver.

Carter, Cynthia 5.19.11 10:05 AM (78.4K)

Hi Cynthia:

The SFMTA is in receipt of your public records request, copy attached for your reference. Staff is gathering responsive documents and has asked that you please provide the dates or a time period.

Thank you,

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103



ATTN: ~~Mr.~~ Ms. Kathy Jowles

I, Cynthia Carter am

requesting a copy of my files
from SFMTA (My entire file please)
as well as Central Control logs
Logs from the Lynn Mechanic Shop
from reports of buses that I was
driving and required service from Road call,
all insp. reports concerning me, CC logs, reports
phone recordings referring to me and emails, side
letters, Letters mailed to me referring to the
supervisor test & station agent test as well as
the actual dates of these tests

Please do not pass
to Cynthia Lamada
~~eschborn~~ thanks.

Thank You
Cynthia Carter

Celaya, Caroline

From: Celaya, Caroline
Sent: Tuesday, May 31, 2011 2:20 PM
To: 'dimplescarter1963@att.net'
Subject: SFMTA response
Attachments: Stubbed Attachments.htm

This message's contents have been archived by the Barracuda Message Archiver.
Carter, Cynthia S. 5/31/11 4:41 PM (99.2K)

Please see the attached response from the SFMTA.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oka | Director
Nathaniel P. Ford Sr. | Executive Director/CEO

May 31, 2011

SENT VIA EMAIL

Cynthia Carter
Dimplescarter1963@att.net

RE: Public Records Request dated May 19, 2011

Dear Ms. Carter:

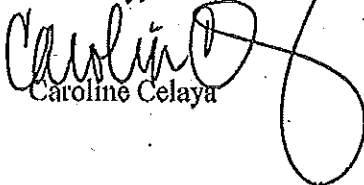
On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 19, 2011.

Please be advised we are hereby invoking an extension of an additional fourteen (14) calendar days from May 31, 2011, to respond to your request.

Under the California Public Records Act and the San Francisco Sunshine Ordinance, the deadline can be extended for an additional fourteen days due to "the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request," and "the need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein." Cal. Gov't Code §6253(c)(2) and (3). The SFMTA is invoking the extension on these grounds because staff must (1) collect and examine a voluminous amount of material, and (2) consult with another City agency having substantial subject matter interest in the request. We will endeavor to respond to your request as soon as possible, but not later than June 14, 2011

Please do not hesitate to contact the Sunshine Request line at 415-701-4670 or sfintasunshinerequests@sfmta.com if you have any questions.

Sincerely,


Caroline Celaya

Celaya, Caroline

From: Celaya, Caroline
Sent: Tuesday, June 14, 2011 4:38 PM
To: 'Cynthia Carter'
Subject: SFMTA response
Attachments: Stubbed Attachments.htm

*If needed,
central control logs can be provided to Ethics (7 pages)*

This message's contents have been archived by the Barracuda Message Archiver.

Carter, Cynthia 6.14.11 doc.pdf (4.7M)

Carter, Cynthia 6.14.11 waiver.DOC (30.5K)

Carter, Cynthia 6.14.11.pdf (172.5K)

Please see the attached response from the SFMTA.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Leo | Vice-Chairman
Leona Bridgus | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oka | Director
Joel Ramos | Director
Nathaniel P. Ford Sr. | Executive Director/CEO

June 14, 2011

SENT VIA EMAIL

Cynthia Carter
Dimplescarter1963@att.net

RE: Public Records Request dated May 19, 2011

Dear Ms. Carter:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 19, 2011. On May 31, 2011, the SFMTA invoked a 14-day extension – until June 14, 2011 – to respond to your request.

The Records Requested

You have requested a copy of:

“my files from SFMTA (my entire file please) as well as central control logs. Logs from the Flynn Mechanic shop, from reports of buses that I was driving and required service from road call, all insp. Reports concerning me and emails, side letters, letters mailed to me referring to the supervisor test and station agent test as well as the actual dates of these tests.”

Please note that if you seek your official MTA personnel file, you are entitled to reasonable access. Cal. Labor Code §1198.5. To access a copy of those records, please contact Kathy Fowls at (415) 701-5037 to schedule a time to inspect the file.

We now respond to your request insofar as it appears to be a public records request for documents. As an initial matter, both the California Public Records Act and the San Francisco Sunshine Ordinance establish a right of access to public records for *members of the public*. Neither the Public Records Act nor the Sunshine Ordinance gives a City employee any right of access to records greater than the right held by a member of the public. As a result, you are entitled to the same rights of access to these records that a member of the public would have and no greater rights, even though the records pertain to you as a MTA employee. *Los Angeles Police Department v. Superior Court*, (1977) 65 Cal.App.3d 661; *Black Panther Party v. Kehoe*, (1974) 42 Cal.App.3d 645.

Exemptions and Privileges

The SFMTA will provide one record that will be redacted for the following reason.

The disclosure of these records in response to a public records request would constitute an unwarranted invasion of personal privacy under state law. [California Government Code

§6254(e) and (k) (protecting records which are "exempted or prohibited pursuant to provisions of federal or state law" from disclosure); *see also*, Cal. Const. Art. I §1.] The records you seek are confidential personnel records. California courts have held that confidential personnel records are protected by the California Constitutional right of privacy. *See, Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal.4th 1, 35 (identifying privacy interest in precluding dissemination of sensitive, confidential information); *Teamsters Local 856 v. Priceless, LLC*; (2003) 112 Cal.App.4th 1500, 1512 (public employees have a right to privacy in their personnel files).

The Sunshine Ordinance recognizes this exemption provided by state law. *See*, S.F. Admin. Code §67.1(g) (City employees have a right or privacy). Further, the records in question are quintessential examples of records that should not be disclosed for reasons of privacy.

Document Production

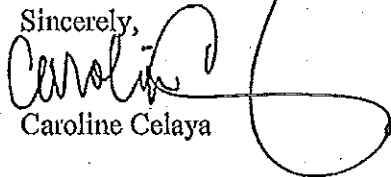
Attached please find one document responsive to your request. We will be providing you a second redacted document on a rolling basis since this document contains private information pertaining to you as a SFMTA employee. S.F. Admin. Code §67.25(d).

If you would like an unredacted version of this document, you must waive your privacy interest with respect some of the information contained in this document before the SFMTA can provide you an unredacted copy. Attached is a full and complete waiver we have prepared for you. Please complete the waiver and return the original document to us. Please be advised that if you waive your privacy interest in this document, any member of the public who subsequently submits a public records request for these same documents will be provided copies.

Finally, the SFMTA is continuing to locate and review additional responsive non-privileged documents and will provide those documents to you on a rolling basis. S.F. Admin. Code §67.25(d).

Please contact the Sunshine request line at (415) 701-4670 or at sfintasunshinerequests@sfmta.com if you have any further questions regarding this matter or if you would like additional information.

Sincerely,



Caroline Celaya

WAIVER OF PRIVACY RIGHTS

I, CYNTHIA CARTER, submitted a request for disclosure of documents pursuant to the San Francisco Sunshine Ordinance in a letter to the San Francisco Municipal Transportation Agency ("SFMTA") dated May 19, 2011 (copy attached for reference).

I understand that the SFMTA has objected to providing these documents, in part, because those documents are protected by my right of privacy. I also understand that I have the option to waive my right to privacy with respect to the requested documents.

I hereby waive any and all rights to keep private or confidential each and every document that is being withheld on account of privacy in response to my request contained in my letter dated May 19, 2011 to the SFMTA (copy attached for reference).

I understand that I am waiving any and all rights to privacy that I now have or may have in the requested documents. I make this waiver knowingly and voluntarily. I also understand that I am not entitled to receive the requested documents under the Sunshine Ordinance until I have made this waiver. Therefore, I make this waiver knowing that it will apply to documents that I have not yet seen and do not yet know the content of.

I further understand that as a result of my knowing and voluntary waiver, the documents I have requested may be provided to anyone, including members of the general public, and that I consent to such disclosure.

Date

CYNTHIA CARTER

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Leona Bridges | Director

Cheryl Brinkman | Director

Malcolm Heinicke | Director

Bruce Oka | Director

Joél Ramos | Director

Debra A. Johnson | Acting Executive Director/CEO

Friday, July 29th, 2011Certified Mail # 7009-2250-0004-4730-2030

Ms. Cynthia Carter
1871 Sunnydale Ave
San Francisco, Ca 94134

Re: ***Requested Copies From Official Personnel File (OPEF)***

Ms. Carter,

On Thursday, June 23rd of 2011, I met with you to review your Official Personnel Employee File. During the course of the review you requested certain copies from your Employee File

On Tuesday, June 28th of 2011, I spoke with you, via telephone, informing you that I was working on copying the documents and they will be ready for you within the next few business days.

On Wednesday, June 29th of 2011, I spoke with you again, via telephone, informing you that the copies you requested, from me, have been completed and are ready for pick up on the 6th floor of 1 South Van Ness.

At 9:45am on Friday, July 15th of 2011, I spoke to you again, via telephone, reminding you that the copies you requested are ready to be picked up. You stated that you would pick up the copies.

As of Close of Business on Thursday, July 28th of 2011 you have not yet picked up your requested copies. Therefore I have enclosed your copies along with this letter and sent them to your homes address via Certified Mail.

If you have any questions, concerns, or issues you may contact me at (415) 701-5034

Thank you,

Christina Leung
Human Resources Associate
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, Sixth Floor
San Francisco, CA. 94103
Tel: (415) 701-5034

cc: Employee File
Encls.

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Cameron Beach | Director

Leona Bridges | Director

Cheryl Brinkman | Director

Malcolm Heinicke | Director

Bruce Oka | Director

Nathaniel P. Ford Sr. | Executive Director/CEO

Cynthia Carter

I

(Print Name)

From my Official Personnel File (OPEF), I received a copy of the following:

- 1) All the documents contained within Part/Section Two: Performance Plans/Appraisals
 - a. Commendation dated February 3, 2000
- 2) All Separation Reports (SR), all Request for Leave (RFL) forms, all Individual Employee Leave History Reports, all FMLA leave history reports, all FMLA eligible data logs, all Municipal Transportation Agency Automatic FMLA designation/Informational Letters and all Employee Request for Family and Medical Leave forms contained within Part/Section Three: Request of Leaves

a. SR Effective 03/25/10	RFL from 03/23/10 – 04/07/10	
b. SR Effective 03/15/10	RFL from 03/15/10 – 03/24/10	
c. SR Effective 10/16/09	RFL from 10/16/09 – 11/02/09	
d. SR Effective 05/14/09	RFL from 05/14/09 – 06/20/09	
e. SR Effective 02/10/09	RFL from 02/09/09 – 02/21/09	
f. SR Effective 01/20/09	RFL from 12/18/09 – 02/09/09	
g. SR Effective 12/09/08	RFL from 12/09/08 – 01/19/09	
h. SR Effective 11/06/08	RFL from 11/06/08 – 11/11/08	
i. SR Effective 10/31/08	RFL from 10/31/08 – 11/10/08	
j. SR Effective 05/27/08	RFL from 05/27/08 – 06/13/08	(2 RFL pages in file)
k. SR Effective 03/22/08	RFL from 02/22/08 – 03/27/08	Kaiser Note date 02/22/08
l. SR Effective 02/22/08	RFL from 02/22/08 – 03/27/08	Kaiser Note date 02/22/08
m. SR Effective 01/11/08	RFL from 01/01/07 – 02/10/08	(3 RFL pages in file)
n. SR Effective 01/20/07	RFL from 01/01/07 – 01/10/08	(2 RFL pages in file)
o. Letter Dated December 21, 2207 RE: Incomplete Request For Leave Form		
p. E-mail dated Thursday, December 20, 2007		
q. SR Effective 11/06/06	RFL from 11/06/06 – 11/15/06	(2 RFL pages in file)
r. SR Effective 07/29/06	RFL from 07/29/06 – 10/20/06	RFL from 09/23/04 -10/23/04
s. SR Effective 11/07/04	RFL from 11/07/04 – 12/07/04	
t. SR Effective 04/10/04	RFL from 04/10/04 – 07/14/04	
u. SR Effective 04/10/04	RFL from 04/10/04 – 05/31/04	
v. SR Effective 03/30/04	RFL from 03/30/04 – 04/30/04	
(2 SR pages in file & (2 RFL pages in file)		
w. SR Effective 09/27/03	RFL from 09/27/03 – 10/27/03	
(2 SR pages in file & (2 RFL pages in file)		
x. Individual Employee Leave History Report Dated June 13, 2008 4 pages		
FMLA Leave History Report Dated June 13, 2008 1 page		
y. Individual Employee Leave History Report Dated March 17, 2008 4 pages		
FMLA Leave History Report Dated March 17, 2008 1 page		
z. Individual Employee Leave History Report Dated March 06, 2008 4 pages		
FMLA Leave History Report Dated March 06, 2008 1 page		
aa. Individual Employee Leave History Report Dated January 25, 2008 3 pages		
FMLA Leave History Report Dated January 25, 2008 1 page		
bb. Individual Employee Leave History Report Dated January 04, 2008 3 pages		
FMLA Leave History Report Dated January 04, 2008 1 page		

- cc. Individual Employee Leave History Report Dated November 20, 2006 3 pages
FMLA Leave History Report Dated November 20, 2006 1 page
- dd. Individual Employee Leave History Report Dated October 27, 2006 3 pages
FMLA Leave History Report Dated October 27, 2006 1 page
- ee. FMLA Leave History Report Dated December 09, 2004 1 page
- ff. FMLA Leave History Report Dated October 02, 1 page
- gg. Eligible for FMLA data log & FMLA note Date Received 12/01/03
- hh. MTA Automatic FMLA Designation/Informational Letter Dated November 22, 2006
- ii. MTA Automatic FMLA Designation/Informational Letter Dated July 7th, 2004
- jj. MTA Automatic FMLA Designation/Informational Letter Dated December 5, 2003
- kk. Employee Request For Family and Medical Leave Form Dated May 29, 2008, 6 pages

3) All the documents contained with Part/Section Four: Employment

- a. Separation Processing Check List Dated 09/10/2010
- b. SFMTA letter dated February 10, 2011, RE: Notice of Dismissal – Amended, 2 pages
- c. E-mail dated August 16, 2010, Subject: FW: Attachment is The Termination Report For Cynthia Carter that you requested on Mon Aug 16
- d. E-mail dated August 16, 2010, Subject: Termination Action – Termination Finalized for Carter, Cynthia
- e. E-mail dated August 13, 2010, Subject: Termination Action – Update of Job Data for Carter, Cynthia
- f. E-mail dated August 13, 2010, Subject: FW: Carter, Cynthia 9163 - Dismissal
- g. SFMTA letter dated August 11, 2010, RE: Notice of Dismissal, 2 pages
- h. CCSF Notice of Separation From Employment, Mailing date August 11, 2010
- i. Separation Report (SR), Date Effective COB 8/11/2010
- j. SFMTA letter dated August 6, 2010, RE: Step 3 Hearing Decision for Cynthia Carter, Grievance #331-10-FL, 2 pages
- k. U.S. Department of Justice Employment Eligibility Verification Dated 4/12/1999
- l. Copy of California Driver License expired 07-06-99 and copy of Social Security Card
- m. Signed Acknowledgement of Employee Pass dated 4/13/99
- n. Signed Acknowledgement of Responsibility dated 4/13/99
- o. Form Number GG-011364 Group Insurance Enrollment and Record Form Dated 4/12/99
- p. Appointment Processing Form Date Issued 06/08/99
- q. Personal History Record, Effective Date 06/12/1999, 2 pages
- r. Copy of California Drivers License, expired 07-06-99
- s. Signed Acknowledgements of Receipt of Copy of Charter Section 8.346, Dated 06/17/99
- t. Review of Judicial History and Driving record Dated 06/17/99
- u. Separation report, Date Effective 06/12/99
- v. Appointment Processing Form Date Issued 04/05/99
- w. Blank page stamped as received 99 APR 23 PM 3:10
- x. Personal History Record, Effective Date 04/12/99, 2 pages
- y. Employees' Retirement System Payroll Form dated 04/22/99
- z. Copy of California Driver License expired 07-06-99 and copy of Social Security Card
- aa. California DMV Driver License / Identification Card, Information Request 03/16/99
- bb. Commercial Instruction Permit issued 01/29/99
- cc. Copy of Medical Card, Driver's Medical Cert. Expired on 01/22/01
- dd. City and County of San Francisco – Oath of Allegiance dated 04/12/899
- ee. Drug Free Workplace Notice, Dated April 12, 99
- ff. Acknowledgment of receipt of Violence in the Workplace Policies Dated April 12, 1999
- gg. Employment Eligibility Verification Dated 04/12/99
- hh. Signed Acknowledgements of Receipt of Copy of Charter Section 8.346, Dated 04/12/99
- ii. Review of Judicial History and Driving record Dated 04/12/99
- jj. Post Employment Self Identification dated 04/12/99
- kk. Separation Report, Date Effective COB 02/12/99
- ll. Voluntary resignation from PUC, Municipal Railway, Effective COB 02/12/99

- mm. Letter Dated February 23,1999 Subject: Student Disqualification "Satisfactory", 2 pages
- nn. Voluntary resignation from PUC, Municipal Railway, Effective COB 02/12/99
- oo. Rule 5 Discipline dated February 1, 1999
- pp. Safety and Training Notice of Disciplinary Action Dated 02/12/99, 2 pages
- qq. Personnel History Card
- rr. Appointment Processing, Date Issued 01/19/99
- ss. Personal History Record, Effective Date 02/01/99, 2 pages
- tt. Employment Eligibility Verification Dated 02/03/99
- uu. Copy of California Driver License expired 07-06-99 and copy of Social Security Card
- vv. Review of Judicial History and Driving record Dated February 1, 1999
- ww. Signed Acknowledgements of Receipt of Copy of Charter Section 8.346, Dated February 1, 1999
- xx. Post Employment Self Identification Dated February 1, 1999
- yy. Notice to Provisional Appointee Dated February 1, 1999, 2 pages
- zz. City and County of San Francisco – Oath of Allegiance dated 02/01/1999
- aaa. Drug Free Workplace Notice, Dated February 1, 1999
- bbb. Acknowledgment of receipt of Violence in the Workplace Policies Dated February 1, 1999
- ccc. California DMV Driver License / Identification Card Information Request 01/22/99, 2 pages
- ddd. California DMV Commercial Instruction Permit Dated 01/27/99
- eee. Copy of Medical Card, Driver's Medical Cert. Expired on 01/22/99
- fff. California DMV Medical Examination Report Dated 01/22/99, 2 pages

4) All the documents contained with Part/Section Five: Discipline

Copies received on the _____ of _____ 2011.

Signature _____

cc: Employee file

Celaya, Caroline

From: Celaya, Caroline
Sent: Thursday, June 30, 2011 11:05 AM
To: 'Cynthia Carter'
Subject: RE: SFMTA response
Attachments: Stubbed Attachments.htm

Importance: High

This message's contents have been archived by the Barracuda Message Archiver.

Carter, Cynthia 6.14.11 Waiver.DOC (30.5K)

Carter, Cynthia 6.14.11.pdf (172.5K)

Carter, Cynthia 6.6.11.pdf (249.9K)

Carter, Cynthia Waiver form.DOC (30.5K)

Dear Ms. Carter:

Please see the attached responses from the SFMTA indicating that upon your signing and returning the signed waiver, copies of the personnel documents you are seeking will be provided to you as mentioned in both letters sent to you earlier this month.

