

# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM  
EXECUTIVE DIRECTOR

Date: November 10, 2016

To: Members of the Ethics Commission

Copy: Allen Grossman, John Rahaim, Sarah Jones

From: Jessica Blome, Deputy Director, Enforcement & Legal Affairs

Subject: **Agenda Item 6: Staff's Report and Recommendation**  
for handling Ethics Commission Complaint No. 03-160621  
*Allen Grossman v. John Rahaim & Sarah Jones*

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**Summary** This memorandum serves as Staff's Report and Recommendation for how the Ethics Commission should handle a complaint alleging violations of the Sunshine Ordinance.

**Action Requested** Because Staff finds no evidence that either John Rahaim or Sarah Jones violated the Sunshine Ordinance in responding to Allen Grossman's public records requests, Staff recommends that the Commission issue an order finding the following: (1) John Rahaim did not willfully or non-willfully violate the Sunshine Ordinance as alleged in Mr. Grossman's Complaint No. 03-160621, first submitted to the Ethics Commission on April 27, 2016, and supplemented thereafter; and (2) Sarah Jones did not willfully or non-willfully violate the Sunshine Ordinance as alleged in Mr. Grossman's Complaint No. 03-160621, first submitted to the Ethics Commission on April 27, 2016, and supplemented thereafter.

### Introduction

On April 27, 2016, Allen Grossman, on behalf of the SF Urban Forest Coalition ("SF UFC") filed a complaint with the Ethics Commission alleging that Planning Department Director John Rahaim and Environmental Planning Director Sarah Jones committed the following violations of the Sunshine Ordinance: "(1) Willful failure to comply with the requirements of Section 67.29; (2) Willful failure to implement its own records retention requirements established by it pursuant to Section 67.29; (3) Willful failures to require that records regarding CEQA reviews be maintained and for public access."

The Ethics Commission has jurisdiction to handle complaints alleging willful violations of the Sunshine Ordinance by a department head under section 67.34 of the Sunshine Ordinance. Staff, therefore, handled Mr. Grossman's complaint against Planning Department Director

John Rahaim pursuant to Chapter Two of the Ethics Commission's Enforcement Regulations for Handling Violations of the Sunshine Ordinance (Sunshine Regulations). Because the facts of Mr. Grossman's complaint against Mr. Rahaim mirrored those against Sarah Jones, a city employee, Staff initiated its own investigation into Mr. Grossman's allegations against Ms. Jones under Chapter Three(I)(A)(3) of the Sunshine Regulations.

### **Background**

Allen Grossman communicated with the Planning Department about its environmental review of various city policies affecting urban trees throughout 2015 and 2016. On June 29, 2015, Mr. Grossman, on behalf of the SF Urban Forest Coalition, submitted an Immediate Disclosure Request ("IDR") to John Rahaim, Director of the San Francisco Planning Department, requesting copies of "certain records maintained by or in the custody of the Planning Department . . . relating to the 'environmental review conducted by the Planning Department's Environmental Planning staff of proposed legislation BOS File No. 150221 and its determination . . . that the proposed amendments are not defined as a project under the [the California Environmental Quality Act] Guidelines Section 15378 and 15060(c)(2) because they do not result in a physical change in the environment' as stated in its letter dated March 15, 2015 to Ms. Angela Calvillo, Clerk and Supervisor Weiner," including notes, memoranda, and timesheets for staff who reviewed the subject "BOS" file. Grossman Complaint, p. 11. Mr. Grossman later amended his request for documents related to the Planning Department's review of the "Better Streets Plan" (BOS File No. 101193) and legislative action taken by the Board of Supervisors (BOS File No. 150221). See *generally*, Allen Grossman Complaint, p. 7-28, which is attached hereto. Both plans affected urban trees.

After some back-and-forth between Mr. Grossman and Planning Department staff regarding the scope of his records request, in early April 2016, Mr. Grossman asked for a link to the Planning Department's online file for the "Better Streets Project," which he thought should be available for download on the Planning Department's website. Grossman Complaint, p. 17. Mr. Grossman reasoned that the City Administrator's Index to Records states that "Case Files Environmental Review Category: Major Environmental Analysis" are routinely retained by the Planning Department, so those files should be available for download. Grossman Complaint, p. 12-13. On April 5, 2016, Director of Environmental Planning Sarah Jones advised Mr. Grossman that not all environmental files are available for download on the Planning Department's website.

