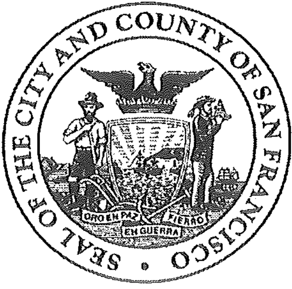

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

PAUL. A. RENNE
CHAIRPERSON

BRETT ANDREWS
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: May 19, 2015

To: Members, Ethics Commission

From: Jesse Mainardi, Deputy Executive Director

Re: **Continuance of Hearing – Ethics Complaint 03-150127**

This matter concerns an allegation by Paula Datesh that Rebekah Krell, the Deputy Director of the Arts Commission, violated the Sunshine Ordinance when responding to a document request by Mr. Datesh. It was heard by the Commission on April 27, 2015, and the Commission continued the matter to May 27, 2015.

At the April meeting, the Commission decided to consider the merits of the matter, even though Ms Datesh's failure to comply with Commission regulations made her complaint subject to dismissal. The Commission determined that Ms. Krell committed a non-willful violation of the Sunshine Ordinance, section 67.27(a), by failing to cite a specific exemption to justify the non-disclosure of a public record.

The Commission did not determine whether the record at issue (an email) was properly withheld. Instead, the Commission determined that it needed to review the withheld record in order decide if the privilege to withhold the record had been waived by Ms. Krell. More specifically, the Commission stated that it needed the email to resolve conflicting testimony from the parties as to whether Ms. Krell read the contents of the withheld record to Ms. Datesh.

The withheld record was provided to Commissioners for in camera review pursuant to procedures set forth by the City Attorney's Office.[1] However, staff understands that Ms. Datesh will likely not attend the continued hearing on May 27, 2015. Ms. Datesh has nevertheless requested that the Commission still hear the matter despite her absence. Ms. Krell also stated that she wished the matter to be heard.

In this regard, the Commission may wish to decide the following issues:

1. Did Ms. Krell waive the exemptions contained in Evidence Code, sections 1040 and 1041 for confidential information?

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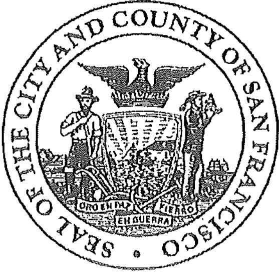
[1] The withheld record was not provided to Commissioner Keane who recused himself from this matter.

25 Van Ness Avenue, Suite 220 • San Francisco, CA 94102-6053• Phone (415) 252-3100• Fax (415) 252-3112
E-Mail Address: ethics.commission@sfgov.org Web site: http://www.sfethics.org

2. Does Sunshine Ordinance, section 67.24(i), prohibit a City department from withholding records based on the exemptions contained in Evidence Code, sections 1040 and 1041 for confidential information?

Documents first provided to the Commission in connection with this matter for the April 27, 2015 meeting are attached. Also attached are documents received from Ms. Datesh and from David Pilpel after the April hearing.



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COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: April 21, 2015

To: Members, Ethics Commission

From: John St. Croix, Executive Director

Re: **Hearing – Ethics Complaint 03-150127**

This complaint will be heard under Chapter Three of the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations"). Staff has scheduled this matter to be heard during the next regular Ethics Commission meeting at **5:30 PM on Monday, April 27, 2015**, in **Room 400** in City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

Both Ms. Datesh ("Complainant") and Ms. Krell ("Respondent") were issued the Report and Recommendation and were noticed of the hearing by e-mail and US Mail/Interoffice Mail on April 8, 2015. Both the Complainant and the Respondent have submitted a response to the Report and Recommendation, all of which are attached. In addition, the Office of the City Attorney submitted a letter to the Commission "to provide advice on an issue of general importance to City government." Staff has included that letter with the packet.

Neither the Complainant nor the Respondent are required to attend the hearing. However, if any 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. At the hearing, the Complainant and the Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance.

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

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BEVERLY HAYON
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: April 8, 2015

To: Rebekah Krell, Deputy Director and CFO, Arts Commission, Respondent
Paula Datesh, Complainant

From: John St. Croix, Executive Director

Re: **NOTICE – Hearing – Ethics Complaint 03-150127**

The above referenced complaint will be heard under Chapter Three of the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations"). Staff has scheduled this matter to be heard during the next regular Ethics Commission meeting at **5:30 PM on Monday, April 27, 2015**, in Room 400 in City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

Neither the Complainant nor the Respondent are required to attend. However, if any 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. The Complainant or the Respondent must request any continuance of the hearing date in writing. The request must be delivered to the Commission Chairperson, and to all other parties, no later than ten business days before the date of the hearing, or no later than Monday, April 13, 2015.

Under Chapter Three of the Regulations, the Executive Director shall prepare a written Report and Recommendation summarizing his or her factual and legal findings. The Report and Recommendation and all accompanying documents are enclosed.

The Complainant and Respondent may each submit a written response to the Director's Report and Recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, the Complainant and Respondent may each submit evidence through declaration. If the Complainant or Respondent submits a response, he or she must deliver the response to the Commission, and to all other parties, no later than five business days prior to the date of the hearing, or no later than Monday, April 20, 2015. Any response may not exceed 10 pages, double-spaced, excluding attachments. The Complainant or Respondent must deliver eight copies of the response, or may send the response as an email attachment, to the Executive Director.

The Complainant and the Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance.

Chatfield, Garrett (ETH)

From: Chatfield, Garrett (ETH)
Sent: Wednesday, April 08, 2015 8:12 AM
To: 'atreboux@aol.com'; Krell, Rebekah (ART)
Subject: Report and Recommendation Ethics Complaint 03-150127
Attachments: Hearing.Packet.0315.pdf

Please find attached the Notice of Hearing and the Report and Recommendation for the above referenced matter.

A hard copy will also be sent.

Thank you,

Garrett Chatfield
San Francisco Ethics Commission
City and County of San Francisco
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(P) 415.252.3100/(F) 415.252.3124
garrett.chatfield@sfgov.org
http://www.sfethics.org

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ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

PAUL A. RENNE
CHAIRPERSON

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BEVERLY HAYON
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: April 8, 2015

To: Members, Ethics Commission

Cc: Rebekah Krell, Deputy Director and CFO, Arts Commission, Respondent
Paula Datesh, Complainant

From: John St. Croix, Executive Director JL for JSC

Re: **REPORT AND RECOMMENDATION**
ETHICS COMMISSION COMPLAINT NO. 03-150127

INTRODUCTION AND JURISDICTION

This report and recommendation has been prepared pursuant to Chapter Three of the Ethics Commission's Regulations for Handling Violations of the Sunshine Ordinance ("Regulations") with regard to a complaint filed by Ms. Paula Datesh on January 22, 2015, alleging a violation of the Sunshine Ordinance by Arts Commission Deputy Director Rebekah Krell.

The Regulations indicate that the Commission shall handle: (1) complaints alleging Sunshine Ordinance violations by elected officials and department heads: (2) complaints regarding public records requests if the District Attorney and/or Attorney General have taken no action after being notified of a failure to produce those records; and (3) staff initiated complaints concerning the Sunshine Ordinance. (Regulations, Chapter 3, Section I.A., copy attached.) The allegation discussed herein involves an Arts Commission employee and, because staff is aware that the Complainant did not

notify the District Attorney and/or Attorney General of Respondent's alleged failure to comply with the Sunshine Ordinance, staff understands that the Commission may dismiss this complaint without considering its merit. Nevertheless, staff has analyzed the allegations should the Commission wish to consider the merits of this matter.[1]

Under the Regulations, the Commission must make a determination on alleged violations of the Ordinance that it will consider at a hearing in open session. The Commission is not bound by the Executive Director's recommendations contained herein.[2]

SUMMARY OF APPLICABLE LAW

Ordinance, section 67.21(b), provides in relevant part, that 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."

Ordinance, section 67.24(i), provides in relevant part, that an exemption from disclosure may not be "based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of [the Ordinance] ... or ... [of the] California Public Records Act that is not forbidden by this ordinance."

Ordinance, section 67.25, provides in relevant part, that a "[n]otwithstanding 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

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[1] Staff also notes that the Commission's complaint form did not accurately reflect the above rule at the time Ms. Datesh submitted her complaint.

[2] The investigation of this complaint exceeded the required 30-day time period because Ms. Datesh made three complaints against various Arts Commission employees on January 22, 2015, and two additional complaints against Arts Commission employees on February 15, 2015. (*See* Regulations, Ch. 3, § II.A.) Staff commenced its investigation into all of the complaints, but on March 10, 2015, Ms. Datesh withdrew all of her allegations except for the one presented in this Report and Recommendation. Thus, complaint numbers 02-150127 and 04-150127 were closed.

shall be satisfied no later than the close of business on the day following the day of the request. . . [so long as] 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."

Ordinance, section 67.27(a), provides that a withholding of records shall be justified in writing by citing either a specific permissive exemption in the California Public Records Act, provided that the exemption is not forbidden to be asserted by the Ordinance.

California Evidence Code, sections 1040(b)(2) and 1041(a)(2) (attached), permit a public entity to withhold information obtained in confidence, including the identity of an informant, if it is against the public interest because there is a necessity for preserving the confidentiality of that information that outweighs the necessity for disclosure in the interest of justice.

California Government Code, section 6254(k), incorporates the privileges contained within Evidence Code sections 1040(b)(2) and 1041(a)(2), into the Public Records Act ("PRA").

PRA, section 6255, states that an agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of the PRA 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.

ALLEGATION

Ms. Datesh alleges that Respondent Krell failed to produce public records.

EVIDENCE CONSIDERED AND FACTUAL FINDINGS

Staff's investigation in this matter included an interview with Ms. Datesh and Mr. Krell, and a review of the records request and response, each of which is attached to this Report and Recommendation. Two Commission investigators also reviewed the email at issue on site at the Arts Commission. From its investigation, staff made the following factual findings.

On January 16, 2015, Ms. Datesh[3] made an Immediate Disclosure Request ("IDR") to Ms. Krell requesting "all emails regarding an inspection Howard Lazar made on Market between 4-5th Street on Friday 2, 2015 [sic]." On January 20, 2015, Ms. Krell responded stating that "[d]ue to the necessity, and our right, to maintain confidentiality in the course of an investigation, we have no documents responsive to your request."[4] Ms. Krell later told staff that an email record does exist that was responsive to the records request, but that it was related to an investigation of a complaint against Ms. Datesh, who is an artist participating in the Street Artists Program. She stated that the email was withheld to keep the complainant's name and identifying information confidential, and that the City Attorney's Office has long advised the Arts Commission that confidential information related to such investigations may be withheld to maintain an informant's confidentiality. She also stated that the content of the email contained information that would identify the complainant and could not be redacted to separate confidential from non-confidential information, thus the entire email was withheld.

LEGAL FINDINGS

Ms. Krell provided a reason for withholding the email in her response to Ms. Datesh, and she stated to staff that she believed citing "confidentiality" met the requirement of Ordinance, section 67.27(a). However, Ordinance, section 67.27(a), requires a citation to a specific permissive exemption in the PRA that allows for the withholding. In this case, based on Ms. Krell's statements to staff, PRA section 6254(k), is the specific permissive exemption that should have been cited. Because Ms. Krell did not provide the citation to a specific permissive

[3] Ms. Datesh is also known as Ann Treboux.

[4] Ms. Datesh made her request as an IDR, pursuant to Ordinance, section 67.25, which requires a response to a public records request by the close of business the day following the day of the request. January 16, 2015, was a Friday and all City offices were closed on Monday, January 19, 2015, for a public holiday. Thus, Ms. Krell timely responded by the next business day.

exemption, she committed a violation of Ordinance, section 67.27(a). However, it does not appear that the violation was willful.

On a related issue, Ms. Krell stated to staff that the Arts Commission routinely conducts investigations of complaints, and that in this case the Arts Commission determined that the necessity in keeping the complainant's information confidential outweighed the necessity for disclosure in the interests of justice. Staff reviewed the email at issue and concluded that the content of the email contained information that would have revealed the identity of the complainant if it were not redacted in its entirety.

The Arts Commission withheld the email based on the standing advice of its Deputy City Attorney, relying on two privileges contained within the California Evidence Code, incorporated into the PRA through the specific exemption of PRA, section 6254(k). The first, California Evidence Code, section 1040(b)(2), allows a public entity to withhold information acquired in confidence if disclosure is "against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure *in the interest of justice*." (Emphasis added.)

The second, California Evidence Code, section 1041(a)(2), similarly allows a public entity to refuse to disclose the identity of a complainant if disclosure is "against the public interest because the necessity for preserving the confidentiality of his or her identity outweighs the necessity for disclosure *in the interest of justice*" (emphasis added), and the information is furnished in confidence to an administrative agency charged with the administration or enforcement of law alleged to be violated.

Although Ordinance, section 67.24(i), allows for a withholding based on an exemption provided for by the California PRA, that same section also prohibits City agencies from asserting

an exemption for withholding any document or information based on a finding or showing that "the public interest in withholding the information outweighs the public interest in disclosure." (*See* Ord. § 67.24(i).) Ordinance, section 67.24(i), appears to allow for the use of a public records exemption, so long as City agencies refrain from using either the general balancing test specifically set forth in PRA, section 6255, or any other PRA exemption that relies on the same balancing test.

Even if Ordinance, section 67.24(i), is read to prohibit the use of any specific PRA exemption that incorporates the general balancing test, it is not entirely clear whether Ordinance, section 67.24(i), prohibits withholding records based on the exemptions in California Evidence Code, sections 1040(b)(2) and 1041(a)(2). The balancing test language of the two Evidence Code sections differs from the balancing test language referenced in Ordinance, section 67.24(i) and PRA, section 6255 (e.g., the balancing tests in the Evidence Code sections specifically reference "the interest of justice," whereas the other balancing tests do not). If Ordinance, section 64.24(i), is read to prohibit only the general balancing test provided for by PRA, section 6255, while allowing for reliance on a specific permissive exemption that incorporates a similar, but not identical balancing test, then the Arts Commission properly applied the Evidence Code provisions and properly withheld the email at issue.

However, if the Commission determines that Ordinance, section 67.24(i), prohibits the reliance on any exemption that incorporates any balancing test, then regardless of the proper application of Evidence Code, sections 1040 and 1041, the Arts Commission would likely be prohibited from relying on those Evidence Code sections to withhold the email. The California Supreme Court has stated that "section 1040 involves a balancing test *similar to* that required by section 6255" and that "[t]he weighing process mandated by Evidence Code section 1040

requires review of the *same elements* that must be considered under section 6255." (*See ACLU v. Deukmejian* (1982) 32 Cal. 3d 440, 446 n. 6; *CBS, Inc. v. Block* (1986) 42 Cal. 3d 646, 656; emphases added.) Thus, "rejection of the claim of exemption under section 6255 on the ground that the public interest weighs in favor of disclosure similarly requires rejection of the claims of exemption under . . . Evidence Code section 1040." (*CBS, Inc.*, *supra*, 42 Cal.3d at 656.)

On balance, it seems that the Supreme Court's language likely suggests that Ordinance, section 67.24(i), prohibits reliance on the balancing tests found in California Evidence Code, sections 1040(b)(2) and 1041(a)(2), given their similarity to the balancing test found in PRA, section 6255. Considering the language from the Supreme Court and that the Ordinance must be broadly interpreted, it appears that the Arts Commission may have been prohibited from withholding the requested record, and by doing so committed a violation of Ordinance, section 67.21(b), because the record that was withheld would not be exempt under the Ordinance.

However, it does not appear that any violation was willful given the Arts Commission's reliance on advice from the City Attorney's office, the ambiguity of Ordinance, section 67.24(i), and that there has been no prior determination regarding the applicability of that section.

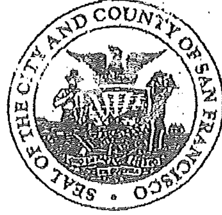
RECOMMENDATION

Based on the above reasons, staff recommends that the Commission find that: (1) Ms. Krell and/or the Arts Commission committed a *non-willful* violation of Ordinance, section 67.27(a), by failing to provide the required justification for the withholding of a public record; and (2) Ms. Krell and/or the Arts Commission committed a *non-willful* violation of Ordinance, section 67.21(b), by withholding a public record.

Ethics Complaint Number 03-150127

Supporting Documents to the Report and Recommendation

San Francisco
Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

FILED
2015 JAN 22 AM 9:44
SAN FRANCISCO
ETHICS COMMISSION
BY

San Francisco Ethics Commission
Complaint Form

Please type or print legibly, and attach additional pages if necessary.

Complainant Information*

Name of Complainant	PAULA DATESH
Address	150 SUTTER ST. #738
Zip	SF, CA 94104
Home Phone	516-254-5938
Work Phone	atreboux @ aol.com

* *If you wish to remain anonymous, do not complete this section or the verification below.*

Respondent Information

Name of Respondent	REBEKAH KRELL
Business Title	CEO
City Department	ARTS COMMISSION
Business Address	25 VAN NESS AVE #302
Work Phone	415-252-4665

☒ *If more space is needed to list additional complainants or respondents, please check this box and attach additional sheets as necessary.*

Type of Allegation(s)

Check the appropriate box(es) below indicating the type of allegation(s) stated in this complaint.

- ☐ Campaign Finance Reform Ordinance
- ☐ Campaign Consultant Ordinance
- ☐ Lobbyist Ordinance
- ☒ Sunshine Ordinance (The Ethics Commission can only investigate alleged violations of the Sunshine Ordinance if: 1) you notified the Respondent of the alleged violation at least 40 days before filing a complaint with the Ethics Commission; and 2) the Respondent did not cure the alleged violation).
- ☐ Multiple Campaign Accounts
- ☐ False Endorsements on Campaign Literature
- ☐ Political Activity by City Officers and Employees
- ☐ Acceptance of Gifts, Contributions and Future Employment by Public Officials Who Approve Contracts and Other Public Benefits
- ☐ Contracts Between Members of Boards and Commissions and the City
- ☐ Dual Officeholding for Compensation
- ☐ City Officers Representing Private Parties Before City Boards and Commissions
- ☐ Intimidation or Retaliation by a City Officer or Employee Against Persons Who File Complaints with the Ethics Commission
- ☐ Financial Conflicts of Interest by City Officers and Employees
- ☐ Payment for Appointment to City Service or Employment
- ☐ Disclosure of Confidential Information by City Officers and Employees
- ☐ City Officer or Employee Appearing Before Former Board or Agency
- ☐ Private Compensation of City Officers and Employees for City Service
- ☐ City Officers or Employees Voting on Own Character or Conduct
- ☐ Decisions Involving Family Members
- ☐ Disclosure of Personal, Business or Professional Relationships
- ☐ Referrals
- ☐ Other** ______________________________

*** Complaints that allege that a City officer or employee engaged in some form of misconduct that is not within the Commission's authority to resolve will be forwarded to the appropriate agency for review and possible enforcement.*

Description of Facts

Provide a specific description of the facts constituting the violation(s), including any relevant dates. Attach additional sheets as necessary.

SENT AN EMAIL IDR ON JAN. 16, 2015.
I HAVE NOT RECIEVED A RESPONSE.
SPOKE WITH KRELL BY PHONE ON JAN. 6.
SHE SAID SHE HAD AN EMAIL RELATIVE
TO THE INCIDENT ON JAN. 2 BUT REFUSED TO SEND IT

Witnesses

Provide the following information about person(s) you believe may have information that would assist the Commission in its evaluation of this complaint.

Name of Witness	
Address	
Phone	
Information you believe this person can provide to support the allegations stated in this complaint	

Name of Witness	
Address	
Phone	
Information you believe this person can provide to support the allegations stated in this complaint	

☐ *If more space is needed to list additional witnesses, please check this box and attach additional sheets as necessary.*

Documentation

Attach copies of any documents in your possession that relate to the allegations stated in this complaint. In addition, indicate below whether there are other records, not in your possession, that you believe may assist the Commission in its evaluation of this complaint.

1 PAGE OF 1 ATTACHED.

ON JAN. 21 - I GOT A LETTER FROM HOWARD LAZAR DATED JAN. 5. IT WAS SENT 1ST CLASS MAIL. IT IS A NOTICE OF WARNING. HE CITES AN INSPECTION ON JAN 2, 2015. HE CLAIMS I ~~IMPEDED~~ INTERFERED W/ A STAFF PERSON AND DID NOT MAKE THE ITEMS I SOLD.

Additional Information

HE INCLUDES 2 PHOTOS. 1 OF ME BEHIND MY STAND TAKING A PHOTO OF HIM. 1 OF →

Provide any additional information that you believe may assist the Ethics Commission in its evaluation of this complaint.

SEE ATTACHED 2 PAGES.

Related Complaints

Have you made the same or similar allegations to another agency or court? Yes ☐ No ☒

If yes, identify the agency or court and attach a copy of any complaint or other written description of the allegations submitted to that agency or court.

Verification***

I certify under penalty of perjury under the laws of the State of California that the above statements are true and correct.

Executed: 1/22/2015 (Date)	At: 25 VAN NESS SAN FRANCISCO, CA (City and State)
By: PAULA DATESH (Typed or printed name)	[signature] (Signature)

**** Complaints need not be verified. Complainants who wish to remain anonymous should not complete the verification section above. However, please be advised that the Commission is not required to process or respond to unverified complaints.*

Additional information to the unanswered Immediate Disclosure Request sent by email to Rebekah Krelll on Jan. 16, 2015:

On Jan. 21-I received a letter from the SFAC and signed by Howard Lazar on Jan. 5. It is a, *"Notice of Violation Warning".* He cites an inspection done on Jan. 2 and claims 2 allegations*-interfering with a staff person and not making the items I sell.* He includes an excerpt of a logbook from Jan.2. These are Howard Lazar notes as he walked around the downtown area alone. In a previously unanswered IDR sent to Krell-I asked for a copy of all Impections done in the downtown area for the month or December 2014. That IDR was unanswered.

Lazar included 2 photos. 1 was me behind my stand taking a photo of him. Another was a blurred photo of earrings. He claims the earring's shown in the photo do not have 3 beads on them and therefore do not conform to the Ordinance. The photo does show each pair of earrings having 3 beads. He does not cite the Ordinance or cite a section. He then rants about how he knows they are commercially manufactured pendants. They are not commercially manufactured pendants.

The 2nd photo does not show I interfered with the duties of a staff person. Every time; Lazar does his inspection he walks alone and I tape him as he approaches my stand. He was there for over 45 minutes angry photographing; walking around my stand and at one point picked up a panel of earrings. He went to the next stand and whispered something into Ms. Yeungs ear. I have the tape and it is avaible upon request.

After this incident, I packed up and went to city hall. I was advised by Ajia Stevens of the Civil Grand Jury Office to file a police report. She looked at the tape. She gave me paperwork and said to file a complaint with the Department of Human Resources. On my way over there, I stopped at the SFAC Offices. Krell came out and said she did not want to look at the tape and to make an appointment. She said she would question Lazar the following Monday and send me an email. I did not receive one and called on Tuesday. She claimed to have an eye witness to the incident.

Krell cited an email sent to her by Lazar. She said it was from the stand next to me. I asked her to send it. She refused. I explained that I would send her an email IDR to ask for the information. I did and she did not respond.

I spoke to DCA Adine Varah by phone yesterday. I explained all of this. Last week, I spoke to Derek Moore-an investigator with the City Attorney's Office. Yesterday, I showed the letter sent to me by Howard Lazar to Cynthia Goldstein of the Board of Permits and Appeals.

The general opinion is the the letter sent to me by Lazar is vague. He starts out in the first person and changes to the third person. He does not cite the Ordinance or section violated; does not give a time frame to respond but says to respond to the program director. I have not responded.

Note: At the Street Artist meeting in January 2015 held in the basement of 25 Van Ness- Howard Lazar interrupted my general public comment by making a comment that, "I do not make what I sell and these items can be found in Chinatown". This is a violation of Chapter 67 of the Sunshine Ordinance.
Item #2-the Directors report was tabled without a vote by the Commissioners. This is a violation of the Brown Act and Sunshine Ordinance. This is in the audio which is posted on-line.

Should you require additional information-please contact me.

From: atreboux <atreboux@aol.com>
To: Krell, Rebekah (ART) (ART) <rebekah.krell@sfgov.org>
Subject: Fw: Immediate Disclosure Request
Date: Fri, Jan 16, 2015 4:05 pm

Subject: Immediate Disclosure Request

Request all emails regarding an inspection Howard Lazar made on Market between 4-5th Streets on Friday 2, 2015. You said you would send an email to me on January 5, 2015 after speaking with Lazar. You did not. when I was able to get you on the phone today, you cited an email that was sent by someone about this incident. it was forwarded to you by Howard Lazar. I request a copy of that email.

I am making this request pursuant to the Sunshine Ordinance.

Ann Treboux
atreboux@aol.com

Chatfield, Garrett (ETH)

From:	Krell, Rebekah (ART)
Sent:	Friday, February 13, 2015 4:16 PM
To:	Chatfield, Garrett (ETH)
Subject:	FW: Immediate Disclosure Request
Importance:	High

Rebekah Krell
Deputy Director & CFO

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From: <Krell>, Rebekah <rebekah.krell@sfgov.org>
Date: Tuesday, January 20, 2015 4:19 PM
To: "atreboux@aol.com" <atreboux@aol.com>
Subject: Re: Immediate Disclosure Request

Ms. Treboux,

Due to the necessity, and our right, to maintain confidentiality in the course of an investigation, we have no documents responsive to your request.

Please note that today, Tuesday, January 20, is the next business day after Friday, January 16, when your request was sent and received. Yesterday, Monday, January 19, our offices were closed in observance of Martin Luther King Jr. Day.

Best,

Rebekah

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From: "atreboux@aol.com" <atreboux@aol.com>
Date: Friday, January 16, 2015 3:14 PM
To: Rebekah <rebekah.krell@sfgov.org>
Subject: Fw: Immediate Disclosure Request

Subject: Immediate Disclosure Request

Request all emails regarding an inspection Howard Lazar made on Market between 4-5th Streets on Friday 2, 2015. You said you would send an email to me on January 5, 2015 after speaking with Lazar. You did not. when I was able to get you on the phone today, you cited an email that was sent by someone about this incident. it was forwarded to you by Howard Lazar. I request a copy of that email.

I am making this request pursuant to the Sunshine Ordinance.

Ann Treboux
atreboux@aol.com

MARCH 10, 2015

FILED
2015 MAR 10 PM 2:04
SAN FRANCISCO
ETHICS COMMISSION

TO THE ETHICS COMMISSION:

I MADE 5 COMPLAINTS. 3 ON JAN. 22, 2015 AND 2 ON FEB. 10, 2015 AGAINST VARIOUS SF ARTS COMMISSION EMPLOYEES.

I WANT TO WITHDRAW ALL ALLEGATIONS EXCEPT 1 AGAINST REBEKAH KRELL FOR FAILING TO JUSTIFY WITHHOLDING OF A PUBLIC RECORD. THIS ALLEGATION WAS ASSIGNED COMPLAINT # 03-150127

SINCERELY,

PAULA DATESH

California LEGISLATIVE INFORMATION

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DIVISION 8. PRIVILEGES [900 - 1070] *(Division 8 enacted by Stats. 1965, Ch. 299.)*

CHAPTER 4. Particular Privileges [930 - 1063] *(Chapter 4 enacted by Stats. 1965, Ch. 299.)*

ARTICLE 9. Official Information and Identity of Informer [1040 - 1047] *(Article 9 enacted by Stats. 1965, Ch. 299.)*

1040. (a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

(c) Notwithstanding any other provision of law, the Employment Development Department shall disclose to law enforcement agencies, in accordance with the provisions of subdivision (k) of Section 1095 and subdivision (b) of Section 2714 of the Unemployment Insurance Code, information in its possession relating to any person if an arrest warrant has been issued for the person for commission of a felony.

(Amended by Stats. 1984, Ch. 1127, Sec. 2.)

1041. (a) Except as provided in this section, a public entity has a privilege to refuse to disclose the identity of a person who has furnished information as provided in subdivision (b) purporting to disclose a violation of a law of the United States or of this state or of a public entity in this state, and to prevent another from disclosing the person's identity, if the privilege is claimed by a person authorized by the public entity to do so and either of the following apply:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state.

(2) Disclosure of the identity of the informer is against the public interest because the necessity for preserving the confidentiality of his or her identity outweighs the necessity for disclosure in the interest of justice. The privilege shall not be claimed under this paragraph if a person authorized to do so has consented that the identity of the informer be disclosed in the proceeding. In determining whether disclosure of the identity of the informer is against the public interest, the interest of the public entity as a party in the outcome of the proceeding shall not be considered.

(b) The privilege described in this section applies only if the information is furnished in confidence by the informer to any of the following:

(1) A law enforcement officer.

(2) A representative of an administrative agency charged with the administration or enforcement of the law alleged to be violated.

(3) Any person for the purpose of transmittal to a person listed in paragraph (1) or (2). As used in this paragraph, "person" includes a volunteer or employee of a crime stopper organization.

(c) The privilege described in this section shall not be construed to prevent the informer from disclosing his or her identity.

(d) As used in this section, "crime stopper organization" means a private, nonprofit organization that accepts and

expends donations used to reward persons who report to the organization information concerning alleged criminal activity, and forwards the information to the appropriate law enforcement agency.

(Amended by Stats. 2013, Ch. 19, Sec. 1. Effective January 1, 2014.)

1042. (a) Except where disclosure is forbidden by an act of the Congress of the United States, if a claim of privilege under this article by the state or a public entity in this state is sustained in a criminal proceeding, the presiding officer shall make such order or finding of fact adverse to the public entity bringing the proceeding as is required by law upon any issue in the proceeding to which the privileged information is material.

(b) Notwithstanding subdivision (a), where a search is made pursuant to a warrant valid on its face, the public entity bringing a criminal proceeding is not required to reveal to the defendant official information or the identity of an informer in order to establish the legality of the search or the admissibility of any evidence obtained as a result of it.

(c) Notwithstanding subdivision (a), in any preliminary hearing, criminal trial, or other criminal proceeding, any otherwise admissible evidence of information communicated to a peace officer by a confidential informant, who is not a material witness to the guilt or innocence of the accused of the offense charged, is admissible on the issue of reasonable cause to make an arrest or search without requiring that the name or identity of the informant be disclosed if the judge or magistrate is satisfied, based upon evidence produced in open court, out of the presence of the jury, that such information was received from a reliable informant and in his discretion does not require such disclosure.

(d) When, in any such criminal proceeding, a party demands disclosure of the identity of the informant on the ground the informant is a material witness on the issue of guilt, the court shall conduct a hearing at which all parties may present evidence on the issue of disclosure. Such hearing shall be conducted outside the presence of the jury, if any. During the hearing, if the privilege provided for in Section 1041 is claimed by a person authorized to do so or if a person who is authorized to claim such privilege refuses to answer any question on the ground that the answer would tend to disclose the identity of the informant, the prosecuting attorney may request that the court hold an in camera hearing. If such a request is made, the court shall hold such a hearing outside the presence of the defendant and his counsel. At the in camera hearing, the prosecution may offer evidence which would tend to disclose or which discloses the identity of the informant to aid the court in its determination whether there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial. A reporter shall be present at the in camera hearing. Any transcription of the proceedings at the in camera hearing, as well as any physical evidence presented at the hearing, shall be ordered sealed by the court, and only a court may have access to its contents. The court shall not order disclosure, nor strike the testimony of the witness who invokes the privilege, nor dismiss the criminal proceeding, if the party offering the witness refuses to disclose the identity of the informant, unless, based upon the evidence presented at the hearing held in the presence of the defendant and his counsel and the evidence presented at the in camera hearing, the court concludes that there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial.

(Amended by Stats. 1969, Ch. 1412.)

1043. (a) In any case in which discovery or disclosure is sought of peace or custodial officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency which has custody and control of the records. The written notice shall be given at the times prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure. Upon receipt of the notice the governmental agency served shall immediately notify the individual whose records are sought.

(b) The motion shall include all of the following:

(1) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace or custodial officer whose records are sought, the governmental agency which has custody and control of the records, and the time and place at which the motion for discovery or disclosure shall be heard.

(2) A description of the type of records or information sought.

(3) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that the governmental agency identified has the records or information from the records.

(c) No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions of this section except upon a showing by the moving party of good cause for noncompliance, or upon a waiver of the hearing by the governmental agency identified as having the records.

(Amended by Stats. 2002, Ch. 391, Sec. 1. Effective January 1, 2003.)

1044. Nothing in this article shall be construed to affect the right of access to records of medical or psychological history where such access would otherwise be available under Section 996 or 1016.

(Added by Stats. 1978, Ch. 630.)

1045. (a) Nothing in this article shall be construed to affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of those investigations, concerning an event or transaction in which the peace officer or custodial officer, as defined in Section 831.5 of the Penal Code, participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties, provided that information is relevant to the subject matter involved in the pending litigation.

(b) In determining relevance, the court shall examine the information in chambers in conformity with Section 915, and shall exclude from disclosure:

(1) Information consisting of complaints concerning conduct occurring more than five years before the event or transaction that is the subject of the litigation in aid of which discovery or disclosure is sought.

(2) In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code.

(3) Facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit.

(c) In determining relevance where the issue in litigation concerns the policies or pattern of conduct of the employing agency, the court shall consider whether the information sought may be obtained from other records maintained by the employing agency in the regular course of agency business which would not necessitate the disclosure of individual personnel records.

(d) Upon motion seasonably made by the governmental agency which has custody or control of the records to be examined or by the officer whose records are sought, and upon good cause showing the necessity thereof, the court may make any order which justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression.

(e) The court shall, in any case or proceeding permitting the disclosure or discovery of any peace or custodial officer records requested pursuant to Section 1043, order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law.

(Amended by Stats. 2002, Ch. 391, Sec. 2. Effective January 1, 2003.)

1046. In any case, otherwise authorized by law, in which the party seeking disclosure is alleging excessive force by a peace officer or custodial officer, as defined in Section 831.5 of the Penal Code, in connection with the arrest of that party, or for conduct alleged to have occurred within a jail facility, the motion shall include a copy of the police report setting forth the circumstances under which the party was stopped and arrested, or a copy of the crime report setting forth the circumstances under which the conduct is alleged to have occurred within a jail facility.

(Amended by Stats. 2002, Ch. 391, Sec. 3. Effective January 1, 2003.)

1047. Records of peace officers or custodial officers, as defined in Section 831.5 of the Penal Code, including supervisorial officers, who either were not present during the arrest or had no contact with the party seeking disclosure from the time of the arrest until the time of booking, or who were not present at the time the conduct is alleged to have occurred within a jail facility, shall not be subject to disclosure.

(Amended by Stats. 2002, Ch. 391, Sec. 4. Effective January 1, 2003.)

San Francisco
Ethics Commission

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Phone 252-3100 Fax 252-3112

ETHICS COMMISSION REGULATIONS FOR HANDLING VIOLATIONS OF THE SUNSHINE ORDINANCE

Effective Date: January 25, 2013
Includes amendments effective November 22, 2013

TABLE OF CONTENTS

CHAPTER ONE

I. Preamble..2

II. Definitions..2

CHAPTER TWO

I. Referrals to the Ethics Commission 5

II. Show Cause Hearing 5

CHAPTER THREE

I. Complaints Alleging Willful Violations of the Sunshine Ordinance by Elected Officials or Department Heads or Complaints Filed Directly with the Ethics Commission Alleging Violations of the Sunshine Ordinance..8

II. Investigation and Recommendation 9

III. Public Hearing 10

CHAPTER FOUR

I. Miscellaneous Provisions 13

II. Severability 15

CHAPTER ONE

I. PREAMBLE

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

A. "Brown Act" means California Government Code section 54950, et seq.

B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.

C. "California Public Records Act" means California Government Code section 6250, et seq.

D. "City" means the City and County of San Francisco.

E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.

F. "Commission" means the Ethics Commission.

G. "Complaint" means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.

H. "Complainant" means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the matter was initiated by Commission staff.

I. "Custodian" means a City officer or employee having custody of any public record.

J. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

K. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.

L. "Elected official" shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.

M. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

N. "Exculpatory information" means information tending to show that the Respondent has not committed the alleged violation(s).

O. "Order of Determination" means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

P. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).

Q. "Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.

R. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

S. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

T. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

U. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

CHAPTER TWO

I. REFERRALS TO THE ETHICS COMMISSION

A. Matters to be heard in a Show Cause Hearing.

1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:

a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or

b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.

2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

B. Scheduling of Show Cause Hearing.

1. After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. In the event that four or more Commissioners will not be present at the scheduled Show Cause Hearing, the Commission may reschedule or continue to the next practicable regular Ethics Commission meeting.

II. SHOW CAUSE HEARING

A. Public Hearing. The Show Cause Hearing shall be open to the public.

B. Standard of Proof. The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

C. Hearing Procedures.

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: each Respondent shall be permitted a five-minute statement; each Complainant shall be permitted a five-minute statement; and each Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

2. 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 business days prior to the scheduled hearing. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

3. 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.

D. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

3. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

E. Ethics Commission Orders.

1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:

a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or

b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or

c. The Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

F. Public Announcement.

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

CHAPTER THREE

I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR DEPARTMENT HEADS OR COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.

A. Matters heard under this Chapter.

1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.

2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.

3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.

4. This Chapter will govern:

a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and

b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.

5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

B. Scheduling of Hearing.

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission, unless impracticable, provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.

3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

II. INVESTIGATION AND RECOMMENDATION

A. Factual Investigation.

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

B. Subpoenas.

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

C. Report and Recommendation.

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following:

a. that Respondent(s) willfully violated the Sunshine Ordinance;

b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or

c. that Respondent(s) did not violate the Sunshine Ordinance.

D. Response to the Report and Recommendation.

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.

2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

III. PUBLIC HEARING

A. General Rules and Procedures.

1. The hearing shall be open to the public.

2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

4. 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.

5. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

B. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

3. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

C. Ethics Commission Orders.

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:

a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or

b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or

c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

CHAPTER FOUR

I. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally conducted between a court and a party appearing before that court.

B. Access to Complaints and Related Documents and Deliberations.

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

C. Oaths and Affirmations.

The Commission may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

E. Extensions of Time and Continuances.

1. 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. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

At any time a hearing is placed on an agenda regarding a matter under Chapter II or III of these Regulations, four or more members must be in attendance. Otherwise, the hearing shall be continued to the next regular Ethics Commission meeting, unless impracticable.

F. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.

3. Delivery is effective upon the date of delivery, not the date of receipt.

4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

G. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

H. Conclusion of Hearing.

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

J. Certification by participating Commissioner if he or she did not attend proceedings held under Chapter II or III in their entirety.

Each Commissioner who participates in a decision, but who did not attend the hearing in its entirety, shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

II. <u>SEVERABILITY</u>

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

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CITY & COUNTY OF SAN FRANCISCO

Provisions of the Sunshine Ordinance - Section 67

Article I: In General

Sec. 67.1. Findings and Purpose.
Sec. 67.2. Citation.

Article II: Public Access to Meetings

Sec. 67.3. Definitions.
Sec. 67.4. Passive Meetings.
Sec. 67.5. Meetings to Be Open and Public; Application of Brown Act.
Sec. 67.6. Conduct of Business; Time and Place for Meetings.
Sec. 67.7. Agenda Requirements; Regular Meetings.
Sec. 67.7-1. Public Notice Requirements.
Sec. 67.8. Agenda Disclosures: Closed Sessions.
Sec. 67.8-1. Additional Requirements for Closed Sessions.
Sec. 67.9. Agendas and Related Materials: Public Records.
Sec. 67.10. Closed Sessions: Permitted Topics.
Sec. 67.11. Statement of Reasons for Closed Sessions.
Sec. 67.12. Disclosure of Closed Session Discussions and Actions.
Sec. 67.13. Barriers to Attendance Prohibited.
Sec. 67.14. Video and Audio Recording, Filming and Still Photography.
Sec. 67.15. Public Testimony.
Sec. 67.16. Minutes.
Sec. 67.17. Public Comment by Members of Policy Bodies.

Article III: Public Information and Public Records

Sec. 67.20. Definitions.
Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.
Sec. 67.21-1. Policy Regarding Use and Purchase of Computer Systems.
Sec. 67.22. Release of Oral Public Information.
Sec. 67.23. Public Review File--Policy Body Communications.
Sec. 67.24. Public Information that Must Be Disclosed.
Sec. 67.25. Immediacy of Response.
Sec. 67.26. Withholding Kept to a Minimum.
Sec. 67.27. Justification of Withholding.
Sec. 67.28. Fees for Duplication.
Sec. 67.29. Index to Records.
Sec. 67.29-1. Records Survive Transition of Officials.
Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.
Sec. 67.29-3.
Sec. 67.29-4. Lobbyist On Behalf of the City.

Sec. 67.29-5. Calendars of Certain Officials.
Sec. 67.29-6. Sources of Outside Funding.
Sec. 67.29-7. Correspondence and Records Shall Be Maintained.

Article IV: Policy Implementation

Sec. 67.30. The Sunshine Ordinance Task Force.
Sec. 67.31. Responsibility for Administration.
Sec. 67.32. Provision of Services to other Agencies; Sunshine Required.
Sec. 67.33. Department Head Declaration.
Sec. 67.34. Willful Failure Shall Be Official Misconduct.
Sec. 67.35. Enforcement Provisions.
Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.
Sec. 67.37. Severability. ,
Sec. 67A.1. Prohibiting The Use Of Cell Phones, Pagers And Similar Sound-Producing Electrical Devices At And During Public Meetings.

Sec. 67.1 Findings And Purpose.

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

(a) Government"s duty is to serve the public, reaching its decisions in full view of the public.

(b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people"s business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.

(c) Although California has a long tradition of laws designed to protect the public"s access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

(d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

(e) Public officials who attempt to conduct the public"s business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public"s interest in open government.

(f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.2. Citation.

This Chapter may be cited as the San Francisco Sunshine Ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.3. Definitions.

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

(a) "City" shall mean the City and County of San Francisco.

(b) "Meeting" shall mean any of the following:

(1) A congregation of a majority of the members of a policy body at the same time and place;

(2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or

(3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

(4) "Meeting" shall not include any of the following:

(A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;

(B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or

(C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

(c) "Passive meeting body" shall mean:

(1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;

(2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;

(3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.

(4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

(5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating city policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "Policy Body" shall mean:

(1) The Board of Supervisors;

(2) Any other board or commission enumerated in the charter;

(3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;

(4) Any advisory board, commission, committee or body, created by the initiative of a policy body;

(5) Any standing committee of a policy body irrespective of its composition.

(6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by charter or by ordinance or resolution of the Board of Supervisors.

(7) Any advisory board, commission, committee, or council created by a federal, state, or local grant whose members are appointed by city officials, employees or agents. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)

Sec. 67.4. Passive Meetings.

(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such gatherings need not be formally noticed, except on the City"s website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.

(3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.

(4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.

(5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City and County of San Francisco.

(6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.

(b) To the extent not inconsistent with state or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.5. Meetings To Be Open And Public; Application Of Brown Act.

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this article. In case of inconsistent requirements under the Brown Act and this article, the requirement which would result in greater or more expedited public access shall apply. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.6. Conduct Of Business; Time And Place For Meetings.

(a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.

(b) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City and County of San Francisco or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City and County of San Francisco.

(c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.

(d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

(e) Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it advises, is required.

(f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

(g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in section 67.7(c), and mailed notice if sufficient time permits. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.7. Agenda Requirements; Regular Meetings.

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is suf-ficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f) Each board and commission enumerated in the charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

(g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER
THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government"s duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City and County exist to conduct the people"s business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people"s review.

FOR MORE INFORMATION
ON YOUR RIGHTS UNDER THE SUNSHINE
ORDINANCE OR TO REPORT A VIOLATION
OF THE ORDINANCE, CONTACT THE
SUNSHINE ORDINANCE TASK FORCE.

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person"s name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 185-96, App. 5/8/96; Proposition G, 11/2/99)

Sec. 67.7-1. Public Notice Requirements.

(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

(b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

(c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted. (Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

Sec. 67.8. Agenda Disclosures: Closed Sessions.

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

(1) With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:

applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

(2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation:

Price: Terms of payment: Both:

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

Unspecified to protect service of process

Unspecified to protect settlement posture

or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation:

As defendant As plaintiff

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City"s ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City"s ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City"s anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with:

or:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

or:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH NEGOTIATOR--COLLECTIVE BARGAINING

Name and title of City"s negotiator:

Organization(s) representing:

Police officers, firefighters and airport police

Transit Workers

Nurses

Miscellaneous Employees

Anticipated issue(s) under negotiation:

Wages

Hours

Benefits

Working Conditions

Other (specify if known)

All

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of under-standing, the name of the memorandum of under-standing:

In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.8-1. Additional Requirements for Closed Sessions.

(a) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least TEN years, or permanently where technologically and economically feasible. Closed session recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded.

(b) Each agenda item for a policy body covered by this ordinance that involve existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this ordinance that involves anticipated litigation, the City Attorney"s Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed. (Added by Proposition G, 11/2/99)

Sec. 67.9. Agendas And Related Materials: Public Records.

(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body"s Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public"s right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.10. Closed Sessions: Permitted Topics.

A policy body may, but is not required to, hold closed sessions:

(a) With the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public"s right of access to public services or public facilities.

(b) To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.

(c) Notwithstanding section (b), an Executive Compensation Committee established pursuant to a Memorandum of Understanding with the

Municipal Executives Association may meet in closed session when evaluating the performance of an individual officer or employee subject to that Memorandum of Understanding or when establishing performance goals for such an officer or employee where the setting of such goals requires discussion of that individual"s performance.

(d) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,

(2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.

(3) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.

(e) With the City"s designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a policy body has authority over such matters.

(1) Such closed sessions shall be for the purpose of reviewing the City"s position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City"s designated representatives and the representatives of employee organizations or the unrepresented employees. A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.

(2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99)

Sec. 67.11. Statement Of Reasons For Closed Sessions.

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 67.8 of this article. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 67.8 of this article, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 67.8 of this article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.12. Disclosure Of Closed Session Discussions And Actions.

(a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.

(b) A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Real Property Negotiations: Approval given to a policy body"s negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body"s vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in subdivision (b) of this section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.

(2) Litigation: Direction or approval given to the body"s legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City"s intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City"s complaint, petition or other litigation initiative.

(3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting other than to pay an amount of money less than $50,000. The agenda for any meeting in which a settlement subject to this section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the city''s interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by subdivision (b) of this section need not be disclosed until the other case is settled or otherwise finally concluded.

(4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

(5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least 15 calendar days before the meeting of the policy body to which the agreement is to be reported.

(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.

(d) A written summary of the information required to be immediately reported pursuant to this section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.13. Barriers To Attendance Prohibited.

(a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

(b) Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.

(c) Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.

(d) Each board and commission enumerated in the charter shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City''s efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."

(e) The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds $20,000, the Board of Supervisors shall, as soon as possible thereafter, review the provisions of this subsection. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96, App. 12/20/96; Proposition G, 11/2/99)

Sec. 67.14. Video and Audio Recording, Filming And Still Photography.

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) Each board and commission enumerated in the charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

(c) Every City policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above. (Added by Ord. 80-08, App. 5/13/08)

Sec. 67.15. Public Testimony.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body"s subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee"s consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.16. Minutes.

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person"s statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.17. Public Comment By Members Of Policy Bodies.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government

actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this ordinance. The release of specific factual information made confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.20. Definitions.

Whenever in this article the following words or phrases are used, they shall mean:

(a) "Department" shall mean a department of the City and County of San Francisco.

(b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).

(c) "Supervisor of Records" shall mean the City Attorney. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375, App. 9/30/96; Proposition G, 11/2/99)

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.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person"s request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person"s request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney"s office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order

under this section, the superior court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

<p>(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney"s office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney"s Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

Sec. 67.21-1. Policy Regarding Use And Purchase Of Computer Systems.

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

(1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.

(2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.

(3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

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 knowledgable 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.

(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. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.23. Public Review File--Policy Body Communications.

(a) The clerk of the Board of Supervisors and the clerk of each board and commission enumerated in the charter shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the policy body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section 67.24 of this article.

(b) Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the department head or at a place nearby, clearly designated to the public. After documents have been on file for two full days, they may be removed, and, in the discretion of the board or commission, placed in a monthly chronological file.

(c) Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.24. Public Information That Must Be Disclosed.

Notwithstanding a department"s legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following

information as to each successful job applicant:

(i) Sex, age and ethnic group;

(ii) Years of graduate and undergraduate study, degree(s) and major or discipline;

(iii) Years of employment in the private and/or public sector;

(iv) Whether currently employed in the same position for another public agency.

(v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);

(2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

(3) The identity of a confidential source;

(4) Secret investigative techniques or procedures;

(5) Information whose disclosure would endanger law enforcement personnel; or

(6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

(e) Contracts, Bids and Proposals

(1) Contracts, contractors" bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person"s or organization"s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or

receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars ($500,000) or more or having a term of ten years or more; or

(iii) any franchise agreements,

all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the city attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)

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. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.28. Fees For Duplication.

(a) No fee shall be charged for making public records available for review.

(b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed one cent per page may be charged, plus any postage costs.

(c) For documents assembled and copied to the order of the requester, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed 10 cents per page may be charged, plus any postage.

(d) A department may establish and charge a higher fee than the one cent presumptive fee in subdivision (b) and the 10 cent presumptive fee in subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds 10 cents or one cent, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to.

(e) Video copies of video recorded meetings shall be provided to the public upon request for $10.00 or less per meeting. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.29. Index To Records.

The City and County shall prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official"s practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City"s World Wide Website and made available at public libraries within the City and County of San Francisco. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.29-1. Records Survive Transition Of Officials.

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents shall be maintained consistent with the records retention policies of the City and County of San Francisco. (Added by Proposition G, 11/2/99)

Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes. (Added by Proposition G, 11/2/99)

SEC. 67.29-3.

Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser''s consent. In the event advertisements are defaced or vandalized, the space provider shall provide written notice to the city and the advertiser and shall allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record. (Added by Proposition G, 11/2/99)

Sec. 67.29-4. Lobbyist On Behalf Of The City.

(a) Any lobbyist who contracts for economic consideration with the City and County of San Francisco to represent the City and County in matters before any local, regional, state, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to whom each expenditure was made, the date the expenditure was made, and specifically identify the local, state, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this Ordinance.

(b) No person shall be deemed a lobbyist under section (a), unless that person receives or becomes entitled to receive at least $300 total compensation in any month for influencing legislative or administrative action on behalf of the City and County of San Francisco or has at least 25 separate contacts with local, state, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. No business or organization shall be deemed as a lobbyist under section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City and County of San Francisco, and the compensated employees or members have at least 25 separate contacts with local, state, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City and County of San Francisco during the month for lobbying activities on matters at the local, state, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during the two-month period on behalf of the City and County of San Francisco for all lobbying activities on maters at the local, state, regional or national level.

(c) Funds of the City and County of San Francisco, including organizational dues, shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens. (Added by Proposition G, 11/2/99)

Sec. 67.29-5. Calendars Of Certain Officials.

The Mayor, The City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no city business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the city. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date. (Added by Proposition G, 11/2/99)

Sec. 67.29-6. Sources Of Outside Funding.

No official or employee or agent of the city shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the

contributor has involving the City. (Added by Proposition G, 11/2/99)

Sec. 67.29-7. Correspondence And Records Shall Be Maintained.

(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

(b) The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.

(c) In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program. (Added by Proposition G, 11/2/99)

Sec. 67.30. The Sunshine Ordinance Task Force.

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to in an attorney from within the City Attorney"s Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. 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. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

Sec. 67.31. Responsibility For Administration.

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for

departments under their respective control. The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.32. Provision Of Services To Other Agencies; Sunshine Required.

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or and representative, shall be accessible as public records. To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The city shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the city with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed. (Added by Proposition G, 11/2/99)

Sec. 67.33. Department Head Declaration.

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney"s Office with the assistance of the Sunshine Ordinance Task Force. (Added by Proposition G, 11/2/99)

Sec. 67.34. Willful Failure Shall Be Official Misconduct.

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. 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. (Added by Proposition G, 11/2/99)

Sec. 67.35. Enforcement Provisions.

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys" fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys" fees and costs.

(d) 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. (Added by Proposition G, 11/2/99)

Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply. (Added by Proposition G, 11/2/99)

Sec. 67.37. Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67a.1. Prohibiting The Use Of Cell Phones, Pagers And Similar Sound-Producing Electrical Devices At And During Public Meetings.

At and during a public meeting of any policy body governed by the San Francisco Sunshine Ordinance, the ringing and use of cell phones, pagers and similar sound-producing electronic devices shall be prohibited. The presiding officer of any public meeting which is disrupted may order the removel from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing

electronic devices. The presiding officer may allow an expelled person to return to the public meeting following an agreement by the expelled person to comply with the provisions of this Section. A warning of the provisions of this Section shall be printed on all meeting agendas, and shall be explained at the beginning of each public meeting by the presiding officer. (Added by Ord. 286-00, File No. 001155. App. 12/22/2000)

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC., Plaintiff and Respondent, v. GEORGE DEUKMEJIAN, as Attorney General, etc., et al., Defendants and Appellants

S.F. No. 24207

Supreme Court of California

32 Cal. 3d 440; *651 P.2d 822*; *186 Cal. Rptr. 235*; *1982 Cal. LEXIS 229*; *8 Media L. Rep. 2436*

September 27, 1982

SUBSEQUENT HISTORY: Respondent's Petition for a Rehearing was Denied November 15, 1982, and the Opinion was Modified to Read as Printed Above. Newman, J., and Reynoso, J., did not Participate therein. Bird, C. J., was of the Opinion that the Petition should be Granted.

PRIOR HISTORY: Superior Court of Sacramento County, No. 262181, Frances N. Carr, Judge.

DISPOSITION: The portion of the judgment of the superior court requiring disclosure of the Interstate Organized Crime Index printouts is affirmed. The portion of that judgment requiring disclosure of the Law Enforcement Intelligence Unit index cards is reversed. The cause is remanded to the superior court for further proceedings consistent with this opinion. Each side shall bear its own costs on appeal. [15]

> 15 Plaintiff seeks attorney fees pursuant to *Government Code section 6259*. The trial court should determine the fees to be awarded, taking into account not only the matters litigated on this appeal, but also the other items included in plaintiff's complaint (see fn. 4, *ante*).

LexisNexis(R) Headnotes

Administrative Law > Governmental Information > Personal Information > General Overview

[HN1] *Cal. Gov't Code § 6254(c)* exempts personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

Administrative Law > Governmental Information > Freedom of Information > Defenses & Exemptions > Medical & Personnel Files

[HN2] Language in the federal Freedom of Information Act, *5 U.S.C.S. § 552(b)(6)*, identical to that of *Cal. Gov't Code § 6254(c)*, bars disclosure whenever release of information would constitute a clearly unwarranted invasion of privacy, regardless of the nature of the file in which the information is stored.

Administrative Law > Governmental Information > Freedom of Information > General Overview
Evidence > Privileges > Government Privileges > General Overview

[HN3] *Cal. Gov't Code § 6254(k)* exempts from disclosure records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

Administrative Law > Governmental Information >

Freedom of Information > Defenses & Exemptions > Law Enforcement Records > General Overview
Governments > Federal Government > Domestic Security
[HN4] The California Public Records Act, *Cal. Gov't Code § 6250 et seq.* (1974), limits the personal identifiers exemption to investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records (A) interferes with enforcement proceedings, (B) deprives a person of a right to a fair trial or an impartial adjudication, (C) constitutes an unwarranted invasion of personal privacy, (D) discloses the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) discloses investigative techniques and procedures, or (F) endangers the life or physical safety of law enforcement personnel. *5 U.S.C.S. § 552(b)(7).*

Administrative Law > Governmental Information > Freedom of Information > General Overview
Governments > Courts > Court Records
[HN5] Where nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is required to serve the objective of the California Open Records Act, *Cal. Gov't Code § 6250 et seq.*, to make public records available for public inspection and copying unless a particular statute makes them exempt. The burden of segregating exempt from nonexempt materials remains one of the considerations which the court can take into account in determining whether the public interest favors disclosure under *Cal. Gov't Code § 6255.*

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

A civil liberties organization brought suit under the Public Records Act (*Gov. Code, § 6250 et seq.*) after a state agency refused its request for certain index cards and computer printouts relating to organized crime suspects. The request was refused on grounds that the information came within the exemption from disclosure accorded intelligence information (*Gov. Code, § 6254, subd. (f)*). The trial court ruled that data on the cards and printouts was subject to disclosure, except for personal identifiers and information which might reveal confidential sources, and entered judgment accordingly. (Superior Court of Sacramento County, No. 262181, Frances N. Carr, Judge.)

The Supreme Court affirmed the portion of the judgment requiring disclosure of the computer printouts, reversed the portion requiring disclosure of the index cards, and remanded for further proceedings consistent with its opinion. The court held the statutory protection against disclosure of intelligence information was improperly limited to personal identifiers and material which might disclose confidential sources, holding instead that the "intelligence information" exemption also bars the disclosure of information supplied in confidence, even if such information does not reveal the identity of a confidential source. Balancing the burdens and costs of disclosing the remaining nonexempt information on the index cards against the public interest to be served by disclosure, the court further held that defendants were entitled to refuse disclosure of the cards in their entirety, since the benefit to be gained from disclosure of the nonexempt portions was marginal and speculative, and since the burden of segregating exempt from nonexempt information would be substantial. As to the computer printouts, the court held that their disclosure was properly compelled, since the information thereon was not confidential and did not involve confidential sources, and since the task of segregating exempt material was thus reduced to one of excising personal identifiers. (Opinion by Broussard, J., with Mosk, Newman and Kaus, JJ., concurring. Separate concurring and dissenting opinion by Richardson, J. Separate concurring and dissenting opinion by Bird, C. J.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES
Classified to California Digest of Official Reports, 3d Series

(1) Records and Recording Laws § 12--Inspection of Public Records--Intelligence Information--Personal Identifiers. -- --Personal identifiers contained in certain law enforcement documents were not exempt from disclosure under *Gov. Code, § 6254, subd. (c)*, since the exemption from disclosure provided by such subdivision is confined to "personnel, medical, or similar files." However, they were exempt under a similar exemption for personal identifiers which was read into the

"intelligence information" exemption from disclosure provided by *Gov. Code, § 6254, subd. (f)*.

(2a) (2b) Records and Recording Laws § 12--Inspection of Public Records--Intelligence Information. -- --In an action under the Public Records Act (*Gov. Code, § 6250 et seq.*) to compel disclosure of certain index cards compiled by law enforcement departments which listed organized crime suspects, the trial court erred in concluding the exemption from disclosure accorded intelligence information (*Gov. Code, § 6254, subd. (f)*) was confined to personal identifiers and information which might reveal confidential sources. While not exempting all information reasonably related to criminal activity, the "intelligence information" exemption also bars the disclosure of information supplied in confidence, even if such information does not reveal the identity of a confidential source. Further, the exclusion of personal identifiers includes information from which the identity of the individual in question might be inferred.

(3) Records and Recording Laws § 12--Inspection of Public Records--Law Enforcement Investigatory Files--Prospect of Enforcement Proceedings. -- --In invoking the Public Records Act's exemption from disclosure accorded investigatory records compiled for law enforcement purposes (*Gov. Code, § 6254, subd. (f)*), the requirement that the information sought relate to a definite prospect of enforcement proceedings is applicable only to information which is not itself exempt from compelled disclosure, but claims exemption only as part of an investigatory file. Information independently exempt, such as intelligence information, is not subject to the requirement that it relate to a definite prospect of enforcement proceedings.

(4) Records and Recording Laws § 12--Inspection of Public Records--Balancing Test. -- --In ruling on a request for the disclosure of information under the Public Records Act (*Gov. Code, § 6250 et seq.*), the burdens and costs of disclosure, including any expense and inconvenience involved in segregating nonexempt from exempt information, must be weighed against the public interest served by disclosure (*Gov. Code, § 6255*). Thus, law enforcement officials were entitled to refuse disclosure of certain index cards which listed organized crime suspects, even though some of the information fell outside the exemption for intelligence information (*Gov. Code, § 6254, subd. (f)*), where the benefit from disclosure of the nonexempt portions was marginal and speculative and where the burden of segregating exempt from nonexempt information would be substantial. However, the disclosure of certain computer printouts was required, where the information on such printouts was not confidential and did not involve confidential sources, and where the task of segregating exempt material was thus reduced to one of excising personal identifiers.

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JUDGES: Opinion by Broussard, J., with Mosk, Newman and Kaus, JJ., concurring. Separate concurring and dissenting opinion by Richardson, J. Separate concurring and dissenting opinion by Bird, C. J.

OPINION BY: BROUSSARD

OPINION

[*443] [**823] [***236] Pursuant to the California Public Records Act (*Gov. Code, § 6250 et seq.* hereafter the Act), [1] petitioner American Civil Liberties Union Foundation of Northern California, Inc. (ACLU) sought to inspect and copy, among other things, certain index cards and computer printouts held by defendant California Department of Justice. The department refused to allow inspection on the ground that the information in question was "intelligence information" exempt from disclosure under *section 6254, subdivision (f)* of the Act. The ACLU then brought suit to compel production of these records. The trial court, after inspecting the records *in camera*, ruled that data on the cards and printouts should be disclosed with the exception of personal identifiers and information which might reveal confidential sources. Defendants appeal from that decision.

1 Unless otherwise indicated, all statutory references are to the Government Code.

The first issue presented by this appeal is the definition and scope of the exemption for "intelligence information" in *section 6254, subdivision (f)*. We agree with the trial court that this exemption should not be read so broadly as to preclude discovery of any information in intelligence files which relates in some manner to criminal activity. We believe, however, that the court erred in limiting the statutory protection to personal identifiers and material which might disclose confidential sources. The term "intelligence information," even if read narrowly so as to further the Act's objective of expanded public disclosure, should protect information furnished in confidence, even if that information does not reveal the identity of a confidential source. Thus the "intelligence information" exemption severely limits the information subject to disclosure, but does not entirely protect the index cards and printouts.

[*444] [***237] Secondly, defendants invoke the balancing test of *section 6255*, asserting that the burden of segregating exempt and nonexempt information outweighs the benefits of disclosure. The issue is close, but after *in camera* inspection of the index cards in [**824] question, we conclude that in this case the segregation of personal identifiers, confidential information, and information which might reveal confidential sources will be so burdensome, and will so reduce the utility of disclosing the documents to the ACLU, that the public interest will not be served by requiring disclosure of the index cards. We therefore reverse the trial court's judgment to the extent it compels disclosure of nonexempt information on the cards in question. The computer printouts, on the other hand, contain neither confidential information nor information supplied by confidential sources, but only data derived from public records. Excision of personal identifiers from the printouts would be a relatively simple task. We therefore affirm the portion of the trial court's judgment requiring disclosure of nonexempt information on the printouts.

I.

This case arose when the ACLU, in May of 1976, filed a request under the Act to inspect and copy a number of documents relating to state law enforcement surveillance practices and records. Among those documents were index cards compiled by a network of law enforcement departments known as the Law Enforcement Intelligence Unit (LEIU), listing persons suspected of being involved in organized crime. Each card lists, among other data, the individual's name, alias, occupation, family members, vehicles, associates, arrests, modus operandi, and physical traits. The subject of a card may be a person suspected of a specific crime; a person suspected of aiding, directly or indirectly, those involved in organized crime; or a person who is "associated" with a principal suspect. "Associates" might be individuals entirely innocent of crime, including family members, business associates, or attorneys of the principal suspects. [2]

2 The ACLU cites a striking example of the potential for abuse in unmonitored gathering of information by law enforcement agencies. Briefly, former State Senator Nate Holden was listed as one of six "associates" of Black Panther Party member Michael Zinzun on the latter's index card. That card was disclosed in litigation in Chicago and was, therefore, on file in other places outside California. Holden, who had never been arrested or convicted of a crime, had rented a house to Zinzun for about four months.

The ACLU also sought to inspect and copy computer printouts from the Interstate Organized Crime Index (IOCI). The IOCI printouts, in contrast to the LEIU index cards, contain entries based solely on information [*445] that is a matter of public record. [3] Existing IOCI printouts are still being used by law enforcement agencies but no new information is being added to them. The printout entries include, among other information, an individual subject's name, physical characteristics, criminal record, crime-related and noncrime-related associates, occupation, and residence.

3 The department's Organized Crime Criminal Intelligence Branch is the coordinating agency not only for the LEIU which produces the index cards, but also for the nationwide computer system which formerly produced the printouts. That system, the IOCI, was originally funded by a grant from the Law Enforcement Assistance Administration (now defunct); one condition of that grant was that the computer entries be based on information that was a matter of public record.

The ACLU's objective in seeking disclosure was to determine generally the nature of the information contained on the LEIU cards and stored in the IOCI computers, not to ascertain the entries relating to any

particular person. The ACLU, therefore, requested the first 100 cards in alphabetical order in the LEIU index and the first 100 entries in the computer printouts, omitting personal identifiers protected from disclosure by *section 6254, subdivision (c)*. [4] When [**825] [***238] the department refused to permit inspection, the ACLU, charging that the department had violated the Act, brought suit to compel disclosure.

4 The ACLU's original request included a total of nine items; in addition to the cards and printouts, the ACLU sought disclosure of annual reports submitted to the Legislature by the department's Organized Crime Criminal Intelligence Branch (OCCIB), notes and texts of briefings given to the Legislature, a catalog of OCCIB publications, the OCCIB policy statement with regard to maintenance or establishment of political files, lists of training conferences, a hardware index, and the current issue of various publications. Some of these items were produced voluntarily; others were produced at the order of the trial court; others did not exist or had been discontinued. On appeal, defendants challenged the trial court's order only insofar as it applied to the index cards and printouts.

At trial, the department claimed the records in question were protected by *section 6254, subdivision (f)* of the Act, which permits the state to withhold "[records] of complaints to or investigations conducted by, or records of *intelligence information* or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local police agency . . . for correctional, law enforcement or licensing purposes . . . ." (Italics added.) The department also claimed an exemption under *section 6255*, which permits an agency to avoid disclosure of materials by showing that "on the facts of the particular case the public interest served by not making the record [*446] public clearly outweighs the public interest served by disclosure of the record."

(1) (See fn. 5.) The trial court first rejected the department's claim of exemption under *section 6254*, holding that the exemptions in that section were confined to (1) personal identifiers, [5] i.e., information which might reveal the names of those who were the subjects of the cards and printouts, and (2) information which might reveal the names of confidential sources who gave the department the card and printout data. The trial court further found that "[public] revelation of the information other than personal identifiers and confidential sources . . . is in the public interest and the public interest weighs in favor of disclosure. Revelation of this information will inform interested members of the public of the type of information which the defendants develop and gather." Although the trial court initially concluded that separation of exempt from nonexempt information on the LEIU cards and the IOCI printouts would be unduly burdensome, on motion to modify the judgment the court reversed its decision and found that the burden of segregating nonexempt information was outweighed by the public interest in access to that information. The trial court therefore rejected the claimed exemption under *section 6255*, [6] and [***239] accordingly entered judgment requiring disclosure, among other matters, of the [**826] LEIU index cards and the IOCI printouts, excluding personal identifiers and data which would reveal confidential sources.

5 The ACLU, as we have noted, expressly excluded from its disclosure request "personal identifiers such as names of subjects [protected] by *Government Code § 6254(c)*." [HN1] This section exempts "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Since subdivision (c) is confined to "personnel, medical, or similar files," the personal identifiers in the cards and printouts here at issue would not be exempt under that section. We read a similar exemption for personal identifiers into the "intelligence information" exemption in subdivision (f).

A recent decision of the United States Supreme Court (*United States v. Washington Post Co. (1982) 456 U.S. 595 [72 L.Ed.2d 358, 102 S.Ct. 1957]* ruled that [HN2] language in the federal Freedom of Information Act (*5 U.S.C. § 552(b)(6)*), identical to that of *section 6254, subdivision (c)*, bars disclosure whenever release of information would constitute a clearly unwarranted invasion of privacy, regardless of the nature of the "file" in which the information is stored. Under this interpretation, *section 6254, subdivision (c)* would bar disclosure of personal identifiers in the cards and printouts.

6 [HN3] *Section 6254, subdivision (k)*, exempts from disclosure "[records] the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." This section thus incorporates the privilege for "official information" of *Evidence Code section 1040*. As the trial court observed, however, *section 1040* involves a balancing test similar to that required by *section 6255*; thus, the court's rejection of the exemption under *section 6255* on the ground that the public interest weighs in favor of disclosure led the court to reject also claims of exemption under *section 6254, subdivision (k)* and *Evidence Code section 1040*.

For discussion of the relationship between *section 6254, subdivision (k)* and *Evidence Code section 1040*, and a comparison of the balancing tests required in those sections, see Note, *The California Public Records Act: The Public's Right of Access to Governmental Information* (1976) 7 Pacific L.J. 105, 121-125.

[*447] II.

The Act, enacted in 1968, replaced a confusing mass of statutes and court decisions relating to disclosure of governmental records. (See Shaffer, et al., *A Look at the California Records Act and Its Exemptions* (1974) 4 Golden Gate L.Rev. 203, 210-213.) The Act begins with a declaration of rights: "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." In the spirit of this declaration, judicial decisions interpreting the Act seek to balance the public right to access to information, the government's need, or lack of need, to preserve confidentiality, and the individual's right to privacy. (See *Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645, 651-652 [117 Cal.Rptr. 106]*; *American Federation of State, etc. Employees v. Regents of University of California (1978) 80 Cal.App.3d 913, 915-916 [146 Cal.Rptr. 42]*.)

The Act was modeled on the 1967 federal Freedom of Information Act (81 Stat. 54), and the judicial construction and legislative history of the federal act serve to illuminate the interpretation of its California counterpart. (*See Northern Cal. Police Practices Project v. Craig (1979) 90 Cal.App.3d 116, 120 [153 Cal.Rptr. 173]*; *Cook v. Craig (1976) 55 Cal.App.3d 773, 781 [127 Cal.Rptr. 712]*; *Black Panther Party v. Kehoe, supra, 42 Cal.App.3d 645, 652*.) As enacted in 1967, the Freedom of Information Act exempted "investigatory records compiled for law enforcement purposes." (See former *5 U.S.C. § 552 (b)(7)*.) [7] The California Act, enacted in 1968, elaborated on this exemption, [*448] barring disclosure of "[records] of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. . . ." [8]

7 The 1967 federal act contained no express mention of "intelligence information." It did incorporate other statutory exemptions, including a statute (*50 U.S.C. § 403(d)(3)*) which orders the Director of the Central Intelligence Agency to protect "intelligence sources." The federal courts have construed that enactment to bar disclosure of information relating to national security which could not have been obtained without guaranteeing the confidentiality of the source. (*Sims v. Central Intelligence Agency (D.C.Cir. 1980) 642 F.2d 562, 571*.)

It is unlikely that the California Legislature, when it enacted an exemption for "intelligence information," had in mind protection of information and sources relating to national security. The language of *section 6254, subdivision (f)* suggests instead that the Legislature considered "intelligence information" a subclassification of the broader exemption for law enforcement investigatory records under the 1967 federal act.

8 Defendants, claiming that the "intelligence information" exemption was intended to encompass all information on the LEIU index and the IOCI printouts, rely on the fact that state budget bills antedating the Act refer to the California Department of Justice's cooperative information exchange with the FBI. These bills, however, relate not to the indexing systems involved here, but to the National Crime

Information Center telecommunications system which linked existing department records with a federal computer. In any case, proof that the Legislature was aware of an information exchange system does not shed any light on whether it intended to protect all information in that system from disclosure.

When a series of federal decisions held that under the 1967 law all documents in a law enforcement investigatory file were exempt, 9 [***240] Congress amended the Freedom of [**827] Information Act to narrow and clarify the exemptions from disclosure. (See *Pratt v. Webster (D.C.Cir. 1982) 673 F.2d 408, 417*; *Climax Molybdenum Co. v. N. L. R. B. (10th Cir. 1976) 539 F.2d 63, 64*; *Poss v. N. L. R. B. (10th Cir. 1977) 565 F.2d 654, 657*.) [HN4] The act, as amended in 1974, limited the exemption to "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting [*449] a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel; . . ." (*5 U.S.C. § 552(b)(7)*.) Since the 1974 amendments were adopted to reinstate the scope of the exemption as intended in the original act (see *Climax Molybdenum Co. v. N. L. R. B., supra, 539 F.2d 63, 64*), and since the California law was modeled upon that original act, we may use the amendments to guide the construction of the California Act.

9 See *Weisberg v. U.S. Department of Justice (D.C.Cir. 1973) 489 F.2d 1195* (en banc), (spectrographic analysis of the bullet that killed President Kennedy is exempt since it is part of an FBI file compiled for law enforcement purposes, and nothing else is relevant); *Aspin v. Department of Defense (D.C.Cir. 1973) 491 F.2d 24* (four-volume report on the coverup of the My-Lai massacre exempt in its entirety); *Ditlow v. Brinegar (D.C.Cir. 1974) 494 F.2d 1073* (letters between the National Highway Traffic Safety Administration and automobile manufacturers concerning possible safety defects protected by exemption 7, even though the only potential defendants have information); *Center for National Policy Review on Race and Urban Issues v. Weinberger (D.C.Cir. 1974) 502 F.2d 370* (since future fund cutoff proceeding, while unlikely and admittedly speculative, was conceivable, HEW's title VI Civil Rights Compliance Reports concerning segregation and discrimination practices in northern public schools could be kept secret).

(2a) We therefore reject defendants' contention that the "intelligence information" exemption of *section 6254, subdivision (f)*, exempts all information which is "reasonably related to criminal activity." Such a broad exemption would in essence resurrect the federal judicial doctrine which Congress repudiated in 1974, and which was never part of California law. **(3)** (See fn. 10.) It would undercut the California decisions which in some circumstances limit the exemption of subdivision (f) to cases involving concrete and definite enforcement prospects. 10 And most important, it would effectively exclude the law enforcement function of state and local governments from any public scrutiny under the California Act, a result inconsistent with its fundamental purpose.