Thank you,

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

From: Cynthia Carter [mailto:dimplescarter1963@att.net]
Sent: Wednesday, June 29, 2011 6:00 PM
To: Celaya, Caroline
Subject: Re: SFMTA response

caroline I came into the office at 1 so. van ness ave to review my records and have them copied because you can't seem to get the job done. I discovered that my records for the years 1999-2007 are missing I have asked you on several occasions for my complete records and you are still playing games not giving me everything I requested. I have brought two letters down to kathy fowlis requesting information and still to this date have not received the information I requested

--- On Tue, 6/14/11, Celaya, Caroline <Caroline.Celaya@sfmta.com> wrote:

From: Celaya, Caroline <Caroline.Celaya@sfmta.com>
Subject: SFMTA response
To: "Cynthia Carter" <dimplescarter1963@att.net>
Date: Tuesday, June 14, 2011, 11:38 PM

Please see the attached response from the SFMTA.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Leona Bridgus | Director
Cheryl Brinkman | Director
Malcolm Helnicke | Director
Bruce Oka | Director
Joél Ramos | Director
Nathaniel P. Ford Sr. | Executive Director/CEO

June 6, 2011

SENT VIA EMAIL

Cynthia Carter
DimpleSCarter1963@att.net

RE: Public Records Request dated May 13, 2011

Dear Ms. Carter:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 13, 2011. On May 23, 2011, the SFMTA invoked a fourteen day extension – until June 6, 2011 – to respond to your request.

The Records Requested

You have submitted a request "for my records from 2-1-99 – 8-11-10 I would like all side letters, faxes correspondence between management etc. emails, notes, arbitrators reports investigations."

Please note that we do not understand your request to seek only your official MTA personnel file. If we are mistaken and you are requesting access to only records in that file, you are entitled to reasonable access. Cal. Labor Code §1198.5. To access a copy of those records, please contact Kathy Fowles at (415) 701-5037 to schedule a time to inspect the file.

We now respond to your request insofar as it appears to be a public records request for documents. As an initial matter, both the California Public Records Act and the San Francisco Sunshine Ordinance establish a right of access to public records for *members of the public*. Neither the Public Records Act nor the Sunshine Ordinance gives a City employee any right of access to records greater than the right held by a member of the public. As a result, you are entitled to the same rights of access to these records that a member of the public would have and no greater rights, even though the records pertain to you as a MTA employee. *Los Angeles Police Department v. Superior Court*, (1977) 65 Cal.App.3d 661; *Black Panther Party v. Kehoe*, (1974) 42 Cal.App.3d 645.

Exemptions and Privileges

The SFMTA is withholding records requested by you for one or more of the following exemptions.

First, the disclosure of these records in response to a public records request would constitute an unwarranted invasion of personal privacy under state law. [California Government Code

§6254(c) and (k) (protecting records which are "exempted or prohibited pursuant to provisions of federal or state law" from disclosure); *see also*, Cal. Const. Art. I §1.] The records you seek are confidential personnel records. California courts have held that confidential personnel records are protected by the California Constitutional right of privacy. *See, Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal.4th 1, 35 (identifying privacy interest in precluding dissemination of sensitive, confidential information); *Teamsters Local 856 v. Priceless, LLC*, (2003) 112 Cal.App.4th 1500, 1512 (public employees have a right to privacy in their personnel files).

The Sunshine Ordinance recognizes this exemption provided by state law. *See*, S.F. Admin. Code §67.1(g) (City employees have a right of privacy). Further, the records in question are quintessential examples of records that should not be disclosed for reasons of privacy.

Second, the California State Constitution protects the privacy rights of individual members of the general public, including third parties, and disclosure of personal information such as home address information, telephone numbers, and email addresses would violate these privacy rights. [California Constitution, Article I, §1, Government Code §6254(c) and (k) (protecting records which are "exempted or prohibited pursuant to provisions of federal or state law" from disclosure).] (California Constitution, Article I, §1 and Government Code §6254(c); *Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal. 4th 1, 35 (identifying privacy interest in precluding dissemination of sensitive, confidential information); *City of San Jose v. Superior Court*, (1999) 74 Cal.App.4th 1008 (court denied media's request for names and contact information of complainants).) The City has a duty to protect the personal privacy of third parties. Where privacy rights are involved, nondisclosure is not just a privilege, but a legal requirement. As a result, the SFMTA is withholding any personal information for individual third parties.

Third, the Public Records Act allows an agency to decline to disclose "records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." *See* Gov. Code §6254(k); *see also*, S.F. Admin. Code §67.21(k). California Evidence Code §954 protects from disclosure communications between attorneys and their clients. The California Supreme Court has confirmed that Government Code §6254(k) authorizes a public entity to deny a member of the public access to a document by asserting the attorney-client privilege. *See Roberts v. Palmdale*, (1993) 5 Cal.4th 363. Similarly, California Code of Civil Procedure ("CCP") §2018 protects "any writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories." CCP §2018 protects the work product, not just attorney work product, generated by a public agency in anticipation of litigation. *Fairley v. Superior Court of Los Angeles County*, (1998) 66 Cal.App.4th 1414, 1422 fn. 5.

Some of the documents you have requested are exempt from disclosure under either the attorney-client privilege or the attorney work product privilege. Disclosure of the communications you have requested would impede the ability of the SFMTA to receive legal

advice. Accordingly, we will not produce privileged attorney-client communications and attorney work product.

Fourth, S.F. Administrative Code §67.24(a)(1) provides that draft documents containing recommendations of the author may be withheld from disclosure. Since several of the responsive documents you have requested contain recommendations of SFMTA staff in their entirety, the SFMTA declines to disclose these documents.

Fifth, California Government Code §6254(b) provides that records pertaining to pending litigation or claims to which the City is a party are exempt from disclosure until the pending litigation or claim has been finally adjudicated or otherwise settled. Further, California Government Code §54956.9, which permits closed sessions by local agencies to discuss pending litigation, defines "litigation" to include any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. Since there is matter pending before an arbitrator regarding the records you have requested, the SFMTA declines to disclose these documents.

Document Production

Regarding the records being withheld due to the first exemption, since you requested personnel related records that pertain to you as a SFMTA employee, you must waive your privacy interest with respect to these documents before the SFMTA can provide you copies. Attached is a full and complete waiver we have prepared for you. Please complete the waiver and return the original document to us. Please be advised that if you waive your privacy interest in these documents, any member of the public who subsequently submits a public records request for these same documents will be provided copies.

Please contact the Sunshine request line at (415) 701-4670 or at sfntasunshinerequests@sfmta.com if you have any further questions regarding this matter or if you would like additional information.

Sincerely,


Caroline Celaya

WAIVER OF PRIVACY RIGHTS

I, CYNTHIA CARTER, submitted a request for disclosure of documents pursuant to the San Francisco Sunshine Ordinance in a letter to the San Francisco Municipal Transportation Agency ("SFMTA") dated May 19, 2011 (copy attached for reference).

I understand that the SFMTA has objected to providing these documents, in part, because those documents are protected by my right of privacy. I also understand that I have the option to waive my right to privacy with respect to the requested documents.

I hereby waive any and all rights to keep private or confidential each and every document that is being withheld on account of privacy in response to my request contained in my letter dated May 19, 2011 to the SFMTA (copy attached for reference).

I understand that I am waiving any and all rights to privacy that I now have or may have in the requested documents. I make this waiver knowingly and voluntarily. I also understand that I am not entitled to receive the requested documents under the Sunshine Ordinance until I have made this waiver. Therefore, I make this waiver knowing that it will apply to documents that I have not yet seen and do not yet know the content of.

I further understand that as a result of my knowing and voluntary waiver, the documents I have requested may be provided to anyone, including members of the general public, and that I consent to such disclosure.

Date

CYNTHIA CARTER

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Leona Bridges | Director

Cheryl Brinkman | Director

Malcolm Heinicke | Director

Bruce Oka | Director

Joél Ramos | Director

Nathaniel P. Ford Sr. | Executive Director/CEO

June 14, 2011

SENT VIA EMAIL

Cynthia Carter

Dimplescarter1963@att.net

RE: Public Records Request dated May 19, 2011

Dear Ms. Carter:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 19, 2011. On May 31, 2011, the SFMTA invoked a 14-day extension – until June 14, 2011 – to respond to your request.

The Records Requested

You have requested a copy of:

“my files from SFMTA (my entire file please) as well as central control logs. Logs from the Flynn Mechanic shop, from reports of buses that I was driving and required service from road call, all insp. Reports concerning me and emails, side letters, letters mailed to me referring to the supervisor test and station agent test as well as the actual dates of these tests.”

Please note that if you seek your official MTA personnel file, you are entitled to reasonable access. Cal. Labor Code §1198.5. To access a copy of those records, please contact Kathy Fowles at (415) 701-5037 to schedule a time to inspect the file.

We now respond to your request insofar as it appears to be a public records request for documents. As an initial matter, both the California Public Records Act and the San Francisco Sunshine Ordinance establish a right of access to public records for *members of the public*. Neither the Public Records Act nor the Sunshine Ordinance gives a City employee any right of access to records greater than the right held by a member of the public. As a result, you are entitled to the same rights of access to these records that a member of the public would have and no greater rights, even though the records pertain to you as a MTA employee. *Los Angeles Police Department v. Superior Court*, (1977) 65 Cal.App.3d 661; *Black Panther Party v. Kehoe*, (1974) 42 Cal.App.3d 645.

Exemptions and Privileges

The SFMTA will provide one record that will be redacted for the following reason.

The disclosure of these records in response to a public records request would constitute an unwarranted invasion of personal privacy under state law. [California Government Code

§6254(c) and (k) (protecting records which are "exempted or prohibited pursuant to provisions of federal or state law" from disclosure); *see also*, Cal. Const. Art. I §1.] The records you seek are confidential personnel records. California courts have held that confidential personnel records are protected by the California Constitutional right of privacy. *See, Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal.4th 1, 35 (identifying privacy interest in precluding dissemination of sensitive, confidential information); *Teamsters Local 856 v. Priceless, LLC*, (2003) 112 Cal.App.4th 1500, 1512 (public employees have a right to privacy in their personnel files).

The Sunshine Ordinance recognizes this exemption provided by state law. *See*, S.F. Admin. Code §67.1(g) (City employees have a right of privacy). Further, the records in question are quintessential examples of records that should not be disclosed for reasons of privacy.

Document Production

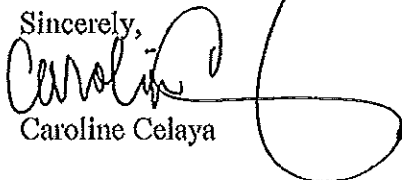
Attached please find one document responsive to your request. We will be providing you a second redacted document on a rolling basis since this document contains private information pertaining to you as a SFMTA employee. S.F. Admin. Code §67.25(d).

If you would like an unredacted version of this document, you must waive your privacy interest with respect some of the information contained in this document before the SFMTA can provide you an unredacted copy. Attached is a full and complete waiver we have prepared for you. Please complete the waiver and return the original document to us. Please be advised that if you waive your privacy interest in this document, any member of the public who subsequently submits a public records request for these same documents will be provided copies.

Finally, the SFMTA is continuing to locate and review additional responsive non-privileged documents and will provide those documents to you on a rolling basis. S.F. Admin. Code §67.25(d).

Please contact the Sunshine request line at (415) 701-4670 or at sfintasunshinerequests@sfmta.com if you have any further questions regarding this matter or if you would like additional information.

Sincerely,


Caroline Celaya

WAIVER OF PRIVACY RIGHTS

I, CYNTHIA CARTER, submitted a request for disclosure of documents pursuant to the San Francisco Sunshine Ordinance in a letter to the San Francisco Municipal Transportation Agency ("SFMTA") dated May 19, 2011 (copy attached for reference).

I understand that the SFMTA has objected to providing these documents, in part, because those documents are protected by my right of privacy. I also understand that I have the option to waive my right to privacy with respect to the requested documents.

I hereby waive any and all rights to keep private or confidential each and every document that is being withheld on account of privacy in response to my request contained in my letter dated May 19, 2011 to the SFMTA (copy attached for reference).

I understand that I am waiving any and all rights to privacy that I now have or may have in the requested documents. I make this waiver knowingly and voluntarily. I also understand that I am not entitled to receive the requested documents under the Sunshine Ordinance until I have made this waiver. Therefore, I make this waiver knowing that it will apply to documents that I have not yet seen and do not yet know the content of.

I further understand that as a result of my knowing and voluntary waiver, the documents I have requested may be provided to anyone, including members of the general public, and that I consent to such disclosure.

Date

CYNTHIA CARTER

Celaya, Caroline

From: Celaya, Caroline
Sent: Wednesday, July 13, 2011 11:52 AM
To: 'Cynthia Carter'
Subject: RE: SFMTA response
Attachments: Stubbed Attachments.htm

This message's contents have been archived by the Barracuda Message Archiver.

Carter, Cynthia 6/14/11 Waiver.DOC (30.5K)

Carter, Cynthia Waiver form.DOC (30.5K)

Dear Ms. Carter:

Your email authorization below is not sufficient. Please sign and return the waivers attached so we may provide you with the documents you are seeking.

Thank you,

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

From: Cynthia Carter [mailto:dimplescarter1963@att.net]
Sent: Saturday, July 02, 2011 12:25 AM
To: Celaya, Caroline
Subject: RE: SFMTA response

You should have had me sign that waiver when I came down there last week, yet you and kathy fowlis seem to be forever out of the office. send everything this is my consent I don't care if the public see's my information they should know how the drivers are treated at the s.f.m.t.a. maybe it will land me interviews with the media on various stages. Stop playing games and send my papers.

--- On Thu, 6/30/11, Celaya, Caroline <Caroline.Celaya@sfmta.com> wrote:

From: Celaya, Caroline <Caroline.Celaya@sfmta.com>
Subject: RE: SFMTA response
To: "Cynthia Carter" <dimplescarter1963@att.net>
Date: Thursday, June 30, 2011, 6:04 PM

Dear Ms. Carter:

Please see the attached responses from the SFMTA indicating that upon your signing and returning the signed waiver, copies of the personnel documents you are seeking will be provided to you as mentioned in both letters sent to you earlier this month.

Thank you,

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

From: Cynthia Carter [<mailto:dimplescarter1963@att.net>]
Sent: Wednesday, June 29, 2011 6:00 PM
To: Celaya, Caroline
Subject: Re: SFMTA response

caroline I came into the office at 1 so. van ness ave to review my records and have them copied because you can't seem to get the job done. I discovered that my records for the years 1999-2007 are missing I have asked you on several occasions for my complete records and you are still playing games not giving me everything I requested. I have brought two letters down to kathy fowlis requesting information and still to this date have not received the information I requested

--- On Tue, 6/14/11, Celaya, Caroline <Caroline.Celaya@sfmta.com> wrote:

From: Celaya, Caroline <Caroline.Celaya@sfmta.com>
Subject: SFMTA response
To: "Cynthia Carter" <dimplescarter1963@att.net>
Date: Tuesday, June 14, 2011, 11:38 PM

Please see the attached response from the SFMTA.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Leona Bridges | Director

Cheryl Brinkman | Director

Malcolm Heinicke | Director

Bruce Oka | Director

Joel Ramos | Director

Nathaniel P. Ford Sr. | Executive Director/CEO

June 14, 2011

SENT VIA EMAIL

Cynthia Carter

Dimplescarter1963@att.net

RE: Public Records Request dated May 19, 2011

Dear Ms. Carter:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 19, 2011. On May 31, 2011, the SFMTA invoked a 14-day extension – until June 14, 2011 – to respond to your request.

The Records Requested

You have requested a copy of:

"my files from SFMTA (my entire file please) as well as central control logs. Logs from the Flynn Mechanic shop, from reports of buses that I was driving and required service from road call, all insp. Reports concerning me and emails, side letters, letters mailed to me referring to the supervisor test and station agent test as well as the actual dates of these tests."

Please note that if you seek your official MTA personnel file, you are entitled to reasonable access. Cal. Labor Code §1198.5. To access a copy of those records, please contact Kathy Fowlis at (415) 701-5037 to schedule a time to inspect the file.

We now respond to your request insofar as it appears to be a public records request for documents. As an initial matter, both the California Public Records Act and the San Francisco Sunshine Ordinance establish a right of access to public records for *members of the public*. Neither the Public Records Act nor the Sunshine Ordinance gives a City employee any right of access to records greater than the right held by a member of the public. As a result, you are entitled to the same rights of access to these records that a member of the public would have and no greater rights, even though the records pertain to you as a MTA employee. *Los Angeles Police Department v. Superior Court*, (1977) 65 Cal.App.3d 661; *Black Panther Party v. Kehoe*, (1974) 42 Cal.App.3d 645.

Exemptions and Privileges

The SFMTA will provide one record that will be redacted for the following reason.

The disclosure of these records in response to a public records request would constitute an unwarranted invasion of personal privacy under state law. [California Government Code

§6254(c) and (k) (protecting records which are "exempted or prohibited pursuant to provisions of federal or state law" from disclosure); *see also*, Cal. Const. Art. I §1.] The records you seek are confidential personnel records. California courts have held that confidential personnel records are protected by the California Constitutional right of privacy. *See, Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal.4th 1, 35 (identifying privacy interest in precluding dissemination of sensitive, confidential information); *Teamsters Local 856 v. Priceless, LLC*; (2003) 112 Cal.App.4th 1500, 1512 (public employees have a right to privacy in their personnel files).

The Sunshine Ordinance recognizes this exemption provided by state law. *See*, S.F. Admin. Code §67.1(g) (City employees have a right of privacy). Further, the records in question are quintessential examples of records that should not be disclosed for reasons of privacy.

Document Production

Attached please find one document responsive to your request. We will be providing you a second redacted document on a rolling basis since this document contains private information pertaining to you as a SFMTA employee. S.F. Admin. Code §67.25(d).

If you would like an unredacted version of this document, you must waive your privacy interest with respect some of the information contained in this document before the SFMTA can provide you an unredacted copy. Attached is a full and complete waiver we have prepared for you. Please complete the waiver and return the original document to us. Please be advised that if you waive your privacy interest in this document, any member of the public who subsequently submits a public records request for these same documents will be provided copies.

Finally, the SFMTA is continuing to locate and review additional responsive non-privileged documents and will provide those documents to you on a rolling basis. S.F. Admin. Code §67.25(d).

Please contact the Sunshine request line at (415) 701-4670 or at sfintasunshinerequests@sfmta.com if you have any further questions regarding this matter or if you would like additional information.

Sincerely,


Caroline Celaya

WAIVER OF PRIVACY RIGHTS

I, CYNTHIA CARTER, submitted a request for disclosure of documents pursuant to the San Francisco Sunshine Ordinance in a letter to the San Francisco Municipal Transportation Agency ("SFMTA") dated May 19, 2011 (copy attached for reference).

I understand that the SFMTA has objected to providing these documents, in part, because those documents are protected by my right of privacy. I also understand that I have the option to waive my right to privacy with respect to the requested documents.

I hereby waive any and all rights to keep private or confidential each and every document that is being withheld on account of privacy in response to my request contained in my letter dated May 19, 2011 to the SFMTA (copy attached for reference).

I understand that I am waiving any and all rights to privacy that I now have or may have in the requested documents. I make this waiver knowingly and voluntarily. I also understand that I am not entitled to receive the requested documents under the Sunshine Ordinance until I have made this waiver. Therefore, I make this waiver knowing that it will apply to documents that I have not yet seen and do not yet know the content of.

I further understand that as a result of my knowing and voluntary waiver, the documents I have requested may be provided to anyone, including members of the general public, and that I consent to such disclosure.

Date

CYNTHIA CARTER

Celaya, Caroline

From: Celaya, Caroline
Sent: Monday, October 24, 2011 2:53 PM
To: 'Cynthia Carter'
Cc: SOTF; Rustom, Chris
Subject: SFMTA response
Attachments: Stubbed Attachments.htm

This message's contents have been archived by the Barracuda Message Archiver.