After more back-and-forth, on April 15, 2016, Sarah Jones advised Mr. Grossman that he could review the Department's file on the "Better Streets Plan" and/or obtain certain records from it by scheduling an appointment with Christine Silva. Grossman Complaint, p. 27.

Mr. Grossman responded that same day alleging that Ms. Jones had misunderstood his request, which was for "the EIR done by Planning." Grossman Complaint, p. 28. He then copied the following language from the City Administrator's Index to Records: "Case Files Environmental Review Category: Major Environmental Analysis" and explained "I was hoping that the public would have access to these files or folders through a link or links on its website. So at this time, there is no need to involve the planners on staff who worked on the legislation. If Planning is not maintaining either of these two files or folders, please advise me." Grossman Complaint, p. 28.

On April 27, 2016, Mr. Grossman, on behalf of the SF Urban Forest Coalition ("SF UFC"), filed a complaint with the Ethics Commission. The subject line of Mr. Grossman's complaint read: "Sunshine Ordinance § 67.34 Complaint." In the complaint, Mr. Grossman alleged that Mr. Rahaim and Ms. Jones committed

the following violations of the Sunshine Ordinance: “(1) Willful failure to comply with the requirements of Section 67.29; (2) Willful failure to implement its own records retention requirements established by it pursuant to Section 67.29; (3) Willful failures to require that records regarding CEQA reviews be maintained and for public access.”

Mr. Grossman requested that the complaint be held for 40 days, “unless prior thereto the Complainant notifies [the Commission] that the Respondents have fully remedied the violations alleged in the Complaint.” On June 10, 2016, the Ethics Commission received a facsimile from Mr. Grossman stating, in part, that neither Respondent had communicated with him “since then regarding a remediation of the violations alleged in the Complaint” and requested that the complaint be considered for investigation by the Ethics Commission. Since his original April 2016 complaint, Staff has reviewed several hundred copies of correspondence and responsive documents to supplement his original complaint. The majority of these documents were submitted to Staff by the Planning Department.

### **Analysis**

Section 67.34 of the Sunshine Ordinance requires the Ethics Commission to handle complaints alleging willful violations of the Sunshine Ordinance against department heads, who have committed “official misconduct” by willfully failing to discharge any duties imposed by the Sunshine Ordinance, Brown Act, or the Public Records Act.

To support Staff’s investigation into his complaint, Staff reviewed hundreds of pages of responsive documents produced by the Planning Department to Mr. Grossman. Mr. Rahaim is copied on a few emails among Mr. Grossman and Planning Department staff. Staff found no evidence that he ever participated in the discussion or corresponded with Mr. Grossman or the Planning Department’s staff during the processing of Mr. Grossman’s records requests. Mr. Grossman has never alleged, and Staff has found no evidence, that Director Rahaim deleted or withheld responsive records or otherwise participated in the responses to Mr. Grossman’s records requests.

In addition to reviewing documents, Staff interviewed Allen Grossman, Christine Silva, and Joan Lubamersky at the City Administrator’s Office to construct an accurate timeline of Mr. Grossman’s requests and the Planning Department’s responses. Staff concludes that the Planning Department either provided all responsive documents to Mr. Grossman in a timely matter or made themselves and the file available to Mr. Grossman for review, as required by Sunshine Ordinance sections 67.21 and 25.

Based on the evidence presented by Mr. Grossman and Staff’s own investigation, Staff concludes that Mr. Rahaim did not willfully violate the Sunshine Ordinance for two reasons: (1) because the Planning Department complied with the Sunshine Ordinance in its responses to Mr. Grossman’s records requests; and (2) because Mr. Rahaim was not involved in the Planning Department’s response to Mr. Grossman’s records requests, either personally or as a direct supervisor.

Because the Planning Department timely responded to all of Mr. Grossman’s records requests, Staff concludes that Ms. Jones did not violate the Sunshine Ordinance either.

Seperately, Mr. Grossman’s complaint also states that the Planning Department did not make the files he requested available for the public to download from the Planning Department’s website. No City law, however, requires the Planning Department to do so. Mr. Grossman alleges that Section 67.29 of the Sunshine Ordinance requires such availability, but section 67.29 only requires the City Administrator to

prepare a “public records index” that simply identifies the “types of information and documents maintained” by each city department, agency, board, commission, and elected officer. The purpose of the index is to “clearly indicate where and how records” of each type are kept and must be “sufficient to aid the public in making an inquiry or a request to inspect” a document. *Id.* For the Commission’s information, the City Administrator maintains this “Index to Records” on the following website: <http://index.sfgov.org/#/home>. To be thorough, Staff contacted the City Administrator’s Office and confirmed that the Planning Department has complied with section 67.29 of the Sunshine Ordinance.