10 In *Bristol-Meyers Company v. F. T. C. (D.C.Cir. 1970) 424 F.2d 935, 939*, the court limited the federal exemption in the 1967 act to cases in which the prospect of enforcement proceedings is concrete and definite. The California Court of Appeal adopted the *Bristol-Meyers* definition. (*Uribe v. Howie (1971) 19 Cal.App.3d 194, 213 [96 Cal.Rptr. 493]*; see *State of California* ex rel. *Division of Industrial Safety v. Superior Court (1974) 43 Cal.App.3d 778, 784 [117 Cal.Rptr. 726]*; *Younger v. Berkeley City Council (1975) 45 Cal.App.3d 825, 833 [119 Cal.Rptr. 830]*.) By 1976, however, the federal courts had generally rejected the *Bristol-Meyers* holding limiting the exemption to cases with concrete enforcement possibilities. (See Note, *op. cit. supra*, 7 Pacific L.J. 105, 127-128 and cases there cited.) The most recent Supreme Court decision on *section 552, subdivision (b)(7)* upholds an exemption for investigatory records without considering the

prospects for enforcement (*United States v. Washington Post Co., supra, 456 U.S. 595.*)

The *Bristol-Meyers* doctrine, as adopted in *Uribe v. Howie, supra, 19 Cal.App.3d 194*, nevertheless remains viable as a construction of the Act. As explained in *Younger v. Berkeley City Council, supra, 45 Cal.App.3d 825, 833*, however, that doctrine relates only to information which is not itself exempt from compelled disclosure, but claims exemption only as part of an investigatory file. Information independently exempt, such as "intelligence information" in the present case, is not subject to the requirement that it relate to a concrete and definite prospect of enforcement proceedings.

[***241] **(2b)** We believe, however, that the definition adopted by the trial court is too narrow. We do not dispute its exemption of "personal identifiers"; such an exemption would be required, if not by the express terms of the Act, by the right of privacy established in *article I, section* [*450] *1 of the California Constitution.* Indeed, in view of the substantial harm that could be inflicted by a public [**828] revelation that an individual was listed in an index of persons involved in organized crime, or even listed as an "associate" of someone involved in organized crime, we think the exclusion of personal identifiers must be viewed broadly. Not only names, aliases, addresses, and telephone numbers must be excluded, but also information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question.

We agree also that information which might lead to the disclosure of confidential sources should be exempt from disclosure. The terms of subdivision (f), however, do not protect sources as such, but protect "intelligence information." We thus see no escape from the conclusion that information supplied in confidence is protected by the Act even if the revelation of that information will not necessarily disclose the identity of the source.

We conclude that the "intelligence information" exemption bars disclosure of information that might identify individuals mentioned in the LEIU or IOCI records, that might identify confidential sources, or that was supplied in confidence by its original source. [11]

11 We agree with the trial court that information is not "confidential" in this context unless treated as confidential by its original source. Thus, information does not become confidential because the California Department of Justice and the submitting law enforcement agency agree to treat it as such; it is confidential only if the law enforcement agency obtained it in confidence originally.

Amicus calls our attention to a definition of "confidential information" in the Information Practices Act of 1977 (*Civ. Code, § 1798 et seq.*). That definition includes as "confidential" all information compiled by law enforcement agencies "for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual." (*Civ. Code, § 1798.3, subd. (a)(1).*) It is not clear, however, if this definition would encompass the LEIU cards or the IOCI printouts, since those materials are not necessarily compiled for the purpose of a current investigation. In any event, *Civil Code section 1798.24, subdivision (g)*, makes it clear that information classed as confidential under the Information Practices Act may still be disclosed pursuant to the California Act; thus, the Information Practices Act definition cannot be used to define an exemption under the California Act.

The foregoing construction of *section 6254, subdivision (f)* will bring that exemption into approximate alignment with the exemption in *section 552, subdivision (b)(7)* of the amended federal act. We recognize, of course, that California has not enacted any amendments to the Act comparable to the 1974 federal amendments, but then the California Legislature faced no overly restrictive court decisions such as those [*451] which impelled the federal amendments. As we have explained, the 1974 federal amendments were intended to restate and clarify the original purpose of the federal act, and since that purpose -- public access to records except where access must be limited to protect privacy or confidentiality -- corresponds to the purpose of the California Act, we believe the two statutes should receive a parallel construction.

Our interpretation of subdivision (f) also derives from the fact that the Act imposes no limits upon who may seek information or what he may do with it. In the

present case the ACLU seeks information to test the operation of the LEIU index and the IOCI printouts and to determine if those police intelligence systems are being misused. In other cases, however, information may be sought for less noble purposes. Persons connected with organized crime may seek to discover what the police know, or do not know, about organized criminal activities (cf. *Federal Bureau of Investigation v. Abramson (1982) 456 U.S. 615, fn. 12 [72 L.Ed.2d 376, 387, 102 S.Ct. 2054]*); persons seeking to damage the reputation of another may try to discover if he is listed as an organized crime [***242] figure or as an associate of such a figure; other persons may simply try to put the state to the burden and expense of segregating exempt and nonexempt information and making the latter available to the public. In short, once information is held subject to disclosure under the Act, the courts can exercise no restraint on the use to [**829] which it may be put. (See *Black Panther Party v. Kehoe, supra, 42 Cal.App.3d 645, 656.*)

We note, by way of contrast to the unrestricted seeking and use of information acquired under the Act, the discovery procedures employed under *Evidence Code section 1040.* This section serves essentially the same purpose as the "intelligence information" exemption of *section 6254, subdivision (f)* -- the protection of confidential information. Under *section 1040,* however, a court will uphold disclosure only if the public interest in disclosure outweighs the necessity for preserving confidentiality (see *Shepherd v. Superior Court (1976) 17 Cal.3d 107, 124, 126 [130 Cal.Rptr. 257, 550 P.2d 161]*); in making this decision the court can consider the needs and interests of the particular litigants (*id., at p. 126*), and can in some cases impose protective orders to limit the use and dissemination of the information.

If, for example, the ACLU had sought to discover LEIU or IOCI records in a pending suit, the trial court, after ascertaining the bona fides of the request, could permit inspection under *section 1040* subject [*452] to protective limitations on use or publication of the information. Since the provisions of the Act do not "affect the rights of litigants . . . under the laws of discovery of this state" (§ 6260), the limitations on disclosure in *section 6254* would not restrict discovery sought in connection with such a civil action. In bringing a request under the Act, however, the ACLU stands in no better position than any member of the public who seeks to inspect LEIU or IOCI records for whatever reason he may have (cf. *Brown v. Federal Bureau of Investigation (2d Cir. 1981) 658 F.2d 71, 75)*, and is subject to the restrictions of *section 6254.*

We therefore conclude that the "intelligence information" exemption bars disclosure to the ACLU of personal identifiers, confidential sources, and confidential information relating to criminal activity. Although much of the information of the LEIU cards and the IOCI printouts is thus exempt from disclosure, the scope of the intelligence information exemption alone thus is insufficient to justify the defendants' blanket refusal of disclosure.

III.

(4) Defendants next argue that in the present case the burden of segregating exempt from nonexempt information is so great, and the utility of disclosing nonexempt information so minimal, that the court should invoke *section 6255* to bar any disclosure. [12] That section states that an agency can justify nondisclosure by showing "that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."

> 12 The briefs of the Attorney General and amicus also suggest that if the court orders disclosure of any information from the LEIU cards, this would breach the LEIU agreements and result in departments of other jurisdictions refusing to provide information to the California Department of Justice. This consequence, they suggest, is one matter to be weighed by the court in evaluating the claimed exemption under *section 6255.* The record on appeal, however, is entirely insufficient for us to determine the effect, if any, of ordering disclosure limited to nonconfidential information upon the future exchange of data by law enforcement units.

Section 6255 has no counterpart in the federal Freedom of Information Act, and imposes on the California courts a duty which does not burden the federal courts -- the duty to weigh the benefits and costs of disclosure in each particular case. We reject the suggestion that in undertaking this task the courts should ignore any expense and inconvenience [*453] involved in segregating nonexempt from exempt information. *Section 6255* speaks broadly of the "public interest," a

phrase which encompasses public concern with the cost and efficiency of [***243] government. To refuse to place such items on the *section 6255* scales would make it possible for any person requesting information, for any reason or for no particular [**830] reason, to impose upon a governmental agency a limitless obligation. Such a result would not be in the public interest. [13]

13 We agree as a general principle with the language in *Northern Cal. Police Practices Project v. Craig (1979) 90 Cal.App.3d 116, 124 [153 Cal.Rptr. 173]*, that [HN5] "where nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is required to serve the objective of the [Act] to make public records available for public inspection and copying unless a particular statute makes them exempt." The burden of segregating exempt from nonexempt materials, however, remains one of the considerations which the court can take into account in determining whether the public interest favors disclosure under *section 6255*.

After careful examination of the LEIU index cards *in camera*, we conclude that in the present case the public interest predominates against disclosure of the cards. It is clear that the burden of segregating exempt from nonexempt information on the 100 cards would be substantial. The cards do not indicate which material is confidential, might reveal a confidential source, or identify the subject of the report; in many instances defendants would have to inquire from the law enforcement department supplying the information. The utility of disclosure to the ACLU, on the other hand, is questionable: the deletion of personal identifiers will make it impossible for the ACLU to learn if a particular person is improperly listed as an associate of a criminal suspect (cf. fn. 2, *ante*); the deletion of confidential information will defeat its efforts to learn if any person is listed on the basis of inaccurate or unsubstantiated rumor.

At best, disclosure of nonexempt information from the cards in question might reveal certain generalities about the records, such as the proportion of persons listed with prior criminal records, the type of criminal activity of which they are suspected, etc. Conceivably such information might help to confirm or allay suspicions concerning the operation of criminal indexing systems. When this marginal and speculative benefit is weighed against the cost and burden of segregating the exempt and nonexempt material on the cards, we conclude that on the facts of this particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure [*454] of the record. [14] We therefore conclude that defendants, relying on *section 6255* of the Act, may refuse to disclose the subject index cards of the LEIU.

14 *Section 6255* requires the courts to look to "the facts of the particular case" in balancing the benefits and burdens of disclosure under the Act. Thus our decision against requiring disclosure is necessarily limited to the facts of this particular case; in another case, with different facts, the balance might tip in favor of disclosure of nonexempt information on the LEIU cards. If, for example, a person were to seek disclosure of only his own card, the diminished need to delete personal identifiers (the person in question presumably knows his own identity and that of his associates) and the reduced burden of determining confidentiality of sources or information when only a single card is involved might justify a court in requiring disclosure.

The IOCI printouts, however, stand on a different footing. All information on the printouts is derived from public records. Information so acquired is not confidential, and the public records in question are not confidential sources. Consequently, the task of segregating exempt material on the printouts reduces to one of excising the personal identifiers. This is a much less onerous burden than the deletion of personal identifiers, confidential information, and confidential sources from the LEIU cards. Weighing the burden of segregation against the benefit of disclosure of the IOCI printouts, the balance tips in favor of disclosure.

The portion of the judgment of the superior court requiring disclosure of the Interstate Organized Crime Index printouts is affirmed. The portion of that judgment requiring disclosure of the Law Enforcement Intelligence Unit index cards is reversed. The cause is remanded to the superior court for further proceedings consistent [**831] [***244] with this opinion. Each side shall bear its own costs on appeal. [15]

15 Plaintiff seeks attorney fees pursuant to *Government Code section 6259*. The trial court

should determine the fees to be awarded, taking into account not only the matters litigated on this appeal, but also the other items included in plaintiff's complaint (see fn. 4, *ante*).

CONCUR BY: RICHARDSON (In Part); BIRD (In Part)

DISSENT BY: RICHARDSON (In Part); BIRD (In Part)

DISSENT

RICHARDSON, J., Concurring and Dissenting. I concur in the majority opinion to the extent that it reverses that portion of the judgment below which required disclosure of the Law Enforcement Intelligence Unit index cards. I respectfully dissent, however, from the opinion insofar as it affirms the compelled disclosure of the Interstate Organized Crime Index printouts. In my view, both the index cards and the printouts are "intelligence information" which are absolutely exempt from disclosure under state law.

[*455] Unlike the federal Freedom of Information Act (81 Stat. 54) and its broadly *qualified* exemption for various investigatory records (see *ante*, p. 448), the California Public Records Act (*§ 6250 et seq. of the Gov. Code*, to which all statutory references relate) on its face contains an *absolute* exemption for "records of intelligence information" of all state and local law enforcement agencies. (*Id., § 6254, subd. (f)*.)

The computer printouts at issue here clearly constitute "records of intelligence information" within the meaning of the California act. As the majority explains, these printouts disclose the names, criminal records, physical characteristics, associates, occupations and residences of each person suspected of organized crime activities. Although the printouts are compiled from information contained in various public records, the printouts themselves are used exclusively by law enforcement agencies to assist in their investigations. The majority holds that only the "personal identifiers" contained in the printouts are exempt from disclosure, and it imposes upon the agency the task of excising such personal identifiers from the remaining, discoverable information.

The California act, however, does not call for, or authorize, the disclosure or segregation of the nonconfidential or nonpersonal portion of the intelligence records of law enforcement agencies. Instead, by its terms the act protects the records in toto. On the assumption that plaintiff ACLU is interested merely in the "types of information" gathered by law enforcement agencies, no reason appears why a *blank* form of printout would not suffice. As Justice Paras carefully explained in his opinion for the Court of Appeal in this case, "The [blank] forms, which defendants have not refused to provide, fully describe the 'type of information' involved. Anything more than that is the information itself, which would add nothing but specific data relating to specific people . . . . But the specific data placed into the blank spaces is beyond question 'intelligence information,' expressly excluded by *section 6254, subdivision (f)*, from the scope of section 6253, subdivision (a)."

Agreeing with the foregoing reasoning, I would reverse the judgment in its entirety.

BIRD, C. J., Concurring and Dissenting. I respectfully dissent from that portion of the court's decision which denies disclosure of the LEIU cards.

[*456] James Madison once said, "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both." (Letter to W. T. Barry, Aug. 4, 1822, 9 The Writings of James Madison (Hunt ed. 1910) p. 103, quoted in *EPA v. Mink (1973) 410 U.S. 73, 110-111 [35 L.Ed.2d 119, 145, 93 S.Ct. 827]* (dis. opn. of Douglas, J.).)

Like James Madison, the California Legislature is of the view that "access to information concerning the conduct of the people's business is a fundamental and necessary [**832] right of every person in this state." (*Gov. Code, § 6250*.) [1] Thus, the California Public Records Act (or Act) was passed for [***245] the precise purpose of "increasing freedom of information" by giving the public "access to information in possession of public agencies." (See *Los Angeles Police Dept. v. Superior Court (1977) 65 Cal.App.3d 661, 668 [135 Cal.Rptr. 575]*.) The Act is "intended to be construed liberally in order to further the goal of maximum disclosure in the conduct of governmental operations." (Final Rep., Assem. Statewide Info. Policy Com. [hereafter *Final Report*] (Mar. 1970) p. 145, appen. G, setting forth opn. Cal. Atty. Gen. No. 67/144 (1970).)

1 All statutory references hereafter are to the Government Code, unless specified otherwise.

In approving the government's efforts in the present case to keep the LEIU cards wholly secret, today's majority concludes that (1) the cards contain much information that is exempt from disclosure under *section 6254, subdivision (f)*; (2) segregation of the exempt material from the nonexempt would be a substantial burden on the government; and (3) this administrative inconvenience justifies withholding even the nonexempt portions of the LEIU cards, pursuant to *section 6255*.

The first two of these conclusions find no support whatsoever in the record. The government has never sought to demonstrate how much, if any, of the information on the LEIU cards is exempt from disclosure nor what the inconvenience or cost of deleting this information might be. Although the Public Records Act clearly places the burden of justifying nondisclosure on the agency desiring secrecy, [2] a majority of this court somehow waives this requirement and finds in favor of the government on these issues.

2 "*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 making the record public clearly outweighs the public interest served by disclosure of the record." (*§ 6255*, italics added; see also *Final Report, supra*, p. 12; *EPA v. Mink, supra, 410 U.S. at p. 93 [35 L.Ed.2d at p. 135*].)

[*457] The court's third conclusion -- that administrative inconvenience is dispositive of these plaintiffs' claim of access to the records of their government -- threatens the very foundations of the Act. It represents a major triumph for bureaucratic inertia and secrecy, and it permits -- and even encourages -- state agencies to undermine the broad disclosure policies of the Act. Yet, as the Court of Appeal has held, the Public Records Act is "suffused with indications of a contrary legislative intent." (*Northern Cal. Police Practices Project v. Craig (1979) 90 Cal.App.3d 116, 123 [153 Cal.Rptr. 173]*.)

The federal Freedom of Information Act (or FOIA) [3] provides a right of public access to records of federal agencies, and, as today's majority agrees, the state and federal enactments "should receive a parallel construction.". (*Ante*, at p. 451.) However, the majority chooses to ignore the unanimous interpretation of the FOIA that "equitable considerations of the costs, in time and money, of making records available for examination do not supply an excuse for non-production." (See, e.g., *Sears v. Gottschalk (4th Cir. 1974) 502 F.2d 122, 126*, and cases cited.)

3 *5 United States Code section 552*.

I remain unpersuaded.

I.

The California Public Records Act was enacted against a "background of legislative impatience with secrecy in government . . . ." *(53 Ops.Cal.Atty.Gen. 136, 143 (1970)*.) The Legislature had long been attempting to "formulate a workable means of minimizing secrecy in government." (*Id., at p. 140*, fn. omitted.) The basic law "was vague and had been interpreted by the courts in a restrictive fashion." (*Final Report, supra*, p. 7.)

Moreover, it "appeared . . . to be creating (or perhaps merely reinforcing) an attitude of reluctance on the part of various administrative officials to make records in their [**833] custody available for public inspection." (53 Ops.Cal.Atty.Gen., *supra*, p. 143.) Those limited reform efforts that managed to become law -- such as the Brown Act of 1953 [4] -- were insufficient to address the problems. What was needed was a comprehensive statute governing access to information. [***246] (Schaffer et al., *A Look at the California Records Act and Its Exemptions* (1974) 4 Golden Gate L.Rev. 203, 212.)

4 Statutes 1953, chapter 1588, page 3269.

[*458] Such an enactment was the California Public Records Act. (§§ 6250-6265.) The tone of the Act was set by the broad language used to define "public records." (§ 6252, subd. (d).) "This definition is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed." (*Final Report, supra*, p. 9.)

Like the federal Freedom of Information Act upon which it was modeled, "the general policy of the [Public Records Act] favors disclosure. Support for a refusal to disclose information 'must be found, if at all, among the

specific exceptions to the general policy that are enumerated in the Act.'" (*Cook v. Craig (1976) 55 Cal.App.3d 773, 781 [127 Cal.Rptr. 712]*, citation omitted, quoting *State of California* ex rel. *Division of Industrial Safety v. Superior Court (1974) 43 Cal.App.3d 778, 783 [117 Cal.Rptr. 726]*.) The burden of establishing that an exception applies lies with the agency resisting disclosure. (See *ante*, fn. 2.)

Even where the Public Records Act permits nondisclosure, it does not *require* withholding the requested information. (*Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645, 656 [117 Cal.Rptr. 106]*.) The Act sets forth "the minimum standards" for access to government information, and generally "a state or local agency may adopt requirements for itself which allow greater access to records." (§ 6253.1; see also *Final Report, supra*, p. 9.)

Moreover, the fact that parts of a requested document fall within the terms of an exemption does not justify withholding the entire document. (*Northern Cal. Police Practices Project v. Craig, supra, 90 Cal.App.3d at p. 123*.) Section 6257 of the Act specifically provides that "[any] reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law."

Relying on the Public Records Act, plaintiff ACLU has sought to examine a random sampling of the LEIU cards [5] maintained by the [*459] California Department of Justice (or Department) ostensibly in connection with its function of "[gathering], analyzing and storing intelligence pertaining to organized crime." (§ 15025, subd. (a).) The ACLU's concern stems from mid-1970's revelations on the national level of law enforcement abuses in the acquisition and maintenance of information for surveillance purposes. The fears expressed at that time have increased as a result of the Department's recent publication of a report purportedly relating to organized crime and terrorism. (Rep.Cal.Atty.Gen. (May 1981) Organized Crime in Cal. -- 1980, pt. 2, Terrorism.) The report suggests that the Department views its duty to monitor organized crime activities as covering "activities of domestic extremist groups in the form of rallies and demonstrations." (*Id.*, p. 1.)

5 The ACLU agrees that all information on the LEIU cards which identifies an individual should be deleted prior to disclosure.

The ACLU also sought a similarly edited sampling of entries in the now-defunct IOCI system. Since I agree with the majority that this information should be released to plaintiff, I do not discuss that aspect of the case further.

Thus, the goals of the ACLU suit include testing the degree to which units in the Department of Justice engage in political surveillance under the guise of obtaining information pertaining to law enforcement and "determining whether the conduct of [the Department] complies with law . . . ."

The Department has refused to disclose any portion of the LEIU cards. It asserts that two provisions of the Public Records Act authorize its actions. Primary reliance is placed on *subdivision (f) of section 6254* [**834] (Exemption (f)), which permits the withholding of "records of intelligence information . . . of . . . the office of the Attorney General and the Department of Justice, and any state or local police agency . . . ." The Department also seeks to invoke the provision of *section 6255* authorizing nondisclosure when "on the facts of the particular case the public interest served by not making [***247] the record public clearly outweighs the public interest served by disclosure of the record."

Throughout these proceedings, the Department has taken the position that these exemptions protect the LEIU cards in toto. It has adduced no evidence to establish a confidential source for any specific information on any of the cards. Moreover, while occasionally asserting that segregation of exempt from nonexempt information would be "burdensome," the Department has offered no testimony, affidavit, or other evidence of the extent of this alleged burden.

Following meticulously conducted proceedings *in camera* -- including examination of the LEIU cards themselves -- the trial court ruled in favor [*460] of disclosure except for "those portions [of the cards] which show and disclose personal identifiers and confidential sources." It found that disclosure of the nonexempt material "will inform interested members of the public of the type of information which the [Department] [develops] and [gathers]." It further found the public interest served by disclosure to be "the need to insure that [the Department is] complying with the Constitution and laws of the United States and the State of California . . . and to defend and protect constitutional rights by guarding against unlawful invasions of privacy and

personal security by over-zealous spying, surveillance and covert activities."

I agree with the majority that the trial court's interpretation of the Public Records Act's exemption for "records of intelligence information" was too narrow. Exemption (f) permits withholding not only information which might identify confidential sources but also "confidential information furnished only by the confidential source" to "a criminal law enforcement authority in the course of a criminal investigation." (See *5 U.S.C. § 552 (b)(7)(D)* [hereafter Exemption 7(D) of the FOIA].)

This conclusion is supported by a close reading of Exemption (f). By the plain wording of the Public Records Act, the Legislature sought to protect confidential "information," not merely the identity of confidential sources. Moreover, in providing within the same subdivision for disclosure of certain facts to victims or their representatives, the Legislature specifically exempted the "statements" and "names and addresses" of confidential informants. This indicates that the Legislature was aware of a distinction between statements and identity and that its choice of the broad term "intelligence information" was intended to encompass more than either of these two ideas separately.

Reading Exemption (f) as protecting confidential sources and information brings this portion of the California Act into close alignment with Exemption 7(D) of the FOIA. (See, e.g., *Duffin* v. *Carlson* (D.C.Cir. 1980) *636 F.2d 709, 712.*) I agree that the two exemptions should normally receive a "parallel construction." (Maj. opn., *ante*, at p. 451.)

However, I am perplexed by one reason tendered by the majority for interpreting Exemption (f) in this fashion. Here, it is asserted that the Public Records Act should be interpreted in light of the "fact" that "information may be sought for less noble purposes" than those of the ACLU in this case. (*Ante*, p. 451.) This reasoning is completely untenable.

[*461] The majority conjures up the possibility that a disclosure request may be made for ignoble purposes and yet fails even to consider that bureaucracies may have improper reasons of their own for refusing disclosure.

Secrecy is not required by the Public Records Act; disclosure is virtually always permitted. (§ 6253.1.) Thus, it is well recognized that disclosure may be resisted not because of a genuine need for secrecy, but [**835] out of fear of "[arousing] public opinion against the policies the agency is determined to employ." (See Schaffer et al., *supra*, 4 Golden Gate L.Rev. at p. 209.) A governmental agency may resist disclosure merely because "from a bureaucratic standpoint, a general policy of revelation could cause positive harm, since it could bring to light information detrimental to the agency and set a precedent for future demands for disclosure." (*Vaughn* v. *Rosen* (D.C.Cir. 1973) [***248] 484, 820, 826.) In entirely ignoring these obvious teachings of history, the majority blinds itself to the very need for a Public Records Act in the first place.

Moreover, the majority thwarts one of the Legislature's avowed purposes in passing the Act, i.e., to "invalidate[]" court decisions which had interpreted the prior law "in a restrictive fashion." (*Final Report, supra*, p. 7.)

In an Attorney General's opinion incorporated into the *Final Report*, it was said to be "clear" that the Act "is intended to be construed liberally in order to further the goal of maximum disclosure in the conduct of governmental operations." (53 Ops.Cal.Atty.Gen., *supra*, at p. 143; *Final Report, supra*, at p. 145.) This source also indicated that the "same historical evidence which compels the conclusion that the . . . Act should be construed broadly also compels the conclusion that [the exemptions] must be construed strictly so as not to interfere with the basic policy of the act." (53 Ops.Cal.Atty.Gen., *supra*, p. 143; *Final Report, supra*, at p. 145.)

The federal cases interpreting the FOIA are all in agreement with our Legislature and our Attorney General. The federal courts have universally accepted the proposition that the FOIA "creates a liberal disclosure requirement, limited only by specific exemptions which are to be narrowly construed." (*Bristol-Myers Company v. F. T. C. (D.C.Cir. 1970) 424 F.2d 935, 938*, fn. omitted, cert. den., *400 U.S. 824 [24 L.Ed.2d 52, 91 S.Ct. 46]*; see also *Dept. of Air Force v. Rose (1976) 425 U.S. 352, 361, 366 [48 L.Ed.2d 11, 21, 24, 96 S.Ct. 1592]*; *Vaughn* v. *Rosen*, *supra*, 484 F.2d 820, 823, cert. den., *415 U.S. 977* [*462] *[39 L.Ed.2d 873, 94 S.Ct. 1564].*) This, of course, is the very same Freedom of Information Act whose "judicial construction and legislative history . .

. serve to illuminate the interpretation of its California counterpart." (Maj. opn., *ante*, at p. 447.)

While I agree with the majority as to the scope of Exemption (f), I cannot subscribe to the dictum which would construe the disclosure provisions of the Act in a one-sided manner, blind to the countervailing considerations. Such statutory construction might accord with those justices' view of good policy, but it does not conform to that which is supposed to be paramount -- the Legislature's intent.

II.

Having determined the proper scope of Exemption (f), the majority proceeds to uphold the Department's claim of secrecy under the balancing test of *section 6255*. (See *ante*, fn. 2.) It rules that the cost and administrative inconvenience of segregating exempt from nonexempt information on the LEIU cards justify the refusal to disclose any information contained in these public records. This conclusion is absurd. It violates the terms and basic concerns of the Public Records Act, the prior court decisions of this state, the "parallel" Freedom of Information Act and the cases interpreting it, as well as common sense.

It is inconceivable that the Legislature, in enacting the *section 6255* balancing test, intended to permit administrative cost and inconvenience to be dispositive of a request for access to public records. Nowhere in *section 6255* or the Act as a whole is such an intention manifested.

The specific exemptions of *section 6254* are of considerable aid in ascertaining the Legislature's conception of "the public interest served by not making [a] record public . . . ." as used in *section 6255*. [6] However, none of these provisions displays a [**836] solicitude for the inconvenience or cost to bureaucracies of affording access to public records. The concerns articulated relate to protection of personal privacy, confidential information, and agency deliberative processes, not bureaucratic convenience.

6 See Note, *The California Public Records Act: The Public's Right of Access to Governmental Information* (1976) 7 Pacific L.J. 105, 119.

Further evidence in this regard can be found in the final sentence of section 6257. There, it is required that "[*any*] reasonably segregable [*463] portion of a record *shall be provided* . . . after deletion of the portions which are exempt by law." (Italics added.) [***249] It is difficult to see how the Legislature could have been clearer in requiring the production of *any* such nonexempt material. [7]

7 The majority opinion hints in a footnote that nonexempt information is not "reasonably segregable" if the burden of segregation is great. (*Ante*, fn. 13, p. 453.) This suggestion does not withstand analysis.

The "reasonably segregable" provision of the California Act was lifted nearly verbatim from the federal Freedom of Information Act. (Cf., final sentence of *5 U.S.C. § 552(b)*.) The federal provision, in turn, has been interpreted to require disclosure of any nonexempt material "if it is at all intelligible -- unintelligibility indicating, of course, that it is not 'reasonably' segregable from the balance." (U.S. Dept. Justice, Atty. Gen. Memo. on 1974 Amends. to Freedom of Information Act (Feb. 1975), in Sourcebook: Legislative History, etc., Freedom of Information Act and Amendments of 1974 (94th Cong., 1st Sess., 1975) pp. 524-525.)

As will be shown hereafter, the federal cases have uniformly rejected the position of the majority that administrative burden can be dispositive of a disclosure request under the FOIA.

The Legislature clearly was aware that some requests for information under the Public Records Act would require an agency to (1) "search for and collect . . . records from . . . establishments that are separate from the office processing the request"; (2) "search for, collect, and appropriately examine a voluminous amount of separate and distinct records"; and (3) consult with "another agency . . . or among two or more components of the agency." (See § 6256.1.) The only concession granted to a bureaucracy by the Legislature in this regard was that such "unusual circumstances" would permit the agency a maximum of 10 extra working days within which to respond to the request. (*Ibid.*) There is not the slightest suggestion that such circumstances ipso facto justify a refusal to disclose.

If any further evidence of legislative intent is

necessary, it can be found in *section 6250*, where the Legislature "declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Today's majority attributes to the Legislature an intent to permit this "fundamental and necessary right" to be overcome by a mere allegation of bureaucratic inconvenience and cost. Once again, this is patently absurd.

In addition to these direct indications of legislative intent, simple logic and experience dictate that the public's right to know not be overriden by claims of bureaucratic inconvenience. The history of freedom of information laws, both in this state and on a national level, is largely [*464] the history of bureaucratic resistance to revealing agency operations. If a disclosure request may be defeated by an agency's showings of administrative cost and burden, then the very foundations of the Public Records Act are undermined.

Initially, uncertainty is injected by this court into an act where clarity was intended. The result will surely be that agencies will be emboldened to resist disclosure requests. This is contrary to the Legislature's intent. Compliance was to be encouraged. The likely result of today's decision is the multiplication of contested court proceedings and the end of voluntary settlements.

Even more important, the bureaucracy -- rather than the Legislature, the courts, or the people -- will be empowered to determine what records will be revealed. It is the bureaucracy that decides in what form and where to keep its records. By commingling exempt and nonexempt information and spreading out responsibility for the compilation and storage of records, the agency can be assured of a tenable claim of exemption under *section 6255*. At the very least, already wary agencies are discouraged from creating "internal procedures that will assure that disclosable information [**837] can be easily separated from that which is exempt." (See *Vaughn* v. *Rosen*, *supra*, 484 F.2d at p. 828; see also *Irons v. Gottschalk (D.C.Cir. 1976) 548 F.2d 992, 996*, cert. den., *434 U.S. 965 [54 L.Ed.2d 451, 98 S.Ct. 505]*.)

Finally, as modern society becomes more complex, so do the issues which confront us and the agencies that are supposed to serve us. At the same time, our demands and [***250] expectations of government continue to expand. Thus, colorable claims of administrative burden will increase. As a result, constrained by this court's holding that access to public records may be denied because of bureaucratic burdens, the Public Records Act will be reduced to an anachronism, applicable to trivialities or events no longer important, but incapable of ensuring the public knowledge necessary to the proper functioning of a democracy.

It is, therefore, not surprising that the courts have unanimously taken a position contrary to that of today's majority. "Undoubtedly, the requirement of segregation casts a tangible burden on governmental agencies and on the judiciary. Nothing less will suffice, however, if the underlying legislative policy of the [Act] favoring disclosure is to be implemented faithfully. If the burden becomes too onerous, relief must be [*465] sought from the Legislature." (*Northern Cal. Police Practices Project v. Craig, supra, 90 Cal.App.3d at p. 124.*)

The federal cases are in complete accord. "[Equitable] considerations of the costs, in time and money, of making records available for examination do not supply an excuse for non-production." (*Sears v. Gottschalk, supra, 502 F.2d at p. 126.*) "Allowing such a defense would undercut the Act's broad policy of disclosure." (*Ferguson v. Kelly (N.D.Ill. 1978) 455 F.Supp. 324, 326.*) Even a cursory sampling of cases involving the Freedom of Information Act reveals that the federal act is used to obtain access to enormous quantities of documents from which an agency must segregate exempt information. The request in the present case for access to 100 small LEIU cards pales by comparison. (See, e.g., *Pratt v. Webster (D.C.Cir. 1982) 673 F.2d 408* [FOIA used to obtain access to edited versions of over 1,000 documents, totalling thousands of pages]; *Reporters Committee for Freedom of the Press v. Sampson (D.C.Cir. 1978) 591 F.2d 944, 949, fn. 17* [FOIA available to obtain access to the "massive volume of materials" in the presidential papers of former President Nixon]; *Diapulse Corp. of Am. v. Food & D. Admin. of Dept. of H.E.W. (2d Cir. 1974) 500 F.2d 75* [FOIA used to obtain access to thousands of documents, the collection and editing of which would take four to six days].)

These federal practices and cases should be highly persuasive to those members of this court who have signed today's majority opinion. Their opinion is replete with statements acknowledging that the Public Records Act "was modeled upon" the federal act and "should receive a parallel construction." (See, e.g., *ante*, at pp.

449, 451.) Yet, federal authority is conspicuously absent when they decree that bureaucratic inconvenience may prevail over the people's "fundamental and necessary right" to know.

I am constrained once again to disagree.

III.

Even if the administrative burden to an agency could be dispositive of a request for information under the Act, I would be hard pressed to comprehend the conclusion of the majority that as a matter of law, the LEIU cards are exempt from disclosure. The majority reasons that (1) "much of the information of the LEIU cards . . . is . . . exempt from disclosure"; (2) the "burden of segregating exempt from nonexempt information [*466] on the 100 cards would be substantial"; and (3) on balance "the public interest predominates against requiring disclosure" of the nonexempt information. (Maj. opn., *ante*, at pp. 451-453.) The first two of these conclusions are wholly unsupported by the record; the third is a serious misapplication of the law.

The Department has never even attempted to establish how much, if any, of the information on the LEIU cards is exempt from disclosure under a proper interpretation of Exemption (f). Rather, it has consistently [**838] taken the position that all of the information on those cards per se constitutes "records of intelligence information." [***251] Since this court has correctly rejected this extreme position (*ante*, at pp. 449-450), I am at a loss to discover the source of its conclusion that "much of the information of the LEIU cards" is exempt under a proper interpretation of Exemption (f). Indeed, the only evidence on this point suggests there is little "intelligence information." A high ranking Justice Department official testified in passing that, "L.E.I.U. is just an index anyway . . . . *It does not have hard intelligence.* L.E.I.U. does not contain that." [8] (Italics added.)

8 The bulk of this official's testimony, like that of the other witnesses below, involved merely the authentication of documents to be examined by the court.

There are similar problems with the court's conclusion regarding the "substantial" burden of segregation. Here, at least, the Department has +proffered an allegation that segregation is "burdensome," but its claim is conclusory and supported by *no* facts. "[Bare] conclusory allegations [do] not suffice to establish an essential fact concerning the applicability of an FOIA exemption." (*Irons v. Bell (1st Cir. 1979) 596 F.2d 468, 471.*) Agency claims that an exemption applies "may or may not be accurate." (*Vaughn* v. *Rosen, supra*, 484 F.2d at p. 824.) Thus, "courts will simply no longer accept conclusory and generalized allegations of exemptions . . . ." (*Id., at p. 826*, fn. omitted.)

It is the court, not the agency, which finally determines the applicability of an exemption. (See *§ 6259*; *Black Panther Party v. Kehoe, supra, 42 Cal.App.3d at p. 657*; see also, e.g., *Lame v. United States Dept. of Justice (3d Cir. 1981) 654 F.2d 917, 922.*) Without evidence, however, a court obviously cannot make that determination. Neither this court nor the trial court has been presented with such evidence.

Given this state of the record and the fact that the agency bears the burden of establishing the applicability of an exemption (see *ante*, fn. [*467] 2), it is hard to fault the trial court for ordering disclosure. How this court manages to arrive at a contrary conclusion as a matter of law remains a mystery.