(Carter, Cynthia 10/24/11 docs1.pdf (2.4M))
(Carter, Cynthia 10/24/11 docs2.pdf (2.5M))
(Carter, Cynthia 10/24/11 waiver DOC (30.5K))
(Carter, Cynthia 10/24/11.pdf (311.8K))
(Carter, Cynthia - Sunshine Request Commendations.pdf (65.1K))
(Carter, Cynthia - Sunshine Request Yard Assignments.pdf (71.9K))
(carterlog.pdf (71.7K))

Ms. Carter:

Please see the attached response letter and responsive documents from the SFMTA.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oka | Director
Joel Ramos | Director
Nathanel P. Ford Sr. | Executive Director/CEO

October 24, 2011

SENT VIA EMAIL

Cynthia Carter
Dimplescarter1963@att.net

RE: Public Records Request dated May 19, 2011

Dear Ms. Carter:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 19, 2011. On May 31, 2011, the SFMTA invoked a 14-day extension – until June 14, 2011 – to respond to your request. On May 31, 2011, you also filed a complaint with the Sunshine Ordinance Task Force ("Task Force") regarding your public records request. On June 14, 2011, the SFMTA responded to your request. On August 23, 2011, a hearing regarding your complaint was held before the Task Force.

The Records Requested

On May 19, 2011, you requested a copy of:

"my files from SFMTA (my entire file please) as well as central control logs. Logs from the Flynn Mechanic shop, from reports of buses that I was driving and required service from road call, all insp. Reports concerning me and emails, side letters, letters mailed to me referring to the supervisor test and station agent test as well as the actual dates of these tests."

On August 23, 2011, at the Sunshine Ordinance Task Force meeting, you clarified that your May 19th request sought the following records: write-ups from supervisors, Central Control reports and mechanical reports on defective buses.

On October 11, 2011, at the Sunshine Ordinance Task Force Compliance and Amendments Committee meeting, you amended your May 19th request to further include: awards/commendations, accommodations, patches, and safe driving awards.

Exemptions and Privileges

Some of the responsive records you seek have been redacted in part, or withheld from production in their entirety based on one of the reasons listed below.

First, you have submitted your request for documents as a public records request. Both the California Public Records Act and the San Francisco Sunshine Ordinance establish a right of access to public records for *members of the public*. Neither the Public Records Act nor the

Sunshine Ordinance gives a City employee any right of access to records greater than the right held by a member of the public. As a result, you are entitled to the same rights of access to these records that a member of the public would have, and no greater rights, although the records pertain to you as a MTA employee. (*Los Angeles Police Department v. Superior Court*, (1977) 65 Cal.App.3d 661; *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645.)

The disclosure of some of the information contained in the records you have requested would constitute an unwarranted invasion of personal privacy under state law. (Cal. Gov't Code §6254(e) and Cal. Const. Art. I, §1; *see also* Cal. Gov't Code §6254 (k) [California's Public Records Act does not require disclosure of records, the disclosure of which is "exempted or prohibited pursuant to provisions of federal or state law"].) The records you seek are confidential personnel records. California courts have held that confidential personnel records are protected by the California Constitutional right of privacy. (*See Teamsters Local 856 v. Priceless, LLC*, (2003) 112 Cal.App.4th 1500, 1512 [public employees have a right to privacy in their personnel files]; *Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal.4th 1, 35 [identifying privacy interest in precluding dissemination of sensitive, confidential information].)

The San Francisco Sunshine Ordinance recognizes this exemption provided by state law. (*See* S.F. Admin. Code §67.1(g) [City employees have a right of privacy].) As a result, the SFMTA has either redacted some of the information contained in the records we are now producing, or has withheld the record in its entirety.

Second, the California State Constitution protects the privacy rights of individual members of the general public, including third parties, and disclosure of personal information such as home addresses, home phone numbers, and personal email addresses would violate this right. (Cal. Const. Art. I, §; *see also* Cal. Gov't Code §6254(e); Cal. Gov't Code §6254 (k); *Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal. 4th 1, 35; *City of San Jose v. Superior Court*, (1999) 74 Cal.App.4th 1008 [court denied media's request for names and contact information of complainants].) The City has a duty to protect the personal privacy of third parties. Where privacy rights are involved, nondisclosure is not just a privilege, but a legal requirement. As a result, the SFMTA has redacted personal information, including home addresses, home phone numbers and personal email addresses for individual third parties.

Third, the Public Records Act allows an agency to decline to disclose "records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." *See* Gov. Code §6254(k); *see also*, S.F. Admin. Code §67.21(k). California Evidence Code §954 protects from disclosure communications between attorneys and their clients. The California Supreme Court has confirmed that Government Code §6254(k) authorizes a public entity to deny a member of the public access to a document by asserting the attorney-client privilege. *See Roberts v. Palmdale*, (1993) 5 Cal.4th 363. Similarly, California Code of Civil Procedure ("CCP") §2018 protects "any writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories." CCP §2018 protects the work product, not just attorney work product,

generated by a public agency in anticipation of litigation. *Fairley v. Superior Court of Los Angeles County*, (1998) 66 Cal.App.4th 1414, 1422 fn. 5.

Some of the documents you have requested are exempt from disclosure under either the attorney-client privilege or the attorney work product privilege. Disclosure of the communications you have requested would impede the ability of the SFMTA to receive legal advice. Accordingly, we will not produce privileged attorney-client communications and attorney work product.

Fourth, some of the information contained on the records are exempt from disclosure because the California Evidence Code recognizes the need to maintain the confidentiality of complainants or witnesses reporting allegedly unlawful behavior and likewise recognizes the need to maintain the confidentiality of certain information acquired in an investigative context. (Cal. Evid. Code §1041 [identity of informer privilege]; Cal. Evid. Code §1040 [official information privilege]). These authorities provide a basis for withholding some of the requested records. (Cal. Govt. Code § 6254(k).)

In addition, disclosure of these records could impair the City's ability to conduct investigations of discrimination complaints as required by federal and State law. When faced with allegations of discrimination in the workplace, the City must thoroughly and effectively investigate. (*Northrop Grumman Corp. v. Workers' Comp. Appeals Bd.* (2002) 103 Cal. App. 4th 1021, 1035-1036 [investigation "mandated by law" once employee informed management of alleged discrimination]; *Ellison v. Brady* (9th Cir. 1991) 924 F.2d 872, 881-882 [employer must investigate complaint promptly and thoroughly]; EEOC Compliance Manual §615:0108 ["When an employee complains to management about alleged harassment, the employer is obligated to investigate the allegation".]) Maintaining the confidentiality of an EEO investigation is essential to a thorough and effective investigation. (EEOC Compliance Manual §615:0107-0108 [employer's policy of investigating discrimination complaints should include assurances that employees will be protected against retaliation, and include assurances of confidentiality to the extent possible].) For these reasons, the SFMTA declines to disclose records involving complainants or witnesses reporting allegedly unlawful behavior or information acquired in an investigative context.

Document Production

On June 14, 2011, the SFMTA responded to your May 19th request. In our response, the SFMTA provided you one document and indicated that the agency had prepared a waiver for you to sign. As of this date, the SFMTA has not received the signed waiver from you. We are again attaching a copy of this waiver for you to sign if you would like to waive your privacy interest with respect to some of the information the SFMTA has withheld from production based on employee privacy.

In addition, since your May 19th request appeared to seek a copy of your entire personnel file pursuant to Labor Code section 1198.5, the SFMTA provide you, via certified mail, a

complete copy of your personnel file on July 29, 2011. These documents were received by you since you opened the envelope containing the documents at the August 23rd Task Force meeting.

At this time, please find additional non-privileged documents responsive to your request. Specifically, these documents include Passenger Service Reports, commendations, and other documents. Your request for mechanical reports on defective buses is a voluminous request and staff is working to gather as much data as is available. The SFMTA will produce these records to you on a rolling basis. S.F. Admin. Code section 67.25(d).

Finally, the SFMTA is continuing to locate and review additional responsive non-privileged documents and will provide those documents to you on a rolling basis. S.F. Admin. Code §67.25(d).

Please contact the Sunshine request line at (415) 701-4670 or at sfntasunshinerequests@sfmta.com if you have any further questions regarding this matter or if you would like additional information.

Sincerely,


Caroline Celaya

WAIVER OF PRIVACY RIGHTS

I, CYNTHIA CARTER, submitted a request for disclosure of documents pursuant to the San Francisco Sunshine Ordinance in a letter to the San Francisco Municipal Transportation Agency ("SFMTA") dated May 19, 2011 (copy attached for reference).

I understand that the SFMTA has objected to providing these documents, in part, because those documents are protected by my right of privacy. I also understand that I have the option to waive my right to privacy with respect to the requested documents.

I hereby waive any and all rights to keep private or confidential each and every document that is being withheld on account of privacy in response to my request contained in my letter dated May 19, 2011 to the SFMTA (copy attached for reference).

I understand that I am waiving any and all rights to privacy that I now have or may have in the requested documents. I make this waiver knowingly and voluntarily. I also understand that I am not entitled to receive the requested documents under the Sunshine Ordinance until I have made this waiver. Therefore, I make this waiver knowing that it will apply to documents that I have not yet seen and do not yet know the content of.

I further understand that as a result of my knowing and voluntary waiver, the documents I have requested may be provided to anyone, including members of the general public, and that I consent to such disclosure.

Date

CYNTHIA CARTER

Celaya, Caroline

From: Celaya, Caroline
Sent: Wednesday, November 02, 2011 6:16 PM
To: 'Cynthia Carter'
Cc: SFMTA Sunshine Requests
Subject: request for reports on defective buses

Tracking:	Recipient	Read
	'Cynthia Carter'	
	SFMTA Sunshine Requests	Read: 2/7/2013 3:59 PM

Ms. Carter:

The SFMTA is in the process of gathering the documents you have requested, specifically the "mechanical reports on defective buses" during your employment from 2-1-99 - 8-11-10.

Please note that in order for the SFMTA to provide you with all of the records you are seeking, would require approximately 300-500 compact discs and could take three months to process.

The breakdown for the information you are seeking is as follows:

Corrective work orders: 1,112,814
Defect card Reports: 29,525
PM work orders: 290,554
Campaign work orders: 11,550
Road call work orders: 145,491

This does not take include: Safety inspections, MRU work orders, etc.

Total work orders is at least 1,589,934. Each work order has from one to 30 lines of data and the total conceivable lines of data could be roughly 19,079,208 lines of data. This is a very conservative estimate.

The cost for compact discs could range from approximately \$78.00 - \$130.00.

Please let us know if you agree to pay the cost OR if you would like to clarify your request to narrow the scope.

Sincerely,

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Celaya, Caroline

From: Celaya, Caroline
Sent: Monday, November 21, 2011 12:36 PM
To: 'Cynthia Carter'
Subject: waiver
Attachments: Stubbed Attachments.htm

Importance: High

This message's contents have been archived by the Barracuda Message Archiver.

Carter, Cynthia (022811-Waiver Doc) (30.5K)

Carter, Cynthia signed waiver.doc (50.7K)

Dear Ms. Carter:

Our city attorney's office has reviewed the attached waiver signed by you and determined that with the additional modification you listed makes the document illusory since you have made it clear that you are not authorizing release of private information to the public.

As a result, we are unable to provide you with unredacted documents at this time.

If you sign the attached waiver without any conditions, the SFMTA can release the private information to you.

Sincerely,

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

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October 27, 2011

Cynthia Carter
CYNTHIA CARTER

Cynthia Carter would also like to note that if any of those documents are released to other employees ~~the~~ maintenance to prevent me from getting another job. the S.F. M.T.A. will be held accountable
No holds Barred

Cynthia Carter
10/24/11 @ 2:29 pm

WAIVER OF PRIVACY RIGHTS

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I further understand that as a result of my knowing and voluntary waiver, the documents I have requested may be provided to anyone, including members of the general public, and that I consent to such disclosure.

Date _____

CYNTHIA CARTER

Date: August 23, 2011

Item No. 8 & 9
File No. 11042

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- | | |
|-------------------------------------|-------------------------------|
| <input checked="" type="checkbox"/> | <u>Cynthia Carter v SFMTA</u> |
| <input type="checkbox"/> | <u> </u> |
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| <input type="checkbox"/> | <u> </u> |

Completed by: Chris Rustom

Date: August 19, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: July 23, 2011
RE: Complaint No. 11042, Cynthia Carter v. Municipal Transportation Agency ("MTA")

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Cynthia Carter ("Complainant") alleges that the Municipal Transportation Agency ("MTA") violated public records laws by failing to adequately respond to her May 12, 2011 request for public documents.

COMPLAINANT FILES COMPLAINT:

On May 31, 2011, Complainant filed this complaint against MTA, referring to "6254 C" as the specific provision of law violated.

JURISDICTION

MTA is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

Section 6250 et seq. of Cal. Gov't Code (PRA)

- Section 6253 governs time limits for responding to public records requests.
- Section 6254(c) governs exemption from disclosure for personnel files under certain circumstances.

APPLICABLE CASE LAW:

None

MEMORANDUM

TO: Sunshine Task Force
DATE: July 23, 2011
PAGE: 2
RE: *Complaint No. 11042, Carter v. MTA*

ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that on May 12, 2011, she made a public records request to MTA, asking for "my files [] (my entire files please) as well as central control logs[,] logs from the Flynn Mechanic Shop from reports of buses that I was driving and required service from road call, all inspection reports concerning me, cc logs, reports, phone recordings, referring to me and emails, side letters, letters mailed to me referring to the supervisor test and station test as well as the actual dates of these tests."

Complainant also provides three responses from MTA to her request. The first is a May 18, 2011 email from MTA requesting further clarification of Carter's record request. This email describes the request as made on May 13, 2011 (rather than May 12) and seeking "my records from 2-1-99 - 8-11-10. I would also like all side letters, faxes, correspondence between management, etc, emails, notes, arbitrator reports, investigations." This suggests that Carter may have made more than one request around this time.

The second and third responses from MTA are letters dated May 23 and May 31, 2011. Each of these letters invoked an additional 14-day extension of time to respond to Complainant's records request. However, the first letter refers to Complainant's May 13, 2011 public records request, while the second letter refers to Complainant's May 19, 2011 public records request. Again, this suggests that Complainant made more than one public records request to MTA and that she has provided evidence referring to multiple requests.

Contested Facts: As of the date of this memorandum, I have not been provided with any response from MTA to the complaint, so it is unclear what, if any, allegations they contest.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did Complainant make more than one public records request?
- If so, what were the dates of those requests and what did they seek?
- Which request does this complaint involve?
- Which of the responses from MTA refer to the request that is the subject of this complaint?
- Did MTA ever provide an additional response to the request that is the subject of this complaint?
- If so, when was the response made?
- If so, were responsive documents provided to complainant?
- Did MTA withhold any documents in responding to this request?
- Was any withholding justified in writing with reference to appropriate exemptions?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the MTA violate the public records laws?

MEMORANDUM

TO: Sunshine Task Force
DATE: July 23, 2011
PAGE: 3
RE: *Complaint No. 11042, Carter v. MTA*

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Task Force
DATE: July 23, 2011
PAGE: 4
RE: *Complaint No. 11042, Carter v. MTA*

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

SEC. 67.25. IMMEDIACY OF RESPONSE.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of

MEMORANDUM

TO: Sunshine Task Force
DATE: July 23, 2011
PAGE: 5
RE: *Complaint No. 11042, Carter v. MTA*

some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

(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 therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee 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. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

MEMORANDUM

TO: Sunshine Task Force
DATE: July 23, 2011
PAGE: 6
RE: *Complaint No. 11042, Carter v. MTA*

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

SECTION 6254. EXEMPTION OF PARTICULAR RECORDS

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(c) Personnel, medical, or similar files, *the disclosure of which would constitute an unwarranted invasion of personal privacy.*

SECTION 6255. JUSTIFICATION FOR WITHHOLDING OF RECORDS

(a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.



<complaints@sfgov.org>
05/31/2011 08:46 AM

To <soft@sfgov.org>
cc
bcc
Subject: Sunshine Complaint

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:S.F.M.T.A.

CONTACTED:KATHY FOWLIS

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:Yes

MEETING_DATE:

SECTIONS_VIOLATED:6254 C

DESCRIPTION:May 12, 2011, I went into the s.f.m.t.a. offices at 1 so. van ness requesting my records by way of a note left with martha acevedo, at the front desk, on the 6th floor, for kathy fowlis to provide me with my records in 10 days, it is now beyond the 10 days and I have yet to receive my files and papers requested. I need these papers for my rebuttal with the civil service commission and they needed to be turned in by the 31st of may 2011, the mta knew this and as a result they are holding on to my records and information that I need to respond to the civil service commission.

HEARING:Yes

PRE-HEARING:Yes

DATE:

NAME:Cynthia Carter

ADDRESS:1871 sunnydale ave

CITY:san francisco

ZIP:94134

PHONE:415 2862769

CONTACT_EMAIL:dimplescarter03@aol.com

ANONYMOUS:

From: Celaya, Caroline (Caroline.Celaya@sfmta.com)
To: dimplecarter1963@att.net;
Date: Wed, May 18, 2011 11:30:44 AM
Cc:
Subject: public records request

Hi Cynthia:

I'm in receipt of your public records request seeking "my records from 2-1-99 - 8-11-10. I would like all side letters, faxes correspondence between management etc. emails, notes, arbitrators reports investigations."

The Agency is gathering responsive documents though your request is vague and staff would like some clarification on the documents you are seeking. Can you please be more specific with regards to "my records"?

Thank you,

Caroline

Caroline Celaya
 San Francisco Municipal Transportation Agency
 One South Van Ness Avenue, 7th Floor
 San Francisco, CA 94103
 415.701.4670

RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO
 2011 JUN -6 AM 10:58
 BY AK
 1 OF 4 PAGES

ATTN: Ms. Kathy Jowles

I, Cynthia Carter am

requesting a copy of my files
 from SFMTA (My entire file please)
 as well as Central Control logs
 Logs from the Flynn Mechanic Shop
 from reports of buses that I was
 driving and required service from Road call,
 all insp. reports concerning me, ca logs, reports
 phone recordings referring to me and emails, side
 letters, Letters mailed to me referring to the
 supervisor test & station agent test as well as
 the actual dates of these tests

Please do not pass
 to Cynthia Hamada
~~at 646~~ Thanks

Thank You
 Cynthia Carter

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oke | Director
Nathanel P. Ford Sr. | Executive Director/CEO

May 23, 2011

SENT VIA EMAIL

Cynthia Carter
Dimplescarter1963@att.net

RE: Public Records Request dated May 13, 2011

Dear Ms. Carter:

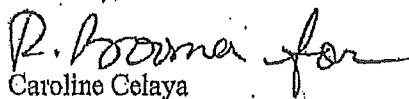
On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 13, 2011.

Please be advised we are hereby invoking an extension of an additional fourteen (14) calendar days from May 23, 2011, to respond to your request.

Under the California Public Records Act and the San Francisco Sunshine Ordinance, the deadline can be extended for an additional fourteen days due to "the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request," and "the need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein." Cal. Gov't Code §6253(c)(2) and (3). The SFMTA is invoking the extension on these grounds because staff must (1) collect and examine a voluminous amount of material, and (2) consult with another City agency having substantial subject matter interest in the request. We will endeavor to respond to your request as soon as possible, but not later than June 6, 2011

Please do not hesitate to contact the Sunshine Request line at 415-701-4670 or sfintasunshinerequests@sfmta.com if you have any questions.