### **Staff’s Recommendation**

Because Staff finds no evidence that either Mr. Rahaim or Ms. Jones violated the Sunshine Ordinance in responding to Mr. Grossman’s public records requests, Staff recommends that the Commission issue an order finding the following:

1. John Rahaim did not willfully or non-willfully violate the Sunshine Ordinance as alleged in Mr. Grossman’s Complaint No. 03-160621, first submitted to the Ethics Commission on April 27, 2016, and supplemented thereafter; and
2. Sarah Jones did not willfully or non-willfully violate the Sunshine Ordinance as alleged in Mr. Grossman’s Complaint No. 03-160621, first submitted to the Ethics Commission on April 27, 2016, and supplemented thereafter.

SF Urban Forest Coalition  
5758 Geary Blvd. #105  
San Francisco, CA 94121-2112  
Email: sfufc@mac.com  
FAX: (415) 831-3721  
Phone: (415) 831-3720

**FACSIMILE TRANSMITTAL**

To: San Francisco Ethics Commission

FAX Number: (415) 252-3112

Phone Number: (415) 252-3100

Number of Pages: 2, including cover sheet.

Date: June 9, 2016

From: SF Urban Forest Coalition (SFUFC)

**Message:** Attached is SFUFC's letter dated today to the San Francisco Ethics Commission regarding SFUFC's Complaint against Mr. John Rahaim, Director of San Francisco Planning and Ms. Sarah B. Jones, Director of Environmental Planning, at the San Francisco Planning Department, as Respondents.

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,  
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

**CONFIDENTIALITY NOTE:** The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

FILED  
2016 JUN 10 AM 8:19  
SAN FRANCISCO  
ETHICS COMMISSION

SF Urban Forest Coalition  
c/o Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121  
Email: [sfufc@mac.com](mailto:sfufc@mac.com)  
FAX: (415) 831-3721  
Phone: (415) 831-3720

BY FACSIMILE

June 9, 2016

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

Re: Sunshine Ordinance §67.34 Complaint:  
Complainant: SF Urban Forest Coalition,  
Respondents: John Rahaim, Director of San Francisco Planning and  
Sarah B. Jones, Director of Environmental Planning


On April 27, 2016 the subject Complaint was submitted to the Ethics Commission by SF Urban Forest Coalition, the Complainant. In its transmittal letter, Complainant asked that the Commission hold the Complaint for 40 days and file it on June 6, 2016, unless prior thereto the Complainant notified the Commission that the Respondents had fully remedied the violations alleged in the Complaint and the Complaint was not to be filed.

Copies of the April 27, 2016 letter and the Complaint were sent on April 27, 2016 by Facsimile to Mr. Rahaim and Ms. Jones, the Respondents, at Planning Department.

Neither Respondent has communicated with the Complainant since then regarding a remediation of the violations alleged in the Complaint. Accordingly, please file the Complaint in accordance with the Commission's applicable regulations and advise the Complainant of the assigned number or identifying reference for the Complaint.

Please contact the Complainant by email at [sfufc@mac.com](mailto:sfufc@mac.com), if there is any question regarding the foregoing or if additional information is required.

Thank You,

  
Allen Grossman  
Executive Director

Cc: John Rahaim, Director of San Francisco Planning  
Sarah B. Jones, Director of Environmental Planning

FILED  
2016 JUN 10 AM 8:19  
SAN FRANCISCO  
ETHICS COMMISSION

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5758 Geary Blvd. #105  
San Francisco, CA 94121-2112  
Email: sfufc@mac.com  
FAX: (415) 831-3721  
Phone: (415) 831-3720

## FACSIMILE TRANSMITTAL

To: San Francisco Ethics Commission

FAX Number: (415) 252-3112

Phone Number: (415) 252-3100

Number of Pages: 26, including cover sheet.

Date: April 27, 2016

From: SF Urban Forest Coalition (SFUFC)

**Message:** Attached is SFUFC's letter dated today to the San Francisco Ethics Commission submitting SFUFC's Complaint against Mr. John Rahaim, Director of San Francisco Planning and Ms. Sarah B. Jones, Director of Environmental Planning, at the San Francisco Planning Department, as Respondents, regarding their violations of the San Francisco Sunshine Ordinance.