It bears noting that the interpretation given today to Exemption (f) was not the interpretation used at the trial proceedings below. Moreover, the Department, relying on its erroneous reading of Exemption (f), tendered no evidence as to how much information on the LEIU cards would disclose or is attributable to a confidential source, as this court today construes those terms. The proper disposition of this aspect of the appeal would be to remand the case for further proceedings in light of the interpretation today given Exemption (f) and *section 6255*.

One final point. The *section 6255* balancing test permits the withholding of records only when "the public interest served by not making the record public *clearly* outweighs the public interest served by disclosure of the record." (*§ 6255*, italics added.) The word "clearly" is significant. The Assembly Information Policy Committee itself emphasized the word in its *Final Report*: "A public agency may only refuse to disclose the contents . . . of a public record, if it can . . . show that the public interest *clearly* is on the side of non-disclosure . . . ." (*Final Report, supra*, p. 12; accord 53 Ops. Cal.Atty.Gen., *supra*, at p. 148.)

In light of this heavy burden on those who seek to justify nondisclosure, the majority's conclusion that the public interest predominates against disclosure is even more indefensible. It represents no more than lip service to the test of *section 6255*. It seems to present yet another example of the roughshod manner in which the majority ride over the commands of the Legislature and the "fundamental and necessary right of every person in this state" to information about his or her government. (See *§ 6250*.)

CBS, INC., Plaintiff and Appellant, v. SHERMAN BLOCK, as Sheriff, etc., et al., Defendants and Appellants

L.A. No. 32029

Supreme Court of California

42 Cal. 3d 646; *725 P.2d 470*; *230 Cal. Rptr. 362*; *1986 Cal. LEXIS 270*

October 9, 1986

PRIOR HISTORY: Superior Court of Los Angeles County, No. C-459176, Harry L. Hupp, Judge.

DISPOSITION: Therefore, this cause is remanded to the trial court for further proceedings consistent with this opinion. The costs on appeal are to be borne by the defendants.

LexisNexis(R) Headnotes

Administrative Law > Governmental Information > Freedom of Information > General Overview
[HN1] See *Cal. Gov't Code § 6258.*

Administrative Law > Governmental Information > Freedom of Information > General Overview
[HN2] See *Cal. Gov't Code § 6259.*

Civil Procedure > Remedies > Injunctions > Elements > General Overview
Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions
[HN3] Traditionally, when deciding whether or not to issue a preliminary injunction, trial courts must evaluate two interrelated factors. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions
Civil Procedure > Appeals > Standards of Review > Abuse of Discretion
[HN4] The ruling on an application for a preliminary injunction does not constitute an adjudication of the ultimate rights in controversy. On appeal the question becomes whether the trial court abused its discretion when it considered both factors. If the appellate court finds that the trial court correctly determined at least one of the two factors, it may affirm the trial court's order.

Administrative Law > Governmental Information > Freedom of Information > General Overview
[HN5] California Public Records Act, *Cal. Gov't Code § 6250 et seq.*, states in pertinent part: access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

Administrative Law > Governmental Information > Freedom of Information > General Overview
[HN6] In formulating the California Public Records Act (PRA), *Cal. Gov't Code § 6250 et seq.*, the legislature had

long been attempting a workable means of minimizing secrecy in government. The PRA was modeled on the federal Freedom of Information Act (Act), *5 U.S.C.S. § 552 et seq.*, and was passed for the explicit purpose of increasing freedom of information by giving the public access to information in possession of public agencies. Maximum disclosure of the conduct of governmental operations was to be promoted by the Act.

Administrative Law > Governmental Information > Freedom of Information > General Overview
[HN7] Two exceptions to the general policy of disclosure are set forth in the California Public Records Act (Act), *Cal. Gov't Code § 6250 et seq.*, and *§ 6254* lists 19 categories of disclosure-exempt material. These exemptions are permissive, not mandatory. The Act endows the agency with discretionary authority to override the statutory exceptions when a dominating public interest favors disclosure.

Administrative Law > Governmental Information > Freedom of Information > General Overview
[HN8] The penultimate sentence of California Public Records Act, *Cal. Gov't Code § 6254* states: Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law. In addition, § 6253.1 provides in pertinent part that a state or local agency may adopt requirements for itself which allow greater access to records .

Administrative Law > Governmental Information > Freedom of Information > General Overview
[HN9] California Public Records Act, *Cal. Gov't Code § 6255* establishes a catch-all exception that permits the government agency to withhold a record if it can demonstrate that on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

Administrative Law > Governmental Information > Freedom of Information > General Overview
[HN10] See California Public Records Act, *Cal. Gov't Code § 6255.*

Administrative Law > Governmental Information > Freedom of Information > General Overview
[HN11] California Public Records Act, *Cal. Gov't Code § 6257* specifically provides that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law. The fact that parts of a requested document fall within the terms of an exemption does not justify withholding the entire document.

Evidence > Privileges > Government Privileges > General Overview
[HN12] The privilege of *Cal. Evid. Code § 1040(b)(2)* must be applied conditionally on a clear showing that disclosure is against the public's interest.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

A television and broadcasting company filed a request, under the California Public Records Act (*Gov. Code, § 6250 et seq.*) to inspect and copy applications submitted to and licenses issued by a county sheriff authorizing possession of concealed weapons by individuals. The information was sought in connection with an investigation of possible abuses by officials in the exercise of their statutorily delegated discretion (*Pen. Code, § 12050*) to issue such licenses. When the request was denied, the broadcasting company filed a motion to obtain disclosure of the records under *Gov. Code, §§ 6258, 6259.* The trial court directed the sheriff to disclose the names and certain identifying information concerning most of the individuals who had been granted licenses, but denied plaintiff's access to any data pertaining to certain individuals and refused to require disclosure of the applications for licenses filed with the county. (Superior Court of Los Angeles County, No. C-459176, Harry L. Hupp, Judge.)

The Supreme Court reversed. The court held that, having invoked the Public Records Act (*Gov. Code, § 6255*) as a basis for denial of access to the requested materials, defendant county officials were required to demonstrate that the public interest served by not making the license records sought public clearly outweighed the public interest served by disclosure of such records and that defendants failed to meet the prescribed burden. The court held that the trial court committed error in ordering disclosure of most of the licenses then in effect with

certain restrictions but denying plaintiff's request for copies of the license applications. The relief granted was inadequate in view of the purpose for which the information was sought, in that, without the applications that accompanied the licenses and that set forth the reasons why each license was requested, the public was not in a position to judge whether the responsible county officer had properly exercised his discretion in issuing the licenses. (Opinion by Bird, C. J., with Broussard, Reynoso, Grodin, JJ., and McClosky (Eugene), J., * concurring. Separate dissenting opinion by Mosk, J., with Panelli, J., concurring.)

> * Associate Justice, Court of Appeal, Second District, assigned by the Chairperson of the Judicial Council.

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES
Classified to California Digest of Official Reports, 3d Series

(1) Appellate Review § 127--Review--Scope and Extent. -- --On review of a trial court order in a proceeding to obtain inspection and disclosure of public records, pursuant to *Gov. Code, §§ 6258, 6259*, the reviewing court is required to conduct an independent review of the trial court's statutory analysis with respect to balancing the burdens and costs of disclosure of the requested information. Factual findings made by the trial court will be upheld if based on substantial evidence.

(2) Records and Recording Laws § 12--Inspection of Public Records--Denial of Access to or Inspection of Records--Burden of Establishing Justification Therefor. -- --The Public Records Act (*Gov. Code, § 6250 et seq.*) was enacted for the explicit purpose of increasing freedom of information by giving the public access to information in possession of public agencies, and thus a county sheriff was not justified, under *Gov. Code, § 6255*, the "catch-all" exception to the general policy of disclosure set forth in the statute, in refusing to release records of licenses to carry concealed weapons, issued by the county, and applications for renewal of such licenses. The sheriff's concern that release of the information would increase the vulnerability of the licensees was conjectural at best, and the concern for substantial privacy of the licensees was not warranted, since the information contained in the records had been voluntarily given to the sheriff by the applicants and sworn to be factually true.

(3) Records and Recording Laws § 12--Inspection of Public Records--County License Records. -- --Rejection of a county sheriff's claim for exemption from disclosure to a television and broadcasting company of records pertaining to licenses to carry concealed weapons, under *Gov. Code, § 6255*, the "catch-all" exemption to the general policy of disclosure of public records under the Public Records Act (*Gov. Code, § 6250 et seq.*), on the ground that the public interest weighed in favor of disclosure as opposed to nondisclosure, required rejection of a claim for exemption made by the sheriff with respect to the same records, under *Gov. Code, § 6254, subd. (k)*, exempting records, disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege, since the same weighing process is involved under both provisions. Rejection of the sheriff's claim for exemption from disclosure of the records sought, based on *Evid. Code, § 1040*, which creates a privilege for official information acquired in confidence, under certain circumstances, was mandated for the same reason.

(4) Records and Recording Laws § 12.5--Inspection of Public Records--Licenses to Carry Concealed Weapons. -- --In an action to obtain disclosure of public records, pursuant to *Gov. Code, §§ 6258, 6259*, in which a television and broadcasting company, in connection with an investigation of possible official abuse, sought to inspect and copy licenses to carry concealed weapons issued by a county, and applications for renewal thereof, the trial court erred in ordering disclosure of identifying information as to most of the licenses in effect at the time but denying plaintiff's request for copies of the license applications, since the relief granted was inadequate in light of the purpose for which the information was sought. Without the applications that accompanied the licenses, each of which contained a statement by the applicant as to the purpose for which the license was requested, the public could not judge whether the county sheriff had properly exercised his discretion in issuing the licenses.

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JUDGES: Opinion by Bird, C. J., with Broussard, Reynoso, Grodin, JJ., and McClosky (Eugene), J., * concurring. Separate dissenting opinion by Mosk, J., with Panelli, J., concurring.

> * Associate Justice, Court of Appeal, Second District, assigned by the Chairperson of the Judicial Council.

OPINION BY: BIRD

OPINION

[*648] [**471] [***363] Are the press and public prohibited from obtaining the information contained in the application for and the license to possess a [*649] concealed weapon under the California Public Records Act (*Gov. Code, § 6250 et seq.*, hereafter the PRA or the Act) even though this information was open to public inspection from 1957-1968 and the Act did not specifically exempt this information from disclosure? [1]

> 1 Unless otherwise indicated, all statutory references are to the Government Code.

I.

This case arose when CBS, Inc. (CBS) filed a request under the PRA, in July of 1983, to inspect and copy the applications submitted to and licenses issued by the Los Angeles County Sheriff authorizing the possession of concealed weapons. CBS sought the information in connection with an investigation of possible abuses by officials in the exercise of their statutorily delegated discretion to issue licenses for concealed weapons. (See *Pen. Code, § 12050.*)

According to the reporter's transcript and the court records it appears that only 35 concealed weapon licenses were issued in Los Angeles County. There are approximately 7 million residents of Los Angeles County.

All of the applications made were for a renewal. For the majority of these, no reason for issuance was given or a one sentence explanation -- "Needed for protection of life and property" -- was used.

The sheriff refused to release any of the applications or licenses. In response, CBS filed a motion for a preliminary injunction [2] detailing the reasons it desired the requested material. The hearing on CBS's motion [**472] [***364] was held in August of 1983. After reviewing the records in camera, the trial judge noted that the reasons stated for desiring a license were essentially "pro forma" and, therefore, ordered disclosure of most of the licenses then in effect with the proviso that the home addresses of the licensees be deleted. The court denied CBS's request for copies of the applications. Both sides have appealed.

> 2 [HN1] *Section 6258* provides in pertinent part that: "Any person may institute proceedings for injunctive or declarative relief in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public record or class of public records under this chapter."
>
> Appellants have conceded that the applications and licenses in question fall within the broad definition of "public records." (*§ 6252, subd. (d).*)

II.

(1) The question presented by this appeal is whether the trial court erred in granting partial relief to CBS on its motion for disclosure under *sections 6258* and *6259*.

[*650] [HN2] *Section 6259* provides in pertinent part: "(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose

the public record or show cause why he should not do so. The *court shall decide the case* after examining the record in camera, if permitted by *subdivision (b) of section 915 of the Evidence Code*, papers filed by the parties and such oral argument and additional evidence as the court may allow. [para.] (b) If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of *Section 6254* or *6255*, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure." (Italics added.)

Although *section 6258* speaks in terms of injunctive relief (see, *ante*, p. 649, fn. 2) and the application contemplated by the statute may be one for a preliminary injunction, there is nothing "preliminary" about the trial court's order here. [3] As the italicized phrase of *section 6259* indicates, the Act does not provide for a trial on the merits. These conclusions are buttressed by the 1984 amendment to *section 6259*, effective as to actions filed on or after January 1, 1985, which provides that such orders are not appealable, but are subject to immediate writ review.

> 3 However, we note that [HN3] traditionally, when deciding whether or not to issue a preliminary injunction, trial courts must evaluate two interrelated factors. (*Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286 [219 Cal.Rptr. 467, 707 P.2d 840].*) "'The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. [Citations.]'" (*Cohen v. Board of Supervisors, supra, 40 Cal.3d 277, 286*, quoting *IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69-70 [196 Cal.Rptr. 715, 672 P.2d 121]*; accord *Robbins v. Superior Court (1985) 38 Cal.3d 199, 206 [211 Cal.Rptr. 398, 695 P.2d 695].*)[HN4]
>
> The ruling on an application for a preliminary injunction does not constitute an adjudication of the ultimate rights in controversy. (*Robbins v. Superior Court, supra, 38 Cal.3d at p. 218.*) Consequently, on appeal the question becomes whether the trial court abused its discretion when it considered *both* factors. If the appellate court finds that the trial court correctly determined at least one of the two factors, it may affirm the trial court's order. (*Cohen v. Board of Supervisors, supra, 40 Cal.3d at pp. 286-287.*)

Sections 6250 to 6265, which govern disclosure of public records, provide little guidance on the question of the standard of review on appeal. The cases are similarly silent on this point. However, the analysis in this court's decision in *American Civil Liberties Union Foundation v. Deukmejian (1982) 32 Cal.3d 440 [186 Cal.Rptr. 235, 651* [***365] *P.2d 822]* (hereafter *ACLU*) clearly indicates that the standard is one of independent review. In that decision, [*651] this court reexamined the records, balanced the burdens and costs of disclosing the requested information, and affirmed in part the trial court's judgment requiring disclosure of nonexempt information. (*ACLU, supra, 32 Cal.3d 440, 443-444.*) Accordingly, [**473] this court must conduct an independent review of the trial court's statutory balancing analysis. Factual findings made by the trial court will be upheld if based on substantial evidence.

III.

(2) Government files hold huge collections of information. These files can be roughly divided into two categories: (1) records detailing public business and official processes; and (2) records containing private revelations. Statutory and decisional authority on public record disclosure reveals two fundamental and frequently competing societal concerns that result from the commingling of public and personal information. [4]

> 4 Two years after the enactment of the PRA, a California legislative committee observed ". . . many who have championed the cause of privacy leave unclear the statutory boundary where the personal right of privacy and the public's right to know the workings of its government meet. Those who know the complexity of government records policy and practice will realize that these values do not always remain separate and distinct." (Assem. Statewide Info. Policy Com., Final Rep. (Mar. 1970) p. 21, 1 Assem. J. Appen. (1970) (hereafter *Final Report*).)

Implicit in the democratic process is the notion that

government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process. [5] However, a narrower but no less important interest is the privacy of individuals whose personal affairs are recorded in government files. [6]

5 [HN5] In California, access to government records has been deemed a fundamental interest of citizenship. *Section 6250* of the PRA states in pertinent part: "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

6 Recognition of the importance of preserving individual privacy is also evident in *section 6250*. The PRA begins with the phrase: "In enacting this chapter, the Legislature [is] mindful of the right of individuals to privacy . . . ." (*§ 6250*.)

When the PRA was enacted in 1968, "'[the] [HN6] Legislature had long been attempting to "formulate a workable means of minimizing secrecy in government."'" (*San Gabriel Tribune v. Superior Court (1983) 143 Cal.App.3d 762, 772 [192 Cal.Rptr. 415]*; quoting *ACLU, supra, 32 Cal.3d 440, 457*.) The PRA was modeled on the federal Freedom of Information Act (*5 U.S.C. § 552 et seq.*; *Cook v. Craig (1976) 55 Cal.App.3d 773, 781 [127 Cal.Rptr. 712]*) and was passed for the explicit purpose of "increasing freedom of information" by giving the public "access to information in possession of public agencies" (*Los Angeles Police Dept. v. Superior Court (1977) 65 Cal.App.3d 661, 668 [135 Cal.Rptr. 575]*). Maximum disclosure of the [*652] conduct of governmental operations was to be promoted by the Act. *(53 Ops.Cal.Atty.Gen. 136, 143 (1970).)*

[HN7] Two exceptions to the general policy of disclosure are set forth in the Act. *Section 6254* lists 19 categories of disclosure-exempt material. These exemptions are permissive, not mandatory. The Act endows the agency with discretionary authority to override the statutory exceptions when a dominating public interest favors disclosure. [7] (*Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645, 656 [117 Cal.Rptr. 106]*.)

7 [HN8] The penultimate sentence of *section 6254* states: "Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law." (See also, *Final Report, supra*, p. 11.)

In addition, section 6253.1 provides in pertinent part that "a state or local agency may adopt requirements for itself which allow greater access to records . . . ."

In addition to these express [HN9] exceptions, *section 6255* establishes a catch-all exception that permits the government agency to withhold a record if it can demonstrate that "on the facts of a particular case the public interest served by not making the record public *clearly outweighs* the public interest [**474] [***366] served by disclosure of the record." [8] (Italics added.)

8 [HN10] *Section 6255* provides in full: "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 making the record public clearly outweighs the public interest served by disclosure of the record." (Italics added.)

Defendants contend that they have met the burden of proving that the records of applications and licenses for concealed weapons fall within the catch-all exception. They argue that releasing this information will allow would-be attackers to more carefully plan their crime against licensees and will deter those who need a license from making an application.

Defendants' concern that the release of the information to the press would increase the vulnerability of licensees is conjectural at best. [9] The prospect that somehow this information in the hands of the press will increase the danger to some licensees cannot alone support a finding in favor of non-disclosure as to all. A mere assertion of possible endangerment does not "clearly outweigh" the public interest in access to these records. [HN11] Moreover, *section 6257* specifically provides that "[any] reasonably segregable portion [*653] of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law." Thus, any information on the applications and licenses that indicate times or places when the licensee is vulnerable to attack may be deleted. [10] The fact that parts of a requested document fall within

the terms of an exemption does not justify withholding the entire document. (*Northern Cal. Police Practices Project v. Craig (1979) 90 Cal.App.3d 116, 123-124 [153 Cal.Rptr. 173].*)

> 9 It is by no means clear, however, that public identification of "celebrity" license holders would subject them to increased risk of violent attack. Such disclosure cannot make the figure any more "public" and, in fact, may discourage an attack by a publicity seeking assailant who would forego notoriety for his own personal safety.
>
> In addition, the trial court impliedly found that, subject to the two exceptions, merely releasing the names of license holders posed no undue risk to them and that there was substantial evidence to support that finding. (See discussion, *infra*, at p. 654.)
>
> 10 A similar procedure was recently approved in *People v. Memro (1985) 38 Cal.3d 658 [214 Cal.Rptr. 832, 700 P.2d 446].* That case involved an attempt by an accused to discover information contained in police officers' personnel files in connection with a claim that his confession had been coerced. The court held that *Evidence Code section 1045* permitted an in camera examination of the records to determine whether disclosure should be ordered "in the interests of justice" and whether disclosure would not "[unnecessarily] annoy[], embarrass[] or oppress[]" the individuals involved. (*Id., at pp. 688-689*; see also *Evid. Code, § 1045, subd. (d).*)

Defendants' contention that disclosure would discourage the filing of applications is also unpersuasive. This court respects the people's right to know and will not limit that right based on an inchoate fear that some will violate the law rather than have their names disclosed.

Next, defendants argue that the licensees' constitutional right of privacy would be violated by disclosing the concealed weapons information. To support this contention, they cite this court's decision in *ACLU, supra*, 32 Cal.3d 440.

ACLU concerned the disclosure of information on persons suspected of maintaining an association with organized crime. The information had been compiled by a network of law enforcement departments. This court held that documents listing individuals' names, physical traits, family members, residences, occupations, and associates in crime were protected from disclosure under the exemption for "intelligence information" (*§ 6254, subd. (f)*). 11 [**475] [***367] (*ACLU, supra, 32 Cal.3d 440, 449-450.*) The court stated that the exemption was required, "if not by the express terms of the Act, [then] by the right of privacy established in *article I, section 1 of the California Constitution.*" (*Id., at pp. 449-450.*)

> 11 The court did not order excision of the exempt information because it determined that segregation would "so reduce the utility of disclosing the documents to the ACLU, that the public interest [would] not be served by requiring disclosure" of the documents. (*ACLU, supra, 32 Cal.3d at p. 444.*)
>
> In the present case, defendants do not argue that segregation would be unduly burdensome.

Defendants also cite this court's decision in *White v. Davis (1975) 13 Cal.3d 757 [120 Cal.Rptr. 94, 533 P.2d 222].* This case is inapposite. It concerned police officers, posing as students, who engaged in the covert recording of class discussions. These recordings were used by the police [*654] officers as "intelligence" reports about professors and students. This court held that the complaint stated a prima facie violation of the state constitutional right of privacy, observing that "a principal aim of the constitutional provision is to limit the infringement upon personal privacy arising from the government's increasing collection and retention of data relating to all facets of an individual's life. The alleged accumulation in 'police dossiers' of information gleaned from classroom discussions or organization meetings presents one clear example of activity which the constitutional amendment envisions as a threat to personal privacy and security." (*Id., at p. 761.*)

Neither of these cases supports defendants' claims for the wholesale suppression of records of the granting of licenses to carry a weapon. The concern in *ACLU* was for the harm that might result from the public revelation of the names or associates of individuals listed in an organized crime index. (*ACLU, supra, 32 Cal.3d at pp. 449-450.*) That information was in essence an allegation that the individual was a participant in criminal activity. None of these allegations had been substantiated in a court of law.

In contrast, the information sought here would not inflict the kind of immediate social stigma that arises from having one's name included on a list of suspected members of organized crime. Moreover, the information contained in the records here was voluntarily given to the sheriff by the applicants. It is sworn to be factually true. 12 Thus, the substantial privacy concerns implicated in *ACLU* are not present here.

12 Even more significant is the fact that the reason for issuance proffered in the majority of the current applications is the blanket statement: "For protection of life and property." The current licenses are primarily renewals. Contrary to the policy promulgated by the sheriff, these applications for renewal do *not* provide "convincing evidence of a clear and present danger to life or great bodily harm to the applicant."

While some of the holders of concealed weapon licenses may prefer anonymity, it is doubtful that such preferences outweigh the "fundamental and necessary" right of the public to examine the bases upon which such licenses are issued. It is a privilege to carry a concealed weapon.

Furthermore, there is a clear and legislatively articulated justification for disclosure -- the right of the public and the press to review the government's conduct of its business. Public inspection of the names of license holders and the reasons the licenses were requested enables the press and the public to ensure that public officials are acting properly in issuing licenses for legitimate reasons. Defendants' conclusion that *White* v. *Davis* precluded disclosure would obliterate the fundamental right of the press and the people to have access to "information concerning the conduct of the people's business." (*§ 6250*.)

[*655] It is possible, of course, that certain information supplied by individual applicants may under certain circumstances entail a substantial privacy interest. For example, the records may contain intimate information concerning an applicant's own or his family's medical or psychological history. In such special cases, the confidential information may be deleted.

The interest of society in ensuring accountability is particularly strong where [**476] [***368] the discretion invested in a government official is unfettered, and only a select few are granted the special privilege. Moreover, the degree of subjectivity involved in exercising the discretion cries out for public scrutiny. For example, the Sheriff of Orange County has issued over 400 licenses; in Los Angeles County only 35 licenses have been issued. Ostensibly, both sheriffs are applying the *same* statutory criteria for granting or denying these licenses. The apparent discrepancy indicates that something may be amiss. If the information on which the decision to grant can be kept from the public and the press, then there is *no* method by which the people can ever ascertain whether the law is being fairly and impartially applied.

Further, the historical treatment of concealed weapons licenses undermines the defendants' claim that the holders have an expectation of privacy regarding such records. *From 1957 to 1968, these licenses were open to public inspection pursuant to Penal Code section 12053.* [13] In the year following the enactment of the PRA, *Penal Code section 12053* was amended to delete this language. The change was made to ensure that these public records would be governed by the new Act. (See Stats. 1969, ch. 371, § 44, pp. 904-905 in conjunction with *62 Ops.Cal.Atty.Gen. 595, 600 (1979)*.) It is important to note that the Legislature did *not* create an exemption, express or implied, for concealed weapons licenses. It did so for many other types of public records. (*§ 6254*.)

13 *Section 12053* stated in pertinent part: "When any such license is issued a record thereof shall be maintained in the office of the licensing authority *which shall be open to public inspection*." (Italics added.)

(3) Finally, defendants point to *section 6254, subdivision (k)* as authority for nondisclosure of this information. [14] *Section 6254, subdivision (k)* exempts "[records] the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

14 In their supplemental briefs to this court, defendants argue for the first time that the exemption contained in *section 6254, subdivision (c)* for "[personal], medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy" applies to the present case.

> The information relating to holders of concealed weapons permits is not in any way comparable to personnel or medical records. (See *62 Ops.Cal.Atty.Gen. 595, 600 (1979).*) Moreover, in light of the importance of the press and the public's right to know the workings of its government, disclosure here cannot be considered an unwarranted invasion of privacy.

[*656] As several courts considering the scope of this exemption have noted, subdivision (k) is not an independent exemption. It merely incorporates other prohibitions established by law. (*Cook v. Craig, supra, 55 Cal.App.3d 773, 783*; see *San Gabriel Tribune v. Superior Court, supra, 143 Cal.App.3d 762, 775.*)

Here, the defendants assert that *Evidence Code section 1040* shields the sheriff from any duty to disclose. *Evidence Code section 1040* creates a privilege for official information acquired in confidence [15] if "[disclosure] of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice . . . ." ([HN12] *Evid. Code, § 1040, subd. (b)(2).*) This privilege must be "applied conditionally on a clear showing that disclosure is against the public's interest." (*San Gabriel Tribune v. Superior Court, supra, 143 Cal.App.3d 762, 777.*)

> 15 It is important to note that no statement of confidentiality is included in the statutory criteria for issuing the licenses or in the policy guidelines distributed by the police department.

The weighing process mandated by *Evidence Code section 1040* requires review of the same elements that must be considered under *section 6255* (*ACLU, supra, 32 Cal.3d 440, 446-447, fn. 6*). Therefore, it is consistent with the PRA. Under this privilege, the burden of demonstrating a need for nondisclosure is on the agency [**477] [***369] claiming the right to withhold the information. (*San Gabriel Tribune v. Superior Court, supra, 143 Cal.App.3d 762, 780.*) Thus, this court's rejection of the claim of exemption under *section 6255* on the ground that the public interest weighs in favor of disclosure similarly requires rejection of the claims of exemption under *section 6254, subdivision (k)* and *Evidence Code section 1040.* (See *ACLU, supra, 32 Cal.3d 440, 446-447, fn. 6.*)

IV.

(4) Disclosure statutes such as the PRA and the federal Freedom of Information Act were passed to ensure public access to vital information about the government's conduct of its business. If the press and the public are precluded from learning the names of concealed weapons' licensees and the reasons claimed in support of the licenses, there will be no method by which the public can ascertain whether the law is being properly applied or carried out in an evenhanded manner.

The trial court granted injunctive relief permitting access to most of the licenses. This relief is inadequate in light of the purpose for which the [*657] information was sought. Without the applications which accompany the licenses and which set forth the reasons why a license is necessary, the public cannot judge whether the sheriff has properly exercised his discretion in issuing the licenses.

Therefore, this cause is remanded to the trial court for further proceedings consistent with this opinion. The costs on appeal are to be borne by the defendants.

DISSENT BY: MOSK

DISSENT

Mosk, J. I dissent.

Nearly three decades ago, the United States Supreme Court refused to allow the State of Alabama to obtain the names of members of the National Association for the Advancement of Colored People, because revelation would have exposed those persons to "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." (*N.A.A.C.P. v. Alabama (1985) 357 U.S. 449, 462 [2 L.Ed.2d 1488, 1500, 78 S.Ct. 1163].*) Again in *Bates v. Little Rock (1960) 361 U.S. 516, 524 [4 L.Ed.2d 480, 486, 80 S.Ct. 412]*, the Supreme Court refused access to membership lists, even for taxing purposes, where the individuals could be subject to "harassment and threats of bodily harm."

The issue in the instant case, therefore, is whether the curiosity of the plaintiff in preparation of a television program, even one resulting in public knowledge, outweighs the constitutional privacy rights of 35 individuals who have expressed in applications their fear

of harassment and bodily harm. I reach the same conclusion as the unanimous Court of Appeal: that under these circumstances the individual privacy rights should prevail.

If the sheriff were issuing gun permits indiscriminately and thousands were extant, there might be a suspicion of misuse of his discretionary power and an implication that he himself was contributing to danger to public safety. The fact that in a county with the vast population of Los Angeles only 35 permits have been issued suggests the sheriff should be commended for his obvious determination to prevent a proliferation of dangerous weapons in the community.

[*658] I adopt as my dissent a substantial portion of the opinion of Justice Compton for the Court of Appeal, concurred in by Presiding Justice Roth and Justice Beach: *

> * Brackets together, in this manner [], without enclosing material, are used to indicate deletions from the opinion of the Court of Appeal; brackets enclosing material (other than editor's added parallel citations) are, unless otherwise indicated, used to denote insertions or additions by this court.

[**478] [***370] The Columbia Broadcasting System, Inc. (CBS) by invoking provisions of the California Public Records Act (*Gov. Code, § 6255 et seq.*, hereafter the Act) seeks access to certain records of the Los Angeles County Sheriff's Department, specifically the records pertaining to persons to whom the sheriff has issued a license to carry a concealed weapon.

When the sheriff refused CBS's request, the latter instituted an action for injunctive and declaratory relief and sought a preliminary injunction. In this latter effort, CBS was partially successful in that the trial court directed the sheriff to disclose the names and certain identifying information concerning most of the individuals who had been granted licenses. The trial court denied CBS access to any data pertaining to two individuals and refused to require disclosure of the applications for permits which had been filed by the individuals. Both sides have appealed.

[I conclude] that the records in question are in their entirety exempt from disclosure under the Act. [I would] therefore direct that the preliminary injunction be vacated.

Carrying a firearm concealed on the person or in a vehicle is generally prohibited by *Penal Code section 12025*. Certain exceptions to the general prohibition are contained in *sections 12026* and *12027 of the Penal Code* but are not relevant here.

Penal Code section 12050 authorizes the sheriff of each county and the chief of any municipal police department to license, from year to year, certain qualified individuals to carry concealed firearms. The statutory criteria [are] that the person be a resident of the jurisdiction of the sheriff or chief, be of good sound character and show that good cause exists for such licensing.

The licensing procedure requires the preparation and collection of certain records including: (a) an application describing the applicant and the reason for desiring the permit (*Pen. Code, § 12051*); (b) a report of all data and information in the California Department of Justice files on the applicant, including any state summary criminal history information (frequently referred [*659] to as a "rap sheet") maintained pursuant to *Penal Code section 11105* (*Pen. Code, § 12052*); (c) any record of the investigation which is required to be made on each applicant (see *Salute v. Pitchess (1976) 61 Cal.App.3d 557, 561 [132 Cal.Rptr. 345]*); and (d) a record of the permit, if granted. (*Pen. Code, § 12053*.) The permit issued must set forth the data required in the application and a description of the weapon authorized to be carried. (*Pen. Code, § 12051*.)

The Los Angeles County Sheriff's Department has augmented the statutory provision by establishing an internal procedure and policy for processing applications for licenses. Procedurally the initial evaluation of all applications is made by a committee consisting of the undersheriff and the two assistant sheriffs -- the highest administrative echelons below the sheriff himself. The final decision is made by the sheriff, who under the statute, has broad discretion.

According to the sheriff's policy, good cause to issue a license exists when "The applicant produces convincing evidence of a clear and present danger to life or of great bodily harm to the applicant, his spouse, or dependent child, which cannot be adequately dealt with by existing law enforcement resources, and which danger cannot be reasonably avoided by alternative measures, and which

danger would be significantly mitigated by the applicant's carrying of a concealed firearm; and (2) the applicant obtains a valid certificate from an advanced officer training institution approved by the California State Bureau of Collection and Investigative Services, attesting to [the] applicant's satisfactory completion of at least twenty-four hours of training. Alternate proof of firearms proficiency may be submitted for review and possible acceptance in lieu of this certificate."

Pursuant to the department's policy guidelines no concealed weapons license is granted "merely for the personal convenience of the applicant. No position or job classification in itself would constitute good cause for the issuance or denial of a [**479] [***371] license. Each application shall be individually reviewed for cause."

Sherman Block, the present defendant, has been Sheriff of Los Angeles County since January 1982. For a period of time prior to that date he served as undersheriff to his predecessor Peter J. Pitchess.

Prior to 1976, former Sheriff Pitchess had followed a policy of routinely denying applications for licenses except in a very limited number of cases. Those cases included judges and elected officials who expressed a concern for their personal safety. Twenty-four licenses were extant in 1976.

[*660] In that latter year, upon a petition for a writ of mandate by two attorneys, [the Court of Appeal] directed the sheriff to exercise his discretion by conducting an individualized investigation and making an individualized determination on each application. (*Salute v. Pitchess, supra, 61 Cal.App.3d 557.*)

The aforementioned internal policy and procedure was adopted in response to this court's mandate. Thirty-five licenses are now in existence. Sheriff Block, as undersheriff, thus served on the screening committee until his assumption of the office of sheriff. [I] point this out as evidence of Sheriff Block's familiarity with the process and his expertise in the field.

In April 1983, CBS requested by letter that Sheriff Block provide the news division of KCBS (a CBS-owned television station in Los Angeles) with copies of the permits then in effect which had been issued by the department.

Alternatively, CBS sought the names of each permit holder, their ages, addresses, occupations, and the reasons for the issuance of the permits as set forth in the various application forms. The information obtained was to form the basis of a television news report concerning the issuance of concealed weapons permits in Los Angeles County. According to a declaration submitted by the news director of KCBS in connection with the motion for a preliminary injunction, such information had become newsworthy as a result of a state Senate bill, introduced in March 1983, which purportedly would have liberalized the requirements for obtaining a concealed weapons license. CBS also professed to be concerned with the possible abuses of power by Sheriff Block in the issuance of the permits to either friends or substantial political contributors.

Sheriff Block denied the request on the ground "that there is a clear danger to the permittees that outweighs the public interest in disclosure." In asserting such grounds the sheriff was relying on *section 6255* of the Act, which permits a public official to withhold disclosure of a record where the public interest in nondisclosure outweighs the public interest in disclosure. 1

1 *Government Code section 6255* provides: "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 making the record public clearly outweighs the public interest served by disclosure of the record."

Before discussing [] the pivotal issue in the case [I] dispose of a number of collateral arguments advanced by both sides by declaring that beyond peradventure the records in question are subject to the Act and their disclosure [*661] or nondisclosure is governed by the provisions of the Act -- specifically *section 6255.*

Enacted in 1968 and modeled on the 1967 federal Freedom of Information Act (81 Stat. 54), the Act replaced a confusing mass of statutes and court decisions relating to disclosure of governmental records. (*American Civil Liberties Union Foundation v. Deukmejian (1982) 32 Cal.3d 440, 447 [186 Cal.Rptr. 235, 651 P.2d 822]*; see also Schaffer et al., *A Look at the California Records Act and Its Exemptions* (1974) 4 Golden Gate L.Rev. 203, 210-213.)

The legislative imprimatur of the Act is contained in *section 6250* declaring that ". . . the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

[**480] [***372] In the spirit of this declaration, judicial decisions interpreting the Act seek to balance the public right [of] access to information, the government's need, or lack of need, to preserve confidentiality, and the individual's right to privacy. (*American Civil Liberties Union Foundation v. Deukmejian, supra, 32 Cal.3d at p. 447*; see also *Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645, 651-652 [117 Cal.Rptr. 106]*; *American Federation of State etc. Employees v. Regents of University of California (1978) 80 Cal.App.3d 913, 915-916 [146 Cal.Rptr. 42]*; *Craig v. Municipal Court (1979) 100 Cal.App.3d 69 [161 Cal.Rptr. 19]*.)

The Act itself consists of a group of integrated sections which generally define public records and the rights of any person to inspect, copy, and receive copies of such records. (*Gov. Code, §§ 6252, 6253, 6253.5, 6254.7, 6254.8*.) These rights are, as noted, subject to certain exceptions only one of which is germane to this dispute.