Sincerely,


Caroline Celaya

Date: Oct. 25, 2011

Item No. 6

File No. 11042

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Cynthia Carter v Municipal Transportation Agency
-
-
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-
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-

Completed by: Chris Rustom

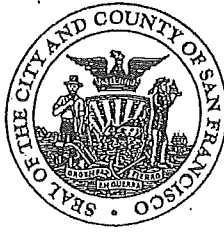
Date: Oct. 20, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No: 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
September 2, 2011

DATE THE DECISION ISSUED
August 23, 2011

CYNTHIA CARTER v SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (CASE NO. 11042)

FACTS OF THE CASE

Cynthia Carter alleges that the San Francisco Municipal Transportation Agency ("SFMTA") violated public records laws by failing to adequately respond to her May 12, 2011 request for public documents and her own employment records.

COMPLAINT FILED.

On May 31, 2011, Ms. Carter filed a complaint with the Task Force against the SFMTA, alleging violation of Section 6254(c) of the California Public Records Act.

HEARING ON THE COMPLAINT

On August 23, 2011, Ms. Carter presented her case to the Task Force. Kathy Fowlis responded for the SFMTA.

Ms. Carter testified that she requested her entire file from SFMTA. She opened a sealed envelope before the Task Force, announcing she received it two weeks ago from the SFMTA but was now opening it for the first time. After going through its contents, she said some of the documents that she asked for were not provided. She said the missing documents included write-ups from supervisors, Central Control reports, and mechanical reports on defective buses. The write-ups from supervisors related to a sexual harassment claim filed by Ms. Carter against her supervisor, who then, she said, began to write up reports against her for use in discharging her from the SFMTA in retaliation for her filing the claim. She said she requested the documents from Caroline Celaya, who was not present at the Task Force hearing, and not from Ms. Fowlis. She said she would not have lost her civil service hearing if she had been provided with all the documents she requested to prove her case. She also said no one told her that she needed to go to different offices for certain documents. When she called Central Control or Street Operations, she was never directed to an appropriate contact person and was told only a lawyer could have access to some documents she was requesting.

Ms. Fowlis testified she is the custodian of records for the SFMTA's Human Resources division only, and that her division keeps the official personnel files for employees. She said Ms. Carter had been provided with a copy of all the documents that were in her official personnel file. She said she does not know if other documents exist but if Ms. Carter had made a sexual harassment claim, that paperwork would be filed with the Equal Employment Opportunity office and not with Human Resources. She said paperwork on defective buses would be maintained by Central Control and those documents would not be in the personnel files. Ms. Fowlis several times indicated in response to Task Force questions that she did not have the necessary information and that Ms. Celaya would be the appropriate person to answer. She further indicated that Ms. Celaya had directed her to represent the SFMTA, probably because the description of the Task Force agenda item for this complaint referred to the failure of the SFMTA to provide Ms. Carter with her personnel file.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that although the SFMTA properly invoked several time extensions, they were nevertheless late in providing the documents to Ms. Carter, who should have received the documents on June 14th but did not receive them until June 23rd. The Task Force also found that although SFMTA officials knew where to direct Ms. Carter to find certain documents, they did not provide assistance to the requester, as required under the Sunshine Ordinance, to help her understand where the documents she sought were located.

DECISION AND ORDER OF DETERMINATION

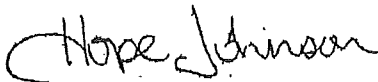
The Task Force finds Caroline Celaya in violation of Sections 67.21(b) for not providing the documents in a timely manner, 67.21(c) for failure to direct the complainant to the appropriate contacts for locating specific categories of documents, and 67.21(e) for failing to send a knowledgeable person to the Task Force hearing on the complaint.

The SFMTA is ordered to provide Ms. Carter with copies of the write ups she received from her supervisors, mechanical reports on defective busses, and the complete Central Control reports relative to her case within 5 business days of the issuance of this Order of Determination and is instructed to appear at a hearing on compliance with this Order before the Compliance and Amendments Committee on Tuesday, September 13, 2011 at 4 p.m. in Room 406 at City Hall.

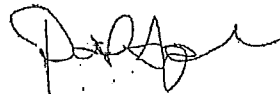
This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011, by the following vote: (Johnson/Knee)

Ayes: Snyder, Knee, Washburn, Costa, West, Johnson

Excused: Cauthen, Manneh, Knoebber, Wolfe, Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



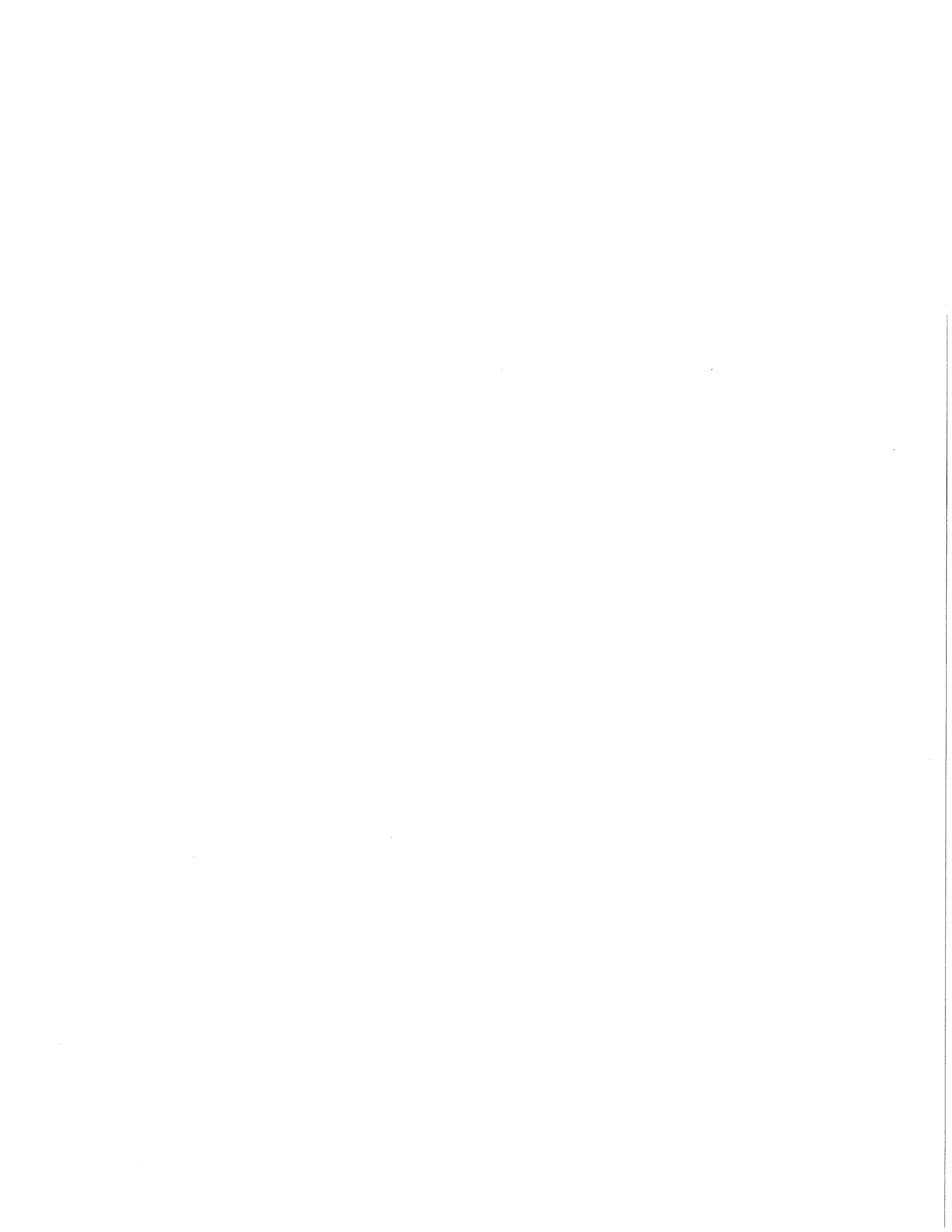
David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

c: Cynthia Carter, Complainant
Caroline Celaya, Respondent
Kathy Fowles, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.



Agenda Item IV (c)





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: January 31, 2013

To: Frank Lee, Respondent
Mohammed Nuru, Respondent
Lars Nyman, Complainant

From: John St. Croix, Executive Director

Re: **NOTICE – Show Cause Hearing – Ethics Complaint 07-120621**

On June 20, 2012, the Sunshine Ordinance Task Force (“Task Force”) delivered a referral letter and Order of Determination (“Order”) to the Ethics Commission. The referral was made pursuant to Sunshine Ordinance sections 67.30(c) and 67.35(d), and San Francisco Charter section 15.102. The named Complainant is Lars Nyman. The named Respondents are Frank Lee and Mohammed Nuru from the San Francisco Department of Public Works for “failure to assist [the requestor] in identifying the existence, form, and nature of available records related to initial approvals and authorizations of [a DPW project] and for failure to provide contact information for appropriate DPW staff” in violation of Sunshine Ordinance, section 67.21(c). In addition, the Task Force found a violation of Sunshine Ordinance section 67.21(e) for “providing an incomplete response to the request for public records regarding initial approval and authorization of the project.”

The Task Force also found a violation of Sunshine Ordinance section 67.21(e) against Frank Lee for failing to appear at the “Task Force hearing on compliance.”

The handling of this complaint was postponed until the Ethics Commission adopted regulations for Sunshine related complaints. Those regulations became effective on January 25, 2013. This matter will be heard under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance (“Regulations”). Staff has scheduled this matter to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, February 25, 2013**, in Room 400 in City Hall.

Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden to show that the Task Force erred in its determination. (*See* Regulations, Chapter Two, § II.B.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his

or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, February 8, 2013.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum, as well as a copy of the Regulations.

FILED

2012 JUN 21 AM 9:09

SAN FRANCISCO
ETHICS COMMISSION
**SUNSHINE ORDINANCE
TASK FORCE**

BY _____



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

April 30, 2012

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Referral for Enforcement of Order of Determination, Action on Failure to Appear
Sunshine Complaint No. 11087, Lars Nyman v. Department of Public Works**

The Sunshine Ordinance Task Force ("Task Force") hereby refers for enforcement the Order of Determination ("Order") issued on February 27, 2012 in Sunshine Complaint No. 11087, Lars Nyman v. Department of Public Works.

This referral for enforcement is made pursuant to:

- (1) Sunshine Ordinance Section 67.30(c) whereby "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts";
- (2) San Francisco City Charter Section 15.102 which provides that the Ethics Commission "may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records"; and
- (3) Sunshine Ordinance Section 67.35(d) whereby "any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed.

The Task Force further refers Frank Lee, Executive Assistant to the Director of the Department of Public Works, for failure to appear at the Task Force hearing on compliance in violation of Sunshine Ordinance Section 67.21(e). This referral is made pursuant to Sunshine Ordinance Section 67.30(c) as previously cited.

<http://www.sfgov.org/sunshine/>

Background

Lars Nyman filed a complaint with the Task Force on November 14, 2011 alleging that the Department of Public Works ("DPW") failed to adequately respond to his public records request dated October 6, 2011.

Task Force Hearing on Complaint

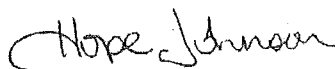
On January 3, 2011, the Task Force held a hearing on the complaint, finding DPW in violation of Sunshine Ordinance public records provisions. DPW was ordered to investigate the existence of and produce relevant project approval records to Mr. Nyman no later than February 5, 2012.

On March 20, 2012, the Task Force's Compliance and Amendments Committee held a hearing on compliance with the Order to investigate and produce records, finding DPW had failed to comply. The matter was returned to the Task Force for further action with a recommendation that the Task Force refer the Order to the District Attorney or Board of Supervisors for enforcement.

On April 4, 2012, the Task Force held a hearing to consider further action. The Task Force found that DPW continued to fail to produce the records and found Mr. Lee in violation of Sunshine Ordinance Section 67.21(e) for failing to appear at the hearing on further action.

A description of the first Task Force hearing, violations found, and decision are described in the attached Order.

Thank you for your attention to this matter. Please contact the Task Force Administrator at sof@sfgov.org or (415) 554-7724 for any additional information needed.



Hope Johnson, Chair
Sunshine Ordinance Task Force

Encl.

cc: Lars Nyman, Complainant
Frank Lee, Executive Assistant, Department of Public Works, Respondent
Mohammed Nuru, Director, Department of Public Works, Respondent
Jerry Threet, Deputy City Attorney

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227
SAN FRANCISCO
ETHICS COMMISSION

ORDER OF DETERMINATION
February 27, 2012

BY _____

DATE THE DECISION ISSUED
January 3, 2012

LARS NYMAN v DEPARTMENT OF PUBLIC WORKS (CASE NO. 11087)

FACTS OF THE CASE

Complainant Lars Nyman alleges that the San Francisco Department of Public Works ("DPW") has not adequately responded to his October 6, 2011 request for public information related to the approval or authorization of the Montgomery/Alta Street tree project.

COMPLAINT FILED

On November 14, 2011, Lars Nyman filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that DPW violated the public information and public records provisions of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On January 3, 2012, Lars Nyman appeared before the Task Force and presented his complaint. DPW was represented by its Director's Executive Assistant Frank Lee, who presented the response.

On October 6, 2011, Mr. Nyman requested from DPW any documents related to the approval or authorization of both the Montgomery/Alta Street tree project and the initial budget for that project. This request was made in follow-up to his previous request for documents related to the approval of the final cost of \$229,039.80, an amount over the original budget of \$101,625.50. Mr. Nyman made the follow-up request at issue in this complaint after DPW told him that no documents exist related to approval of costs over the original budget because that approval was given verbally.

Mr. Nyman stated that Mr. Lee told him no documents exist that are responsive to his current request for the initial approval of the project itself other than those provided in response to previous requests. Mr. Nyman alleged that no documents related to the initial project approval have ever been provided. He stated Mr. Lee offered to arrange for him to meet with DPW staff to discuss the project but that he preferred to receive a response in writing. He further stated that Mr. Lee provided him with the names of DPW staff involved in the project but not with their contact information.

Mr. Lee stated DPW had previously provided all responsive documents to Mr. Nyman. He stated that he had confirmed with DPW staff that the approval of costs over the initial estimate was done verbally, and, therefore, no documents exist related to that approval. He repeated his offer to arrange for Mr. Nyman to meet with DPW staff to review and discuss specific information relative to his requests.

Mr. Lee also described details of his search for responsive documents. Upon further questioning by the Task Force, Mr. Lee stated that he did not know if records exist related to initial approval or authorization of the project itself, including approval of the posting of the notice of tree removal. He further stated he believed such a request would constitute a new records request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that a request for documents related to initial approval of the project itself is not a new request because Mr. Nyman's October 6, 2011 email to DPW at issue in this complaint specifically requests that information. The Task Force further found that Mr. Nyman's request for any initial approval documents is logically inclusive of approvals or instructions to post notices of tree removal, one of the initial steps of the project.

Based on Mr. Lee's admission that he does not know if records exist related to the initial approval or authorization of the project itself, including approval of the initial budget and notices of tree removal, the Task Force found that DPW had not fully responded to Mr. Nyman's request as required by Sunshine Ordinance Section 67.21(e). Based on statements by Mr. Nyman and documents presented for the hearing, the Task Force further found that DPW had not assisted Mr. Nyman in identifying records available or provided him with contact information for appropriate project staff upon learning he wanted to receive his responses in writing as required by Sunshine Ordinance Section 67.21(c).

DECISION AND ORDER OF DETERMINATION

The Task Force finds DPW in violation of Sunshine Ordinance Sections:

67.21(c) for failure to assist Mr. Nyman in identifying the existence, form, and nature of available records related to initial approvals and authorizations of the project and for failure to provide contact information for appropriate DPW staff; and

67.21(e) for providing an incomplete response to the request for public records regarding initial approval and authorization of the project.

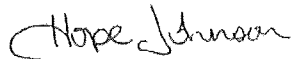
DPW shall research the existence of public records and information related to the initial approval or authorization of both the project itself and the initial budget for the project, release the requested records within 5 business days of the issuance of this Order of Determination, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00pm in Room 406. The Committee shall monitor compliance with this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 3, 2012, by the following vote: (Wolfe/West - 7/1/2)

Ayes: 7 - Knee, Manneh, Washburn, Costa, Wolfe, West, Johnson

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Lars Nyman, Complainant
Frank Lee, Executive Assistant, Department of Public Works, Respondent
Mohammed Nuru, Interim Director, Department of Public Works, Respondent
Jerry Threet, Deputy City Attorney

Date: January 3, 2012

Item No. 21 & 22

File No. 11087

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: Dec. 22, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



Sunshine Complaint
complaints

to:

sotf

11/14/2011 03:21 PM

Hide Details

From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Department of Public Works

CONTACTED:Frank Lee

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:

DESCRIPTION:The Department of Public Works spent \$229,039.80 in 2010/2011 on the Montgomery/Alta Street tree project. The project was initially budgeted for \$101,625.50. I made a request under the Sunshine Ordinance to the Department of Public Works and Frank Lee (DPW's designated point man for Sunshine Ordinance requests) on October 6, 2011. In my request, I requested any document or documents that approved or authorized this project. I also requested any document or documents that approved or authorized the initial budget for \$101,625.50 for this project. As of this date, October 20, 2011, Mr. Lee has not provided any such documents, nor explicitly stated there are no such documents. Mr. Lee did respond, without providing any documents, stating that "...other than..." documents he has provided to me in prior requests "...we do not have any other documents that would be responsive...". The use of "other than" implies there are documents that address my request and that he has already provided those documents to me. However, he has not - I have not received any documents from Mr. Lee that shows the approval or authorization of the project or the initial budget.

HEARING:Yes

PRE-HEARING:No

DATE:October 20

NAME:Lars Nyman

ADDRESS:
CITY:
ZIP:
PHONE:
CONTACT_EMAIL:upwardfacingdog@hotmail.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No



1 Dr. Carlton B. Goodlett Place, City Hall, Room 348
San Francisco, CA 94102
(415) 554-6900 ■ www.sfdpw.org

Edwin M. Lee, Mayor
Mohammed Nuru, Interim Director



November 22, 2011

Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Subject: Sunshine Complaint #11087
Lars Nyman v Public Works

Dear Sunshine Ordinance Task Force:

We answered Mr. Nyman's October 6, 2011 Public Records Request promptly on the following day. At that time, we explained to Mr. Nyman that we had already given to him – through our previous responses to his previous records requests – the documents that were responsive to his latest request. We also explained to Mr. Nyman why there were no documents that fit some of his questions and invited him to discuss this with our staff.

Mr. Nyman did not accept our invitation to meet.

On October 13, 2011, we outlined every document that we provided to him since he began his requests. Our first response to him was on June 15, 2011. At the end of this outline was another invitation to meet and discuss.

Mr. Nyman still has not accepted our invitation to meet.

As evidence of our responses, I am attaching the October 13, 2011 email to Mr. Nyman, which also contains Mr. Nyman's record request of October 6 and our initial response on October 7.

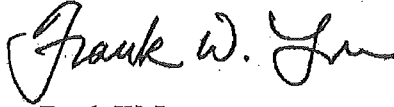
We understand that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Please see California Government Code § 6253(b).) Our obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in our custody. (See San Francisco Administration Code § 67.20(b).) There is no requirement that our department or officers construct a document to meet the specifications of any request.



San Francisco Department of Public Works
Making San Francisco a beautiful, livable, vibrant, and sustainable city.

In summary, we believe that our department responded to Mr. Nyman's request properly.

Sincerely,



Frank W. Lee
Executive Assistant to the Director



Lee, Frank W

From: Lee, Frank W
Sent: Thursday, October 13, 2011 5:18 PM
To: 'Up Dog'
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Here is a summary of what we gave to you and explained to you.

On June 15, 2011, we gave to you:

- A copy of the Notice of Tree Removal that was posted; and
- 14 letters and emails that we received during the Notice of Tree Removal posting period (June 1, 2010 to June 30, 2010).