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,  
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

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SF Urban Forest Coalition  
c/o Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121  
Email: [sfufc@mac.com](mailto:sfufc@mac.com)  
FAX: (415) 831-3721  
Phone: (415) 831-3720

BY FACSIMILE

April 27, 2016

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

Re: Sunshine Ordinance §67.34 Complaint:  
Complainant: SF Urban Forest Coalition,  
Respondents: John Rahaim, Director of San Francisco Planning and  
Sarah B. Jones, Director of Environmental Planning

The subject Complaint (attached hereto) is submitted to the Ethics Commission by SF Urban Forest Coalition, the Complainant. Please hold it for 40 days and file it on June 6, 2016, unless prior thereto the Complainant notifies you that the Respondents have fully remedied the violations alleged in the Complaint and the Complaint is not to be filed.

Copies of this letter and the Complaint were sent to Mr. Rahaim and Ms. Jones, the Respondents, by Facsimile to them at Planning Department's FAX number, as evidenced by the FAX transmission report, also attached hereto.

Please contact the Complainant by email at [sfufc@mac.com](mailto:sfufc@mac.com), if there is any question regarding the foregoing or if additional information is required.

Thank You,



Allen Grossman  
Executive Director

Cc: John Rahaim, Director of San Francisco Planning  
Sarah B. Jones, Director of Environmental Planning

FILED  
2016 APR 27 AM 10:13  
ETHICS COMMISSION



**SF Urban Forest Coalition**  
5758 Geary Blvd. #105  
San Francisco, CA 94121-2112  
Email: sfufc@mac.com  
FAX: (415) 831-3721  
Phone: (415) 831-3720

**FACSIMILE TRANSMITTAL**

To: John Rahaim, Director of San Francisco Planning  
And to: Sarah B. Jones, Director of Environmental Planning  
Of: San Francisco Planning Department  
FAX Number: (415) 558-6409  
Phone Number: (415) 558-6378  
Number of Pages: 24, including cover sheet.  
Date: April 27, 2016  
From: SF Urban Forest Coalition (SFUFC)

**Message:** Attached is a copy of SFUFC's letter dated today to the San Francisco Ethics Commission submitting SFUFC's Complaint against Mr. Rahaim and Ms. Jones, as Respondents, regarding their violations of the San Francisco Sunshine Ordinance.

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,  
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

**CONFIDENTIALITY NOTE:** The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

## TRANSMISSION VERIFICATION REPORT

TIME : 04/27/2016 09:35  
NAME : SFUFC/GROSSMAN  
FAX : 4158313721  
TEL : 4158313720  
SER.# : G0J395977

DATE, TIME	04/27 09:25
FAX NO./NAME	14155586409
DURATION	00:09:45
PAGE(S)	24
RESULT	OK
MODE	STANDARD



Phone 252-3100 Fax 252-3112

**San Francisco Ethics Commission  
Complaint Form**

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

2016 APR 27 AM 10:13  
SFUFC/GROSSMAN  
ETHICS COMMISSION

**Complainant Information\***

<b>Name of Complainant</b>	URBAN FOREST COALITION, a California not-for-profit corporation
<b>Address</b>	c/o ALLEN GROSSMAN, 111 30 <sup>TH</sup> AVENUE., SAN FRANCISCO, CA
<b>Zip</b>	94121
<b>Home Phone</b>	-----
<b>Work Phone</b>	(415) 831-3720

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

**Respondent Information**

<b>Name of Respondent</b>	JOHN RAHAIM
<b>Business Title</b>	DIRECTOR OF SAN FRANCISCO PLANNING
<b>City Department</b>	SAN FRANCISCO PLANNING DEPARTMENT
<b>Business Address</b>	1650 MISSION STREET, SUITE 400 SAN FRANCISCO, CA 94103
<b>Work Phone</b>	(415) 558-6411

*X 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) Violations of San Francisco Sunshine Ordinance**

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. **SEE ATTACHED STATEMENT**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Witnesses**

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

<b>Name of Witness</b>	Allen Grossman
<b>Address</b>	111 30 <sup>th</sup> Avenue
<b>Phone</b>	(415) 831-3720
<b>Information you believe this person can provide to support the allegations stated in this complaint</b>	Mr. Grossman is Executive Director of the Complainant and was directly involved in all aspects of the actions alleged in the Complaint.

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

☐ *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.

All the documents that relate to the allegations in the Complaint are attached as Exhibits #1 through #9, inclusive, to the Statement attached to this Complaint.