Section 6255 has no counterpart in the federal Freedom of Information Act, and imposes on the courts of this state a duty which does not burden the federal courts -- the duty to weigh the benefits and costs of disclosure in each particular case. (*American Civil Liberties Union Foundation v. Deukmejian, supra, 32 Cal.3d at p. 452*; see also *Procunier v. Superior Court (1973) 35 Cal.App.3d 207, 209 [110 Cal.Rptr. 529]* [disapproved on other grounds in *Shepherd v. Superior Court (1976) 17 Cal.3d 107, 124 (130 Cal.Rptr. 257, 550 P.2d 161)*]; *Yarish v. Nelson (1972) 27 Cal.App.3d 893, 902-903 [104 Cal.Rptr. 205]*.)

[*662] The significance of *section 6255* lies in the fact that it provides a means by which an agency may withhold a public record which would not be exempt under any of the specific exemptions delineated in *section 6254*.

The statute specifically states that there are two public interests which must be considered when access to a public record is at issue, the interest served by disclosure and the interest served by nondisclosure. The section, however, does not purport to define these public interests. The public interest in disclosure is, for the most part, synonymous with the public's "right to know" and thus embodies all the concerns associated with the public's need to be informed of governmental activities. (See Barber, *The California Public Records Act: The Public's Right of Access to Governmental Information* (1976) 7 Pacific L.J. 105, 118.) The specific exemptions enacted in *section 6254* also make clear the Legislature's conception of the public interest in nondisclosure. An examination of *section 6254* reveals that the Legislature obviously intended to protect from disclosure those records which would expose personal or financial information relating to an individual (*Gov. Code, § 6254, subds. (c), (i), (n)*) or which compromise agency integrity by exposing state secrets (*Gov. Code, § 6254, subds. (b), (f), (h), (k)*), confidential sources of information (*Gov. Code, § 6254, subds. (f), (k)*), or agency deliberative processes (*Gov. Code, § 6254, subd. (a)*).

When the Legislature balanced the competing interests in formulating *section 6254*, it found that the public interest in nondisclosure of these types of records outweighed the public interest in disclosure. *Section 6255* was thus designed to act as a catchall for those individual records similar in nature to the categories of records exempted by *section 6254*, but which the Legislature determined, in balancing the competing interests, would not justify nondisclosure *as a general rule*. (See Barber, *The California Public Records Act: The Public's Right of Access to Governmental Information, supra*, at pp. 119-120.)

Section 6255 embodies the established common law rule that public policy demands certain records should not be open to indiscriminate public inspection, even if they are in the custody of a public official and even if they contain material of a public nature. (See *City & County of S.F. v. Superior Court (1951) 38 Cal.2d 156 [238 P.2d 581]*; *Craemer v. Superior Court (1968) 265 Cal.App.2d 216 [71 Cal.Rptr.* [**481] [***373] *193]*.) "[Where] there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. In this regard the term 'public policy' means anything which tends to undermine that sense of security for individual rights, whether of personal liberty or private property, which any citizen ought to feel has a tendency to be injurious to the public or the public good." (*Craemer v. Superior Court, supra, at p. 222*.)

[*663] [It] is important at this juncture to emphasize that a license to carry a concealed weapon confers on the license holder nothing more than an immunity from prosecution for the misdemeanor of carrying a concealed weapon. The license does not give the holder the right to *use* the weapon in any manner not available to any other citizen.

[]

The sheriff, in his opposition to the motion for a preliminary injunction, set forth the following justification for his refusal to disclose the records.

"All of the concealed weapons licenses presently outstanding were issued by the Sheriff's Department to protect the applicant's life or that of his family from threats of violence made against them. In each case, there is a clear and present danger to the safety of these persons which cannot be protected by law enforcement resources. To make public the licenses issued or the information contained therein would subject the licensees to the increased risk of serious injury or death that the issuance of concealed weapons is designed to prevent.

"Many times a criminal's plans to commit a serious crime or serious injury to an intended victim fails for lack of proper planning and preparation. In this instance, if the identity of the licensee or the reason for issuance of a concealed weapons license became known to the criminal, the likelihood is that crime planning would become much more sophisticated and would involve an escalated use of force. This would substantially increase the likelihood of success of the crime at the risk of the safety to the licensee and his or her family. In short, if the criminal is aware that his victim is armed, he is likely to better plan his crime and use a more sophisticated weapon to ensure its success.

"In addition, some of the Department's licensees are prominent, well known people. It is quite likely that if their status as concealed weapons licensees became public, they would be subject to an increased risk of personal harm. Many persons who commit crimes of violence do so to get back at society and to obtain publicity for their criminal acts. If the identity of these officials and business people were made public, it is quite likely that these criminals would view an attack on these citizens as a larger challenge with all of the corresponding increased publicity.

"Lastly, to make public the identity of persons who possess concealed weapons would greatly inhibit the issuance of licenses to people who need them. For all of the reasons referred to above, if prospective applicants knew their identity was going to be made public, it is probable that they [*664] would not carry a concealed weapon. Because law enforcement cannot adequately protect these individuals and they would possess no weapon to protect themselves, specific and identifiable threats to them and their families would go unprotected, increasing the risk of physical harm."

[An] in camera examination of the records [] also convinced [the court below] that each of the 35 permits were issued by the sheriff's department to protect the applicant's life or that of his or her family from threats of violence made against them. In each instance there is a clear and present danger to the safety of these persons which cannot be protected by law enforcement resources. Public disclosure of the licenses issued or the information contained therein would undoubtedly subject the licensees to the increased risk of serious injury or death.

Public disclosure of the records would clearly jeopardize the safety of the permit [**482] [***374] holders, for it would provide a veritable shopping list of weapons potentially available for theft, and it would expose the particular vulnerabilities of the individuals who possess such weapons.

Balanced against the foregoing considerations is CBS's claim that the public "right to know" compels disclosure. []

According to CBS the matter of licenses to carry concealed weapons became a newsworthy subject when legislation was introduced to liberalize issuance of such licenses. CBS, the public, and more importantly the Legislature, already know the sheriff's procedure and policy and that only 35 licenses have been issued in the most populous county of the state.

CBS makes no claim that it has had any difficulty in identifying persons who have been denied permits. In fact, on July 7 and 8, 1983, CBS broadcast reports on that aspect of the issue.

CBS in addition, however, wants the names and addresses of the license holders together with the reasons for which the licenses were issued. The first and most obvious result of obtaining that information would be the

probability that the licensees would be subject to contact and questioning by media representatives -- not always a pleasant experience.

The second and more serious consequence would undoubtedly be the dissemination via television of the names, addresses, pictures and backgrounds of the licensees together with their assigned reasons for needing the licenses. 2

2 CBS makes the assertion that it is a "responsible" organization and that we should not presume that indiscriminate disclosure would result. The problem with that argument is that if the information is subject to disclosure, there is no way that this court or the sheriff could limit it to CBS.

[*665] [I] have considerable difficulty in discerning any important public interest that would be served by exposing this group of citizens to such treatment, especially in view of the sheriff's expert assessment of the danger involved.

It may well be that in light of the serious crime problem which exists in our community and the Legislature's evident concern, [] the sheriff should be persuaded to liberalize his policy. That cause, however, will not be advanced one whit by disclosure of the identity of the 35 present licensees.

Moreover, public disclosure of such information might seriously discourage future applicants from being open and honest in providing the information required under *Penal Code section 12051*. If prospective applicants knew that their identity was to be made public, there also exists the strong possibility that they would not apply to carry a concealed weapon. This dramatically increases the probability that those who need to carry such weapons would do so irrespective of the laws which generally prohibit the possession of concealed firearms. Such a result is, of course, abhorent to our legal system and increases the risk of injury, accidental or otherwise, to the public as a whole.

CBS maintains that the concerns articulated by Sheriff Block constitute nothing more than unsupported speculation. [I] disagree. Sheriff Block, as an elected official with years of training and experience in the detection and prevention of crime, is particularly well suited to offer his opinion on the issues raised by this litigation. []

The evidence produced at the hearing on the preliminary injunction not only identified legitimate privacy interests in the release of concealed weapons information, but it also established that the need for CBS to obtain the data in question is minimal if not nonexistent. We are not dealing here, as did the court in *Salute v. Pitchess, supra, 61 Cal.App.3d 557*, with litigation involving persons who have been denied a concealed weapons permit. CBS's demands are overly broad and its assigned reasons are supported by no compelling interest that would serve the public welfare.

[]

The Legislature has vested designated law enforcement officials with almost unfettered discretion in this area. If that [**483] [***375] discretion is to be curtailed, the Legislature is the body to do it.

In light of the record presently before this court, [I] must assume that Sheriff Block, the duly elected sheriff, is performing his official duties with [*666] complete regularity, (see *Evid. Code, § 664*) and is presumed innocent of any wrongdoing. (*Evid. Code, § 520*; see also *Pen. Code, § 1096*.)

[]

"If citizenship in a functioning democracy requires general access to government files, limited but genuine interests also demand restricted areas of nonaccess. Decisional law on the subject accepts the assumption that a statute calling for general disclosure may validly define reasonably restricted areas of nondisclosure, provided that the latter are justified by genuine public policy concerns. One concern is the privacy of citizens whose information gets into government files. [para.] Overbroad claims to disclosure may threaten the privacy of individual citizens and accelerate the advent of the Orwellian state." (*Black Panther Party v. Kehoe, supra, 42 Cal.App.3d at p. 655*.)

Based upon the foregoing, [] the disclosure of the materials sought by CBS would constitute an unwarranted invasion of the privacy of the individual permit holders involved. (See *Cal. Const., art. I, § 1*.) Although [no one] [] can anticipate precisely the effects of public disclosure, [one] may surmise that general access to these records would result in an increased risk

of danger to all permittees. On the other side of the balance, [there is] [] no overriding public interest which mandates disclosure. It is, therefore, readily apparent that Sheriff Block was justified in denying CBS access to the documents in question.

The order granting a preliminary injunction [should be] reversed and the matter [] remanded to the trial court with directions to enter an order denying a motion for a preliminary injunction.

Ethics Complaint Number 03-150127

Complainant's Response to the Executive Director's Report and Recommendation

FILED

15 APR 20 PM 4:42

SAN FRANCISCO
ETHICS COMMISSION

BY ____________

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 in the basis that disclosure is prohibited by law **shall cite the specific authority in the Public Records Act or elsewhere.**

(c) A withholding on the basis that disclosure is prohibited by law **shall cite the specific statutory authority of 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 requestor of the nature and extent of the nonexempt information** and shall suggest alternative sources for the information requested, if avaible.

ADDITIONAL DOCUMENTS:
CASE 03-150127

Additional Documents

Case # 03-150127

April 20, 2015

FILED
15 APR 20 PM 1:41
SAN FRANCISCO
ETHICS COMMISSION
BY________

Members of the Ethics Commission:

Howard Lazar of the San Francisco Arts Commission has a long standing history of altering documents; withholding public information and abusing his position as a public servant to willfully violate local law. See attached Orders of Determination; Notice of Warning and response to March 13, 2012 hearing.

The case before you is an example of a street inspection done on January 2, 2015 in which Howard Lazar walked alone. I videotaped as he spent 45 minutes in front of my stand. I stepped back and did not block him in any way. He went to the next stand near 835 Market Street to spend 30 seconds, looked over his shoulder and left. The email in question came from Wat So at the next stand. She was complaining that she believed I took a photo of her stand. Wat So showed me the email and Rebekah Krell verified that she sent an email. This email has nothing to do with an eye witness to an incident. That is the reason why Krell did not want to turn it over.

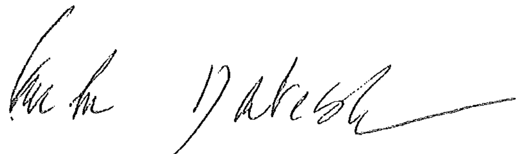
The attached letter I received from Howard Lazar shows no evidence of, "distupting the duties of a staff person" and the Notice of Warning should be rescinded. I went to the SFAC Offices at 5pm the day of the incident. I asked Krell if she wanted to see the tape. She said, "no". She said she would talk to Lazar and send me an email the following Monday. I had not heard from her and called on Tuesday. She again said there was an email from Wat So and began to read it.

I asked her to send it to me. She refused. She did not want to make an appointment to view the tape. I then made an IDR for the email. Krell was the Custodian of Records at the time.

Howard Lazar has a history of filing false log inspection reports. I stated that 17 times under public comment at full SFAC meetings. He has a long standing history of filing false police reports with claims that I, "stalked" him. He has also sworn out complaints with the SF City Attorney's Office on the same issue. In 2011, I spent 2 years in SF Criminal Court over a SFAC employees', "stalking" complaint. (Case #2235456). I did not know Evelyn Russell (Street Artist secretary) and always renewed by mail. Her claim was that, "I grunted 3 times on the phone". Russell did not appear at trial and I submitted emails stating that when I called 415-252-2583 (Lazar's phone) a female voice was singing gospel music. Lazar lied on the police report and Russell was fired. For 2 years, my First Amendment Rights were violated as I was prevented from attending all SFAC meetings.

While the facts of this specific case do not raise to the level of a WILLFUL violation under the Sunshine Ordinance, it shows the level of deception and trickery of Howard Lazar. He has been employed there for over 44 years and has yearly performance reviews. For more than 42 years, he was the Custodian of Records. Only last year, he was removed from that position. He never had Sunshine training and writes the minutes of the Street Artist Committee.

I would like a copy of the email in question and the Notice of Warning to be withdrawn for lack of evidence.



From: atreboux <atreboux@aol.com>
To: Krell, Rebekah (ART) (ART) <rebekah.krell@sfgov.org>
Subject: Fw: Immediate Disclosure Request
Date: Fri, Jan 16, 2015 4:05 pm

Subject: Immediate Disclosure Request

Request all emails regarding an inspection Howard Lazar made on Market between 4-5th Streets on Friday 2, 2015. You said you would send an email to me on January 5, 2015 after speaking with Lazar. You did not. when I was able to get you on the phone today, you cited an email that was sent by someone about this incident. it was forwarded to you by Howard Lazar. I request a copy of that email.

I am making this request pursuant to the Sunshine Ordinance.

Ann Treboux
atreboux@aol.com

Paula Datesh

150 Sutter Street #738

San Francisco, CA 94104

email:atreboux@aol.com

January 22, 2015

Ms. Krell;

I am responding to a letter sent to the above address dated January 5, 2015 from Howard Lazar. Exhibit #1:

The 1st paragraph mentions a report but does not reference it. Lazar mentions an Ordinance (Ord. 4-53)- but does not include it in his attachments. On page #2 of his attachments: he cites Section 5 but not reference which Ordinance. Lazar does mention where to find it.

Page #2 of his attachments does not define which violations are, "serious" and which are, "not serous". He does not reference the alleged violations in his letter as to which category they fall into.

He starts the letter in the 1st person; changes to the 3rd person; sends a copy to all Arts Commissioners Street Artist Committee and the Director of Cultural Affairs. Lazar does not cite which , "Arts" Commissioners" so I am not adequately informed. He does not include how to contact them.

RESPONSE TO INSPECTORS LOGBOOK DECEMBER 18, 2014

Lazar walked around alone that day. I was in M-3. The photos he referenced are from space M-9. I was packed up and on the phone when Lazar approached. I taped him from my phone as he approached. The photos included on page #3 and #4 do not speak to that day. Since Lazar does not reference which section of which Ordinance he is referencing, my response is that, "I displayed single feather earrings".-is that I do not know what that is. Each earring I make has multiple feathers and most are on leather. I do not use commercially manufactured pendants when making earrings. The process I use is all handmade by me. His claim of having no beads attached I false. Lazar second photo shows SF Giants earrings with 3 beads on each earring. Lazar did not ask me any questions and these photos do not speak to the inspection done on December 14, 2014. Again, his claim was that I was in M-3. These photos show space M-9. The inspection log book of December 14-includes false information with no evidence to support his claim.

RESPONSE TO INSPECTORS LOGBOOK OF JANUARY 2, 2015

I was not displaying commercially manufactured SF Giants pendants. These are flat bottle caps that I flattened; spray painted and drilled a hole into. Each one I made by hand. I did not display commercially manufactured silver-capped feather jewelry without any adornment. Again, I made all components of the earrings I sell. I have no problem making these items AGAIN before any member of your Committee. Lazar did not cite the, "pendant criteria" in his letter or attachments. He did not include where to find this information. His claim that I did not make them is false.

On January 2, 2015 Lazar came up on me from behind. He angry aimed a small silver camera at me. I *ALWAYS t*ape him when he approaches me in the street. When I saw him, I stepped back a few feet and began to record. For 21 minutes I taped him without moving from behind my stand. His photo of me *BEHIND MY STAND* does not show, " I blocked him on the asides and in front of her display from taking photos". The photo Lazar submitted was me, *BEHIND MY STAND* recording him.

Lazar's claim that I was a few feet behind him as he was inspecting the Chor Yu Yeung stand is false. I continued taping him from my stand and the tape shows him passing the Yeung stand. He did not look at it and wished them a happy New Year. Note that stand is oversized and sells over 900 mass produced animal hats. Lazar ignores it on a regular basis.

A few minutes later, I packed up and went to see someone in City Hall. I showed the tape and Was advised to file a police report. I was able to get Ms. Krell on the phone. She asked for a copy of the tape to be emailed to her. I said it was too large. I stopped at the SFAC office at about 5pm the same day. Krell came out. She said she would question Lazar the following Monday and send me an email. Since I did not receive an email from her, I called on Tuesday. Krell's claim was that there was an eye-witness to the event on Jan. 2. She named the daughter of Chor Yu Yeung's email sent to Howard Lazar. I asked her to send it to me. She refused. I sent an Immediate Disclosure Request for the email. To date, there has been no response. I filed a complaint for the document with the SOFT task force.

Howard lazar has a habit of lying in his inspection log books. The permit revocation hearing of March 13, 2013 was held while I was in the hospital. Not only were my due process rights violated, I sent a letter asking for a continuance along with my response to the charges against

me. I was told in an email sent by Krell that, "all Commissioners would get my response and it would be posted on-line" It was not. Lazar log books detail a stalking event that did not take place. I was not working that day and he was not able to supply evidence to support his claim. At the Board of Permits and Appeals hearing-again Lazar did not supply a response to his charges; claimed to be too sick to attend and received a huge tongue lashing by Ms. Heung-the president. Cite www.sfgov.tv. Note also SF Sunshine Ordinance Order of Determination- Willful Order (William Clark v Howard Lazar). After one year of delays, Lazar admitted on the public Record to deleting sections of an audio tape. See attachment. Note also that Howard Lazar interrupted my public comment at the January 2015 Street Artist meeting. This is a violation of the 1st Amendment; The Brown Act and the Sunshine Ordiance. He said, "anyone can buy what you sell in Chinatown'"

Succinctly, these allegations have no merit or basis in fact. Lazar has once again wrote a badly Written letter; not cited the Ordinance or code he basis his allegations on or supplied adequate evidence to support his allegations. I have supplied adequate evidence to support my claim of Lazar falsifying an inspection (December 18 and Janaury 2, 2015). Not only do I deny all charges against me-I suggest that another studio visit be scheduled so that I may remake the same items I made 2 years ago. I further suggest a public hearing be held on these allegations. I want to be Given the opportunity to present evidence to the the allegations and to go on the public record with my defense.

The 21 minute tape of Lazar's January 2, 2015 inspection is avaible upon request. It will show that I did not block Lazar at all. It will show Lazar that Lazar lied in his inspector's log book.

sfac

San Francisco Arts Commission

Edwin M. Lee
Mayor

Tom DeCaigny
Director of
Cultural Affairs

Programs:
Civic Art Collection
Civic Design Review
Community Arts & Education
Cultural Equity Grants
Public Art
SFAC Galleries
Street Artist Licensing

25 Van Ness Avenue, Ste. 345
San Francisco, CA 94102
tel 415-252-2590
fax 415-252-2595
sfartscommission.org
facebook.com/sfartscommission
twitter.com/SFAC

City and County of
San Francisco

January 5, 2015

NOTICE OF WARNING

Paula Datesh
150 Sutter Street, #738
San Francisco, CA 94104

Dear Ms. Datesh:

This is to inform you that a report was filed with the Arts Commission that you allegedly violated the Street Artist Ordinance (Ord. 41-83) on the following date and in the following manner:

December 18, 2014, Market Street, 5th to 4th streets:
1) Selling items not of the artist's own creation.

(Please see attached Inspector's Logbook).

January 2, 2015, Market Street, 5th to 4th streets:
1) Selling items not of the artist's own creation.
2) Obstructing the duty of a staffperson.

(Please see attached Inspector's Report and photos).

Please see the attached "NOTICE TO STREET ARTISTS" describing the Arts Commission's procedures with respect to such violations.

This is to respectfully request that you do not violate the Street Artist Ordinance.

If you wish to respond to this notice, please write to the Street Artists Program Director.

San Francisco
Arts Commission

Edwin M. Lee
Mayor

Tom DeCaigny
Director of
Cultural Affairs

Programs:
Civic Art Collection
Civic Design Review
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Cultural Equity Grants
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twitter.com/SFAC

City and County of
San Francisco

Notice to Street Artists

Section 5 of the Street Artists Ordinance allows the Director of Cultural Affairs to refuse to issue a street artists certificate or renewal if charges have been filed alleging deception or violation of the Street Artists Ordinance. The Art Commission has adopted the following procedures to implement Section 5. These procedures may be used to address violations in addition to, and may be taken with, the existing suspension-revocation procedures.

CHARGES OF MINOR VIOLATIONS OF THE STREET ARTISTS ORDINANCE:

--includes most violations of a non-violent/ non-threatening nature.

First Violation: "NOTICE OF WARNING" from Program Director.

Second Violation: "NOTICE OF INTENT TO RECOMMEND DENIAL OF CERTIFICATE OR RENEWAL" from Program Director.

Notice will offer artist an opportunity to have a public hearing with Program Director to discuss the charge. If artist agrees in writing to comply with Street Artists Ordinance, Program Director will recommend issuance of certificate or renewal. If artist does not agree in writing to comply with the ordinance, Program Director will recommend denial of certificate or renewal.

Third Violation: (when at least 1 of 3 of the incidents has been witnessed by Police or Program staff): "NOTICE OF WITHHOLDING OF CERTIFICATE OR RENEWAL PENDING HEARING" from Director of Cultural Affairs.*

CHARGES OF SERIOUS VIOLATIONS OF THE STREET ARTIST ORDINANCE

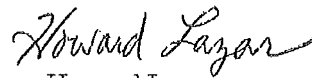
--includes violations of a violent or threatening nature and violations that significantly threaten integrity of Street Artists Program.

First Verifiable Violation: "NOTICE OF WITHHOLDING OF CERTIFICATE OR RENEWAL PENDING HEARING" from Director of Cultural Affairs.*

*Denials of certificates or renewals are governed by section 2408 of the Street Artists Ordinance. The Street Artists Program Committee will hold a public hearing on the certificate or renewal in accordance with Section 2408. A decision by the Committee and Program Director to deny certificate or renewal may be appealed to the Board of Appeals within 15 days, in accordance with section 2409 of the Street Artists Ordinance.

12/10/1996

Sincerely,



Howard Lazar
Street Artists Program Director
Arts Commission

HL:al

Attachments:
Notice to Street Artists
Inspector's Logbook 12-18-14
Inspector's Logbook and photos 1-2-15

Cc: All Arts Commissioners, Street Artists Committee
Director of Cultural Affairs Tom DeCaigny

INSPECTOR' S LOGBOOK
THURSDAY, DECEMBER 18, 2014
1:35 – 3:50 p.m.
DOWNTOWN AND JUSTIN HERMAN PLAZA

1:35 p.m., Hallidie Plaza: Sunny, mild. Inspected the wares of the following artists:

Diswani Nono
Zhao Mei Pan
Masao Karube
Rui Ling Chang
Henoc de Alba – I showed him the photos of Dora's "butterfly" fork bracelets and asked him if he made ones that looked like them; he replied that he made the same design about 10 years ago.
Ismael Morales
Chao Ju Chang
Gat Wah Lee Chen
Shu Qi Dong
Jimmy Sha

1:45 p.m., Market Street, 5th to 4th streets:
M-9: David Campos
M-10: Wai Chi So

Manuel Loli was set up for business between "M-10" and "M-11", told me he had suffered from not being able to sell due to the rains, that this was the first dry day for him to sell, but that he would immediately dismantle his display and go elsewhere. I told him to try Hallidie Plaza. He began to dismantle his display.

M-11: James Toolate
M-12: Carlos Kuncar
M-4: Fernando Hechavarria (display)
M-3: **Paula Datesh** – displaying single feather earrings on ear wires (no beads or other adornment attached); also displaying orange-colored circular SF Giants pendant earrings on ear wires (no beads or other adornment attached); she videoed me while I inspected these commercially manufactured items.

Z-2: Zhenjie Feng
Z-1: Xing Zhi Yuan

Alyssa called me with names of artists whose certificates had recently expired.

2:05 p.m., Market Street at Grant Avenue:

INSPECTOR' S LOGBOOK
FRIDAY, JANUARY 2, 2015
2:05 – 3:35 p.m.
MARKET STREET CORRIDOR AND JUSTIN HERMAN PLAZA

2:05 p.m., Hallidie Plaza: Sunny; cold. Inspected the wares of the following artists:

Zhao Mei Pan
Masao Karube
Alejandro Galicia-Chavez
Ismael Morales
Rui Ling Chang
Yu Qi Chen
Shu Qi Dong – crocheting a red hat
Jimmy Sha

Still lots of holiday shoppers in the Downtown area.

2:20 p.m., Market Street, 5th to 4th streets:
M-9: **Paula Datesh** – again displaying the commercially manufactured SF Giants pendant earrings and commercially manufactured silver-capped feather jewelry on earwires without any adornment. The Giants pendant earrings had 3 beads attached which, if they didn't come attached with the commercial pendants, would still violate the Arts Commission's pendant criteria because the pendants which Paula did not make were not subordinate to, or an integral part of, the design.

I took photos of her display of the items, and while I was doing so, she aimed her mobile device at me and then blocked me (at the sides and front of her display) from taking my photos.

M-10: Chor Yu Yeung / Wai Chi So – while I was inspecting their display, Paula was a few feet behind me aiming her mobile device at me.
M-11: Al Gamarra
M-12: Carlos Kuncar
M-3: Henoc de Alba - display

Z-2: Xue You Mai – crocheting
Z-1: Zhong Yu Wang

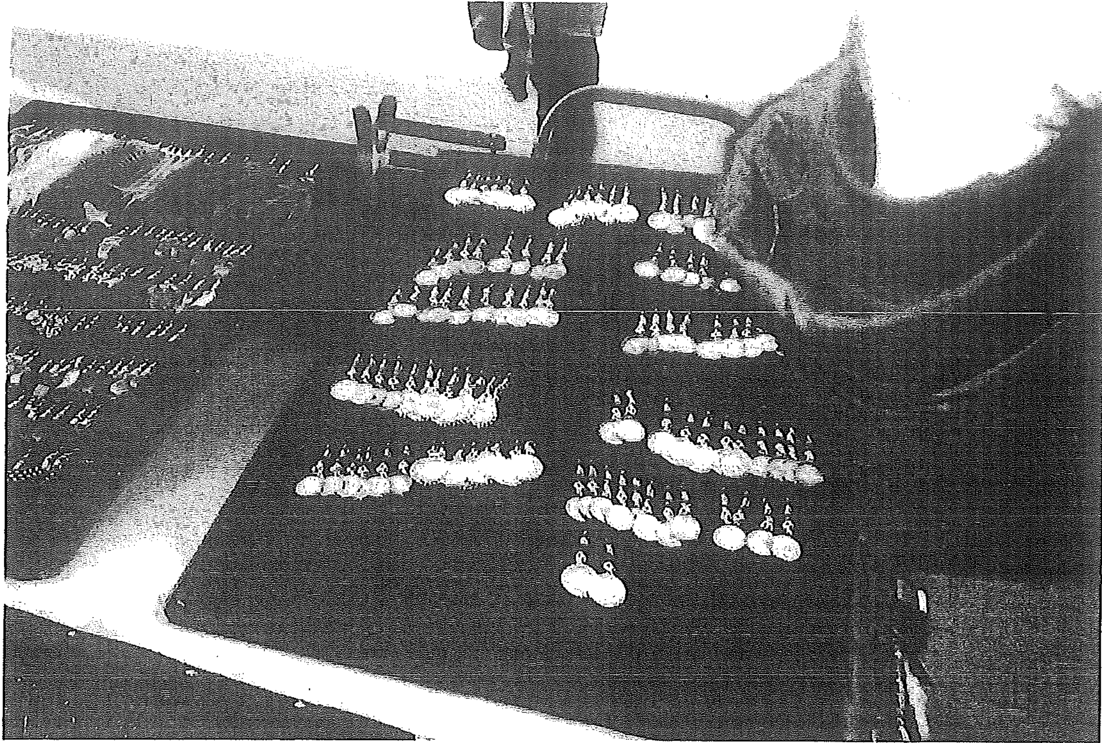
2:35 p.m., Market Street at 4th Street:
no artists

2:37 p.m., Market Street at Grant Avenue:
no artists

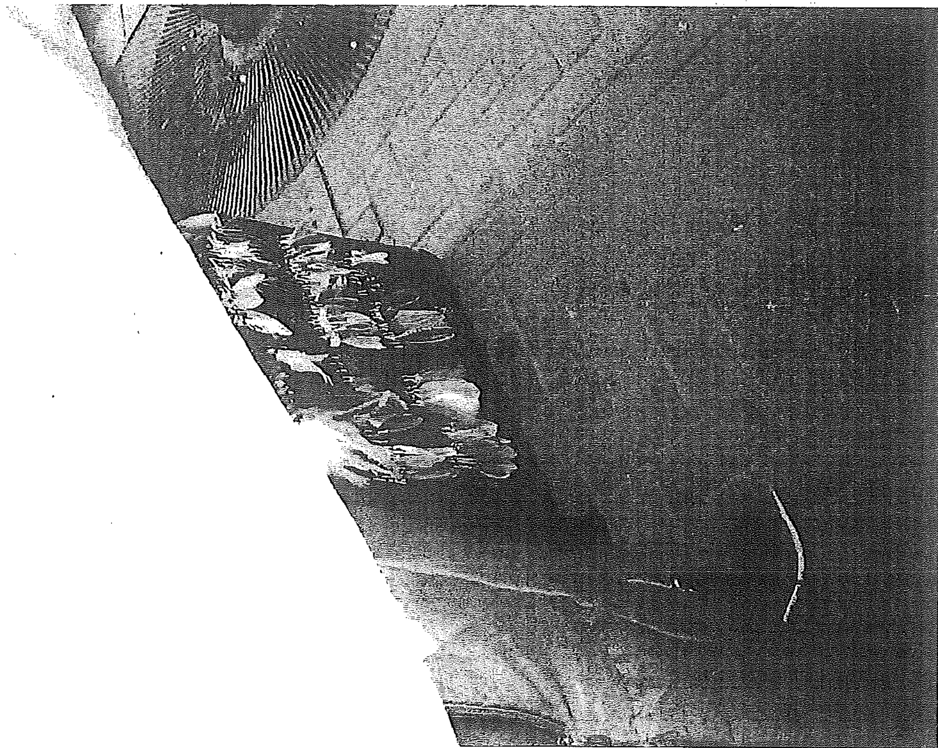
2:44 p.m., Market Street at Sutter Street:
no artists.

2:55 p.m., Market Street, Spear to Steuart streets:

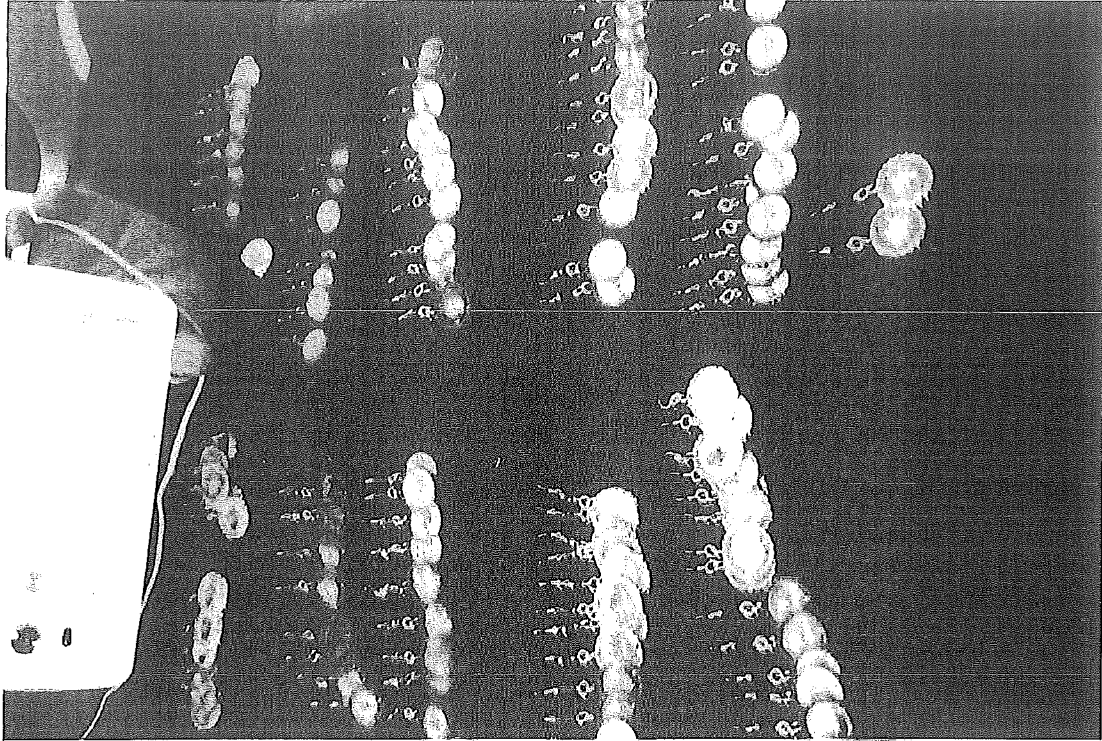
January 2, 2015
Lazar



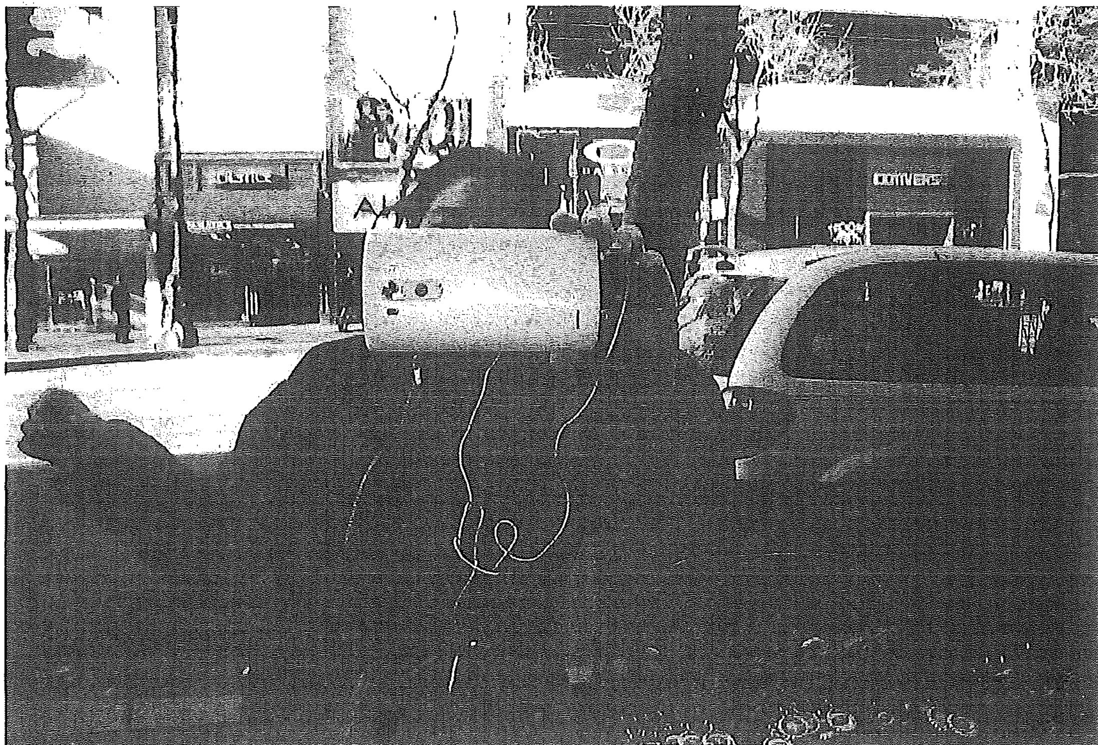
Paula Datesh # 8898



January 2, 2015-Lazar

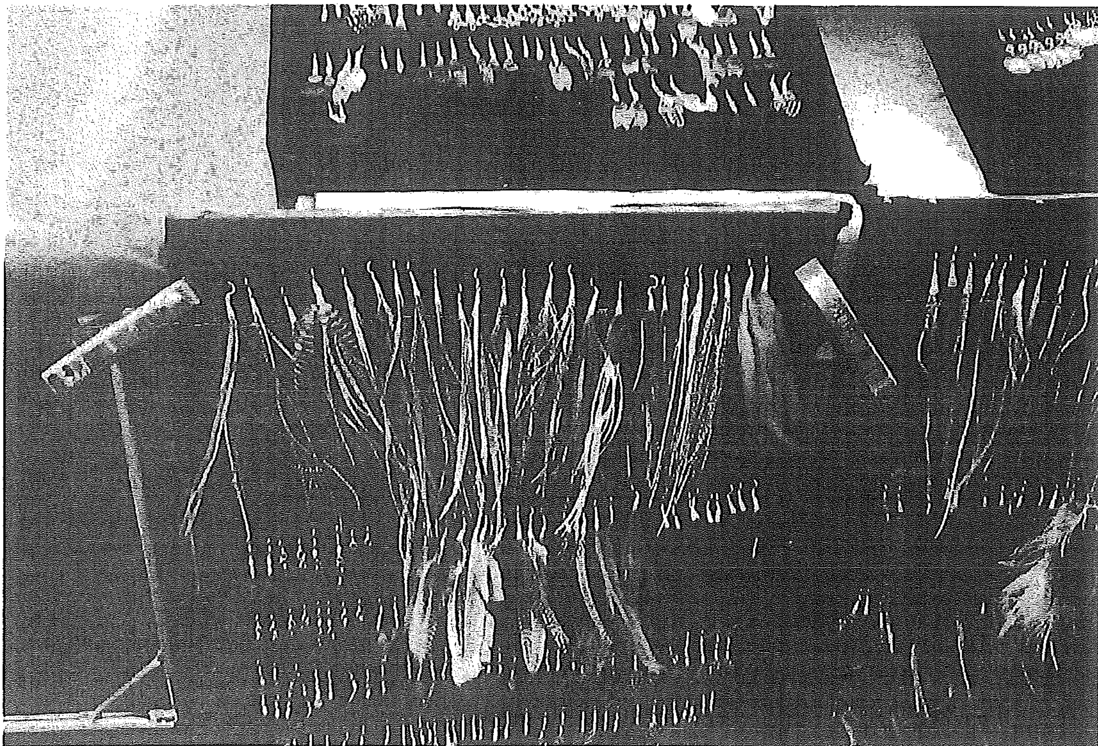


Pavla Datesh #8898



January 2, 2015. Lazar

Paula Datesh # 8898



25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-4665 F: 415-252-2595
sfartscommission.org

e-Newsletter I Twitter I Facebook I YouTube I Flickr

From: <pdatesh@aol.com>
Date: Tue, 12 Mar 2013 15:17:07 -0700
To: Rebekah <rebekah.krell@sfgov.org>
Subject: Re: FedEx Received and Posted

I refer the emailed copy Which was sent to you and Kate this afternoon
via Speedway in Sf. The photos are
clearer. Please use that copy.
Thanks

Paula

On Mar 12, 2013, at 3:03 PM, "Krell, Rebekah" <rebekah.krell@sfgov.org> wrote:

> Hello Paula,
>
> Per your request, I'm writing to confirm receipt of the FedEx documents you sent. All will be posted online and copies will be made for the Commissioner's for tomorrow's hearing. We will redact your email address. Please let me know if you have any questions.
>
> Best,
>
> Rebekah
>
> Rebekah Krell
> **Deputy Director & CFO**
>
> **San Francisco Arts Commission**
> **25 Van Ness Avenue, Suite 345**
> **San Francisco, CA 94102**
> **T: 415-252-4665 F: 415-252-2595**
> **sfartscommission.org**
>
> e-Newsletter I Twitter I Facebook I YouTube I Flickr

From: Paula Datesh <pdatesh@aol.com>
To: Pdatesh <Pdatesh@aol.com>
Subject: Fwd: FedEx Received and Posted
Date: Sat, Aug 3, 2013 6:30 pm

Ok, will do.