On June 27, we gave to you:

- Four emails exchanged between Dadisi Najib and Frank W. Lee on April 12, 2011.

On July 6, we gave to you:

- An April 12, 2011 email to Dadisi Najib from James DeVinny; and
- An April 12, 2011 email to Dadisi Najib, Gloria Chan, and James DeVinny from Frank W. Lee.

On August 8, we gave to you:

- The original cost estimate of \$101,625.50 that was produced in September 2010

On that same August 8, we also:

- Informed you that the final actual cost of the project is being calculated; and
- Explained to you which employees discussed and determined the sending of workers to work on the project on Sunday, March 27.

On August 12, we gave to you:

- A spreadsheet showing the actual total cost (\$229,039.80) and the labor hours spent; and
- Nine reasons for exceeding the original estimate (\$101,625.50).

On August 26, we gave to you:

- The date of the when the itemized estimated budget or cost for the project was approved, which was September 2010;
- Documents, including sketches, related to the original estimate (\$4,248.65) of the "tree support" that was also approved in September 2010;
- The name of the employee that produced the itemized estimated budget or cost for the project; and
- The name of the employee that approved that itemized estimated budget or cost for the project.

On August 29, we:

- Again, explained that the original tree support budget of \$4,248.65 was approved in September 2010; and
- Explained that the final actual cost of the tree support was \$23,561.

On September 9, we gave to you:

- Sketch of the tree base for the tree support that was actually built; and
- Sketch of the tree support and saddle, as part of the tree support, that were actually built

On that same September 9, we also:

- Explained to you how the approval of building the tree support (base, support and saddle) was made and, subsequently, why there were no documents showing this approval.

On September 12, we

- Again, stated that there were no documents showing approval of the building of the tree support.

On September 30, we

- Explained that we have no documents that shows discussions concerning "the overrun of cost of this project";
- Explained that we had already given to you the name of the employee that approved the \$101,625.50 original estimate and that there were no documents because his approval was done verbally; and
- Explained that there is no approval of the final cost because the \$229,039.80 expenditure was the actual cost of the entire project, not an estimate used for any approval or authorization.

On October 3, we:

- Explained that there were no documents, including any emails, that show approval and/or authorization of spending more than the original \$101,625.50 cost that was verbally approved at the beginning of the project.

And, finally, on October 7, we:

- Offered to arrange a meeting between you and the employees that made the original estimate and approvals so that you could discuss any concerns you had with them.

If you find that you are missing any of the above emails or documents in your email inbox, please let me know.

There are no documents, other than what were included in the documents that we gave to you (see above), that shows or are related to the approval and/or authorization of the Montgomery/Alta Street tree project. There are no documents, other than what were included in the documents that we gave to you (see above), that are related to the approval and/or authorization of the initial budget for the Montgomery/Alta Street tree project.

If you would like to meet, please let me know.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Sunday, October 09, 2011 6:49 PM
To: Lee, Frank W
Cc: Up Dog
Subject: RE: Sunshine Ordinance request

Mr Lee,

No, I have not received any documents from your or from the Department of Public Works that address my current request - I have not received any such documents nor have I requested such documents.

I am not unclear about anything. What I am clear about is that I issued an official request under the Sunshine Ordinance of the City of San Francisco and that I did not receive a proper response.

You state that "Other than what we have already provided to you..." and "... we do not have any other documents...". Your statement and use of "other" implies there are documents that address my request. However, as I stated above, I have not received any documents from you or from the Department of Public Works that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the initial budget for the Montgomery/Alta Street tree project.

I submitted my official request under the Sunshine Ordinance of the City of San Francisco. You are obligated, under the Sunshine Ordinance of the City of San Francisco, to supply such documents and you did not. If the Department of Public Works does not have any documents that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the initial budget for the Montgomery/Alta Street tree project, you need to explicitly and clearly state so.

Consequently, I consider that you have not responded to my request under the Sunshine Ordinance of the City of San Francisco.

Sincerely,
Lars Nyman

From: Frank.W.Lee@sfdpw.org
To: upwardfacingdog@hotmail.com
CC: upwardfacingdog@hotmail.com
Date: Fri, 7 Oct 2011 19:05:47 -0700
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Other than what we have already provided to you in response to your previous requests, we do not have any other documents that would be responsive to your request, again, for documents that approves and/or authorizes the Montgomery/Alta street tree project and for documents that approves and/or authorizes the initial budget for the Montgomery/Alta street tree project.

Furthermore, I explained to you the approval method that was used and the names of the employees that produced the initial estimate and made the approval. If you are unclear about this and would like to discuss this with these employees, please let me know. I would be able to arrange a meeting for you.

Sincerely,
Frank W. Lee
Executive Assistant to the Director

Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: m m [mailto:upwardfacingdog@hotmail.com]
Sent: Thursday, October 06, 2011 10:32 AM
To: Lee, Frank W
Cc: Up Dog
Subject: Sunshine Ordinance request

Dear Mr. Lee,

In my email on 10/3/2011 to you I asked you a couple of questions. Since I have not received a response from you I am forced to submit an official Sunshine Ordinance request to get the information.

As a background, I have tried since April 2011 to get information from you and the Department of Public Works about the Montgomery/Alta Street tree project that was performed in early 2011. You have informed me that the amount in the budget for the Montgomery/Alta Street tree project that was approved was \$101,625.50. You have indicated that there are no documents showing any information or discussion about the cost overrun for this project, that there are no documents showing approval or authorization for spending beyond the initial budget for this project. In a comment, you also seem to have indicated there are no documents showing approval or authorization for the initial budget itself.

It seems somewhat surprising that there would be no documents approving or authorizing the initial budget for the project and the spending of money for this project. Since I had not issued an official request for that that information, and since I may have misunderstood your comments, to make sure I will make an official Sunshine Ordinance request to get to the bottom of this.

If there are no documents showing approval or authorization for the initial budget for the project, I am wondering if there are any documents showing approval and authorization of the project itself. Again, to get to the bottom of this I will make an official Sunshine Ordinance request below.

I am requesting documents under the Sunshine Ordinance of the City of San Francisco:

- 1- any documents, including emails, meeting minutes etc., that approves and/or authorizes the Montgomery/Alta Street tree project
- 2- any documents, including emails, meeting minutes etc., that approves and/or authorizes the initial budget for the Montgomery/Alta Street tree project

Note, the request for documents in this request is in addition to any other request I have made.
I look forward to receiving the information requested.

Sincerely,
Lars Nyman

File No. 11087

SOTF Item No. _____
CAC Item No. 5

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: _____

Compliance and Amendments Committee

Date: March 20, 2012

CAC/SOTF

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Completed by: Andrea Ausberry Date March 14, 2012
Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

**SUNSHINE ORDINANCE
TASK FORCE**



**City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227**

**ORDER OF DETERMINATION
February 27, 2012**

DATE THE DECISION ISSUED
January 3, 2012

LARS NYMAN v DEPARTMENT OF PUBLIC WORKS (CASE NO. 11087)

FACTS OF THE CASE

Complainant Lars Nyman alleges that the San Francisco Department of Public Works ("DPW") has not adequately responded to his October 6, 2011 request for public information related to the approval or authorization of the Montgomery/Alta Street tree project.

COMPLAINT FILED

On November 14, 2011, Lars Nyman filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that DPW violated the public information and public records provisions of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On January 3, 2012, Lars Nyman appeared before the Task Force and presented his complaint. DPW was represented by its Director's Executive Assistant Frank Lee, who presented the response.

On October 6, 2011, Mr. Nyman requested from DPW any documents related to the approval or authorization of both the Montgomery/Alta Street tree project and the initial budget for that project. This request was made in follow-up to his previous request for documents related to the approval of the final cost of \$229,039.80, an amount over the original budget of \$101,625.50. Mr. Nyman made the follow-up request at issue in this complaint after DPW told him that no documents exist related to approval of costs over the original budget because that approval was given verbally.

Mr. Nyman stated that Mr. Lee told him no documents exist that are responsive to his current request for the initial approval of the project itself other than those provided in response to previous requests. Mr. Nyman alleged that no documents related to the initial project approval have ever been provided. He stated Mr. Lee offered to arrange for him to meet with DPW staff to discuss the project but that he preferred to receive a response in writing. He further stated that Mr. Lee provided him with the names of DPW staff involved in the project but not with their contact information.

Mr. Lee stated DPW had previously provided all responsive documents to Mr. Nyman. He stated that he had confirmed with DPW staff that the approval of costs over the initial estimate was done verbally, and, therefore, no documents exist related to that approval. He repeated his offer to arrange for Mr. Nyman to meet with DPW staff to review and discuss specific information relative to his requests.

Mr. Lee also described details of his search for responsive documents. Upon further questioning by the Task Force, Mr. Lee stated that he did not know if records exist related to initial approval or authorization of the project itself, including approval of the posting of the notice of tree removal. He further stated he believed such a request would constitute a new records request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that a request for documents related to initial approval of the project itself is not a new request because Mr. Nyman's October 6, 2011 email to DPW at issue in this complaint specifically requests that information. The Task Force further found that Mr. Nyman's request for any initial approval documents is logically inclusive of approvals or instructions to post notices of tree removal, one of the initial steps of the project.

Based on Mr. Lee's admission that he does not know if records exist related to the initial approval or authorization of the project itself, including approval of the initial budget and notices of tree removal, the Task Force found that DPW had not fully responded to Mr. Nyman's request as required by Sunshine Ordinance Section 67.21(e). Based on statements by Mr. Nyman and documents presented for the hearing, the Task Force further found that DPW had not assisted Mr. Nyman in identifying records available or provided him with contact information for appropriate project staff upon learning he wanted to receive his responses in writing as required by Sunshine Ordinance Section 67.21(c).

DECISION AND ORDER OF DETERMINATION

The Task Force finds DPW in violation of Sunshine Ordinance Sections:

67.21(c) for failure to assist Mr. Nyman in identifying the existence, form, and nature of available records related to initial approvals and authorizations of the project and for failure to provide contact information for appropriate DPW staff; and

67.21(e) for providing an incomplete response to the request for public records regarding initial approval and authorization of the project.

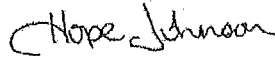
DPW shall research the existence of public records and information related to the initial approval or authorization of both the project itself and the initial budget for the project, release the requested records within 5 business days of the issuance of this Order of Determination, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00pm in Room 406. The Committee shall monitor compliance with this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 3, 2012, by the following vote: (Wolfe/West - 7/1/2)

Ayes: 7 - Knee, Manneh, Washburn, Costa, Wolfe, West, Johnson

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Lars Nyman, Complainant
Frank Lee, Executive Assistant, Department of Public Works, Respondent
Mohammed Nuru, Interim Director, Department of Public Works, Respondent
Jerry Threat, Deputy City Attorney



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

December 27, 2011:

LARS NYMAN VS. DEPARTMENT OF PUBLIC WORKS (11087)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Lars Nyman ("Complainant") alleges that the Department of Public Works ("DPW") has not adequately responded to his October 6, 2011 public records request for public information related to the approval and/or authorization of the Montgomery/Alta Street tree project.

COMPLAINANT FILES COMPLAINT:

On October 20, 2011, Complainant filed this complaint against DPW.

JURISDICTION:

DPW is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that on October 6, 2011, he requested from Frank Lee of DPW public information related to the approval and/or authorization of the Montgomery/Alta Street tree project. He further alleges that, as of October 20, 2011, "Mr. Lee has not provided any such documents, nor explicitly stated there are no such documents. Mr. Lee did respond, without providing any documents, stating that '...other than...' documents he has provided to me in prior requests '...we do not have any other documents that would be responsive...'. The use of 'other than' implies there are documents that address my request and that he has already provided those documents to me. However, he has not - I have not received any documents from Mr. Lee that shows the approval or authorization of the project or the initial budget."

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 2
RE: Complaint 11087: Nyman v. DPW

On November 22, 2011, DPW responded to the Sunshine complaint. In that letter, DPW stated:

We answered Mr. Nyman's October 6, 2011 Public Records Request promptly on the following day. At that time, we explained to Mr. Nyman that we had already given to him – through our previous responses to his previous records requests – the documents that were responsive to his latest request. We also explained to Mr. Nyman why there were no documents that fit some of his questions and invited him to discuss this with our staff.

Mr. Nyman did not accept our invitation to meet.

On October 13, 2011, we outlined every document that we provided to him since he began his requests. Our first response to him was on June 15, 2011. At the end of this outline was another invitation to meet and discuss.

Mr. Nyman still has not accepted our invitation to meet.

The October 13, 2011 email from DPW to complainant includes a recital that DPW on August 10, 2011 had provided Mr. Nyman with the original, approved budget documents and information related to this project. DPW further asserted that the law does not require that it created any documents in response to complainant's request and that it has provided all responsive documents in its custody.

Complainant does not allege any facts as to why he believes that DPW has responsive documents that it has not provided to him.

Finally, this complaint is related to and in some ways duplicates Complaint 11060, filed by Mr. Nyman against DPW regarding the same set of documents. Complaint 11060, which appeared on the agendas for the October 25, 2011 and November 29, 2011 meetings of the Task Force. The Task Force voted 8-0 to dismiss this complaint due to the failure of the complainant to attend the two hearings where it was scheduled to be heard.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does DPW have further responsive records that it has not provided?
- What evidence does Complainant have that DPW may have such records?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has DPW withheld any records responsive to the request?
- If so, did DPW justify withholding in accordance with the requirements of the Ordinance?
- Are DPW's justifications for any withholding within the exemptions allowed by the Ordinance and the PRA?

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 3
RE: Complaint 11087: Nyman v. DPW

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 4
RE: Complaint 11087: Nyman v. DPW

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.25. IMMEDIACY OF RESPONSE.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 5
RE: Complaint 11087: Nyman v. DPW

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- (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 therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee 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. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:
 - (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
 - (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
 - (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.



Sunshine Complaint
complaints

to:

sotf

11/14/2011 03:21 PM

Hide Details

From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Department of Public Works

CONTACTED:Frank Lee

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:

DESCRIPTION:The Department of Public Works spent \$229,039.80 in 2010/2011 on the Montgomery/Alta Street tree project. The project was initially budgeted for \$101,625.50. I made a request under the Sunshine Ordinance to the Department of Public Works and Frank Lee (DPW's designated point man for Sunshine Ordinance requests) on October 6, 2011. In my request, I requested any document or documents that approved or authorized this project. I also requested any document or documents that approved or authorized the initial budget for \$101,625.50 for this project. As of this date, October 20, 2011, Mr. Lee has not provided any such documents, nor explicitly stated there are no such documents. Mr. Lee did respond, without providing any documents, stating that "...other than..." documents he has provided to me in prior requests "...we do not have any other documents that would be responsive...". The use of "other than" implies there are documents that address my request and that he has already provided those documents to me. However, he has not - I have not received any documents from Mr. Lee that shows the approval or authorization of the project or the initial budget.

HEARING:Yes

PRE-HEARING:No

DATE:October 20

NAME:Lars Nyman

ADDRESS:
CITY:
ZIP:
PHONE:
CONTACT_EMAIL:upwardfacingdog@hotmail.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No



1 Dr. Carlton B. Goodlett Place, City Hall, Room 348
San Francisco, CA 94102
(415) 554-6900 www.sfdpw.org

Edwin M. Lee, Mayor
Mohammed Nuru, Interim Director



November 22, 2011

Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Subject: Sunshine Complaint #11087
Lars Nyman v Public Works

Dear Sunshine Ordinance Task Force:

We answered Mr. Nyman's October 6, 2011 Public Records Request promptly on the following day. At that time, we explained to Mr. Nyman that we had already given to him – through our previous responses to his previous records requests – the documents that were responsive to his latest request. We also explained to Mr. Nyman why there were no documents that fit some of his questions and invited him to discuss this with our staff.

Mr. Nyman did not accept our invitation to meet.

On October 13, 2011, we outlined every document that we provided to him since he began his requests. Our first response to him was on June 15, 2011. At the end of this outline was another invitation to meet and discuss.

Mr. Nyman still has not accepted our invitation to meet.

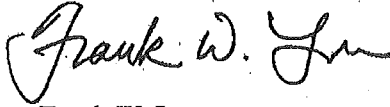
As evidence of our responses, I am attaching the October 13, 2011 email to Mr. Nyman, which also contains Mr. Nyman's record request of October 6 and our initial response on October 7.

We understand that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Please see California Government Code § 6253(b).) Our obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in our custody. (See San Francisco Administration Code § 67.20(b).) There is no requirement that our department or officers construct a document to meet the specifications of any request.



In summary, we believe that our department responded to Mr. Nyman's request properly.

Sincerely,

A handwritten signature in cursive script that reads "Frank W. Lee". The signature is written in black ink and is positioned above the printed name and title.

Frank W. Lee
Executive Assistant to the Director



Lee, Frank W

From: Lee, Frank W
Sent: Thursday, October 13, 2011 5:18 PM
To: 'Up Dog'
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Here is a summary of what we gave to you and explained to you.

On June 15, 2011, we gave to you:

- A copy of the Notice of Tree Removal that was posted; and
- 14 letters and emails that we received during the Notice of Tree Removal posting period (June 1, 2010 to June 30, 2010).

On June 27, we gave to you:

- Four emails exchanged between Dadisi Najib and Frank W. Lee on April 12, 2011.

On July 6, we gave to you:

- An April 12, 2011 email to Dadisi Najib from James DeVinny; and
- An April 12, 2011 email to Dadisi Najib, Gloria Chan, and James DeVinny from Frank W. Lee:

On August 8, we gave to you:

- The original cost estimate of \$101,625.50 that was produced in September 2010

On that same August 8, we also:

- Informed you that the final actual cost of the project is being calculated; and
- Explained to you which employees discussed and determined the sending of workers to work on the project on Sunday, March 27.

On August 12, we gave to you:

- A spreadsheet showing the actual total cost (\$229,039.80) and the labor hours spent; and
- Nine reasons for exceeding the original estimate (\$101,625.50).

On August 26, we gave to you:

- The date of the when the itemized estimated budget or cost for the project was approved, which was September 2010;
- Documents, including sketches, related to the original estimate (\$4,248.65) of the "tree support" that was also approved in September 2010;
- The name of the employee that produced the itemized estimated budget or cost for the project; and
- The name of the employee that approved that itemized estimated budget or cost for the project.

On August 29, we:

- Again, explained that the original tree support budget of \$4,248.65 was approved in September 2010; and
- Explained that the final actual cost of the tree support was \$23,561.

On September 9, we gave to you:

- Sketch of the tree base for the tree support that was actually built; and
- Sketch of the tree support and saddle, as part of the tree support, that were actually built

On that same September 9, we also:

- Explained to you how the approval of building the tree support (base, support and saddle) was made and, subsequently, why there were no documents showing this approval.

On September 12, we

- Again, stated that there were no documents showing approval of the building of the tree support.

On September 30, we

- Explained that we have no documents that shows discussions concerning "the overrun of cost of this project";
- Explained that we had already given to you the name of the employee that approved the \$101,625.50 original estimate and that there were no documents because his approval was done verbally; and
- Explained that there is no approval of the final cost because the \$229,039.80 expenditure was the actual cost of the entire project, not an estimate used for any approval or authorization.

On October 3, we:

- Explained that there were no documents, including any emails, that show approval and/or authorization of spending more than the original \$101,625.50 cost that was verbally approved at the beginning of the project.

And, finally, on October 7, we:

- Offered to arrange a meeting between you and the employees that made the original estimate and approvals so that you could discuss any concerns you had with them.

If you find that you are missing any of the above emails or documents in your email inbox, please let me know.