**Additional Information**

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

The files noted on the Planning Department's website - see link below- became effective in 1999. No effort has been made since then to establish those files, notwithstanding the records relating to CEQA reviews are critical to their decisions on whether there is compliance or not.

[http://index.sfgov.org/#/agency\\_list/556bc154206cc24c3a7af90a](http://index.sfgov.org/#/agency_list/556bc154206cc24c3a7af90a)

The specific violations of the San Francisco Sunshine Ordinance alleged in this Complaint are:

(1) Willful failure to comply with the requirements of Section 67.29; (2) Willful failure to implement its own records retention requirements established by it pursuant to Section 67.29; (3) Willful failures to require that records regarding CEQA reviews be maintained and for public access.

**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.

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**Verification\*\*\***

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

Executed:	At:
April 27, 2016	San Francisco, CA
By:	<i>Allen Grossman</i>
Allen Grossman	(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.

Statement attached to and made part of Complaint filed with San Francisco Ethics Commission by SF Urban Forest Coalition against John Rahaim, Director of San Francisco Planning and Sarah B. Jones, Director of Environmental Planning.

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**Additional Respondent:**

Sarah B. Jones,  
Director of Environmental Planning  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103  
(415) 558-6411

**Description of Facts:**

(1) On June 20, 2015, SF Urban Forest Coalition ("SFUFC" or "Complainant") submitted an Immediate Disclosure Request ("IDR") to John Rahaim, Director of San Francisco Planning ("Director Rahaim") requesting copies of certain records maintained by or in the custody of the Planning Department ("Planning") relating to "the environmental review conducted by the Planning Department's Environmental Planning staff of proposed legislation BOS File No. 150221 and its determination ... "that the proposed amendments are not defined as a project under CEQA Guidelines Section 15378 and 15060(c) (2) because they do not result in a physical change in the environment" as stated in its letter dated March 15, 2015 to Ms Angela Calvillo, Clerk and Supervisor Weiner ", a copy of which was attached to the IDR. A copy of the IDR, as sent, is attached as Exhibit #1.

(2) The IDR stated that:

"[I]ncluded in the records requested in this IMMEDIATE DISCLOSURE REQUEST are without limitation,

...

(b) **Any entry to notation in any log, docket or similar compilation listing BOS File # 15022 as having been reviewed and the person (s) who reviewed that BOS File;**

(c) Any files, notes or memoranda prepared or kept by the person(s) who reviewed that BOS File; and

(d) Any daily or other time sheets that reflect the time the person(s) who reviewed that BOS File devoted to it. **[Emphasis Added]**

(3) In due course, SDUFC received Planning's response to the IDR from Christine Lamorena, Planning's Manager of Commission Affairs. On July 27, 2015, following the review of the records provided by Planning, SFUFC's Executive Director

(SFUFC's ED) wrote Ms. Lamorena requesting copies of certain records or pages of records or other information that should have been included in the responsive records. See Exhibit #2.

- (4) Since it appeared that neither Ms. Lamorena nor any other Planning staff member answered SFUFC's July 2015 letter, SFUFC's Executive Director wrote Ms. Lamorena on March 24, 2016 as follows:

"In going back through the June 29, 2015 IDR file and checking my emails for last July and August, I realized that the "missing" records mentioned in this email from last July were probably not sent me. If I am mistaken, please resend the email transmitting them. If they weren't sent, please do so sometime in the next few days." Exhibit #3.

- (5) On March 24, 2016, SFUFC's ED wrote Ms. Lamorena again, with a copy to Sarah Jones, Director of Environmental Planning. (Exhibit #4). In that letter, he stated, in part,

"Ms. Jones, as Director of Environmental Planning, undoubtedly knew what records were sought. A copy of the request was directed to her because most if not all the requested records were to be found within her group. Under Sunshine Ordinance sections 67.21(a) and 67.21(b), she was the "custodian" of any responsive records that existed when the request was submitted and she should have responded to our request.

"It is troubling that a CEQA "determination" was made - probably by Joy Navarrete, who signed off on the determination - with no other records documenting who actually reviewed the proposed legislation, when the determination was made, how much time was spent reviewing the proposed legislation and by whom nor are there any log entries to substantiate that review.

...

"With the request's narrow focus and the limited Planning staff involved and the fact that the relevant records would have been created during the few months preceding the IDR and would have been readily available, Planning's failure to send any that were relevant would lead to the conclusion that none exist. If that conclusion is not correct, please forward the records that respond to the records request."