Rebekah Krell
Ok, will do.

Rebekah Krell
Deputy Director & CFO
Ok, will do.

Rebekah Krell
Deputy Director & CFO

San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
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>
> **Best,**
>
> Rebekah
>
> Rebekah Krell

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

July 6, 2011

San Francisco Ethics Commission
Benedict Y. Hur, Chairperson
Jamienne S. Studley, Vice-Chairperson
Beverly Hayon
Dorothy S. Liu
Charles L. Ward
25 Van Ness Avenue, Suite 220
San Francisco, California 94102

Re: William and Robert Clark vs. Arts Commission (Sunshine Ordinance Task Force Case No. 11037): Request for Ethics Commission enforcement action for willful violations of Sunshine Ordinance by Howard Lazar, Street Artists Program Director for the City Arts Commission

Dear Commissioners:

At its regular meeting of June 28, 2011, the Sunshine Ordinance Task Force voted unanimously to find that Howard Lazar, Street Artists Program Director for the City Arts Commission, had willfully violated two provisions of the Sunshine Ordinance in handling a public-records request from William and Robert Clark, designated as Task Force Case No. 11037:

– Sunshine Ordinance Section 67.21(c), which states: "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..."

– Sunshine Ordinance Section 67.28(a), which states: "No fee shall be charged for making public records available for review."

In testimony before the Task Force at the aforesaid meeting, Messrs. Clark said they had requested certain information from Mr. Lazar; that upon being informed that the

information was available, they visited the Arts Commission office, were shown a pair of Manila envelopes, and were told that they would have to pay four dollars and ninety cents ($4.90) to view the forty-nine pages contained in one envelope, and two dollars and ten cents ($2.10) to view the twenty-one pages contained in the other envelope; and that of the seventy pages they paid to view, only four contained information they had requested.

The Clarks' testimony and printed material included in the information packet for the aforesaid meeting convinced the Task Force that:

– Rather than providing only the information that the Clarks requested, Mr. Lazar resorted to a practice known as "sand-bagging" – mixing the requested information in with a huge volume of superfluous information, forcing them to spend valuable time to comb through the material for the information they had sought. Mr. Lazar thereby skirted the Section 67.21(c) requirement to "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."

– The Clarks should not have been charged to look at any material, because they had not asked for reproduction thereof; their request would have been satisfied if they had merely been permitted on-site scrutiny of the information they requested. Mr. Lazar thereby violated, or caused to be violated, the afore-cited Section 67.28(a) of the Sunshine Ordinance.

The Street Artists Program is funded in whole or in part through fees charged to the artists, under both voter initiative and legislative City ordinance. Not only members of the public have a right to public information access but, even more, those who pay fees for no direct services in return. This is a major guiding principle of the Public Records Act, which is the basis of the Sunshine Ordinance that the Task Force is charged to uphold, much as the Ethics Commission is charged to uphold the Fair Political Practices Act and the FPPA-based local rules on accountability and transparency in the political process.

Besides all of the above, Mr. Lazar willfully violated Sunshine Ordinance Section 67.21(e) by failing to attend the Task Force's hearing into the Clarks' complaint. Mr. Lazar and an associate, Julio Mattos, attended the June 28, 2011, meeting of the Task Force but abruptly left the meeting room while the Clarks were presenting their complaint; neither Mr. Lazar nor Mr. Mattos returned. When the Task Force Chair asked if anyone in the audience wished to present facts and evidence in support of the respondent – i.e. Mr. Lazar – no one responded. Section 67.21(e) states in part: "Where requested by [a] petition, the Sunshine Task Force may conduct a public hearing concerning [a] records request denial. An authorized representative of the custodian of the public records requested shall attend ***any*** hearing and explain the basis for its decision to withhold the records requested." (Emphasis added.)

The latter-most violation continues a pattern of willful misconduct by Arts Commission staff personnel in responding to sunshine-related complaints. They failed to send a knowledgeable representative to hearings that the Task Force held on February 22, 2011, and May 18, 2011. Following the May 18 meeting, the Task Force received a letter stating that the Arts Commission was not notified of the hearing held on that date. However, after reviewing communications records, Task Force Administrator Chris Rustom assured all concerned – including providing corroborating documentation – that he had, in accordance with proper procedure, notified the parties-in-interest well in advance of the hearing date.

The Task Force recognizes that extenuating and mitigating circumstances might on occasion arise; however, that the absence of knowledgeable representation on the Commission staff's part is repetitive shows a pattern of callous disregard for the public's right to know and for the Task Force's exercise of due process, and further evidences the willful nature of the violation.

Accordingly, the Task Force files this petition with the Ethics Commission under Sunshine Ordinance Section 67.34, which states: "The willful failure of any ... 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. 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."

We strongly urge that the Ethics Commission exercise any and all powers that you have to (1) effect redress of the financial penalty illegally imposed on the Clarks for exercising their rights under the Sunshine Ordinance and the Public Records Act; and (2) impose a fine and/or penalty on Mr. Lazar for his willful violations of the Sunshine Ordinance.

This episode, unfortunate though it is, provides an opportunity for the Ethics Commission to send a loud, clear message that willful violation of City and State sunshine laws will not be tolerated. Thank you for your attention.

Sincerely,

Richard A. Knee
Sunshine Ordinance Task Force Chair

C: Mayor Edwin Lee
Board of Supervisors
Arts Commission

William and Robert Clark, Complainants in Sunshine Ordinance Task Force Case No. 11037

Howard Lazar, Respondent in Sunshine Ordinance Task Force Case No. 11037

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

July 6, 2011

Honorable Edwin Lee, Mayor
Honorable Members of the Board of Supervisors
City and County of San Francisco
David Chiu (District 3), President
Eric Mar (District1)
Mark Farrell (District 2)
Carmen Chu (District 4)
Ross Mirkarimi (District 5)
Jane Kim (District 6)
Sean Elsbernd (District 7)
Scott Wiener (District 8)
David Campos (District 9)
Malia Cohen (District 10)
John Avalos (District 11)

Dear Ladies and Gentlemen:

Please find enclosed with this note a copy of a letter from the Sunshine Ordinance Task Force to the Ethics Commission wherein the Commission is requested to take any and all steps within its power to discipline Howard Lazar, Street Artists Program Director for the Arts Commission, for multiple willful violations of the City's Sunshine Ordinance.

Please recall that the Task Force, in a letter dated June 17, 2011, called your attention to numerous instances in which Arts Commission staff personnel (1) had withheld disclosable public information, oral and/or documentary, in violation of the Ordinance and the California Public Records Act, and (2) had repeatedly failed to send a knowledgeable representative to Task Force hearings into citizens' allegations of said, such failures also constituting a violation of the Ordinance.

The Task Force felt this was necessary and proper especially at this time, as deliberations on the City's 2011-12 are in progress; every City entity must be held accountable for the amount of money it is requesting, its intended use of that money, and its expenditures during the current and previous fiscal years.

By copying to you our letter to the Ethics Commission, the Task Force wishes to renew your attention to the apparently standard practice by certain Arts Commission staff personnel to dodge that accountability, and we again urge that you raise concerns with the Arts Commission on this matter. Thank you for your attention.

Sincerely,

Richard A. Knee
Sunshine Ordinance Task Force Chair

Enclosure: Letter from Sunshine Ordinance Task Force to Ethics Commission

Cc: Arts Commission

SUNSHINE ORDINANCE
TASK FORCE

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

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 Julio Mattos, contract clerk for the Arts Commission, appeared on behalf of

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.

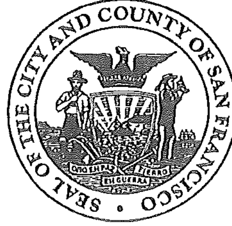
An audio recording of the Task Force hearing on the complaint and supporting documentation is available on the Task Force's web site. Please contact the Task Force Administrator by email at sotf@sfgov.org or telephone at (415) 554-7724 to request this information be forwarded in hard copy format.

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



ORDER OF DETERMINATION
August 19, 2013

DATE THE DECISION ISSUED
July 9, 2013

PAULA DATESH VS. ARTS COMMISSION, HOWARD LAZAR (13005)

FACTS OF THE CASE

Paula Datesh ("Complainant") alleges Howard Lazar, Program Director and the San Francisco Arts Commission (the "Commission") violated the Ordinance by failing to provide the Complainant with requested public information in a number of separate categories.

COMPLAINT FILED

On February 8, 2013, Ms. Datesh filed a complaint with the Task Force alleging violations of Sections 67.21, 67.24, 67.26, and 67.27 of the Ordinance.

HEARING ON THE COMPLAINT

On July 9, 2013, Complainant Ms. Datesh appeared before the Task Force and presented her claim. Respondent, Howard Lazar, Program Director presented the Arts Commission's defense.

The issue in the case is whether the Arts Commission violated Sections 67.21, 67.24, 67.26, and 67.27 of the Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Complainant Ms. Datesh to be persuasive and finds Sections 67.25(a) and 67.21(e) to be applicable in this case. The Task Force does not find that testimony provided by Howard, Program Director, Arts Commission persuasive to resolving the allegations of violation of these two provisions of the Ordinance in this case.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Arts Commission violated Sections 67.25(a) for failure to respond the day following the Immediate Disclosure Request and 67.21(e) for failure to comply with the records request in a timely manner. The Arts Commission shall release the records requested within 5 business days of the issuance of this Order and appear before the Education, Outreach and Training Committee on September 9, 2013 for a hearing on the adequacy of the Commission's policies and processes for responding to public records requests.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 9, 2013 by the following vote: (Pilpel/Knee)

Ayes: Knee, Washburn, Pilpel, Sims, David Hyland, Oka, Fischer, Grant

Kitt Grant, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Paula Datesh, Complaint
Howard Lazar, Respondent
Kate Patterson, Respondent

ORDER OF DETERMINATION
February 7, 2014

DATE THE DECISION ISSUED
January 30, 2014

CASE TITLE – PAULA DATESH V. HOWARD LAZAR AND SHARRON PAGE RITCHIE, SAN FRANCISCO ARTS COMMISSION (File No. 13036)

FACTS OF THE CASE

Paula Datesh (Complainant) made a complaint alleging that the San Francisco Arts Commission (Respondent) violated provision of the Sunshine Ordinance by: 1) improperly posting Complaints letter in the agenda for the March 13, 2013, meeting of the Street Arts Licensing Committee; and 2) failing to post minutes for meetings in a timely fashion.

COMPLAINT FILED

On July 18, 2013, Complainant filed a complaint with the Task Force regarding the Respondent's alleged failure to properly post Complainant's letter to a meeting agenda and failure to post meeting minutes in a timely fashion.

HEARING ON THE COMPLAINT

On January 30, 2014, Complainant, appeared before the Task Force and presented her claim. Kate Patterson, Arts Commission (Respondent), presented the Arts Commission's defense.

The issue in the case was whether the Agency violated Sections 67.9 and/or 67.16 of the Sunshine Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

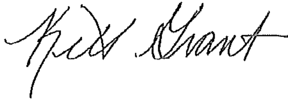
Based on the testimony and evidence presented the Task Force finds the testimony of the Complainant to be persuasive and finds Sunshine Ordinance Section 67.16 to be applicable in this case. The Respondent acknowledged their error and agreed with the findings of the Sunshine Ordinance Task Force.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the San Francisco Arts Commission in violation of Section 67.16 of the Sunshine Ordinance for failure to post the San Francisco Arts Commission's meeting minutes of April 1, 2013, May 6, 2013, May 20, 2013, and June 3, 2013, in a timely manner.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 30, 2014, by the following vote: (Washburn/Hyland)

Ayes: Knee, Washburn, Pilpel, Sims, Hyland, Oka, Fischer
Absent: David, Grant



Kitt Grant, Chair
Sunshine Ordinance Task Force

c: Nicholas Colla, Deputy City Attorney
Jerry Threet, Deputy City Attorney
Paula Datesh, Complainant
Howard Lazar, SF Arts Commission
Sharon Page-Ritchie, SF Arts Commission
Kate Patterson, SF Arts Commission

ORDER OF DETERMINATION
February 7, 2014

DATE THE DECISION ISSUED
February 5, 2014

CASE TITLE – PAULA DATESH V. HOWARD LAZAR AND REBEKAH KRELL, SAN FRANCISCO ARTS COMMISSION (File No. 13052)

FACTS OF THE CASE

Paula Datesh (Complainant) made a complaint alleging that the San Francisco Arts Commission (Respondent) violated provision of the Sunshine Ordinance by failing to timely respond to her immediate disclosure request on the following two occasions: 1) Howard Lazar, Arts Commission, failed to respond to Complainant's August 28, 2013, request for information; and 2) Rebekah Kress, Arts Commission failed to respond to Complaint's request for information on an unknown date.

COMPLAINT FILED

On September 4, 2013, Complainant filed a complaint with the Task Force regarding the Respondent's alleged failure to timely respond to complaint's immediate disclosure request.

HEARING ON THE COMPLAINT

On February 5, 2014, Complainant appeared before the Task Force and presented her claim. Howard Lazar, Arts Commission (Respondent), presented the Arts Commission's defense.

The issue in the case was whether the Agency violated Sections 67.21 and 67.25 of the Sunshine Ordinance and/or Section 6253 of the California Government Code.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

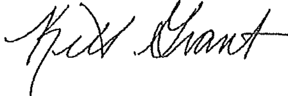
Based on the testimony and evidence presented the, Task Force finds the testimony of the Complainant to be persuasive and finds Sunshine Ordinance Sections 67.25(a) and 67.21(b) to be applicable in this case. The Respondent acknowledged their error and agreed with the findings of the Sunshine Ordinance Task Force.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the San Francisco Arts Commission in violation of Section 67.25(a) and 67.21(b) for failure to respond to an immediate disclosure request in a timely manner.

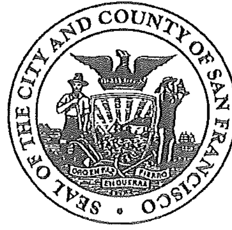
This Order of Determination was adopted by the Sunshine Ordinance Task Force on February 5, 2014, by the following vote: (Fischer/Knee)

Ayes: Knee, Washburn, Pilpel, Sims, Hyland, Oka, Fischer, Grant
Absent: David



Kitt Grant, Chair
Sunshine Ordinance Task Force

c: Nicholas Colla, Deputy City Attorney
Jerry Threet, Deputy City Attorney
Paula Datesh, Complainant
Howard Lazar, SF Arts Commission
Rebekah Krell, SF Arts Commission
Kate Patterson, SF Arts Commission



ORDER OF DETERMINATION
May 8, 2014

DATE THE DECISION ISSUED
April 30, 2014

CASE TITLE – PAULA DATESH V. HOWARD LAZAR, SAN FRANCISCO ARTS COMMISSION (File No. 14018)

FACTS OF THE CASE

Paula Datesh (Complainant) made a complaint alleging that Howard Lazar, San Francisco Arts Commission (Respondent) violated provisions of the Sunshine Ordinance by failing to respond to immediate disclosure requests in a timely manner.

COMPLAINT FILED

On February 13, 2014 Ms. Datesh filed complaints against the San Francisco Arts Commission alleging failure to respond to various immediate disclosure requests in a timely manner.

HEARING ON THE COMPLAINT

On April 30, 2014, Ms. Datesh appeared before the Task Force and presented her claim. Howard Lazar, Arts Commission and Kate Paterson-Murphy (Respondent), presented the Arts Commission's defense.

The issue in the case was whether the Arts Commission violated Sections 67.21 and 67.25 of the Sunshine Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

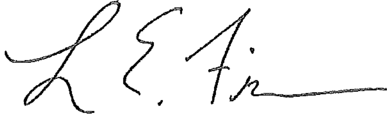
Based on the testimony and evidence presented, the Task Force finds the testimony of Ms. Datesh to be persuasive and finds Sunshine Ordinance Sections 67.25(a) to be applicable to this case. The Task Forces does not find the testimony provided by Mr. Lazar, Arts Commission, persuasive to this case.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the San Francisco Arts Commission in violation of Section 67.25(a) for failure to respond to an immediate disclosure request in a timely manner. The San Francisco Arts Commission shall appear before the Compliance and Amendments Committee to discuss methods to insure that immediate disclosure requests are responded to in a timely manner.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on April 30, 2014, by the following vote: (Hyland/Knee)

Ayes: Knee, Pilpel, Sims, Hyland, Oka, Fischer, Grant
Noes: None
Absent: Washburn, David



Louise Fischer, Vice-Chair
Sunshine Ordinance Task Force

c: Nicholas Colla, Deputy City Attorney
Jerry Threet, Deputy City Attorney
Paula Datesh, Complainant
Howard Lazar, SF Arts Commission
Kate Patterson, SF Arts Commission

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

ORDER OF DETERMINATION
August 5, 2014

DATE THE DECISION ISSUED
July 22, 2014

CASE TITLE – PAULA DATESH V. SHARON PAGE RITCHIE, SAN FRANCISCO ARTS COMMISSION (File No. 14034)

FACTS OF THE CASE

Paula Datesh (Complainant) made a complaint alleging that Sharon Page Ritchie and Howard Lazar, San Francisco Arts Commission (Respondent), violated provisions of the Sunshine Ordinance by failing to post either meeting minutes, audio recordings, or both, for various meetings in a timely manner.

COMPLAINT FILED

On various dates, Ms. Datesh filed complaints against the San Francisco Arts Commission alleging failure to post multiple meeting minutes, audio recordings, or both, for various meetings in a timely manner.

HEARING ON THE COMPLAINT

On July 22, 2014, Ms. Datesh appeared before the Task Force and presented her claim. Sharon Page-Ritchie and Howard Lazar, San Francisco Arts Commission (Respondent), presented the San Francisco Arts Commission's defense.

The issue in the case was whether the San Francisco Arts Commission violated Sections 67.14(b) and 67.16 of the Sunshine Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds the testimony of Ms. Datesh to be persuasive and finds Sunshine Ordinance Sections 67.14 and 67.16 to be applicable to this case for failure to audio record various meetings and failure to post meeting minutes for various meetings in a timely manner.

DECISION AND ORDER OF DETERMINATION

The Task Force finds Sharon Page-Ritchie, San Francisco Arts Commission, in violation of Sunshine Ordinance Sections 67.14 and 67.16 for failure to audio record various meetings and failure to post meeting minutes for various meetings in a timely manner.

The San Francisco Arts Commission is ordered to appear before the Compliance and Amendments Committee, on a date to be determined, to provide a report that includes a full and comprehensive accounting/review of all minutes, audio recordings, and website postings for the Arts Commission. The report should include, at a minimum: 1) status on all recordings and minutes required to be available and posted online; 2) estimated timeframe to address outstanding issues related to meeting minutes and audio recordings; 3) inventory of all audio recordings available in various formats; and 4) plan with timeframe to resolve any outstanding issues.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 22, 2014, by the following vote: (Hepner/Oka)

Ayes: 9– Rumold, Winston, Pilpel, Hepner, David, Fischer, Oka, Hyland, Washburn
Noes: 0 – None
Absent: 1 – Wolf

Allyson Washburn, Chair
Sunshine Ordinance Task Force

c: Nicholas Colla, Deputy City Attorney
Paula Datesh, Complainant
Sharon Page Ritchie, San Francisco Arts Commission
Kate Patterson, San Francisco Arts Commission

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ORDER OF DETERMINATION
March 21, 2015

DATE RECOMMENDATION ISSUED
February 4, 2015

CASE TITLE - Paula Datesh v. San Francisco Arts Commission (SFAC)(File No. 14089)

FACTS OF THE CASE

Paula Datesh (Complainant) made a complaint alleging that Rebekah Krell, Howard Lazar, and Sharon Page Richie, San Francisco Arts Commission (Respondents), violated provisions of the Sunshine Ordinance by failing to respond to Immediate Disclosure Requests (IDR) in a timely and/or complete manner.

COMPLAINT FILED

On various dates Ms. Datesh filed complaints with the Task Force regarding alleged failure to respond in a timely/and or complete manner.

HEARING ON THE COMPLAINT

On January 20, 2015, the Complaint Committee heard the matter.

Ms. Datesh appeared before the Task Force and presented her claim. File No. 14089 originally consisted of 19 separate complaints regarding the failure to respond to various IDRs. Upon review of the complaints and discussions, Ms. Datesh withdrew 16 of the 19 complaints. The remaining complaints are 14089-4, 14089-5, and 14089-10. In addition to the original complaint, Ms. Datesh believes that the Arts Commission failed to provide assistance to her to identify the requested public records and failed to send a knowledgeable representative to the Complaint Committee meeting.

Rebekah Krell, Deputy Director and CFO, SFAC (Respondent), provided the following response:

14089-4 The SFAC responded to the October 12, 2014, IDR on October 14, 2014. October 12, 2014, was a Sunday and October 13, 2014, was a holiday. The SFAC's responded to the IDR by the end of the next business day in a timely manner.

14089-5 The SFAC responded to the October 20, 2014, IDR on October 23, 2014. The SFAC acknowledges that the response to the IDR was two business days late. However, the Complainant provided incorrect information in the IDR request. The SFAC requested clarifying information to determine if Ms. Datesh wanted the March 14, 2012, or the March 13, 2013 audio recording. A CD and a weblink to the audio of the March 13, 2013, Street Artist meeting was previously provided to Ms. Datesh on March 29, 2013.

14089-10 The SFAC responded to the September 24, 2014, IDR on September 29, 2014. The SFAC acknowledges that their response to the IDR was three business days late. The August 2014 logbooks were provided. However, Ms. Krell stated in her response to the Complainant that the SFAC did not have any records responsive to the request for an audit of the minutes, agendas, and audio recordings of meetings. During the meeting clarification was provided that an "audit" is a computer generated report detailing the dates and times of the online posting of agenda, minutes, and audio recordings. Ms. Krell volunteered to inquire as to the possibility of generating such an audit report.

FINDINGS OF FACT AND CONCLUSION OF LAW

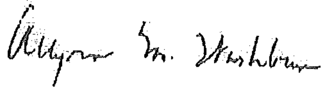
Based on the testimony and evidence presented, the Complaint Committee found the testimony of the parties to be persuasive and finds Administrative Code (Sunshine Ordinance), Section 67.25(a), to be applicable to Complaint Nos. 14089-5 and 14089-10.

RECOMMENDED DECISION AND PROPOSED ORDER OF DETERMINATIONS

The Complaint Committee recommended that the Task Force accept its determination that the Task Force has jurisdiction and find Rebekah Krell, Howard Lazar, and Sharon Page Richie, SFAC, in violation of Administrative Code (Sunshine Ordinance), Section 67.25(a), for failure to respond to Immediate Disclosure Requests in a timely manner in regards to Complaint Nos. 14089-5 and 14089-10. The Complaint Committee further recommends that a referral to committee for oversight/compliance is not justified and that the matter be concluded.

On February 4, 2015, the Sunshine Ordinance Task Force reviewed and adopted the recommendation of the Compliance and Amendments Committee by the following vote:

Ayes: 8 - Rumold, Chopra, Pilpel, David, Fischer, Hinze, Hyland, Washburn
Noes: 0 - None
Absent: 3 - Hepner, Winston, Wolf



Allyson Washburn, Chair
Sunshine Ordinance Task Force

c. Members Sunshine Ordinance Task Force
Nicholas Colla, Deputy City Attorney
Paula Datesh, Complainant
Rebekah Krell, San Francisco Arts Commission
Howard Lazar, San Francisco Arts Commission
Sharon Page-Richie, San Francisco Arts Commission

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TTD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
April 16, 2015

DATE RECOMMENDATION ISSUED
April 1, 2015

CASE TITLE - Ann Treboux v. Rebekah Krell and the San Francisco Arts Commission (File No. 15017)

FACTS OF THE CASE

Ann Treboux (Complainant) made a complaint alleging that Rebekah Krell and the San Francisco Arts Commission violated Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely manner.

COMPLAINT FILED

On February 27, 2015, Ms. Treboux filed a complaint with the Task Force regarding the alleged violation.

HEARING ON THE COMPLAINT

On March 17, 2015, the Complaint Committee heard the matter.

Ms. Treboux provided a summary of the complaint and requested the Task Force to find violations. Ms. Treboux stated that her Immediate Disclosure Request was not reviewed by the San Francisco Arts Commission in a timely manner as the email request was forwarded to a junk email box.

Kate Patterson-Murphy, San Francisco Arts Commission (SFAC)(Respondent) acknowledged that the Immediate Disclosure Request send directly to Ms. Krell (SFAC) was accidently forwarded to Ms. Krell's junk email box. The reason for the misdirection of the email is unknown. However, steps have been taken to be sure that Ms. Treboux's emails to the San Francisco Arts Commission do not get marked as junk e-mail in the future. Upon discovery of the problem, the San Francisco Arts Commission responded to the request on the same day. The SFAC has recently created a general e-mail address to accept public records requests to resolve the problem of requests being sent to employees who are absent for an undetermined time.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the Complaint Committee finds the testimony of the Complainant to be persuasive and finds Administrative Code (Sunshine Ordinance), Sections 67.25(a), applicable in this case.

RECOMMENDATION

The Complaint Committee recommended that the Sunshine Task Force (SOTF) accept the determination that the SOTF has jurisdiction and that Rebekah Krell and the San Francisco Arts Commission violated Administrative Code (Sunshine Ordinance), Section 67.25(a), for failure to respond an Immediate Disclosure request in a timely manner.

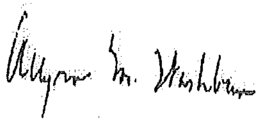
The Complaint Committee further recommends no additional follow-up is required as the San Francisco Arts Commission has already taken steps to correct the problem.

The recommendation was adopted by the Complaint Committee on March 17, 2015, by the following vote:

Ayes: 3 - Rumold, Hinze, Fischer
Noes: 0 - None

On April 1, 2015, the Sunshine Ordinance Task Force reviewed and adopted the Complaint Committee recommendation and found that Rebekah Krell and the San Francisco Arts Commission violated Administrative Code (Sunshine Ordinance), Section 67.25(a), for failure to respond to an Immediate Disclosure Request in a timely manner by the following vote:

Ayes: 8 - Wolf, Pilpel, Hepner, David, Fischer, Hinze, Hyland, Washburn
Noes: 0 - None
Absent: 1 - Chopra



Allyson Washburn, Chair
Sunshine Ordinance Task Force

c. Members, Sunshine Ordinance Task Force
Nicholas Colla, Deputy City Attorney
Ann Treboux, Complainant
Rebekah Krell, San Francisco Arts Commission
Kate Patterson-Murphy, San Francisco Arts Commission

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TTD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
April 16, 2015

DATE RECOMMENDATION ISSUED
April 1, 2015

CASE TITLE - Ann Treboux v. Rebekah Krell and the San Francisco Arts Commission (File No. 15017)

FACTS OF THE CASE

Ann Treboux (Complainant) made a complaint alleging that Rebekah Krell and the San Francisco Arts Commission violated Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely manner.

COMPLAINT FILED

On February 27, 2015, Ms. Treboux filed a complaint with the Task Force regarding the alleged violation.

HEARING ON THE COMPLAINT

On March 17, 2015, the Complaint Committee heard the matter.

Ms. Treboux provided a summary of the complaint and requested the Task Force to find violations. Ms. Treboux stated that her Immediate Disclosure Request was not reviewed by the San Francisco Arts Commission in a timely manner as the email request was forwarded to a junk email box.

Kate Patterson-Murphy, San Francisco Arts Commission (SFAC)(Respondent) acknowledged that the Immediate Disclosure Request send directly to Ms. Krell (SFAC) was accidently forwarded to Ms. Krell's junk email box. The reason for the misdirection of the email is unknown. However, steps have been taken to be sure that Ms. Treboux's emails to the San Francisco Arts Commission do not get marked as junk e-mail in the future. Upon discovery of the problem, the San Francisco Arts Commission responded to the request on the same day. The SFAC has recently created a general e-mail address to accept public records requests to resolve the problem of requests being sent to employees who are absent for an undetermined time.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the Complaint Committee finds the testimony of the Complainant to be persuasive and finds Administrative Code (Sunshine Ordinance), Sections 67.25(a), applicable in this case.

RECOMMENDATION

The Complaint Committee recommended that the Sunshine Task Force (SOTF) accept the determination that the SOTF has jurisdiction and that Rebekah Krell and the San Francisco Arts Commission violated Administrative Code (Sunshine Ordinance), Section 67.25(a), for failure to respond an Immediate Disclosure request in a timely manner.

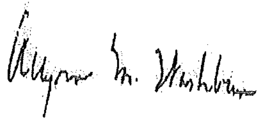
The Complaint Committee further recommends no additional follow-up is required as the San Francisco Arts Commission has already taken steps to correct the problem.

The recommendation was adopted by the Complaint Committee on March 17, 2015, by the following vote:

Ayes: 3 - Rumold, Hinze, Fischer
Noes: 0 - None

On April 1, 2015, the Sunshine Ordinance Task Force reviewed and adopted the Complaint Committee recommendation and found that Rebekah Krell and the San Francisco Arts Commission violated Administrative Code (Sunshine Ordinance), Section 67.25(a), for failure to respond to an Immediate Disclosure Request in a timely manner by the following vote:

Ayes: 8 - Wolf, Pilpel, Hepner, David, Fischer, Hinze, Hyland, Washburn
Noes: 0 - None
Absent: 1 - Chopra



Allyson Washburn, Chair
Sunshine Ordinance Task Force

c. Members, Sunshine Ordinance Task Force
Nicholas Colla, Deputy City Attorney
Ann Treboux, Complainant
Rebekah Krell, San Francisco Arts Commission
Kate Patterson-Murphy, San Francisco Arts Commission

SUNSHINE ORDINANCE
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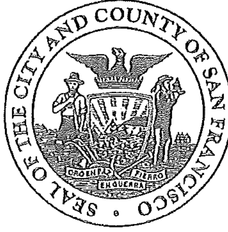

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ORDER OF DETERMINATION
May 18, 2012 (Revised)

DATE THE DECISION ISSUED
February 28, 2012

WILLIAM CLARK v ARTS COMMISSION (CASE NO. 11008)

FACTS OF THE CASE

Complainant William Clark alleged that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by failing to adequately and timely respond to his February 4, 2011 public records request for the audio recording of the Street Artists Program Committee's regularly scheduled meeting held on January 12, 2011.

COMPLAINT FILED

On February 28, 2011, William Clark filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that the SFAC violated Section 67.21(b) of the Sunshine Ordinance by failing to adequately and timely respond to his public records request for the audio recording of the January 12, 2011 Street Artists Program Committee meeting.

HEARING ON THE COMPLAINT

On February 28, 2012, William Clark appeared before the Task Force and presented his complaint. Julio Mattos, part-time contract clerk for the SFAC, appeared on behalf of the SFAC and presented its response.

Mr. Clark's complaint was first heard by the Task Force on March 22, 2011 and April 26, 2011. The Task Force reconsidered the complaint on February 28, 2012 on the recommendation of the Task Force's Compliance and Amendments Committee.

On February 4, 2011, Mr. Clark submitted a public records request to Howard Lazar, SFAC Street Artists Program Director, for a copy of the audio recording of the regular meeting of the Street Artists Program Committee held on January 12, 2011. Mr. Clark had not received a copy of the requested recording by February 28, 2011, and filed a complaint with the Task Force.

On March 9, 2011, Mr. Lazar sent an email to Mr. Clark with an electronic copy of the requested audio recording attached, and also mailed him three compact disks of the recording. After listening to both versions of the produced recording, Mr. Clark requested to inspect the original audio cassette tape recording because the electronic versions were too poor quality to hear some portions of the meeting.

On March 15, 2011, the SFAC allowed Mr. Clark to listen to the original audio cassette tape recording of the meeting. Mr. Clark alleged that a portion of the meeting was not included on this recording. He stated that a verbal argument between his brother, Robert Clark, and former SFAC Director of Cultural Affairs Luis Cancel occurred during public comment at the meeting, and this was missing from the audio recording. He alleged that either the audio cassette tape that was provided by the SFAC was not the original recording or that the recording had been altered to remove the section containing the argument. He requested the Task Force forward the matter to the District Attorney for investigation.

Mr. Clark stated that the verbal exchange that he alleged was not included on the audio recording of the meeting was also not included in the written minutes of the meeting.

Mr. Lazar responded in writing to Mr. Clark's complaint on March 10, 2011. Mr. Lazar acknowledged the delay in responding to Mr. Clark's public records request, and explained he was unable to timely respond because he was out of the office for two weeks due to illness.

On November 8, 2011, Mr. Lazar appeared before the Task Force's Compliance and Amendments Committee. He admitted that the section containing the verbal argument was missing from the audio recording of the January 12, 2011 Street Artists Program Committee meeting as alleged by Mr. Clark. He stated that the meeting had been recorded on audio cassette tape using a tape recorder, and that the cassette tapes produced to Mr. Clark on March 15, 2011 were the original tapes.

Mr. Lazar further stated that he had not deliberately removed that section from the audio recording or tampered with the cassette tapes in any way. He further stated that he had no explanation for why the section was not included on the audio recordings, and that the tape recording equipment had not malfunctioned during the meeting.