There are no documents, other than what were included in the documents that we gave to you (see above), that shows or are related to the approval and/or authorization of the Montgomery/Alta Street tree project. There are no documents, other than what were included in the documents that we gave to you (see above), that are related to the approval and/or authorization of the initial budget for the Montgomery/Alta Street tree project.

If you would like to meet, please let me know.

Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]

Sent: Sunday, October 09, 2011 6:49 PM

To: Lee, Frank W

Cc: Up Dog

Subject: RE: Sunshine Ordinance request

Mr Lee,

No, I have not received any documents from you or from the Department of Public Works that address my current request - I have not received any such documents nor have I requested such documents.

I am not unclear about anything. What I am clear about is that I issued an official request under the Sunshine Ordinance of the City of San Francisco and that I did not receive a proper response.

You state that "Other than what we have already provided to you..." and "... we do not have any other documents...". Your statement and use of "other" implies there are documents that address my request. However, as I stated above, I have not received any documents from you or from the Department of Public Works that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the initial budget for the Montgomery/Alta Street tree project.

I submitted my official request under the Sunshine Ordinance of the City of San Francisco. You are obligated, under the Sunshine Ordinance of the City of San Francisco, to supply such documents and you did not. If the Department of Public Works does not have any documents that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the initial budget for the Montgomery/Alta Street tree project, you need to explicitly and clearly state so.

Consequently, I consider that you have not responded to my request under the Sunshine Ordinance of the City of San Francisco.

Sincerely,
Lars Nyman

From: Frank.W.Lee@sfdpw.org

To: upwardfacingdog@hotmail.com

CC: upwardfacingdog@hotmail.com

Date: Fri, 7 Oct 2011 19:05:47 -0700

Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Other than what we have already provided to you in response to your previous requests, we do not have any other documents that would be responsive to your request, again, for documents that approves and/or authorizes the Montgomery/Alta street tree project and for documents that approves and/or authorizes the initial budget for the Montgomery/Alta street tree project.

Furthermore, I explained to you the approval method that was used and the names of the employees that produced the initial estimate and made the approval. If you are unclear about this and would like to discuss this with these employees, please let me know. I would be able to arrange a meeting for you.

Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: m m [mailto:upwardfacingdog@hotmail.com]
Sent: Thursday, October 06, 2011 10:32 AM
To: Lee, Frank W
Cc: Up Dog
Subject: Sunshine Ordinance request

Dear Mr. Lee,

In my email on 10/3/2011 to you I asked you a couple of questions. Since I have not received a response from you I am forced to submit an official Sunshine Ordinance request to get the information.

As a background, I have tried since April 2011 to get information from you and the Department of Public Works about the Montgomery/Alta Street tree project that was performed in early 2011. You have informed me that the amount in the budget for the Montgomery/Alta Street tree project that was approved was \$101,625.50. You have indicated that there are no documents showing any information or discussion about the cost overrun for this project, that there are no documents showing approval or authorization for spending beyond the initial budget for this project. In a comment, you also seem to have indicated there are no documents showing approval or authorization for the initial budget itself.

It seems somewhat surprising that there would be no documents approving or authorizing the initial budget for the project and the spending of money for this project. Since I had not issued an official request for that information, and since I may have misunderstood your comments, to make sure I will make an official Sunshine Ordinance request to get to the bottom of this.

If there are no documents showing approval or authorization for the initial budget for the project, I am wondering if there are any documents showing approval and authorization of the project itself. Again, to get to the bottom of this I will make an official Sunshine Ordinance request below.

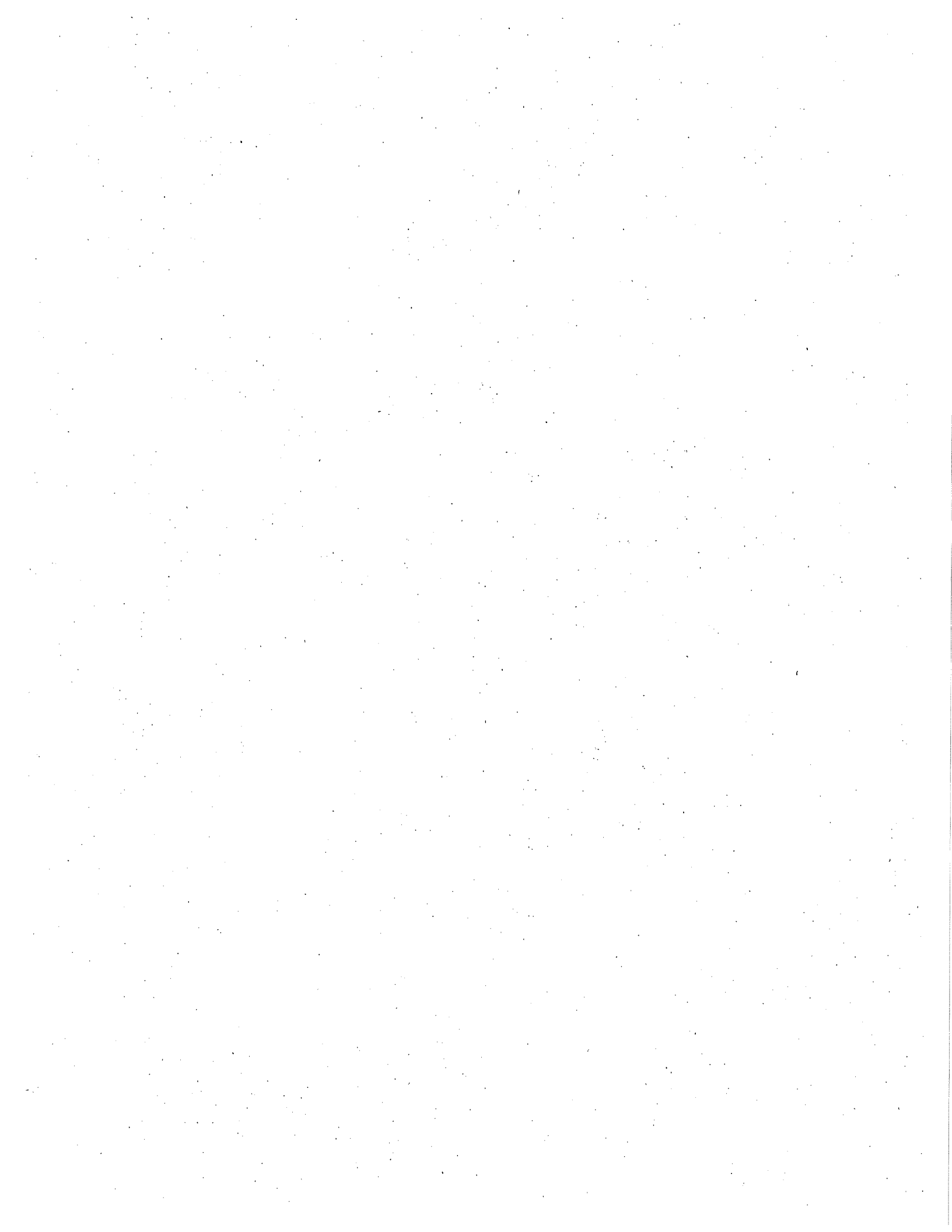
I am requesting documents under the Sunshine Ordinance of the City of San Francisco:

- 1- any documents, including emails, meeting minutes etc., that approves and/or authorizes the Montgomery/Alta Street tree project
- 2- any documents, including emails, meeting minutes etc., that approves and/or authorizes the initial budget for the Montgomery/Alta Street tree project

Note, the request for documents in this request is in addition to any other request I have made.

I look forward to receiving the information requested.

Sincerely,
Lars Nyman



File No. 11087

SOTF Item No. 6

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: April 4, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Memorandum |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Order of Determination |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Complaint and supporting documents |
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Completed by: Andrea Ausberry Date March 27, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
February 27, 2012

DATE THE DECISION ISSUED
January 3, 2012

LARS NYMAN v DEPARTMENT OF PUBLIC WORKS (CASE NO. 11087)

FACTS OF THE CASE

Complainant Lars Nyman alleges that the San Francisco Department of Public Works ("DPW") has not adequately responded to his October 6, 2011 request for public information related to the approval or authorization of the Montgomery/Alta Street tree project.

COMPLAINT FILED

On November 14, 2011, Lars Nyman filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that DPW violated the public information and public records provisions of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On January 3, 2012, Lars Nyman appeared before the Task Force and presented his complaint. DPW was represented by its Director's Executive Assistant Frank Lee, who presented the response.

On October 6, 2011, Mr. Nyman requested from DPW any documents related to the approval or authorization of both the Montgomery/Alta Street tree project and the initial budget for that project. This request was made in follow-up to his previous request for documents related to the approval of the final cost of \$229,039.80, an amount over the original budget of \$101,625.50. Mr. Nyman made the follow-up request at issue in this complaint after DPW told him that no documents exist related to approval of costs over the original budget because that approval was given verbally.

Mr. Nyman stated that Mr. Lee told him no documents exist that are responsive to his current request for the initial approval of the project itself other than those provided in response to previous requests. Mr. Nyman alleged that no documents related to the initial project approval have ever been provided. He stated Mr. Lee offered to arrange for him to meet with DPW staff to discuss the project but that he preferred to receive a response in writing. He further stated that Mr. Lee provided him with the names of DPW staff involved in the project but not with their contact information.

Mr. Lee stated DPW had previously provided all responsive documents to Mr. Nyman. He stated that he had confirmed with DPW staff that the approval of costs over the initial estimate was done verbally, and, therefore, no documents exist related to that approval. He repeated his offer to arrange for Mr. Nyman to meet with DPW staff to review and discuss specific information relative to his requests.

Mr. Lee also described details of his search for responsive documents. Upon further questioning by the Task Force, Mr. Lee stated that he did not know if records exist related to initial approval or authorization of the project itself, including approval of the posting of the notice of tree removal. He further stated he believed such a request would constitute a new records request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that a request for documents related to initial approval of the project itself is not a new request because Mr. Nyman's October 6, 2011 email to DPW at issue in this complaint specifically requests that information. The Task Force further found that Mr. Nyman's request for any initial approval documents is logically inclusive of approvals or instructions to post notices of tree removal, one of the initial steps of the project.

Based on Mr. Lee's admission that he does not know if records exist related to the initial approval or authorization of the project itself, including approval of the initial budget and notices of tree removal, the Task Force found that DPW had not fully responded to Mr. Nyman's request as required by Sunshine Ordinance Section 67.21(e). Based on statements by Mr. Nyman and documents presented for the hearing, the Task Force further found that DPW had not assisted Mr. Nyman in identifying records available or provided him with contact information for appropriate project staff upon learning he wanted to receive his responses in writing as required by Sunshine Ordinance Section 67.21(c).

DECISION AND ORDER OF DETERMINATION

The Task Force finds DPW in violation of Sunshine Ordinance Sections:

67.21(c) for failure to assist Mr. Nyman in identifying the existence, form, and nature of available records related to initial approvals and authorizations of the project and for failure to provide contact information for appropriate DPW staff; and

67.21(e) for providing an incomplete response to the request for public records regarding initial approval and authorization of the project.

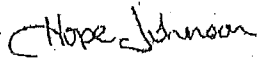
DPW shall research the existence of public records and information related to the initial approval or authorization of both the project itself and the initial budget for the project, release the requested records within 5 business days of the issuance of this Order of Determination, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00pm in Room 406. The Committee shall monitor compliance with this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 3, 2012, by the following vote: (Wolfe/West - 7/1/2)

Ayes: 7 - Knee, Manneh, Washburn, Costa, Wolfe, West, Johnson

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Lars Nyman, Complainant
Frank Lee, Executive Assistant, Department of Public Works, Respondent
Mohammed Nuru, Interim Director, Department of Public Works, Respondent
Jerry Threat, Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

December 27, 2011.

LARS NYMAN VS. DEPARTMENT OF PUBLIC WORKS (11087)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Lars Nyman ("Complainant") alleges that the Department of Public Works ("DPW") has not adequately responded to his October 6, 2011 public records request for public information related to the approval and/or authorization of the Montgomery/Alta Street tree project.

COMPLAINANT FILES COMPLAINT:

On October 20, 2011, Complainant filed this complaint against DPW.

JURISDICTION:

DPW is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that on October 6, 2011, he requested from Frank Lee of DPW public information related to the approval and/or authorization of the Montgomery/Alta Street tree project. He further alleges that, as of October 20, 2011, "Mr. Lee has not provided any such documents, nor explicitly stated there are no such documents. Mr. Lee did respond, without providing any documents, stating that '...other than...' documents he has provided to me in prior requests '...we do not have any other documents that would be responsive...'. The use of 'other than' implies there are documents that address my request and that he has already provided those documents to me. However, he has not - I have not received any documents from Mr. Lee that shows the approval or authorization of the project or the initial budget."

FOX PLAZA • 1390 MARKET STREET, 6TH FLOOR • SAN FRANCISCO, CALIFORNIA 94102-5408
RECEPTION: (415) 554-3800 • FACSIMILE: (415) 437-4644

n:\codenf\as2010\9600241\00745855.doc

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 2
RE: Complaint 11087: Nyman v. DPW

On November 22, 2011, DPW responded to the Sunshine complaint. In that letter, DPW stated:

We answered Mr. Nyman's October 6, 2011 Public Records Request promptly on the following day. At that time, we explained to Mr. Nyman that we had already given to him – through our previous responses to his previous records requests – the documents that were responsive to his latest request. We also explained to Mr. Nyman why there were no documents that fit some of his questions and invited him to discuss this with our staff.

Mr. Nyman did not accept our invitation to meet.

On October 13, 2011, we outlined every document that we provided to him since he began his requests. Our first response to him was on June 15, 2011. At the end of this outline was another invitation to meet and discuss.

Mr. Nyman still has not accepted our invitation to meet.

The October 13, 2011 email from DPW to complainant includes a recital that DPW on August 10, 2011 had provided Mr. Nyman with the original, approved budget documents and information related to this project. DPW further asserted that the law does not require that it created any documents in response to complainant's request and that it has provided all responsive documents in its custody.

Complainant does not allege any facts as to why he believes that DPW has responsive documents that it has not provided to him.

Finally, this complaint is related to and in some ways duplicates Complaint 11060, filed by Mr. Nyman against DPW regarding the same set of documents. Complaint 11060, which appeared on the agendas for the October 25, 2011 and November 29, 2011 meetings of the Task Force. The Task Force voted 8-0 to dismiss this complaint due to the failure of the complainant to attend the two hearings where it was scheduled to be heard.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does DPW have further responsive records that it has not provided?
- What evidence does Complainant have that DPW may have such records?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has DPW withheld any records responsive to the request?
- If so, did DPW justify withholding in accordance with the requirements of the Ordinance?
- Are DPW's justifications for any withholding within the exemptions allowed by the Ordinance and the PRA?

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 3
RE: Complaint 11087: Nyman v. DPW

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 4
RE: Complaint 11087: Nyman v. DPW

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.25. IMMEDIACY OF RESPONSE.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 5
RE: Complaint 11087: Nyman v. DPW

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- (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 therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee 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. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:
 - (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
 - (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
 - (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.



Sunshine Complaint
complaints

to:
sotf
11/14/2011 03:21 PM
Hide Details
From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org
Email:complaints@sfgov.org
DEPARTMENT:Department of Public Works
CONTACTED:Frank Lee
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:

DESCRIPTION:The Department of Public Works spent \$229,039.80 in 2010/2011 on the Montgomery/Alta Street tree project. The project was initially budgeted for \$101,625.50. I made a request under the Sunshine Ordinance to the Department of Public Works and Frank Lee (DPW's designated point man for Sunshine Ordinance requests) on October 6, 2011. In my request, I requested any document or documents that approved or authorized this project. I also requested any document or documents that approved or authorized the initial budget for \$101,625.50 for this project. As of this date, October 20, 2011, Mr. Lee has not provided any such documents, nor explicitly stated there are no such documents. Mr. Lee did respond, without providing any documents, stating that "...other than..." documents he has provided to me in prior requests "...we do not have any other documents that would be responsive...". The use of "other than" implies there are documents that address my request and that he has already provided those documents to me. However, he has not - I have not received any documents from Mr. Lee that shows the approval or authorization of the project or the initial budget.

HEARING:Yes
PRE-HEARING:No
DATE:October 20
NAME:Lars Nyman

ADDRESS:
CITY:
ZIP:
PHONE:
CONTACT_EMAIL:upwardfacingdog@hotmail.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No

City and County of San Francisco



Edwin M. Lee, Mayor
Mohammed Nuru, Interim Director

San Francisco Department of Public Works

1 Dr. Carlton B. Goodlett Place, City Hall, Room 348
San Francisco, CA 94102
(415) 554-6900 ■ www.sfdpw.org



November 22, 2011

Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Subject: Sunshine Complaint #11087
Lars Nymian v Public Works

Dear Sunshine Ordinance Task Force:

We answered Mr. Nyman's October 6, 2011 Public Records Request promptly on the following day. At that time, we explained to Mr. Nyman that we had already given to him – through our previous responses to his previous records requests – the documents that were responsive to his latest request. We also explained to Mr. Nyman why there were no documents that fit some of his questions and invited him to discuss this with our staff.

Mr. Nyman did not accept our invitation to meet.

On October 13, 2011, we outlined every document that we provided to him since he began his requests. Our first response to him was on June 15, 2011. At the end of this outline was another invitation to meet and discuss.

Mr. Nyman still has not accepted our invitation to meet.

As evidence of our responses, I am attaching the October 13, 2011 email to Mr. Nyman, which also contains Mr. Nyman's record request of October 6 and our initial response on October 7.

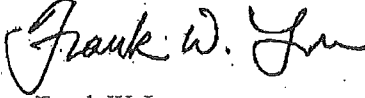
We understand that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Please see California Government Code § 6253(b).) Our obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in our custody. (See San Francisco Administration Code § 67.20(b).) There is no requirement that our department or officers construct a document to meet the specifications of any request.



Sunshine Complaint #11087
Page 2 of 2

In summary, we believe that our department responded to Mr. Nyman's request properly.

Sincerely,



Frank W. Lee
Executive Assistant to the Director



Lee, Frank W

From: Lee, Frank W
Sent: Thursday, October 13, 2011 5:18 PM
To: 'Up Dog'
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Here is a summary of what we gave to you and explained to you.

On June 15, 2011, we gave to you:

- A copy of the Notice of Tree Removal that was posted; and
- 14 letters and emails that we received during the Notice of Tree Removal posting period (June 1, 2010 to June 30, 2010).

On June 27, we gave to you:

- Four emails exchanged between Dadisi Najib and Frank W. Lee on April 12, 2011.

On July 6, we gave to you:

- An April 12, 2011 email to Dadisi Najib from James DeVinny; and
- An April 12, 2011 email to Dadisi Najib, Gloria Chan, and James DeVinny from Frank W. Lee.

On August 8, we gave to you:

- The original cost estimate of \$101,625.50 that was produced in September 2010

On that same August 8, we also:

- Informed you that the final actual cost of the project is being calculated; and
- Explained to you which employees discussed and determined the sending of workers to work on the project on Sunday, March 27.

On August 12, we gave to you:

- A spreadsheet showing the actual total cost (\$229,039.80) and the labor hours spent; and
- Nine reasons for exceeding the original estimate (\$101,625.50).

On August 26, we gave to you:

- The date of when the itemized estimated budget or cost for the project was approved, which was September 2010;
- Documents, including sketches, related to the original estimate (\$4,248.65) of the "tree support" that was also approved in September 2010;
- The name of the employee that produced the itemized estimated budget or cost for the project; and
- The name of the employee that approved that itemized estimated budget or cost for the project.

On August 29, we:

- Again, explained that the original tree support budget of \$4,248.65 was approved in September 2010; and
- Explained that the final actual cost of the tree support was \$23,561.