At the Task Force reconsideration hearing on February 28, 2012, Mr. Mattos appeared for the SFAC and stated that he did not know the procedure for audio recording SFAC's committee meetings or reproducing those recordings. He further stated he was unaware if the missing dialogue had been subsequently included in the written minutes of the meeting.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented and Mr. Lazar's own admission, the Task Force found that a verbal exchange between Mr. Clark's brother and Mr. Cancel occurred during public comment at the Street Artists Program Committee's regular meeting held on January 12, 2011 and was not included in the audio recording or written minutes of the meeting.

The Task Force further found that the audio recording of the meeting is a public record subject to inspection that "shall not be erased or destroyed" pursuant to Sunshine Ordinance Section 67.14(b).

The Task Force additionally found that Sunshine Ordinance Section 67.16 requires that written minutes of meetings of the SFAC and its standing committees include "a brief summary of each person's statement during the public comment period for each agenda item."

In addition, the Task Force found that Mr. Lazar's failure to acknowledge that a section of the audio recording was missing and failure to include a summary of the missing verbal exchange in the written meeting minutes for eight months after Mr. Clark brought the matter to his attention constitutes willful failure to comply with the Sunshine Ordinance.

DECISION AND ORDER OF DETERMINATION

Pursuant to Sunshine Ordinance Section 67.34, the Task Force finds Howard Lazar in violation of Sunshine Ordinance Sections 67.14(b) for willful failure to provide Mr. Clark with the audio recording of the January 12, 2011 Street Artists Program Committee that is not erased or destroyed, 67.16 for willful failure to include the known missing verbal exchange in the written meeting minutes, and 67.21(e) for willful failure to send a knowledgeable representative to the hearings on Mr. Clark's complaint.

Mr. Lazar shall consult with Mr. Clark to include in the written minutes of the January 12, 2011 Street Artists Program Committee meeting a summary of the verbal exchange missing from the audio recording of the meeting, shall mark audio recordings of the meeting to indicate the section is missing and refer listeners to the minutes, and shall appear before the Compliance and Amendments Committee on Tuesday, June 19, 2012 at 4:00 p.m. in Room 406 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on February 28, 2012, by the following vote: (Chair Johnson / Knee)
Ayes: 6 - Snyder, Knee, Manneh, Costa, West, Johnson
Absent: 1 - Cauthen, Chan
Excused: 2 - Washburn, Wolfe

Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: William Clark, Complainant
Howard Lazar, Street Artists Program Director, Arts Commission, Respondent
Tom DeCaigny, Director of Cultural Affairs, Arts Commission, Respondent
Jerry Threet, Deputy City Attorney

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ORDER OF DETERMINATION
June 18, 2011

DATE THE DECISION ISSUED
May 18, 2011

WILLIAM CLARK V ARTS COMMISSION (CASE NO. 11023)

FACTS OF THE CASE

Complainant William Clark alleges that the San Francisco Arts Commission ("Commission" or "Respondent") failed to provide public records and public information responsive to his February 21, 2011, request.

COMPLAINT FILED

On March 16, 2011, Mr. Clark filed a complaint against the Arts Commission.

HEARING ON THE COMPLAINT

On May 18, 2011, Mr. Clark presented his case to the Task Force. The Respondent was not present and no one in the audience presented facts or evidence in support of the Respondent. Howard Lazar, Street Artists Program Director for the Commission, had informed the Task Force that he would not be able to attend the meeting.

Mr. Clark told the Task Force that he sent Luis Cancel, the Commission's Director of Cultural Affairs, and Mr. Lazar an email requesting public documents and oral information as to when and why Commission employee Evelyn Russell had her job code changed from 1426 Senior Clerk/Typist to 3541 Curator 1. He said he went to the Department of Human Resources and learned that the transfer involved a substantial pay increase for Ms. Russell. He said he has copies of emails that suggest Ms. Russell's qualifications were manipulated to qualify her as a curator but her work at the Commission is that of a Clerk/Typist. He said he received an email from Mr. Lazar on March 14, 2011, stating that several documents were available for pickup and the copying charge was $3.40. He said Mr. Lazar stated in one of the documents that he was withholding some of the records under California Public Records Act Sections 6254(c) to protect personnel, medical or similar files and 6254(k) to protect records exempted or prohibited from disclosure, and Sunshine Ordinance Section 67.1(g) because of the right to privacy. None of the documents, he said, explained why Ms. Russell's job code was changed and he has not received a verbal explanation. He said Sunshine Ordinance Section 67.24(c)(6) requires the Arts Commission to provide him with the information he requested and by not following the law, Mr. Lazar had violated Section 67.21(b) of the Sunshine Ordinance. He added that street artists are entitled to the information because their fees are helping pay the Commission staff's salaries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judging from the evidence presented, the Task Force finds that it does not have any evidence to contradict the fact that Ms Russell received a promotion and its associated compensatory package, and the basis of that fact is subject to disclosure.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Sunshine Ordinance Sections 67.24(c)(6) by not disclosing the reason for any performance-based increase in compensation for a staff member, and 67.21(e) by not sending a knowledgeable representative to the meeting. The Mayor, the Board of Supervisors, members of the Arts Commission oversight committee on the Arts Commission are to be notified of the Arts Commission's continued disregard of the requirements of Section 67.21(e), which is to send a knowledgeable representative to Task Force hearings.

The Commission shall release the records requested within 5 business days of the issuance of this Order and shall appear before the Compliance and Amendments Committee on July 12, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on May 18, 2011, by the following vote: (Snyder/Wolfe)
Ayes: Snyder, Manneh, Washburn, Costa, Wolfe, Johnson, Knee
Absent: Cauthen
Excused: Knoebber, Chan, West

Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: William Clark, Complainant
Luis Cancel, Respondent
Howard Lazar, 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

February 3, 2012

District Attorney George Gascón
San Francisco District Attorney's Office
Hall of Justice
850 Bryant Street, Room 322
San Francisco, CA 94103

**Re: Sunshine Complaint No. 11023, William Clark v. Arts Commission
Notice of Failure to Comply with Order of Determination**

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of Street Artist Program Director Howard Lazar's failure to comply with the Order of Determination ("Order") issued on June 18, 2011 in Sunshine Ordinance Complaint No. 11023, William Clark v. Arts Commission.

This notification is provided in request for appropriate action pursuant to:

(1) Sunshine Ordinance Section 67.21(e) which provides that "[u]pon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request" and "[i]f the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance," 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 or the Acts."

Background

William Clark filed a complaint with the Task Force on March 6, 2011 alleging the San Francisco Arts Commission failed to provide public records and information responsive to his request made February 21, 2011.

UPMC HEALTH SYSTEM

FILED

15 APR 20 PM 4:32

SAN FRANCISCO
ETHICS COMMISSION

BY

A912 Scaife Hall
3550 Terrace Street
Pittsburgh, Pennsylvania 15261
412-647-3118
Fax: 412-647-6222

Department of Medicine

Renal-Electrolyte Division and
Laboratory of Epithelial Cell Biology

March 11, 2013

To Whom It May Concern:

Paula Datesh was admitted to this facility on March 10, 2013.

Please contact 412-522-0494 with any concerns.

MARCH 13, 2012 RESPONSE
NOT GIVEN TO COMISSIONERS
OR POSTED ON-LINE. DUE PROCESS
VIOLATION.

Hello, my name is Paula Datesh. Until I received this packet of materials on or about February 22nd, I never received ***any*** "notice of warning" about the supposed violations on eight separate days, including December 7 and 11, January 5, 6 and 17, and February 2, 11 and 13.

I have never been convicted of a felony, or even a misdemeanor and have never been on probation. I have no history of violence, substance abuse, and don't take any anti-psychotic medicine. I have never received a ticket from the police or had my Street Artist Program license suspended, despite being in the program off and on, beginning around 1993. I have never sold commercially manufactured goods.

To answer each one of the accusations:

For the **December 7th accusations** (uncertified and commercially manufactured selling items and exceeding display size), there is no documentation about me being in violation of space size regulations or selling items I am not licensed to sell. I have never sold commercially manufactured goods. On that day, the battery of my electronic camera was not functioning. I tried to electronically record Howard Lazar, because I believe he is singling me out for harassment. I believe he continually gossips about me and spreads false information, for instance, that I should be in prison and been a felon in the past. I try to get a record of him gossiping, but have been unsuccessful so far. I have asked him to repeat what I have heard him saying, but he refuses. What I have been told is that Lazar has gone so far as contacting the staff of both the *Yerba Buena Business Improvement District* and the *Union Square BID* and giving them pictures ("mug shots") of me from my license picture which, until recently, were displayed at their offices. The staff of these BIDs said that Lazar has badmouthed and gossiped about me, telling them that they were to ignore me and that I was on probation which is untrue.

For the **December 11th accusation** (selling uncertified metal earrings), there is no proof of this, and I have never sold metal earrings, or again, commercially manufactured goods. According to my memory, I left early that day because I was not making money.

For the **January 5th accusations** (selling in an undesignated space and harassing another street artist), I was not selling outside my designated space. The chair was within my space, not in front of it. In fact, Ralph Anderson threw the chair outside the space, and the police were not called by me. I have never talked to Ralph Anderson, and he stayed in his space until 5:00 or 6:00 pm, not leaving early as this complaint seems to imply. I have been a victim of his gossiping. He told me "You fucking bitch, I am going to run you out of this program. John (referring to John Tunui, the Market Manager) knows all about you." He has told customers and the police that I am dangerous. Anderson told the police that he was afraid to file a complaint, because I would get his address, and that he, for some reason, is afraid of me. The Police laughed at him. I said nothing, until the Police approached me. Anderson's January 9th email to Lazar even states "John Tunui told me she is a convicted felon who has served time in prison." These are the types of abuse that have been brought to my attention by others.

I find the **January 6th accusation** (harassing another street artist and interfering with the business of another artist) particularly bizarre. I believe I was just asking John Tunui a question, instead it is called "taunting." There is no basis for him to make the statement that his customers walked away because of my presence or that, by implication, I interfered with a sale. At other times, John Tunui has called me a "bitch." He has said, "You belong in prison" and "I have a restraining order against you." (the Police could find no record of a restraining order.) At other times, he has said, "I will run you out of this program." I believe these comments show a pattern of abuse of power by the Market Manager. I further believe that he should be relieved of his duties and another person selected as Market Manager.

For the **January 17th accusation** (harassing/disrupting), another bizarre one, I was merely asking him a question about the rules. If there is any harassment or hostility, it is coming from John Tunui. From my previous comments, you can imagine I do not like to deal with John Tunui and feel I am being singled out for abusive treatment.

For the **February 2nd accusation** (harassing/disrupting), I have never said anything to Daniel Hennessy of a "taunting" or "harassing" nature. My display was not in his space. One customer had moved into his space to get a better look at some of my works. When Hennessy complained, I moved

the display to the other side. At one point, the Police showed up in three cop cars (again I did not call them). I suspect that Hennessy left because of the Police, not because of me. In the past, the Police have told Tunui to stop "making stupid 9-1-1 calls," as this one was. The Police have told me to document everything, and I continue to try to document the verbal abuse from John Tunui. In his email, dated February 2nd, he claims I do not approach him or come to his booth, in direct contradiction to his January 6th complaint.

Regarding the **February 11th accusation** (selling in an undesignated space, within 10 feet of an entrance, and exceeding size regulations and selling uncertified items), I never received any warning about this. The documentation submitted by John Tunui is inconclusive and does not adequately link me to the prints shown. Lazar's February 13th logbook assumes that I was in violation and ex post facto tries to make it seem like a "public safety" issue without basis.

Lazar's **February 13th** Logbook, and accusation (obstructing the duty of a staff person), also seems to document a "safety" issue for him. He has accused me of "stalking" him. The fact that I was on the streetcar with him was a coincidence. At the plaza, I was just saying hello to Shan Jian. I have known her for 10 years. He is gossiping about me to LiLi Zhang. Again, I am trying to get documentation, not interfering with any inspection, since his "inspection" or "performance of his duties" consists of gossiping.

If I stand next to him at the Plaza, it is an attempt to get documentation of his gossiping and slandering of me, not being any physical threat to anyone. Also, notice the tone of his other log entries, as opposed to those about me, I suspect he is trying to set me up. There is a pattern here. Lazar's slandering is a threat to me which I have spoken about on many occasions before the *Arts Commission* and their subcommittees. I have been trying to clear my name. The Police have told me to try to get visual documentation of his gossip and slandering. That is what I am trying to do. These accusations are bogus and should not lead to suspension or revocation of my license. I also believe you need to get a new Market Manager for Justin Herman Plaza and send Lazar, at the least, to get better training as a Program Director, if not suspension or termination. I believe he is the source of Tunui's and others' misinformation and ridicule of me. Please do not make his pernicious efforts to undermine my position in the Street

Artists Program succeed. Please renew my license and tell Lazar to cease and desist.

From: Krell, Rebekah <rebekah.krell@sfgov.org>
To: pdatesh <pdatesh@aol.com>
Subject: Re:
Date: Tue, Feb 5, 2013 11:01 am

I agree with you.

Rebekah Krell
Deputy Director & CFO

San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-4665 F: 415-252-2595
sfartscommission.org

e-Newsletter
<http://visitor.r20.constantcontact.com/manage/optin/ea?v=001WY2H_3RLHWq41R0dN5CO_A%3D%3D> I Twitter <http://www.twitter.com/SFAC> I Facebook <http://www.facebook.com/#!/sfacpublicart?ref=ts> I YouTube <http://www.youtube.com/ArtsCommission> I Flickr <http://www.flickr.com/photos/sfac>

On 2/5/13 10:00 AM, "pdatesh@aol.com" <pdatesh@aol.com> wrote:

>Just to let you know- I saw the same cop on a MUNI platform a few minutes
>ago.
>He responded to the Saturday Embarcadero incident. I said I did go to the
>full commission
>to mention the problem as I promised I would. He said these stupid 911
>calls reflect
>badly on the street artist program and show a lack of leadership.
>
>It sounded to me as if Mike Addario put a curse on the Commission.
>After so many years of working in the street; dealing with BID's;
>difficult people;
>mentally ill vendors and police- I have learned from experience that it
>is always
>better to come to an understanding in a friendly manner. Mike Addario and
>the
>Clark Brothers are going about this wrong.

Tenukis 911 Call.

From: pdatesh <pdatesh@aol.com>
To: Krell, Rebekah <rebekah.krell@sfgov.org>
Subject: Re:
Date: Mon, Feb 4, 2013 10:53 am

I will be at the Full Commission today.

On Feb 4, 2013, at 10:52 AM, "Krell, Rebekah" <rebekah.krell@sfgov.org> wrote:

> Hello Paula,
>
> I am sorry to learn of this latest incident, and appreciate you letting me
> know. I'll forward your email to the Street Artists program staff and we
> will keep the record in our files.
>
> Best,
>
> Rebekah
>
>
> Rebekah Krell
> Deputy Director & CFO
>
> San Francisco Arts Commission
> 25 Van Ness Avenue, Suite 345
> San Francisco, CA 94102
> T: 415-252-4665 F: 415-252-2595
> sfartscommission.org
>
> e-Newsletter
> <http://visitor.r20.constantcontact.com/manage/optin/ea?v=001WY2H_3RLHWq41R
> OdN5CO_A%3D%3D> I Twitter <http://www.twitter.com/SFAC> I Facebook
> <http://www.facebook.com/#!/sfacpublicart?ref=ts> I YouTube
> <http://www.youtube.com/ArtsCommission> I Flickr
> <http://www.flickr.com/photos/sfac>
>
>
>
>
>
>
>
>
> On 2/3/13 8:38 AM, "pdatesh@aol.com" <pdatesh@aol.com> wrote:
>
>> Daniel Hennessey, has been a street artist in San Francisco of and on for
>> about 10
>> years. He may be mentally ill; too much drug abuse or methadone. He has
>> never
>> been able to put together a few comprehensible sentences and seems to be
>> in
>> another space and time.
>>
>> Today I was in the space next to him. He had 10 by 10 feet for a rickety
>> 4 foot table.
>> He was abusive to my customers and claimed they were trespassing into his
>> space.
>> He ran to the market msnager. I was not questioned. Three SFPd cars came
>> shout
>> 3pm. The market manger claimed he had. No concatenation order against me.
>> When asked to produce it- he was unable and told not to call 911. I
>> showed a
>> Video tape of Hennessey abusing my customers. I said I ignored it. Police
>> did not

```
>> question him. As they approached, he packed up.
>>
>> As always, Ms, Krell- I was there minding my business and was verbally
>> abused for
>> no reason. Police were called for no reason and the market manager made a
>> claim
>> that he could not support.
>>
>> I have been called names by the market manager for no reason- told, "I
>> belong in jail"
>> and my business was again disrupted.
>>
>> I was told by the police to document everything which I have done through
>> this email.
>> Please contact me if you wish to view the video.
>>
>> Paula
>
>
```

From: pdatesh <pdatesh@aol.com>
To: Howard Lazar <howard.lazar@sfgov.org>
Subject: Immediate Disclosure Request
Date: Fri, Jan 18, 2013 1:51 am

All documents including recent police reports involving an a statement made by John Tenulu, "you are in big trouble"; "you are getting written up";"they love you in jail", documents relating to the reason why my DMV photo iOS being circulated to various entire in the Downtown area in SF. Documents relating to t an invented incident withers Lycouris claimed I did something to her and I was screamed at by Krelll-Dec.5. Documents relating tan invented incident in which Paterdon called security at 25 Van Ness to the 3rd floor and claimed otherwise at a public hearing.

These may be communicated via email to this email address.

No response from anyone at SFAC.

San Francisco Police Department
REPORTEE FOLLOW-UP

Case Number: 130-109-928

Case numbers are assigned to an investigator based on facts obtained during the initial investigation.

☒ Company A	(Central)	315-2400
☐ Company B	(Southern)	553-1373
☐ Company C	(Bayview)	671-2300
☐ Company D	(Mission)	558-5400
☐ Company E	(Northern)	614-3400
☐ Company F	(Park)	242-3000
☐ Company G	(Richmond)	666-8000
☐ Company H	(Ingleside)	404-4000
☐ Company I	(Taraval)	759-3100
☐ Company J	(Tenderloin)	345-7300

Please contact the investigation unit checked above to provide additional information not available during initial police report.

Information such as:

- Serial numbers of lost or stolen items
- Video evidence of the incident
- Name(s) of possible witness(es) or suspect(s)

Zhou #4697

Officer's Name and Star No. SFPD105 (rev.03/11)

San Francisco Police Department
REPORTEE FOLLOW-UP

Case Number: 130-109-702

Case numbers are assigned to an investigator based on facts obtained during the initial investigation.

☑ Company A	(Central)	315-2400
☐ Company B	(Southern)	553-1373
☐ Company C	(Bayview)	671-2300
☐ Company D	(Mission)	558-5400
☐ Company E	(Northern)	614-3400
☐ Company F	(Park)	242-3000
☐ Company G	(Richmond)	666-8000
☐ Company H	(Ingleside)	404-4000
☐ Company I	(Taraval)	759-3100
☐ Company J	(Tenderloin)	345-7300

Please contact the investigation unit checked above to provide additional information not available during initial police report.

Information such as:

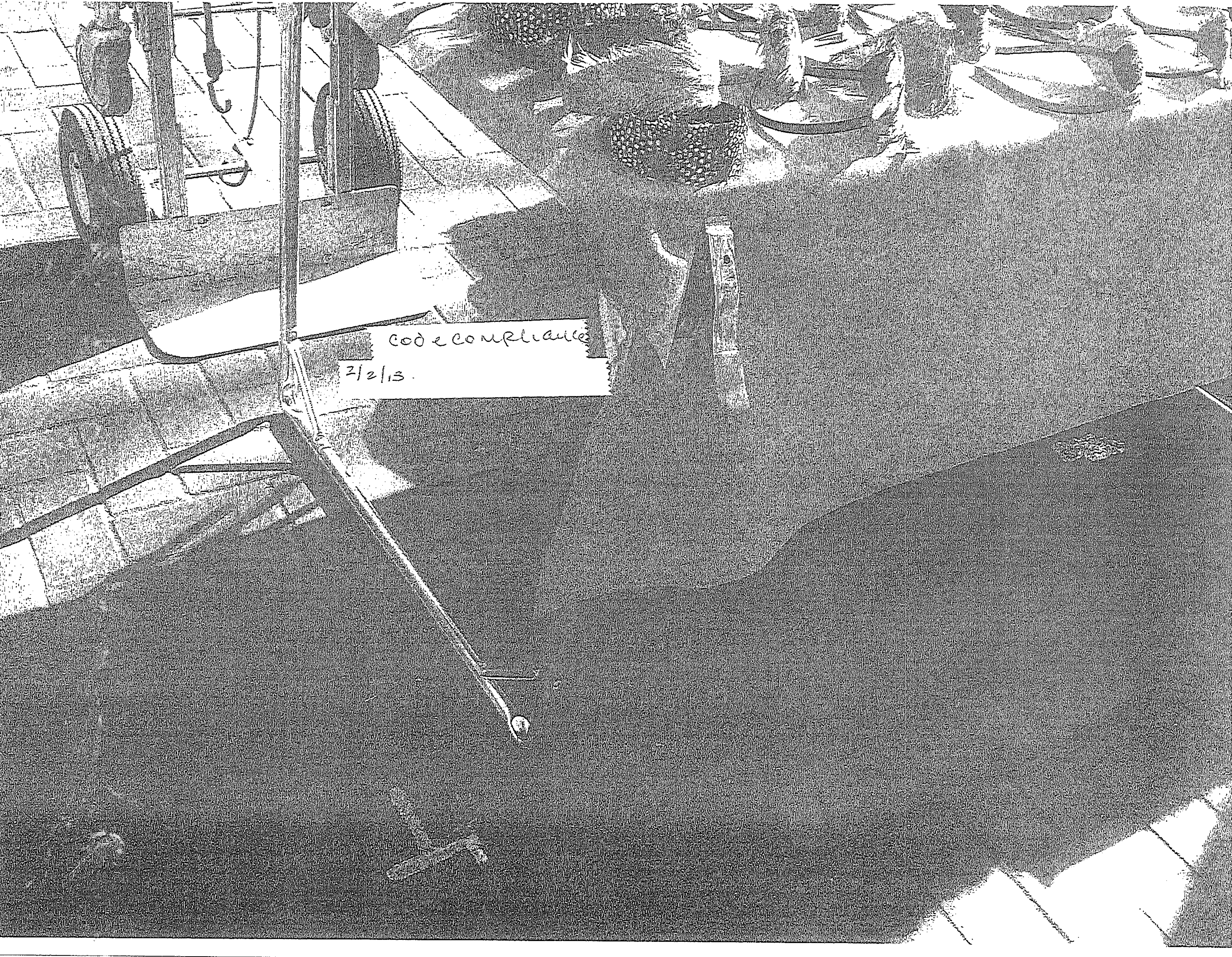
- Serial numbers of lost or stolen items
- Video evidence of the incident
- Name(s) of possible witness(es) or suspect(s)

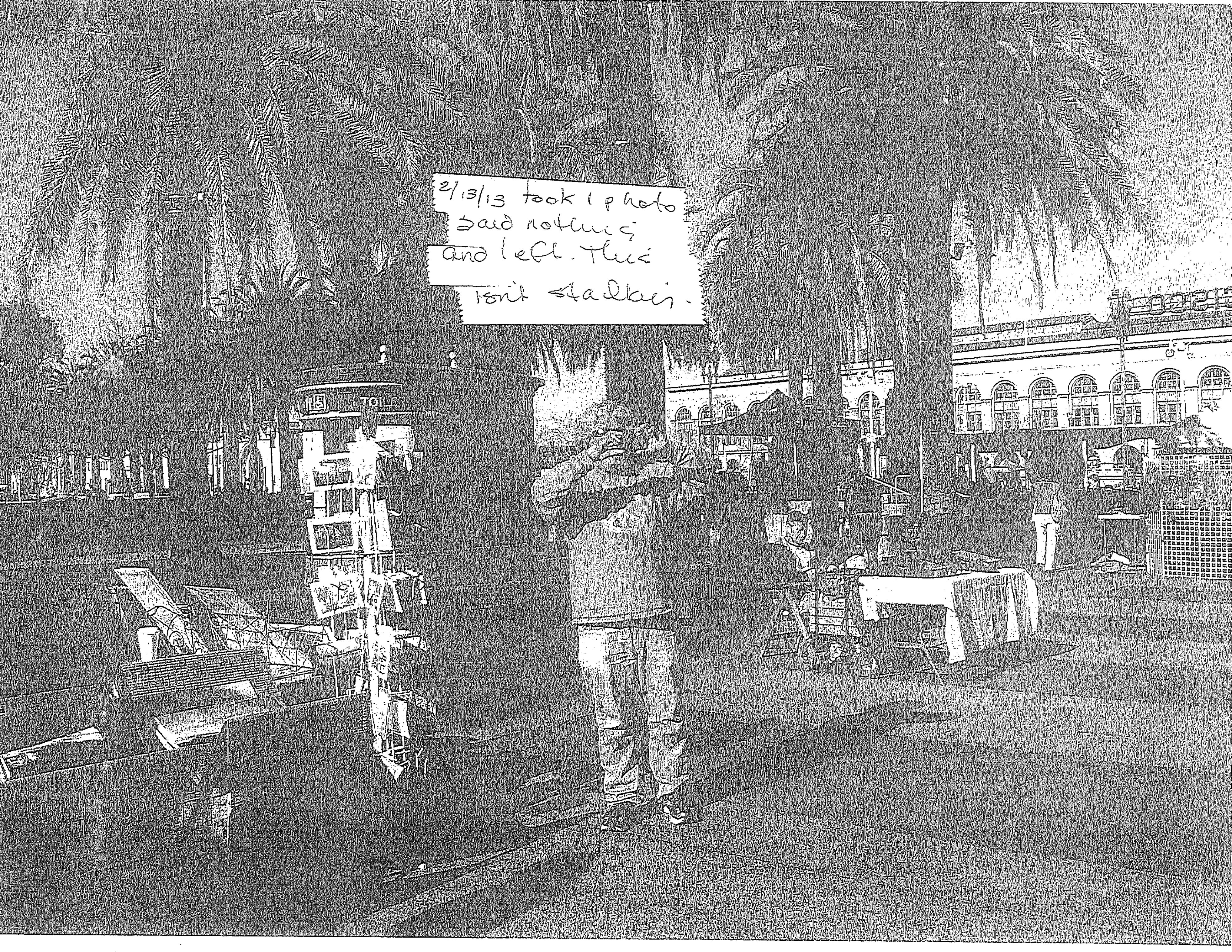
PSA Zhou #4697

Officer's Name and Star No. SFPD105 (rev.03/11)

2 Police reports against John Tenuli for making stupid 911 calls w/ false statements

Code compliance
1/6/13 I made all of this
and have no problem
being re-screened.


code compliance
2/2/13.


2/13/13 took 1 photo
said nothing
and left. This
isn't stalking.
TOILE

Someone lles
photo au a
puplic plaza.

Ethics Complaint Number 03-150127

Respondent's Response to the Executive Director's Report and Recommendation

sfac

FILED

2015 APR 21 AM 8: 11

SAN FRANCISCO
ETHICS COMMISSION

BY

San Francisco
Arts Commission

Edwin M. Lee
Mayor

Tom DeCaigny
Director of
Cultural Affairs

Programs:
Civic Art Collection
Civic Design Review
Community Arts & Education
Cultural Equity Grants
Public Art
SFAC Galleries
Street Artist Licensing

25 Van Ness Avenue, Ste. 345
San Francisco, CA 94102
tel 415-252-2590
fax 415-252-2595
sfartscommission.org
facebook.com/sfartscommission
twitter.com/SFAC

City and County of
San Francisco

April 20, 2015

John St. Croix, Executive Director
Ethics Commission, City & County of San Francisco
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Complaint 03-150127

Dear Mr. St. Croix:

In response to the complaint referenced above, I am writing to put into context the Arts Commission's decision to withhold the document at issue in this matter, disclosure of which would have identified a person who brought to the Commission's attention a rule violation by another artist. I will outline the structure of the Street Artists program, provide a brief context of the document at issue, and close with an explanation the reasons we withheld the document.

Program Structure

The San Francisco Arts Commission's Street Artist program is staffed by two full-time City employees, who are supervised by the agency's Deputy Director. Mayoral appointed commissioners serve on the Street Artists committee and provide oversight of the program, while an advisory committee, also comprised of Mayoral appointees, screens artists and assists with enforcement. The program is governed by the Street Artists ordinance, (Section 24 of the San Francisco Police Code), which was passed by the voters on November 4, 1975, as Proposition L.

The Program Director and advisory committee members are in the field every day inspecting artists' wares and ensuring compliance with program regulations. When they observe that Artists are out of compliance, the Director first issues verbal and written warnings and may hold a hearing before the Street Artists committee. The hearing includes testimony from witnesses. The Commission may then choose to suspend or revoke a license, and its decision may be appealed at the Permit Appeals Board.

History of Acrimony and Hostility

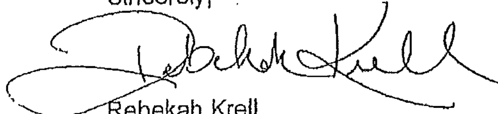
Because of a few participants in the Street Artists Program, there is a long history of acrimony and a culture of hostility with some of the Artists, including harassment by artists of other artists, staff, and commissioners. The Program Director frequently investigates complaints, mediates conflicts, and resolves disputes that arise between and among artists and other vendors, City staff, and members of the public. Competition for limited profitable spaces, as well as working in very close proximity on busy sidewalks and in active public areas create an environment rife with potential disruption and disagreement. The artists, most of whom are extremely low-income, and many of whom are recent immigrants with limited to no English language proficiency, are a vulnerable population.

Withholding Complainant Identity

Within this context, it is of paramount importance that Arts Commission staff retain the authority to use their judgment and discretion in protecting the identity of a complainant, both during an investigation, and in managing day-to-day operations, in order to ensure a peaceful working environment, and the well being of program participants and their property. In this particular instance, as already noted in your report, the document in question (an email conversation between a street artist and the Program Director) could not be partially redacted without disclosing the identity of the author. In addition, the complainant expressed fear of retaliation and requested in writing the document not be shared, after experiencing harassment by the requestor.

When deciding whether to disclose the document at issue, we considered the real concern both that we have and that the complainant expressed. If the Arts Commission cannot withhold the identity of complainants, a primary source of information necessary for the Program Director's enforcement proceedings will disappear due to the complainant's fear of retaliation. And, given the history of this Program, such fear is real. We therefore believe that we should be able to continue to consider these factors in making a determination of whether to disclose a document pursuant to a public records request.

Sincerely,



Rebekah Krell
Deputy Director & CFO

cc: Tom DeCaigny, Director of Cultural Affairs
Margaret Baumgartner, Deputy City Attorney

Ethics Complaint Number 03-150127

Letter from the Office of the City Attorney

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

BURK E. DELVENTHAL
Deputy City Attorney

Direct Dial: (415) 554-4650
Email: buck.delventhal@sfgov.org

April 20, 2015

FILED
2015 APR 20 PM 3:52
SAN FRANCISCO ETHICS COMMISSION

By U.S. Mail and E-mail (ethics.commission@sfgov.org)

Honorable Paul A. Renne, Chairperson
Honorable Members, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

Re: Ethics Commission Complaint No. 03-150127
Paula Datesh, Complainant
Rebekah Krell/Arts Commission, Respondent

Dear Chairperson Renne and Honorable Commission Members:

The City Attorney's Office takes note of the staff report in this matter, "Report and Recommendation Ethics Commission Complaint No. 03-150127," dated April 8, 2015. We submit this letter to provide advice on an issue of general importance to City government that the staff report raises: Whether the City may rely on California Evidence Code Sections 1041 and 1040, the "identity of informer" and "official information" privileges, to withhold records in response to a public records request. As indicated in the City Attorney's *Good Government Guide*, our office has consistently and widely advised City agencies that the Sunshine Ordinance does not affect the ability of the City to rely on each of these privileges, where applicable, in denying access to public records.[1]

Background

The Public Records Act protects from disclosure "[r]ecords 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." (Cal. Gov. Code § 6254(k).) Two such provisions are the identity of informer privilege (Cal. Evid. Code § 1041) and the official information privilege (Cal. Evid. Code § 1040). The Act cross-references these Evidence Code sections in its listing of more than 500 California statutes that protect records from disclosure. (Cal. Gov. Code § 6276.32.)

The Sunshine Ordinance does not specifically preclude the City from relying on the identity of informer and official information privileges as grounds for declining to disclose a record in

[1] The staff report, at page 2, states that the Commission, under its own rules, may have discretion to dismiss the complaint without addressing its merits. Not knowing if the Commission will exercise that option, we submit this letter addressing the two privileges in the event the Commission considers the merits.

response to a public records request. Nevertheless, the staff report concludes, at page 7, that Section 67.24(i) of the Sunshine Ordinance (S.F. Admin. Code § 67.24(i)) "may" have that effect, and therefore recommends that the Commission find that the Respondent violated the Ordinance – though not willfully – by withholding a public record on the basis of these privileges.

As the staff report acknowledges, at page 5, its conclusion is contrary to the "standing advice" of the Deputy City Attorney advising the Arts Commission. We note that the staff report's recommendation is contrary to the public advice that the City Attorney's Office gives to all City departments, boards, commissions, officials, and employees. The City Attorney's *Good Government Guide,* which explains open government rules that City officials and employees must follow, and which is available on the City Attorney's website, states, at page 102:

> In some circumstances, departments may shield from disclosure the identity of persons complaining to the City about violations of law. Cal. Evidence Code § 1041. Privacy or other grounds may also authorize or require nondisclosure, even where the complaint does not allege a violation of law. Cal. Govt. Code § 6254(c). Substantial public interests often warrant withholding the identity of complainants. When, for example, a tenant complains about a landlord, a neighbor complains about a neighbor, an employee complains about an employer, or a citizen complains about a person making a public disturbance, disclosure of the identity of the complainant, the complaint, and/or the investigation could lead to retaliation against or harassment of the complainant and could also compromise the investigation. Under those circumstances the City may be able to withhold or redact the complaint and record of the investigation. See generally Cal. Evidence Code § 1040.

We elaborate below on these principles.

<u>The Privileges</u>

Identity of Informer Privilege

This privilege extends beyond informants in the criminal law context to those who "furnish[] information ... purporting to disclose a violation of a law ... of a public entity in this state ... in confidence ... to ... [a] representative of an administrative agency charged with the administration or enforcement of the law alleged to be violated ...." (Cal. Evid. Code § 1041.) The privilege applies where "[d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice ...." (*Id.*) The privilege serves two interrelated functions.

Most obviously, the privilege protects individuals within its ambit from hassle, harassment, threats, retaliation, and potentially even violence (in a very small number of cases, typically impossible to identify in advance). The examples in the *Good Government Guide* of common situations outside of the criminal law context that are fraught with these possibilities illustrate the principle that persons who, in a non-public way, report suspected violations of law to responsible City officials should not thereby be subject to possible abuse, or worse, at the hands of those who may be violating the law. The principle applies in the context of many City programs, including the Street Artists Program, in which permittees operate in close physical proximity to one

another and the public, and City officials responsible for the Program receive complaints or other information about permittees' suspected violations from those with whom they interact.

When invoking the identity of informer privilege, the City is protecting those individuals who have come forward with information regarding violations of the law from the ire of persons the informer identified. The City must take seriously the protection of the personal interests of the informer. But the City's interest in maintaining the anonymity of such individuals extends beyond its protective role. It is a virtual certainty that administration and enforcement of numerous City programs, including but by no means limited to the Street Artists Program, would suffer if the identities of persons complaining or otherwise supplying information of violations of law were customarily made known to the person or entity that is the subject of a complaint or investigation. Important aspects of code enforcement, traffic enforcement, and enforcement of ethics, labor, and landlord-tenant laws, to name a few examples, would suffer under such a legal regime. In some cases, possible wrongdoing would never be uncovered, in other cases investigations of wrongdoing would be hindered because people would be reluctant to come forward and initiate a complaint, or cooperate with an investigation.

Official Information Privilege

Under the identity of informer privilege, an entire record may be withheld if disclosure of the contents of the record would effectively enable the object of the complaint to identify the source of the information. (*People v. Galland* (2008) 45 Cal.4th 354, 364.) In such a circumstance, the City agency would not be required to rely on the official information privilege. Nevertheless, because the availability of the official information privilege and the identity of informer privilege under the Sunshine Ordinance presents similar questions and because the staff report addresses the official information privilege, this letter does so as well, though only briefly.

The official information privilege covers information acquired in confidence by the City where "[d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice...." (Cal. Evid. Code § 1040.) Probably the most important function of this privilege is to protect the integrity and efficacy of active governmental investigations. Courts have repeatedly recognized this function of the privilege. (*People v. Jackson* (2003) 110 Cal.App.4th 280, 287; *Suarez v. Office of Administrative Hearings* (2004) 123 Cal.App.4th 1191, 1194-95.) If the City were unable to invoke this privilege in response to a public records request, and other exemptions (such as the law enforcement investigative records exemption in the Public Records Act, Cal. Evid. Code § 6254(f)) were inapplicable, then persons the City is investigating, and witnesses with information pertaining to the investigation, could use knowledge gained through a public records request to undermine or subvert an active investigation.