On September 9, we gave to you:

- Sketch of the tree base for the tree support that was actually built; and
- Sketch of the tree support and saddle, as part of the tree support, that were actually built

On that same September 9, we also:

- Explained to you how the approval of building the tree support (base, support and saddle) was made and, subsequently, why there were no documents showing this approval.

On September 12, we

- Again, stated that there were no documents showing approval of the building of the tree support.

On September 30, we

- Explained that we have no documents that shows discussions concerning "the overrun of cost of this project";
- Explained that we had already given to you the name of the employee that approved the \$101,625.50 original estimate and that there were no documents because his approval was done verbally; and
- Explained that there is no approval of the final cost because the \$229,039.80 expenditure was the actual cost of the entire project, not an estimate used for any approval or authorization.

On October 3, we:

- Explained that there were no documents, including any emails, that show approval and/or authorization of spending more than the original \$101,625.50 cost that was verbally approved at the beginning of the project.

And, finally, on October 7, we:

- Offered to arrange a meeting between you and the employees that made the original estimate and approvals so that you could discuss any concerns you had with them.

If you find that you are missing any of the above emails or documents in your email inbox, please let me know.

There are no documents, other than what were included in the documents that we gave to you (see above), that shows or are related to the approval and/or authorization of the Montgomery/Alta Street tree project. There are no documents, other than what were included in the documents that we gave to you (see above), that are related to the approval and/or authorization of the initial budget for the Montgomery/Alta Street tree project.

If you would like to meet, please let me know.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Sunday, October 09, 2011 6:49 PM
To: Lee, Frank W
Cc: Up Dog
Subject: RE: Sunshine Ordinance request

Mr Lee,

No, I have not received any documents from your or from the Department of Public Works that address my current request - I have not received any such documents nor have I requested such documents.

I am not unclear about anything. What I am clear about is that I issued an official request under the Sunshine Ordinance of the City of San Francisco and that I did not receive a proper response.

You state that "Other than what we have already provided to you..." and "... we do not have any other documents...". Your statement and use of "other" implies there are documents that address my request. However, as I stated above, I have not received any documents from you or from the Department of Public Works that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the initial budget for the Montgomery/Alta Street tree project.

I submitted my official request under the Sunshine Ordinance of the City of San Francisco. You are obligated, under the Sunshine Ordinance of the City of San Francisco, to supply such documents and you did not. If the Department of Public Works does not have any documents that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the initial budget for the Montgomery/Alta Street tree project, you need to explicitly and clearly state so.

Consequently, I consider that you have not responded to my request under the Sunshine Ordinance of the City of San Francisco.

Sincerely,
Lars Nyman

From: Frank.W.Lee@sfdpw.org
To: upwardfacingdog@hotmail.com
CC: upwardfacingdog@hotmail.com
Date: Fri, 7 Oct 2011 19:05:47 -0700
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Other than what we have already provided to you in response to your previous requests, we do not have any other documents that would be responsive to your request, again, for documents that approves and/or authorizes the Montgomery/Alta street tree project and for documents that approves and/or authorizes the initial budget for the Montgomery/Alta street tree project.

Furthermore, I explained to you the approval method that was used and the names of the employees that produced the initial estimate and made the approval. If you are unclear about this and would like to discuss this with these employees, please let me know. I would be able to arrange a meeting for you.

Sincerely,
Frank W. Lee
Executive Assistant to the Director

Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: m m [mailto:upwardfacingdog@hotmail.com]
Sent: Thursday, October 06, 2011 10:32 AM
To: Lee, Frank W
Cc: Up Dog
Subject: Sunshine Ordinance request

Dear Mr. Lee,

In my email on 10/3/2011 to you I asked you a couple of questions. Since I have not received a response from you I am forced to submit an official Sunshine Ordinance request to get the information.

As a background, I have tried since April 2011 to get information from you and the Department of Public Works about the Montgomery/Alta Street tree project that was performed in early 2011. You have informed me that the amount in the budget for the Montgomery/Alta Street tree project that was approved was \$101,625.50. You have indicated that there are no documents showing any information or discussion about the cost overrun for this project, that there are no documents showing approval or authorization for spending beyond the initial budget for this project. In a comment, you also seem to have indicated there are no documents showing approval or authorization for the initial budget itself.

It seems somewhat surprising that there would be no documents approving or authorizing the initial budget for the project and the spending of money for this project. Since I had not issued an official request for that information, and since I may have misunderstood your comments, to make sure I will make an official Sunshine Ordinance request to get to the bottom of this.

If there are no documents showing approval or authorization for the initial budget for the project, I am wondering if there are any documents showing approval and authorization of the project itself. Again, to get to the bottom of this I will make an official Sunshine Ordinance request below.

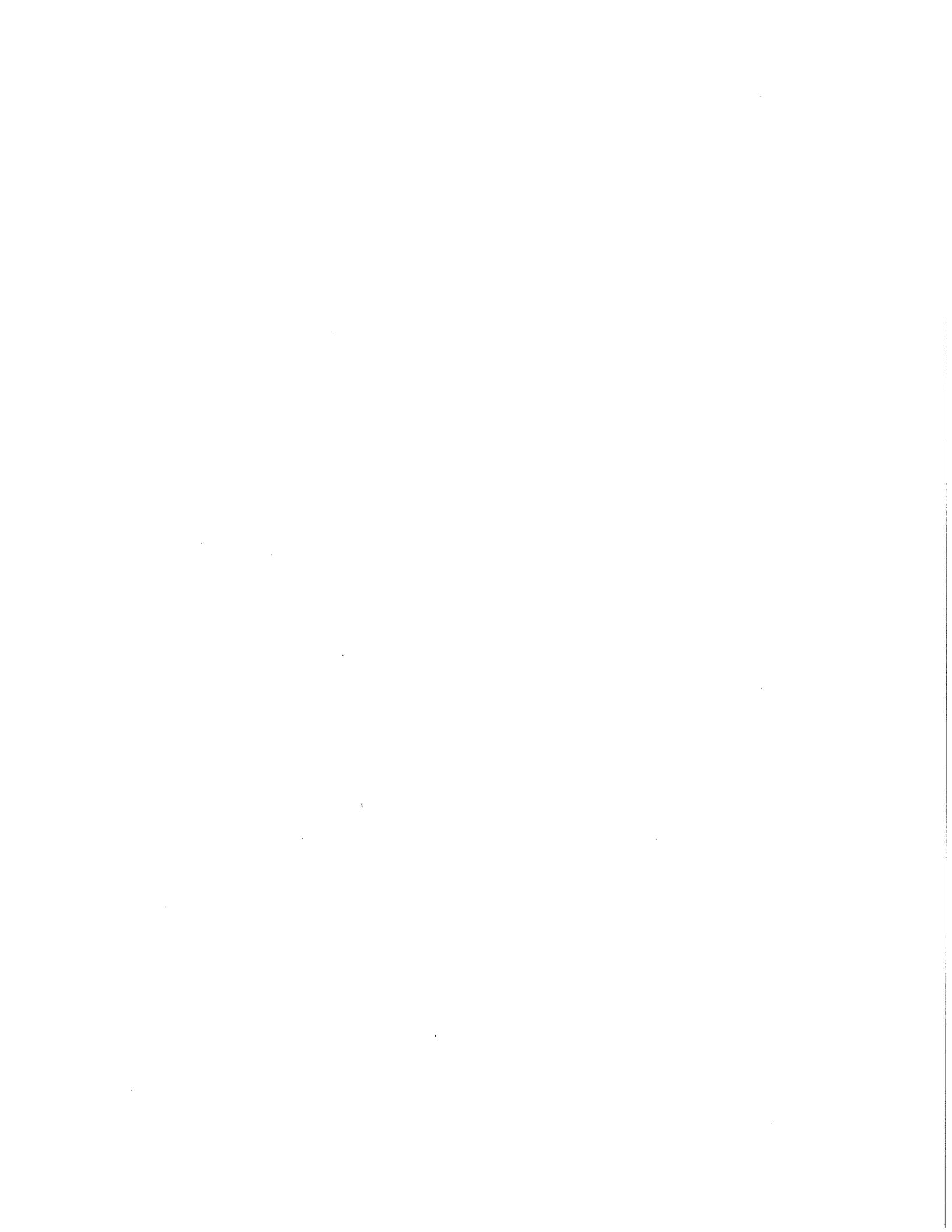
I am requesting documents under the Sunshine Ordinance of the City of San Francisco:

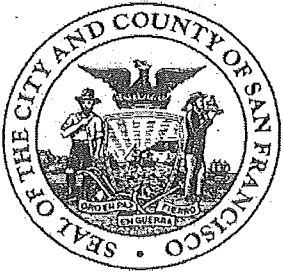
- 1- any documents, including emails, meeting minutes etc., that approves and/or authorizes the Montgomery/Alta Street tree project
- 2- any documents, including emails, meeting minutes etc., that approves and/or authorizes the initial budget for the Montgomery/Alta Street tree project

Note, the request for documents in this request is in addition to any other request I have made.
I look forward to receiving the information requested.

Sincerely,
Lars Nyman

Agenda Item IV (d)





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: January 31, 2013
To: Howard Lazar, Respondent
William Clark, Complainant
From: John St. Croix, Executive Director
Re: **NOTICE - Show Cause Hearing – Ethics Complaint 09-120703**

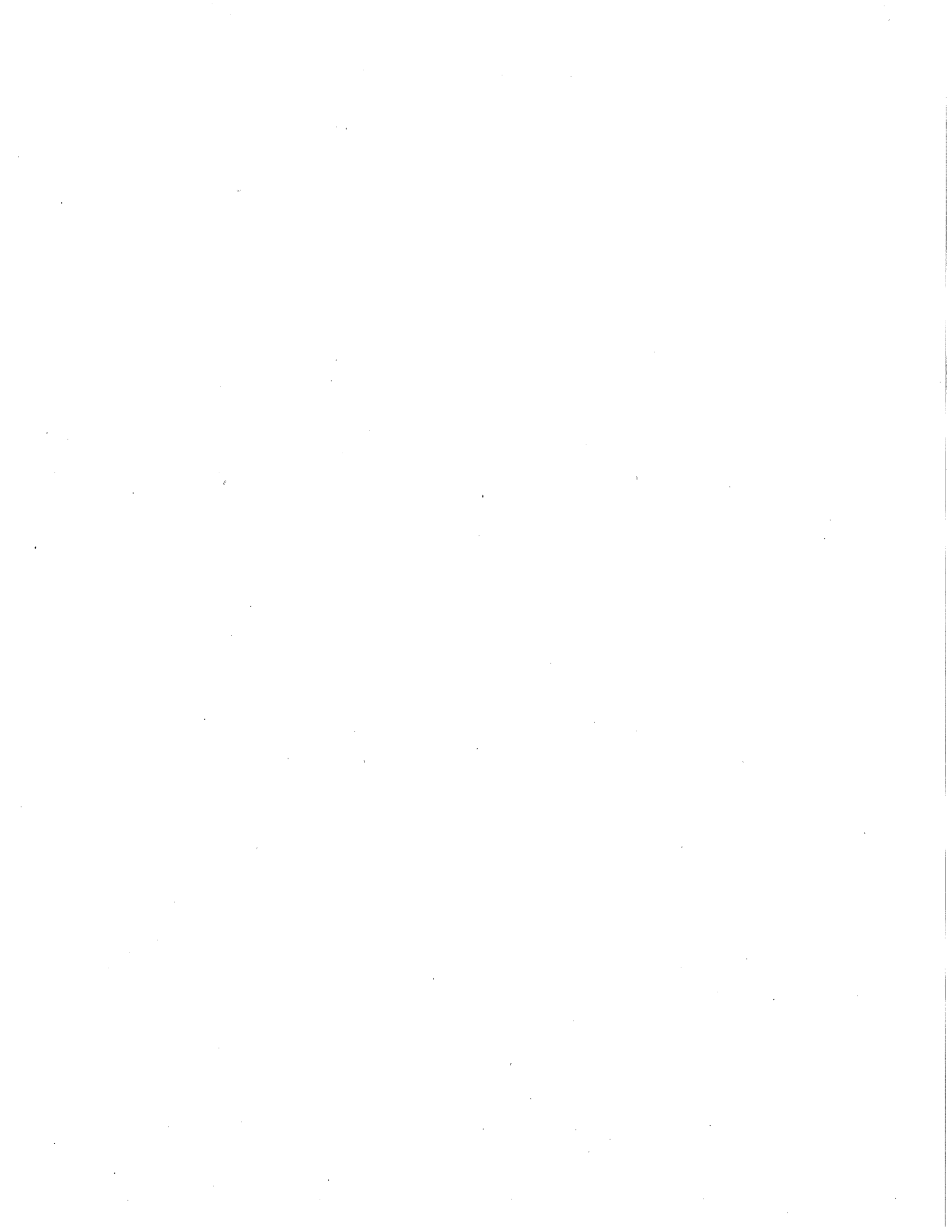
On July 3, 2012, the Sunshine Ordinance Task Force (“Task Force”) delivered a referral letter to the Ethics Commission. The referral was made pursuant to Sunshine Ordinance sections 67.30(c) and 67.34. The named Complainant is William Clark. The named Respondent is Howard Lazar. The Task Force referred “willful violation findings against Howard Lazar, Street Artists Program Director for the San Francisco Arts Commission.”

After a hearing on August 23, 2011, the Task Force found that Mr. Lazar violated section 67.21(b) “for failure to release the public information to Mr. Clark within 10 days of receiving the public records request,” section 67.21(e) “for failure to send a knowledgeable representative to the Task Force hearing,” and section 67.22(b) for “failure to release public information to Mr. Clark on a timely and responsive basis.”

The Task Force “further found Mr. Lazar had willfully violated these sections of the Sunshine Ordinance under Section 67.34 based on his pattern and practice of inadequate responses, repeated violations of the Sunshine Ordinance, and evident lack of intent to comply with the Sunshine Ordinance in the future.” Mr. Lazar is not an elected official or department head.

The handling of this complaint was postponed until the Ethics Commission adopted regulations for Sunshine related complaints. Those regulations became effective on January 25, 2013. This matter will be heard under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance (“Regulations”). Staff has scheduled this matter to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, February 25, 2013** in Room 400 in City Hall.

Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden to show that the Task Force erred in its determination. (*See* Regulations, Chapter Two, § II.B.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his



or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. (See Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend. However, if either party fails to appear, and the Commission has not granted either party a continuance or rescheduled the matter under Chapter IV, section I.E, the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, February 8, 2013.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum; a copy of the Regulations is also attached.



FILED

2012 JUL -3 AM 8:07
SUNSHINE ORDINANCE
SAN FRANCISCO
TASK FORCE
ETHICS COMMISSION



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

BY _____

May 18, 2012

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Referral of Willful Violation of the Sunshine Ordinance
Sunshine Complaint No. 11045, William Clark v. Arts Commission

The Sunshine Ordinance Task Force ("Task Force") hereby refers willful violation findings against Howard Lazar, Street Artists Program Director for the San Francisco Arts Commission, in Sunshine Complaint No. 11045, *William Clark v. Arts Commission*.

This willful violation finding is referred for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby "complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission;" and
- (2) Sunshine Ordinance Section 67.30(c) which provides that "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance."

Background

William Clark filed a complaint with the Task Force on June 14, 2011 alleging that Howard Lazar violated public records laws by failing to respond to his May 27, 2011 request for information regarding a proposal for street artists space by the Hayes Valley Merchant Association.

Task Force Hearing on Complaint

On August 23, 2011, the Task Force held a hearing on the complaint. William Clark presented his complaint and Julie Mattos, contract clerk for the Arts Commission, appeared on behalf of

<http://www.sfgov.org/sunshine/>

Howard Lazar and presented the response. Mr. Lazar was not present at the hearing and had not provided a response to Mr. Clark prior to the date of hearing.

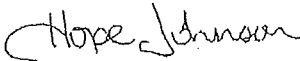
The Task Force found Mr. Lazar in violation of Sunshine Ordinance Sections:

- (1) 67.21(b) for failure to release the public information to Mr. Clark within 10 days of receiving the public records request;
- (2) 67.22(b) for failure to release public information to Mr. Clark on a timely and responsive basis; and
- (3) 67.21(e) for failure to send a knowledgeable representative to the Task Force hearing.

The Task Force further found Mr. Lazar had willfully violated these sections of the Sunshine Ordinance under Section 67.34 based on his pattern and practice of inadequate responses, repeated violations of the Sunshine Ordinance, and evident lack of intent to comply with the Sunshine Ordinance in the future.

An audio recording of the Task Force hearing on the complaint and supporting documentation is available on the Task Force's web site. Please contact the Task Force Administrator by email at sotf@sfgov.org or telephone at (415) 554-7724 to request this information be forwarded in hard copy format.

Thank you for your attention to this matter. Please confirm receipt of this notice to the Task Force Administrator.



Hope Johnson, Chair
Sunshine Ordinance Task Force

Encl.

cc: William Clark, Complainant
Howard Lazar, Street Artist Program Director, Arts Commission, Respondent
Jerry Threet, Deputy City Attorney

Date: August 23, 2011

Item No. 4 & 5

File No. 11045

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- William Clark against the Arts Commission**
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-

Completed by: Chris Rustom

Date: August 19, 2011

*This list reflects the explanatory documents provided

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: June 21, 2011
RE: Complaint No. 11045, William Clark v. San Francisco Arts Commission

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant William Clark ("Complainant") alleges that the San Francisco Arts Commission (the "Commission") violated the Ordinance by failing to respond to his May 27, 2011 email request for information answering a series of questions detailed in his complaint.

COMPLAINANT FILES COMPLAINT:

On June 14, 2011, Complainant filed a complaint with the Task Force alleging a violation of section 67.21(b) and 67.22(c).

JURISDICTION

The Commission is a department under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against the Arts Commission. The Commission did not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21(b) governs the time to respond to a request for a public record.
- Section 67.22 governs the release of oral public information.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that the Commission violated the Ordinance by failing to respond to his May 27, 2011 email request for information answering a series of questions detailed in his complaint. Complainant further alleges that, at the time the complaint was filed, the Commission had not responded to his request in any way.

The Commission has not responded to the Complainant's allegations.

FOX PLAZA • 1390 MARKET STREET, 6TH FLOOR • SAN FRANCISCO, CALIFORNIA 94102-5408
RECEPTION: (415) 554-3800 • FACSIMILE: (415) 437-4644

n:\coden\as2011\9600241\00714650.doc

MEMORANDUM

TO: Sunshine Task Force
DATE: July 22, 2011
PAGE: 2
RE: *Complaint No. 11045, William Clark v. San Francisco Arts Commission*

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Commission complied with the requirements¹ of the Ordinance and the Public Records Act?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

¹ The Task Force previously has been advised that Section 67.22 requires that a department must designate a knowledgeable person to respond to oral inquiries from the public, so long as it would not take the designated representative longer than 15 minutes to find the responsive information. Because the Task Force has nevertheless found repeatedly that any City employee must respond to oral inquiries by the public, no additional analysis of this issue is again provided here.

MEMORANDUM

TO: Sunshine Task Force
DATE: July 22, 2011
PAGE: 3
RE: *Complaint No. 11045, William Clark v. San Francisco Arts Commission*

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

- (a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- (b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.
- (c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.

Release of oral public information shall be accomplished as follows:

- (a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.
- (b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

MEMORANDUM

TO: Sunshine Task Force
DATE: July 22, 2011
PAGE: 4
RE: *Complaint No. 11045, William Clark v. San Francisco Arts Commission*

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.