The official information privilege serves other important, though limited, functions. For example, in some cases, to obtain a company's proprietary information necessary to the City's use of a technology to assist its administrative functions or to obtain a researcher's raw data, a City department may find it necessary to acquire the information in confidence by promising to protect it from disclosure to the extent permitted by law.

The Sunshine Ordinance

Section 67.24(i) of the Sunshine Ordinance states:

> Neither the City, nor any office [sic], employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act [sic] that is not forbidden by this ordinance.

The staff report, at page 7, concludes that Section 67.24(i) – which the report acknowledges is ambiguous – precludes the City from relying on the identity of informer and official information privileges to withhold records in response to a public records request. The City Attorney's Office has reached a contrary conclusion.

To begin with, it is not clear that Section 67.24(i), concerning "exemption[s]," was intended to apply to evidentiary privileges. An evidentiary privilege is not ordinarily thought of as an exemption. Rather, it is one of many State laws that gain their force from provisions external to the Public Records Act. Many but not all of these laws are listed for reference purposes at the end of the Act. (Cal. Gov. Code §§ 6276 et seq.) Many of these laws, such as the identity of informer and official information privileges, predate the Act. Section 6254(k) of the Act does not create these evidentiary privileges and other confidentiality laws or establish them as exemptions; rather, it makes clear that the Act does not supersede them and automatically require that records encompassed within evidentiary privileges or protected from disclosure by other confidentiality laws be disclosed in response to a public records request.

But if one does consider evidentiary privileges or Section 6254(k) of the Public Records Act to be "exemptions," they are, in the words of the second sentence of Section 67.24(i), "not forbidden by [the Sunshine Ordinance]." They thus stand in sharp contrast to specific exemptions the use of which the Ordinance prohibits or limits. (*E.g.,* S.F. Admin. Code §§ 67.24(g) (prohibiting use of "catch-all" balancing exemption, Cal. Gov. Code § 6255); 67.24(h) (prohibiting use of a deliberative process exemption); 67.24(a) (limiting use of draft memoranda exemption, Cal. Gov. Code § 67.24(a)); 67.24(c) (limiting use of personnel records exemption, Cal. Gov. Code § 6254(c)); 67.24(d) (limiting use of law enforcement investigative records exemption, Cal. Gov. Code § 67.24(f)).) Unlike its treatment of these exemptions, the Sunshine Ordinance evinces no obvious legislative intent to dispense with or limit the identity of informer and official information privileges in a public records context.

The staff report bases its conclusion that Section 67.24(i) embodies an intent to prohibit the use of the two evidentiary privileges in the public records context on the theory that the balancing test called for under the two privileges is akin to the catch-all balancing test in Section 6255 of the Public Records Act (Cal. Gov. Code § 6255) ("the public interest served by not disclosing the record clearly outweighs the public interest served by disclosing the record")), which the City may not use to prevent access to a record. But the analogy is not apt:

- The catch-all balance can apply to any public record not encompassed within an exemption; to types of records the Legislature has never determined should be withheld from the public. Section 6255 thus gives to public entities broad discretion to decide for themselves what types of records may qualify for withholding under its balancing test.

- Under the catch-all balance, there are no limits on what considerations may go into the balance. Section 6255 thus gives to public entities broad latitude to invoke its exemption.

- Because of the open-ended nature of the catch-all balance, the justification for withholding a record on that basis may and often will be a post hoc justification.

For these reasons, one might conclude that a public entity could abuse or over-use the catch-all balance and thereby endanger the open government regime the Public Records Act establishes. But the identity of informer and official information privileges are much more circumscribed than Section 6255's catch-all balance, and thus do not pose the same perceived danger to open government that presumably underlies the Sunshine Ordinance's ban on using the catch-all balance to deny access to a public record.

The identity of informer privilege encompasses a narrow category of records – those which identify persons who in a non-public way have informed City officials about suspected violations of law. Further, the public interests justifying withholding a record under this privilege are, as a practical matter, relatively limited; in almost all circumstances they will be one or both of those mentioned earlier – to protect the individuals reporting a suspected violation of law, and to ensure the effectiveness of enforcement efforts that depend in part on receiving complaints or other information from such individuals. Indeed, the first of these two interests – protecting the individuals involved – is as much a private interest as a public one.

The official information privilege encompasses only records the City has acquired in confidence, and, as a practical matter, has particular application in discrete contexts, such as records of active investigations, where there often will be an obvious public interest in withholding records to ensure the integrity of the investigation.

Courts strongly disfavor repeals by implication; that is, finding that one law has repealed another law without having expressly said so. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476-77.) Further, if there is a conflict between a specific provision of law and a general provision, courts typically find that the specific provision controls, whether or not enacted first. (*Warne v. Harkness* (1963) 60 Cal.2d 579, 588.) And courts disfavor construction of ambiguous laws in derogation of sovereignty. (*Eden Memorial Park Ass'n v. Superior Court* (1961) 189 Cal. App. 2d 421, 423-24.) The confidential informant and official information privileges are integral to the maintenance of the rule of law, a quintessential sovereign responsibility.

These basic principles of statutory construction aid us in determining the legislative intent behind Section 67.24(i). While the Sunshine Ordinance cannot repeal the Public Records Act, these basic principles would likely give a court pause to conclude that the voters who adopted Section 67.24(i) intended to strip from the City the authority to rely on such longstanding policies that serve important purposes that predate and stand apart from the objectives of either the Act or the Ordinance. Therefore a court would be reluctant to conclude that the Sunshine Ordinance has

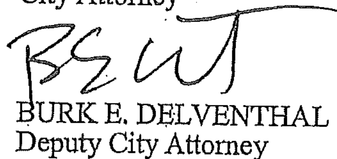
superseded them without making its intent to do so clear.[2] It is for these reasons that absent a clear statement in the Sunshine Ordinance – and Section 67.24(i) is anything but clear – our office has concluded and advised that the Ordinance does not limit the ability of the City to rely on two provisions of the Evidence Code that the Public Records Act specifically recognizes as examples of "[r]ecords 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." (Cal. Gov. Code § 6254(k).)

Summary Conclusion

The longstanding advice of the City Attorney's Office is that California Evidence Code Sections 1041 and 1040, the identity of informer and official information privileges, where applicable, may serve as the basis for withholding records in response to a public records request. The Sunshine Ordinance does not preclude the City from relying on these privileges to not disclose a record involving a complaint or other communication that an individual made to responsible City officials about a possible violation of law.

Very truly yours,

DENNIS J. HERRERA
City Attorney



BURK E. DELVENTHAL
Deputy City Attorney

cc: Paula Datesh
Rebekah Krell
John St.Croix

[2] A criminal, civil, or administrative proceeding may be commenced following the completion of an investigation of a possible violation of City law; for example, an administrative proceeding to suspend or revoke a City permit. In such proceedings, depending on the facts and circumstances, constitutional principles such as due process, as well as the agency's rules governing the hearing, may in a particular case call for disclosure of information that is within the scope of the identity of informer privilege or official information privilege, or both. This letter does not address disclosure in that context, which is not governed by the Public Records Act but rather by constitutional principles or agency rules that apply to the hearing.

David Pilpel
San Francisco CA

FILED
15 APR 21 PM 3:22
SAN FRANCISCO ETHICS COMMISSION
BY

Chair Paul Renne and Members
Ethics Commission
25 Van Ness Ave Ste 220
San Francisco CA 94102

21 April 2015

Re: Ethics Complaint No. 03-150127 filed by Paula Datesh

Dear Chair Renne and Members,

I write as an individual to provide additional information regarding the subject complaint. This complaint was not made to the Sunshine Ordinance Task Force ("Task Force"); the Task Force has not discussed it and I do not represent the Task Force or either of the parties here.

First, by way of background, I believe that the Complainant here (Paula Datesh / Ann Treboux; she changes her name from time to time for reasons unknown) easily makes more public records requests of the San Francisco Arts Commission than any other person, according to the most recent Sunshine Requests Log that the Arts Commission provided in response to a suggestion from the Task Force to track public records requests and responses. I also understand that it is not uncommon for the Complainant to make multiple public records requests, with back-and-forth follow-up, on any given day. I believe that the Arts Commission tries to timely and completely respond to every request received. When something is occasionally late or lost the Arts Commission has apologized and attempted to avoid repeating that particular error.

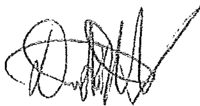
Second, I find it unusual and wasteful for the Ethics Commission to hear this particular complaint in this way. While the Task Force normally hears complaints regarding compliance with the Sunshine Ordinance (and the Complainant files many complaints there, some sustained) and the Task Force refers a small number of complaints to the Ethics Commission for enforcement, this is the first complaint that I know of to be filed directly with the Ethics Commission, bypassing the Task Force. Regardless of the outcome here, I think that this sets a bad precedent by creating a new venue for lodging original complaints. While the Task Force does not always do a perfect job, their complaint process is designed to establish facts, find violations where warranted, and fix practices going forward. I don't think that the Sunshine Ordinance envisioned a more resource-intensive trip to the Ethics Commission every time.

Third, on the merits as to reasons for withholding records, if the Arts Commission did not properly cite the applicable reasons then there may be a violation here. It appears to me that the reasons were fully and properly included, but the legal citation for the withholding may be lacking. If so, then I believe that the Arts Commission should be directed to review with the City Attorney their proper responsibility for citations when withholding public records. Further, if there is a violation here it certainly appears to me that it is not willful in nature.

Fourth, on the merits as to withholding the subject report, I understand that the report is part of an investigatory file within the Street Artist Program. While the Arts Commission is not a traditional law enforcement agency, they do manage certain arts and cultural affairs programs including the Street Artist Program, which includes a comprehensive licensing element with detailed requirements that subject artists in the program to suspension and revocation for failure to comply with program rules. I understand that one aspect of monitoring program compliance is receiving reports from other artists alleging violations which are properly investigated by the Street Artist Program staff. I believe that such reports, while being investigated, must be kept confidential so as not to impair an ongoing investigation. Similar to other investigatory files not otherwise made permanently confidential by law, only when an investigation is complete and no further action will be taken should such files be open to public review. At that time, such reports should be made available, subject to redaction as to information that could reasonably identify the person making the report. If other street artists cannot be assured that their identifying information will be kept permanently confidential they will not make such reports and ensuring compliance with the program requirements will be made that much more difficult. Alternatively, if the report was made with the expectation of confidentiality, then it may be permanently confidential under the California Evidence Code. Again, I see no willful violation here.

Thank you for your time and attention. I believe that the Arts Commission manages the City's arts and cultural affairs programs responsibly along with its public accountability requirements, including public records. I look forward to the hearing on this complaint.

Sincerely,



David Pilpel

cc: John St. Croix, Executive Director

Ethics Complaint Number 03-1501273

Additional Documents Submitted by Respondent for Continuance of Hearing

Members of the Ethics Commission

Case # 030-150157

Additional Documents

FILED
15 MAY -8 PM 12: 18
SAN FRANCISCO
ETHICS COMMISSION
BY

May 7, 2015

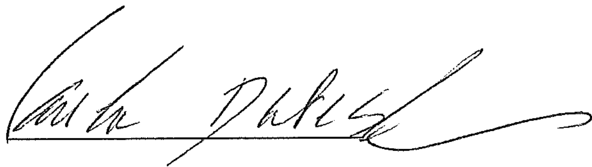
The issue to be heard on March 27, 2015 is confidentiality of a witness or informant.

I wish to point out that even though Rebekah Krell of the *San Francisco Arts Commission* was found in violation of the Sunshine Ordinance last month (67.21 a) –Howard Lazar has made the same mistake on an incident report of March 15, 2015. He gave the names of two witnesses in his report. See attached documents.

The Sunshine Ordinance was enacted to shine light into SF City Departments with the objective that they do not repeat the same mistake. Howard Lazar continues to repeat the same mistakes. It is likely that he will continue to do so. I do not believe that Ms. Krell can control him. I believe he has been falsifying inspections for 44 years.

I spoke to Wat So, the witness of the January 2 incident. She said she sent a short email to Howard Lazar regarding what she believed to be my photographing her stand. It had nothing to do with being a witness to an, "interfering with staff by blocking my stand" statement. She did not send a second email. I got a notice of warning based on Lazar's falsified logbook and claim of an eye witness.

As I mentioned last month, I met with Krell twice in 2 years. I was told that she would keep an eye on Lazar and I could call when such incidents take place. While it is unfortunate that Ms. Krell was the Custodian of Records and her name will appear on the violation- is Howard Lazar who needs to be held accountable and monitored.



Paula Datesh

FILED
15 MAY -8 PM 12: 18
SAN FRANCISCO
ETHICS COMMISSION

INSPECTOR' S LOGBOOK
WEDNESDAY, MARCH 18, 2015
2:45 – 3:50 p.m.
MARKET STREET CORRIDOR

2:45 p.m., Hallidie Plaza: Sunny, breezy, cool. Inspected the wares of the following artists:

Zhao Mei Pan
Masao Karube
Alejandro Galicia-Chavez
Ismael Morales
Rui Ling Chang
Shu Qi Dong
Jimmy Sha

3:00 p.m., Market Street, 5th to 4th streets:
M-11: Juan Manuel Alvarez
M-4: Xue You Mai – crocheting
M-3: Juan Kuncar – painting on a sports cap

3:10 p.m., Market Street at Grant Avenue:
No artists

3:15 p.m., Market Street at Sutter Street:
SU-1: Susan Giammona

CONFIDENTIAL

Went to Justin Herman Plaza to interview Jeff Potter as to what he witnessed of the March 15th incident involving Datesh and Tunui. Also spoke to Enrique Perez about the incident.

CONFIDENTIAL

Ended inspection at 3:50 p.m.

Called office for messages.

Called Alyssa to exchange information.

Howard Lazar
Street Artists Program Director

INSPECTOR' S LOGBOOK
TUESDAY, MARCH 17, 2015
1:50 – 3:15 p.m.
JUSTIN HERMAN PLAZA

1:50 p.m., Market Street, Spear to Steuart streets: Sunny, breezy; cool. Inspected the wares of the following artists:

Hamlin Liu / Tianmin Yu
Boma Cho

2:00 p.m., Justin Herman Plaza:
Rosibel Arana
Elden Deza
Jonathan Guilliams
Lynn Vandenberg
Mario Hernandez
Enrique Perez
Annie Kuhn
Xiu Shi
John Tunui – responded to my questions regarding the allegations made by Paula Datesh against him regarding a March 15 incident (See attached report).
Linda LaTouche
Erin Cowan
Daniel Hennessey
Shu Rong Li
Wen Zhong Sha
Mahmaz Jafari – making a silver wire and serpentine ring.
Xiang Li
Mei Ling Chen
Vivena Cuyugan
Ron Menninga
Sheila Taylor-Hill
Jacqueline Ryan – all her displayed hats bearing bright St. Patrick's Day greenery.

I was approached by new licensee Vincent Concepcion who told me that he will be at the 6 a.m. lottery tomorrow to get a space, his first day selling at the Plaza.

Mauricio Trabuco
Mabel Ma
Zhao He Li
(name confidential) – spoke to me about the March 15 incident regarding Paula Datesh's allegations against John Tunui (see attached report with names of witnesses redacted for confidentiality).
Walter Molina

INVESTIGATION OF MARCH 15, 2015 INCIDENT

INTRODUCTORY NOTES

Role of the "Market Manager". In order to maintain a fair and orderly distribution of selling spaces, the street artists unofficially elected one of their peers to act as an unofficial "Market Manager" to (a) run a daily ad hoc lottery for the spaces in Justin Herman Plaza as well as the spaces on Market Street, Steuart to Spear streets; (b) mark the spaces on the pavement/bricks so that the artists can see clearly where they can set up their displays; and (c) work with the Arts Commission's Street Artists Program Director in negotiations with representatives of events, adjacent retail businesses, and the Hyatt hotel in reference to locating and relocating the artists during hours of temporary events, loading and unloading commercial installations, etc.

Several years ago, John Tunui and the Director of the Street Artists Program negotiated with the Hyatt's management with respect to the artists' request to have the "CAFÉ" spaces, as well as the other spaces adjacent to the hotel, designated by the Board of Supervisors for street artist usage. The management personnel agreed to not challenge our request so long as we abided by their wishes to not have the artists in any of the spaces that would be in the way of loading/unloading/fork lift activities. Since that time, the artists, largely through the efforts of John Tunui and the efforts of his predecessor "Market Manager" Tad Sky, have kept to that agreement.

Except for occasional voluntary donations from street artists, the unofficial "Market Manager" receives no City compensation for his services nor is he exempt from possible Arts Commission disciplinary action for any violation of the Street Artists Ordinance.

Procedure for investigating conflicts between street artists. Upon receiving a written complaint of one artist (or several artists) against another artist (or several artists), the Street Artists Program Director may elect to meet with the parties involved in order to resolve the conflict. In lieu of this, the Program Director investigates the site(s) of the alleged incident(s), communicates with the complainant and the accused, communicates with witnesses, examines relevant documents or other physical material as possible evidence, and drafts a report of the investigation with stated findings and conclusion. The draft report is mailed to all parties involved for additional comments and/or corrections and/or inclusions. The Program Director then issues a final report which is mailed to all parties involved.

If the report finds that a violation has been committed, the violator is then subject to possible disciplinary action by the Arts Commission which may include the following: a letter of warning; a notice to appear for a screening of wares conducted by the Advisory Committee of Street artists and Crafts

Examiners; a notice to appear at a hearing with the Program Director as hearing officer; or a notice to appear at a hearing with the Arts Commissioners of the Street Artists Committee. The outcome of a hearing with the Street Artists Committee may result in acquittal or suspension or revocation of the artist's license ("certificate').

THE INCIDENT

On March 15, 2015, Street Artist Paula Datesh sent an email to Arts Commission Deputy Director Rebekah Krell which stated the following:

"I had first pick at Justin Herman Plaza today. I came to the top of the Embarcadero BART. Tunui came about 9:30am. He called me evil; kicked my Artwork and told people around not to talk to me. I called the police. He lied to them saying he came for a fork lift issue. This needs to stop!"

In reference to the above, on March 17th, Ms. Datesh wrote to Arts Commission Director of Communications Kate Patterson-Murphy: *"What are you doing with the information?" Ms. Patterson-Murphy responded: "We are looking into the matter."*

On March 17th, I visited the Plaza and spoke with Street Artist John Tunui about the incident. I also spoke with two witnesses of the incident.

According to John Tunui:

On Sunday, March 15th, John obtained through the (ad hoc) Justin Herman Plaza lottery space #8, and Paula Datesh obtained space #13 situated across from John's space.

To avoid an encounter with Paula, at about 7:30 a.m., John moved his display from the Plaza and took a space on the Market Street sidewalk ("Café Space #5") opposite the former Noah's Bagels store. Paula then moved to the sidewalk and attempted to take space #101. That morning, however, for the artists' understanding, John had indicated on the map of spaces that space #101 could not be used because the hotel building would be having a fork lift moving back and forth across that area of the sidewalk. Upon seeing Paula attempt to move into the space, John told her to move and gave her the reason.

Paula called the police, officers arrived, and she told them that John had kicked her display and had kicked her, and that this aggravated her diabetic condition.

John denied kicking her and her display, but (according to John) the officer told him: "You know why we're here. This violent behavior against this poor

woman is unacceptable. This constitutes a stay away order." The officer told John to stay away from Paula.

Afterwards, at early afternoon, a female officer arrived and reiterated to John the same message, that a stay away order for him would be proper. John tried to tell the officer his side of the story, but she would not let him speak. Witness #1 (see below) tried to speak on John's behalf, but the officer dismissed what the witness had to say.

The officer told John: "Two years ago you called us to protect you here from another man; now she's [Paula] calling to protect her from *you*. You know better." But (according to John) if the officer had looked at the record, she would have seen that John had called the police for protection against a person named Gary Wyrich who is now in prison for his violent behavior. Nevertheless, the officer told John, "I should handcuff you and put a stay away order on you." In lieu of doing so, the officer told John that he was not to move past where he was.

John abided by the officer's directive. Paula, on the other hand, walked back and forth on the sidewalk for the rest of the day, until about 4:30 p.m.

According to Witness #1 (name to remain confidential; Section 1040(a)(2) of the California Evidence Code allows "A public entity" [e.g., the Arts Commission] "a privilege to refuse to disclose official information ... if the privilege is claimed by a person authorized by the public entity to do so and: (2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice ..."):

Witness #1 stated that he witnessed the entire incident from the time John moved out of his Plaza space to the sidewalk space, John speaking to Paula, and the police arriving on both occasions and not accepting John's or the witness's story. **Witness #1 stated that at no time did John kick Paula or her display.**

Witness #1 stated that he was "shocked" that the police automatically took the side "of someone transgressing the rules" and that it was John's job [as street artist-elected Market Manager] to ask her to move out of the forklift area. "But they didn't hear the other side of the story; the woman officer was in his face." Witness #1 further stated, in a March 22, 2015 email to Howard Lazar, that *"I still wish the officer tried to get John's side of what happened. The lady [Paula Datesh] sold her lies well."*

According to Witness #2 (name to remain confidential; see note above with regard to the confidentiality of witnesses):

Witness #2 stated that during the afternoon of March 15th he was approached by a female police officer who said she was looking for John Tunui because there was a complaint against him. Witness #2 directed the officer to where John was set up and told the officer that the problem was not John, that it was about Paula Datesh who causes trouble for all the artists at the Plaza, and that John only does his job trying to have the artists comply with their simple rules.

Witness #2 stated he saw the officer confront John, speak sternly at him, told him he was not to move away from his space, and would not let him explain that he was trying to keep the area open so that the hotel's fork lift activity would not be impeded by the artists.

Further clarification from Paula Datesh:

On March 20, 2015, Paula Datesh, writing as "Ann Treboux", sent an email to Kate Patterson stating: *"I went to the lottery at Justin Herman Plaza. I had not been there to work for over 2 years. I did not walk through the area during the same time period.*

"I had #1 at the lottery and went to the top of the Embarcadero BART. At about 9:30am John Tunui came up. He said, "Ignore her. She is evil". He kicked my Artwork and left. I called the non emergency SFPD number. Two cars came from the Southern Station. For some reason, he was hanging around my area when his space was near the plaza-almost ¾ of a block away. I explained what he did. I also said I was diabetic and his actions were causing me distress. Tune[Tunui] claimed he was there to tell me about a fork lift. I said, there was a fork lift but ¾ of a block away. SFPD spoke to the people around who confirmed what Tunui did. He was advised to stay to his area and it[if] he has some announcement to send someone else.

"Sometime later Tunui returned. He taunted me to, 'call 911. His friend Richard Ernst is waiting for my call'. I again said nothing and called SFPD Godfrey. She came from Central Station. We spoke, she ran his name and went to speak to him. He was advised to stay away from me. He claimed, 'he didn't like me'.

"Sometime later, Tunui returned. He blew kisses and left." ...

Further clarification from John Tunui:

On March 19, 2015, John Tunui sent an email to Howard Lazar stating: *"Correction to my earlier email: ...*

"1. I moved from space 8 to [space] CAFE 7.

"2. Paula crossed her name off space 13 and moved her display to CAFÉ 101 but she didn't put her name on in CAFÉ 101 on the map."

[John Tunui supplied photocopies of the map, the artists' number sheet, and an email from the Hyatt regency hotel to John Tunui requesting that on March 15th the artists vacate the spaces that would be adversely affected by then hotel's loading and unloading activities, and an earlier email (November 22, 2013) sent by the hotel to John Tunui informing him of a similar request for the artists to accommodate the hotel's loading/unloading activities for November 29-30, 2013.]

"I told her she couldn't set up in CAFÉ 101 because of the fork lifts. She got angry at me and accused me of harassing her but I told her CAFÉ 101 had been crossed off the map. ... It[']s my job to walk through the areas where the forklifts will be operating to make sure all displays are in their spaces, and I saw Paula's display was over the line and told her to correct it, that[']s when she called the police. I never kicked her or touched any part of her body. She was already upset because I made her move from CAFÉ 101. ...

"By the end of the day Walter X arrived after the lottery and set up in space 8 (my first space). Bo Bixler also arrived after the lottery and set up in space 13 (Paula's first space).

"But if you study the map there[']s a lot of changes and that[']s just the way it is. Sunday is more casual, so a lot of people show up later in the day and set up in available spaces without signing the map. ... Or they'll change spaces without changing the map. ..."

OBSERVATIONS

1. Paula Datesh writes that she *"had #1 at the lottery and went to the top of the Embarcadero BART."* John Tunui, however, asserts that, through the lottery, Paula obtained space #13 in the Plaza, not the "Embarcadero BART" area which is a block west of the Plaza; and that it was after John moved his display from the Plaza westward to space "CAFÉ 7" that Paula moved westward (out of the Plaza) attempting to take space "CAFÉ 101".

2. Paula writes that *"For some reason"* John *"was hanging around my area when his space was near the plaza-almost ¾ of a block away."* But John states that, while he obtained Plaza space #8, he moved his display from the Plaza westward to space "CAFÉ 7" in order to avoid Paula who had obtained Plaza space #13 which would

have placed her across from John.

3. Paula writes that John *"kicked my Artwork and left."* According to John, Paula told the police officer that John had kicked her display and had kicked her. Witness #1 stated that at no time did John kick Paula or her display.

4. Paula writes that John *"lied to"* the police *"saying he came for a fork lift issue"*, that he *"claimed he was there to tell me about a fork lift"* and that she told the officer that *"there was a fork lift but ¾ of a block away."* According to John, however, the space that Paula was attempting to move into could not be used because the hotel was about to have fork lift activity across that area of the sidewalk. Witness #1 confirms that it was John's job (as street artist-elected Market Manager) to ask her to move out of the fork lift area. Therefore the fork lift was not *"3/4 of a block away"* as Paula asserts.

5. Paula writes that *"SFPD spoke to the people around who confirmed what Tunui did."* But, according to John, witness #1 tried to speak on John's behalf, but the officer dismissed what the witness had to say. This is corroborated by witness #1 who said that the police did not accept John's or the witness's version of what had happened.

6. Paula writes that John *"was advised"* by the police officer *"to stay to his area"* and that *"Sometime later Tunui returned"* and *"He taunted me to 'call 911' ..."* and *"Sometime later, Tunui returned"* and *"He blew kisses and left. ..."* John, however, asserts that after the officer told him that he was not to move past where he was, he abided by the officer's directive; whereas Paula walked back and forth on the sidewalk for the rest of the day until about 4:30 p.m.

FINDINGS AND CONCLUSION

1. John submitted a photocopy of the day's map of "BART SPACES" and "CAFÉ SPACES" which shows cross-out marks in spaces #101 and #102 and in handwriting the word "FORK LIFT" signifying to the artists that the two spaces were not available for the day. This refutes Paula's allegation that John *"lied to"* the police *"saying he came for a fork lift issue."*

2. While John is not a paid employee or staff member of the Arts Commission exercising legal authority, he demonstrated a conscious effort to make an attempt to (1) stop a street artist from being in harm's way of a fork lift and (2) stop a conflict with the hotel management which required the area to be open for its fork lift activity.

3. Based on a lack of evidence, there is no proof that John "kicked" or in any way touched Paula and/or her display ["Artwork"].

Final report submitted:

Howard Lazar
Street Artists Program Director
Arts Commission

April 14, 2015

See the following ADDENDA of documents submitted by Paula Datesh/Ann Treboux and John Tunui.

Ethics Complaint Number 03-1501273

Additional Documents Submitted by David Pilpel for Continuance of Hearing

David Pilpel
2151 27th Ave
San Francisco CA 94116-1730

FILED
2015 APR 28 PM 4:38
SAN FRANCISCO
ETHICS COMMISSION
BY

Dennis Herrera, City Attorney
City Attorney's Office
1 Carlton B Goodlett Pl Ste 234
San Francisco CA 94102-4682

April 28, 2015

Re: April 27, 2015 Ethics Commission Meeting

Dear City Attorney Herrera,

I write as an individual regarding last night's Ethics Commission ("Commission") meeting and some advice provided by Deputy City Attorney Joshua White at that meeting regarding Ethics Complaint No. 03-150127 filed by Paula Datesh. The complaint was not made to the Sunshine Ordinance Task Force ("Task Force"), the Task Force has not discussed it, and I do not represent the Task Force or either of the parties in the matter. I provided a letter to the Commission prior to the meeting that was included in the meeting packet; a copy is attached.

During discussion of the subject complaint Commission Member Ben Hur asked if the Commission was unable to make a determination as to whether a particular record sought was public and subject to disclosure without viewing the subject record, could the Commission do so by conducting an in camera review in closed session, and Deputy City Attorney White indicated that the Commission could do so. Following that, the Commission essentially bifurcated the complaint, found a non-willful violation of Administrative Code section 67.27 (a) and continued the portion of the complaint regarding disclosure of the underlying record to a future meeting.

I think that 3 problematic steps would be required: (1) compel production of the subject record (actually an email) from the Arts Commission to the Ethics Commission in connection with this complaint; (2) provide a copy of the subject record to Ethics Commission members but not the public, so as to maintain confidentiality until and unless it is determined that the record is public and subject to disclosure; and (3) conduct an in camera review in closed session.

As I indicated in my letter to the Commission, hearing complaints directly at the Commission and bypassing the Task Force is itself a problem. The Sunshine Ordinance provides that "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." (San Francisco Administrative Code section 67.34) This complaint alleged a willful violation, but not by an elected official or department head, so there really is no authority in the Sunshine Ordinance for the Ethics Commission to even hear the matter. No other provision of the Sunshine Ordinance discusses filing complaints directly with the Commission. Further, the Charter provides that "The commission shall conduct investigations in accordance with this subdivision of alleged violations

of this charter and City ordinances relating to campaign finance, lobbying, conflicts of interest and governmental ethics." (Charter section C3.699-13.) Charter provisions about Commission investigations do not refer to the Sunshine Ordinance or public meeting or public records laws.

The Charter does provide that ". . . the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records." (Charter section 15.102.) Thus, the Commission has adopted Regulations for Handling Violations of the Sunshine Ordinance. Finally, the Charter provides that "The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers." (Charter section 15.100.)

First, if the Commission somehow has the power to "investigate" this complaint in a way not countenanced by either the Charter of the Sunshine Ordinance, it could only "require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers." The Commission has not requested, and did not discuss last night, a subpoena to the Arts Commission to produce the subject record.

Second, since the Regulations for Handling Violations of the Sunshine Ordinance requires a Report and Recommendation from the Executive Director and a public hearing on a complaint, I know of no way to provide a record to Commission members but not the public in connection with that item. Both the Commission staff and the City Attorney asserted at last night's meeting that the Commission staff's characterization of the subject record should suffice.

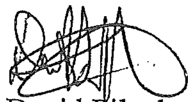
Third, I know of no way to hold an in camera review in closed session at a Commission meeting. The Ralph M. Brown Act ("Brown Act") provides that "Except as expressly authorized by this chapter . . . no closed session may be held by any legislative body of any local agency." (California Government Code section 54962.) The Brown Act only provides for in camera review of a closed session recording in a court proceeding alleging that a violation of the Brown Act has occurred in a closed session that has been recorded pursuant to that section. (California Government Code section 54960.) Meanwhile, the California Public Records Act only provides for in camera review of a public record in a court proceeding to determine if the record is subject to disclosure. (California Government Code section 6259.) No closed session is authorized for an in camera review of a record to determine if the record is subject to disclosure.

Moreover, the Task Force is confronted frequently with the difficult task of determining if a record is subject to disclosure. The Task Force has never been told that it has the power to compel production, provide the record to Task Force members but not the public, and hold an in camera review in closed session to determine if the record is subject to disclosure. I suspect that the Task Force has never been given this option because the Sunshine Ordinance does not allow it. The Board of Supervisors, in enacting and amending the Sunshine Ordinance, or the voters, in amending it significantly in 1999, did not confer such power on the Task Force. Similarly, the Commission could have such power but does not. Both the Brown Act and the California Public Records Act have narrow provisions for in camera review in court proceedings and no provisions for such review at public meetings. The Sunshine Ordinance has no provisions about this at all.

While it may be easy to argue that in order to perform a duty or function these powers are somehow inherent, that argument is dangerous and flawed. I'm sure someone has said that government power is not unlimited and that the laws and the voters allocate powers and duties. Here, I think the Commission is without power to address the instant complaint, which should be properly re-directed to the Task Force or the City Attorney's Supervisor of Records function. At a minimum, I think the Commission has no power or mechanism to compel production, provide the record to Commission members but not the public, and hold an in camera review in closed session to determine if the record is subject to disclosure. I urge you to reconsider the advice given by Deputy City Attorney White last night and to be more circumspect with future advice.

Thank you for your time and attention. I look forward to a proper response to this letter.

Sincerely,



David Pilpel

Attachment

cc: Deputy City Attorney Joshua White, City Attorney's Office
Deputy City Attorney Andrew Shen, City Attorney's Office
Deputy City Attorney Jon Givner, City Attorney's Office
Deputy City Attorney Margaret Baumgartner, City Attorney's Office
Deputy City Attorney Paul Zarefsky, City Attorney's Office
Deputy City Attorney Buck Delventhal, City Attorney's Office
Chief Assistant City Attorney Jesse Smith, City Attorney's Office
Chief Deputy City Attorney Ron Flynn, City Attorney's Office
Chair Paul Renne and Members, Ethics Commission
Executive Director John St. Croix, Ethics Commission
Deputy Executive Director Jesse Mainardi, Ethics Commission
Investigator / Legal Analyst Garrett Chatfield, Ethics Commission

David Pilpel
San Francisco CA

FILED
15 APR 21 PM 3:22
SAN FRANCISCO
ETHICS COMMISSION
BY

Chair Paul Renne and Members
Ethics Commission
25 Van Ness Ave Ste 220
San Francisco CA 94102

21 April 2015

Re: Ethics Complaint No. 03-150127 filed by Paula Datesh

Dear Chair Renne and Members,

I write as an individual to provide additional information regarding the subject complaint. This complaint was not made to the Sunshine Ordinance Task Force ("Task Force"); the Task Force has not discussed it and I do not represent the Task Force or either of the parties here.

First, by way of background, I believe that the Complainant here (Paula Datesh / Ann Treboux; she changes her name from time to time for reasons unknown) easily makes more public records requests of the San Francisco Arts Commission than any other person, according to the most recent Sunshine Requests Log that the Arts Commission provided in response to a suggestion from the Task Force to track public records requests and responses. I also understand that it is not uncommon for the Complainant to make multiple public records requests, with back-and-forth follow-up, on any given day. I believe that the Arts Commission tries to timely and completely respond to every request received. When something is occasionally late or lost the Arts Commission has apologized and attempted to avoid repeating that particular error.

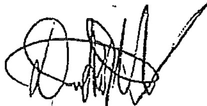
Second, I find it unusual and wasteful for the Ethics Commission to hear this particular complaint in this way. While the Task Force normally hears complaints regarding compliance with the Sunshine Ordinance (and the Complainant files many complaints there, some sustained) and the Task Force refers a small number of complaints to the Ethics Commission for enforcement, this is the first complaint that I know of to be filed directly with the Ethics Commission, bypassing the Task Force. Regardless of the outcome here, I think that this sets a bad precedent by creating a new venue for lodging original complaints. While the Task Force does not always do a perfect job, their complaint process is designed to establish facts, find violations where warranted, and fix practices going forward. I don't think that the Sunshine Ordinance envisioned a more resource-intensive trip to the Ethics Commission every time.

Third, on the merits as to reasons for withholding records, if the Arts Commission did not properly cite the applicable reasons then there may be a violation here. It appears to me that the reasons were fully and properly included, but the legal citation for the withholding may be lacking. If so, then I believe that the Arts Commission should be directed to review with the City Attorney their proper responsibility for citations when withholding public records. Further, if there is a violation here it certainly appears to me that it is not willful in nature.

Fourth, on the merits as to withholding the subject report, I understand that the report is part of an investigatory file within the Street Artist Program. While the Arts Commission is not a traditional law enforcement agency, they do manage certain arts and cultural affairs programs including the Street Artist Program, which includes a comprehensive licensing element with detailed requirements that subject artists in the program to suspension and revocation for failure to comply with program rules. I understand that one aspect of monitoring program compliance is receiving reports from other artists alleging violations which are properly investigated by the Street Artist Program staff. I believe that such reports, while being investigated, must be kept confidential so as not to impair an ongoing investigation. Similar to other investigatory files not otherwise made permanently confidential by law, only when an investigation is complete and no further action will be taken should such files be open to public review. At that time, such reports should be made available, subject to redaction as to information that could reasonably identify the person making the report. If other street artists cannot be assured that their identifying information will be kept permanently confidential they will not make such reports and ensuring compliance with the program requirements will be made that much more difficult. Alternatively, if the report was made with the expectation of confidentiality, then it may be permanently confidential under the California Evidence Code. Again, I see no willful violation here.

Thank you for your time and attention. I believe that the Arts Commission manages the City's arts and cultural affairs programs responsibly along with its public accountability requirements, including public records. I look forward to the hearing on this complaint.

Sincerely,



David Pilpel

cc: John St. Croix, Executive Director