<complaints@sfgov.org>

06/14/2011 06:13 PM

To <soft@sfgov.org>

cc

bcc

Subject Sunshine Complaint

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:San Francisco Arts
Commission

CONTACTED:Howard Lazar

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:Section 67.22(c) and Section 67.21(b)

DESCRIPTION:On September 21, 2009, a proposal to designate 4 new street artist selling spaces on Hayes Street which my brother and I presented to the SF Arts Commission and the Arts Commission approved was calendared to be heard by the Board of Supervisors' Land Use and Economic Development Committee. At that meeting, instead of voting on our proposal the committee put our proposal to the Call of the Chair. The committee did this as a result of being told by Mr. Cancel and Mr. Lazar that the Arts Commission was withdrawing their support for our proposal and instead supporting an alternative proposal offered to them by the Hayes Valley Merchants Association which would connect artists in the Street Artist Program with businesses and galleries in the Hayes Valley business district. Since we hadn't heard anything from the Arts Commission regarding the Hayes Valley merchant Association's alternative proposal since that time, we sent Howard Lazar the following email on May 27, 2011: Mr. Lazar, I am not requesting any documents but I would like an answer to the following questions: Has anything developed from the proposal Director of Cultural Affairs Luis Cancel and Mr. Lazar received in 2009 from Hayes Street Merchants President Russell Pritchard to commence, "a partnership" between the Arts Commission's Street Artists Program and the Hayes Valley Merchants Association "to connect artists within the Street Artists Program with Hayes Valley merchants to develop and institute a program of matching up artists and merchants" which "will provide another avenue for local artists to show and to sell their work."? Has the Arts Commission and/or the Hayes Street Merchants done anything to implement the Hayes Street Merchant's alternative proposal to our proposal which was to designate 4 street artist sales spaces on Hayes Street?
William J. Clark It has been more than 10 days since I sent Mr. Lazar the email and as of today, I have not received any response or information from Mr. Lazar regarding this public information request. We are requesting this information pursuant to the provisions of the San Francisco Sunshine Ordinance. William J. Clark Robert J. Clark

HEARING:Yes

PRE-HEARING:No

DATE:June 14, 2011.

NAME:William J. Clark

ADDRESS:P. O. Box 882252

CITY:SF

ZIP:94188

PHONE:415-822-5465

CONTACT_EMAIL:billandbobclark@access4less.net
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No



Bill and Bob Clark
<billandbobclark@access4less.net>

To soff@sfgov.org

cc

07/29/2011 05:11 PM

bcc

Please respond to
Bill and Bob Clark
<billandbobclark@access4less.net>

Subject Complaint #11045_William & Robert Clark v Arts
Commission

Hi Chris,

I would like you to put this email which includes a copy of the announcement by the Hayes Valley Merchant Association President Russell Pritchard about his alternative proposal to our proposal to designate 4 Street Artist selling spaces on the 300 block of Hayes Street.

This proposed partnership between the Hayes Valley Merchant Association, the SF Arts Commission and the Street Artist Program is the alternative proposal we were referring to when we asked Howard Lazar for information about its status which he refuses to provide us.

Howard Lazar's refusal to provide us with the information regarding the status of this Hayes Valley Merchant Association alternative proposal is why we filed our complaint #11045.

William J. Clark
Robert J. Clark

Announcement: A partnership between the SF Arts Commission, Street Artist Program, and The Hayes Valley Merchants Association.

Purpose: To connect artist within the Street Artist Program with Hayes Valley Merchants. This connection will provide a retail opportunity for the artists.

As President of the Hayes Valley Merchants Assn, I am pleased to work with Howard Lazar of the SF Arts Comm. Street Artist program, to develop and institute a program of matching up artists and merchant's. I will create a data base of merchants interested in showing work by local artist and I will connect the appropriate merchant with the artists.

The merchants and artists will work together directly, to establish their working relationship. Our role is simply to orchestrate the connection. Many Hayes Valley Merchants currently show work by local artists, as I do in my store Zonal, this program will provide another avenue for local artists to show and to sell their work.

Russell Pritchard
Hayes Valley Merchants
415.255.9307

-----Original Message-----

>From: sotf@sfgov.org
>Sent: Jul 22, 2011 4:48 PM
>To: billandbobclark@access4less.net, Howard.Lazar@sfgov.org
>Cc: Jill.Manton@sfgov.org, SanSan.Wong@sfgov.org, Kan.Htun@sfgov.org,
Alyssa.Licouris@sfgov.org, Adine.Varah@sfgov.org, pj@pjcommunications.com
>Subject: SOTF hearing reminder: #11045_William & Robert Clark v Arts
Commission

>

>

>This is a reminder that a hearing is scheduled with the Sunshine Ordinance
>Task Force, regarding the above titled complaint, to hear the merits of the
>complaint and to issue a determination.

>

>Date: Tuesday, July 26, 2011
>Location: City Hall, Room 408
>Time: 4:00 p.m.

>

>Complainants: Your attendance is required at this meeting/hearing.

>

>Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance,
>the custodian of records or a representative of your department, who can
>speak to the matter, is required at the meeting/hearing.

>

>Attached is a copy of the Deputy City Attorney's Instructional Letter to
>the Task Force.

>

>(See attached file: 11045_Instructional.pdf)

>

>To access the agenda please click on the link below. Then click on the
>associated item number to access the packet material related to your item.

>

><http://www.sfbos.org/index.aspx?page=12112>.

>

>Chris Rustom
>Sunshine Ordinance Task Force
>1 Dr. Carlton B. Goodlett Place
>City Hall, Room 244
>San Francisco, CA 94102-4689
>OFC: (415) 554-7724
>FAX: (415) 554-7854
>SOTF@sfgov.org



Bill and Bob Clark
<billandbobclark@access4less.net>

08/01/2011 01:14 PM

Please respond to
Bill and Bob Clark
<billandbobclark@access4less.net>

To soif@sfgov.org

cc

bcc

Subject: Complaint #11045_William & Robert Clark v Arts
Commission

Hi Chris,

I want a copy of this email put into the file for my complaint #11045.

I would like the task force members to read the portion of the minutes for the July 13, 2011 Street Artist Committee which I included below in this email.

Apparently, Mr. Lazar has the time to meet with and answer ALL the questions of 27 representatives of different cultural institutions from 15 provinces in China about the Street Artist Program and lottery system but he doesn't have the time to answer my questions about the Street Artist Program or have the time to meet with the Sunshine Ordinance Task Force and answer any questions the members of the task force would like him to answer.

William J. Clark

STREET ARTISTS COMMITTEE

Wednesday, July 13, 2011

3:00 p.m.

25 Van Ness Avenue, Suite 70
Minutes

Members present: Greg Chew, Chair, Amy Chuang, Sherene Melania, Jessica Silverman

Members absent: John Calloway

Staff present: Street Artists Program Director Howard Lazar

Commissioner Chew, Chair, called the meeting to order at 3:02 p.m.

1. Discussion. Street Artists Program Director's Report.

Street Artists Program Director Howard Lazar reported on the following:

Meeting with China Ministry: Mr. Lazar was approached by the China Ministry of Culture Delegation to discuss how the Street Artists Program works including lottery and licensing processes as well as the Arts Commission in general. On July 6, 2011, Mr. Lazar and Program Assistant Alyssa Licouris met with 27 individuals who represented different cultural institutions from 15 provinces of China and their interpreter. Mr. Lazar felt honored that the Ministry chose

to meet with the Street Artists Program.

Date: Oct. 25, 2011

Item No. 3

File No: _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force August 23, 2011
- _____
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Completed by: Chris Rustom

Date: Oct. 20, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

Sunshine Ordinance Task Force



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7724
Fax No. 554-7854
TDD/TTY No. 544-5227

<http://www.sfgov.org/sunshine/>

**SUNSHINE ORDINANCE TASK FORCE
REGULAR MEETING
DRAFT MINUTES**

Tuesday, August 23, 2011
4:00 p.m., City Hall, Room 408

Task Force Members

Seat 1	David Snyder, Esq.	Seat 8	Bruce Wolfe (Vice chair)
Seat 2	Richard Knee	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Hope Johnson (Chair)
Seat 4	Suzanne Manneh	Seat 11	Jackson West
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	(Vacant)
Seat 7	Jay Costa	Ex-officio	(Vacant)

Call to Order 4:20 P.M.

Roll Call Present: Snyder, Knee, Washburn, Costa, West, Johnson
Absent: Cauthen, Manneh, Knoebber, Wolfe, Chan

Agenda Changes: Item 27 heard after Item 2.

Deputy City Attorney: Jerry Threet
Clerk: Chris Rustom

Member Knee, seconded by Member Washburn, motioned to excuse Members Cauthen, Manneh, Knoebber, Wolfe and Chan.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Absent: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

1. 11048 Determination of jurisdiction on complaint filed by Pastor Gavin against Supervisor Chiu and Supervisor Mar for allegedly violating Sunshine Ordinance requirements for public notices and agendas.
Approx. 0:18:00

Member Knee, seconded by Member Snyder, motioned to find jurisdiction.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chian

2. 11048 Hearing on complaint filed by Pastor Gavin against Supervisor Chiu and Supervisor Mar for allegedly violating Sunshine Ordinance requirements for public notices and agendas.

Heard: Complainant Pastor Gavin presented her complaint. Speaking in support of the complainant were four member of the public who wished to remain anonymous, Laura Traveler of the Parkmerced Action Coalition, Mitchell Omerberg of the Affordable Housing Alliance and Steve Zeltzer of United Public Workers for Action. Lin-Shao Chin, an legislative aide to Supervisor Eric Mar, provided the response.

Member Knee, seconded by Member Costa, motioned:

- (a) to find Supervisor Eric Mar, the Chair of the Land Use Committee, in violation of Sections 67.7(b) for not providing any explanatory document that was provided to the policy body in connection with an agenda item, and Section 67.15(a) & (b) for failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of 14 pages of amendments.
- (b) to continue the item to the September Task Force meeting and name Board President Chiu, Supervisor Wiener and Supervisor Cohen, the two other committee members, as respondents.

Public Comment: Ray Hartz, Director San Francisco Open Government, said he supported the motion because the committee, knowing that there was a potential Sunshine Ordinance violation, disregarded the law and went ahead to vote on the item. Tomas Picarello said Board President David Chiu should also be accountable because he introduced the additional documents in question. He said Board President Chiu needs to explain why the documents were introduced without public comment. Nick Pasquarello said all the issues surrounding Board President Chiu and Committee Chair Mar have been discussed and needed to be voted on today and the others at another date.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

3. 11043 The Compliance & Amendments Committee has referred Case No. 11043 Alicia Gamez v Department of Public Health back to the full Task Force with a recommendation that it find all Noise Ordinance Task Force meetings, recommendations, and documents invalid, and monitor DPH compliance with the committee's order to produce records based on the Order of Determination.

Approx.
1:29:49

Heard: Complaint Alicia Gamez and Respondent Dr. Rajiv Bathia of the Department of Public Health provided the Task Force with a progress report in complying with the Order of Determination.

Members noted that the Noise Ordinance Task Force, which is expected to sunset in a few weeks, now knows the requirements of the Sunshine Ordinance, and that there was an ongoing dialogue and the production of records between both parties.

Member Washburn, seconded by Member Costa, motioned to send a letter to the Board of Supervisors, the Mayor, the City Attorney and the Department of Public Health to inform them how NOTS violated the public meeting requirements from the very beginning and the possibility of similar bodies violating the same rules, and that when similar bodies are created that the staff be made aware of the rules that govern it, and urge the Board of Supervisors to extend the life of NOTF for a certain period to allow for public participation.

Public Comment: Tomas Picarello said it was unfortunate that NOTF had a deputy city attorney on it and no advice was given to rectify the issue. He said the letter should also go to the Entertainment Commission because it also deals with noise. A neighbor of the complainant presented copies of 50 complaints that were filed with the Police Department. She said the inspector was only concerned by the noise made by the compressor and not the noise made by the patrons and other machinery associated with the business.

Matter concluded.

Five-minute recess declared.

4. 11045 Determination of jurisdiction on complaint filed by William Clark against the Arts Commission for allegedly violating Sections 67.22(e) and 67.21(b) of the Sunshine Ordinance.

Approx.
2:24:12

Member Knee, seconded by Member Costa, motioned to find jurisdiction.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

5. 11045 Hearing on complaint filed by William Clark against the Arts Commission for allegedly violating Sections 67.22(e) and 67.21(b) of the Sunshine Ordinance.

Heard: Complainant William Clark presented his case. Julio Mattos presented the Arts Commission's position.

Member Washburn, seconded by Member Costa, motioned to find Howard Lazar of the Arts Commission in violation of Sections 67.21(b) for not releasing the information within 10 days following receipt of the request, 67.22(b) for not releasing information on a timely and responsive basis, and 67.21 (e) for not sending a knowledgeable person to the hearing.

Based on the respondent's protracted pattern of responses; on respondent's repeated violation of the Sunshine Ordinance; and respondent's evident lack of intent to comply with the Sunshine Ordinance in the future, the Task Force finds Mr. Lazar in willful violation under Section 67.34 and has referred the matter to the Ethics Commission.

Public Comment: Robert Clark said Mr. Lazar attended last month's Task Force meeting and could have passed on the information. He said it was outrageous for Mr. Lazar to be able to answer numerous questions from a Chinese delegation but unable to answer one question from the Task Force.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

6. 11047 Determination of jurisdiction on complaint filed by Dorian Maxwell against the San Francisco Municipal Transportation Agency for allegedly not keeping withholding to a minimum.

Matter continued to September 27, 2011.

7. 11047 Hearing on complaint filed by Dorian Maxwell against the San Francisco Municipal Transportation Agency for allegedly not keeping withholding to a minimum.

Matter continued to September 27, 2011.

8. 11042 Determination of jurisdiction on complaint filed by Cynthia Carter against the San Francisco Municipal Transportation Agency for allegedly denying her access to her personnel file.
Approx. 2:58:00

Member Knee, seconded by Member Washburn, motioned to find jurisdiction.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

9. 11042 Hearing on complaint filed by Cynthia Carter against the San Francisco Municipal Transportation Agency for allegedly denying her access to her personnel file.

Heard: Complainant Cynthia Carter presented his case. Dorian Maxwell spoke in support of the complainant. Kathy Fowlis presented the San Francisco Municipal Transportation Agency's position.

Chair Johnson, seconded by Member Knee, motioned to find Caroline Celaya in violation of Sections 67.21(b) for not providing the documents in a timely manner, 67.21(c) for failure to direct the complainant to where the other documents could possibly be, 67.21(e) for not sending a knowledgeable person to the hearing, and that the MTA provide Ms. Carter with copies of the write ups from her supervisors, mechanical reports on defective busses and the complete Central Control reports relative to her case.

Public Comment: Ray Hartz, Director San Francisco Open Government, said Ms. Carter was at a total disadvantage at her hearing because she could not present a solid defense with facts and figures. A member of the public said it seemed that Ms. Carter's case was not an isolated incident because Mr. Maxwell also has to go through the same experience. He also said the City loses money when it has to hire attorneys when it gets sued for wrongful termination.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

Matter referred to Compliance and Amendments Committee.

10. 11046 Determination of jurisdiction on complaint filed by Charles Pitts against the Shelter Monitoring Committee for allegedly calling a recess to discuss an item while a meeting was in progress.
Approx.

Member Knee, seconded by Member Snyder, motioned to continue the matter to the September 27, 2011, meeting.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

11. 11046 Hearing on complaint filed by Charles Pitts against the Shelter Monitoring Committee for allegedly calling a recess to discuss an item while a meeting was in progress

See Item 10.

12. 11054 Determination of jurisdiction on complaint filed by Ray Hartz against Luis Herrera of the Public Library for allegedly failing to include his 150-word summaries in the body of the minutes.
Approx.
3:56:20

Member Knee, seconded by Member Costa, motioned to find jurisdiction.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson.
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

13. 11054 Hearing on complaint filed by Ray Hartz against Luis Herrera of the Public Library for allegedly failing to include his 150-word summaries in the body of the minutes.

Heard: Complainant Ray Hartz presented his case. The Public Library was represented by Sue Blackman and Library Commission Vice President Lee Munson.

Member Costa, seconded by Chair Johnson, motioned to find Luis Herrera of the Public Library in violation of Sections 67.15(d) for abridging public comment, 67.16 for not including the 150-word summary

in the body of the minutes, and 67.34 for willful violation.

Member Knee, seconded by Member West motioned to separate Section 67.15(d) from the motion.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

On the motion to find a violation of Sections 67.16 for not including the 150-word summary in the body of the minutes, and 67.34 for willful violation.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

On the motion to find a violation of Sections 67.15(d).

Public Comment: None.

The motion carried by the following vote:

Ayes: 4 - Snyder, Costa, West, Johnson
Noes: 2 - Knee, Washburn
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

Chair Johnson, seconded by Member Knee, motioned to rescind the vote.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

On the motion to find a violation of Sections 67.15(d).

Public Comment: None.

The motion failed by the following vote:

Ayes: 3 - Costa, West, Johnson
Noes: 3 - Snyder, Knee, Washburn
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

Five minute recess declared.

14. 11055 Determination of jurisdiction on complaint filed by Ray Hartz against Luis Herrera of the Public Library for allegedly failing to assist in identifying documents.

Approx.
4:48:00

Member Washburn, seconded by Member Knee, motioned to find jurisdiction.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

15. 11055 Hearing on complaint filed by Ray Hartz against Luis Herrera of the Public Library for allegedly failing to assist in identifying documents.

Heard: Complainant Ray Hartz presented his case. The Public Library was represented by Sue Blackman. Library Commission Vice President Lee Munson spoke in favor of Ms. Blackman.

No motion was made.

Matter concluded.

16. 11056 Determination of jurisdiction on complaint filed by Allen Grossman against Dennis Herrera and Jack Song of the City Attorney's Office for allegedly not responding to an Immediate Disclosure Request on a timely basis and not responding to a request for public information.

Continued to September 27, 2011.

17. 11056 Hearing on complaint filed by Allen Grossman against Dennis Herrera and Jack Song of the City Attorney's Office for allegedly not responding to an Immediate Disclosure Request on a timely basis and not responding to a request for public information.

Continued to September 27, 2011.

18. Issuing public reports evaluating compliance with the Sunshine Ordinance and related California laws by City Departments and Officials pursuant to Sec. 67.30(c).
Approx. 5:07:00
Members discussed the topic and, without objection, continued the matter to the September 27, 2011, meeting because quorum was about to be lost.
Public Comment: Ray Hartz, Director San Francisco Open Government, suggested creating a list of those who repeatedly violate a particular section of the ordinance and then seek their department head's input for inclusion in a report.
19. Amending Article VI, Sec. 1 of the Sunshine Ordinance Task Force By-Laws to eliminate or suspend the Complaint Committee. (discussion and action item)
No quorum.
20. Amending Article VI, Sec. 1 of the Sunshine Ordinance Task Force By-Laws to create a Technology Committee.
No quorum.
21. Supervisor of Records Report.
No quorum.
22. Approval of January 4, 2011, special meeting minutes.
No quorum.
23. Approval of January 20, 2011, special meeting minutes.
No quorum.
24. Approval of January 25, 2011, regular meeting minutes.
No quorum.
25. Report: Compliance and Amendments Committee meeting of August 9, 2011.
No quorum.
26. Administrator's Report.
No quorum.

27. Public comment on matters not listed on the agenda.

Approx.

1:28:15 None.

28. Announcements, comments, questions, and future agenda items from the Task Force members.

No quorum.

Adjournment

Having lost quorum with the departure of Member Snyder, the Task Force adjourned at the hour of 9:48 p.m.

This meeting has been audio recorded and is on file in the Office of the Sunshine Ordinance Task Force, Rm. 244, City Hall, No. 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102, Phone 554-7724 and at <http://www.sfbos.org/index.aspx?page=9811>