- (6) On March 24, 2016, Ms. Jones advised SFUFC's ED by email as follows:

"We do not maintain separate records for legislative items that we review and conclude are not projects under CEQA. If, upon review, a piece of legislation could not have any potential to cause direct or indirect physical change in the environment we inform the Clerk of the Board to that effect and do not take in the legislation for environmental review."



"Please contact Joy Navarrete (cc:ed on this email) if you have any further questions."

(Exhibit #5)

(7) On April 5, 2016, SFUFC's ED wrote Ms. Jones in an email:

"The Planning Department should have a log or other way to locate both "Categorical Exemptions" and "Case Files Environmental Review" as its website describes those two sets of records as records that are to be kept by the department according to the City's Index of Records as follows:

**Case Files Environmental Review**

Category: Major Environmental Analysis

Remarks: Destroy if microfilmed/Optical Imaged

retention type: 1 - Permanent retained on-site: 15 years retained off-site: Permanent

**Categorical Exemption**

Category: Major Environmental Analysis

Remarks: Destroy if microfilmed/Optical Imaged

retention type: 1 - Permanent retained on-site: 2 years retained off-site: Permanent

"This is the link: [http://index.sfgov.org/#/agency\\_list/556bc154206cc24c3a7a190a](http://index.sfgov.org/#/agency_list/556bc154206cc24c3a7a190a)

"Under the circumstances the Planning Department is either not following its own record retention policy, which is mandated under Section 67.29 of the Sunshine Ordinance or is violating its provisions."

Exhibit #6A.

(8) That email was followed up with another email in which SFUFC's ED advised Ms. Jones:

"I should have included this sentence copied from the same page of the website:

"You may submit a request for any of the following records in accordance with applicable public records laws. The departments have included a direct link to some of the records; if there is no link for the record you are seeking, and/or you would like to request additional information regarding that record, please contact the department or division directly using the contact information provided for that specific record."

Exhibit #6B.

- (9) On April 15, 2016, SFUFC's ED sent the following email request to Ms. Joy Navarette, as directed by Ms. Jones:

"Would you please send me the link on the Planning Department's website to:

Case Files Environmental Review  
Category: Major Environmental Analysis

that shows the complete entry documenting the Planning Department's CEQA review of the 2010 Better Streets Plan (BOS File # 10194/Ordinance #310-10) as well as the EIR itself, together with copies of any notes, comments, memoranda, communications and any other records related to the CEQA review and the EIR.

"If there is no link, please send me a copy of the complete entry documenting the Planning Department's CEQA review of the 2010 Better Streets Plan (BOS File # 10194/Ordinance #310-10) as well as the EIR itself, together with copies of any notes, comments, memoranda, communications or any other records related to the CEQA review and the EIR.

"Consider this a public records request submitted in accordance with Sunshine Ordinance Section 67.21(b), which provides, in part:

" 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."

Exhibit #7.

- (10) On April 15, 2016, SFUFC received an email from Ms. Jones in which she stated:

"Joy was the staff contact I provided regarding review of Board-initiated legislation. Although the Better Streets Plan included legislative action, it was a plan that originated in this department and was not worked on by Joy.

"The Planning Department case file number for the Better Streets Plan is 2007.1238. From your request, it looks like you want to review that file and/or obtain certain records from it. I've added Devyani Jain and Adam Varat to this email since they were some of the people on our staff who worked on the project. For this request, please contact Christine Silva who can advise you on how to proceed."

Exhibit #8.

- (11) On April 15, 2016, SFUFC's ED replied to Ms. Jones' email as follows:

"You misunderstood my request.

"The focus of the request was Planning's records referred to in the body of the

request, namely these two files or folders, and the entries in them that relate to the Better Streets Plan, including, what I assumed to be the case, the EIR done by Planning.

"Case Files Environmental Review  
Category: Major Environmental Analysis

"Not knowing what other content or related files would be referred to in those files or folders on this CEQA review, given the importance of that legislation and the CEQA requirements that might apply to it, I expected there would be some other records that related to those requirements and what the EIR should cover. That is what a "case file" usually means.

"I was also hoping that the public would have access to these files or folders through a link or links on its website.

"So at this time there is no need to involve the planners on staff who worked on the legislation.

If Planning is not maintaining either of these two files or folders, please advise me."

Exhibit #9.

(12) To date, there has been no response from Mr. Rahaim, Ms. Jones, Ms. Navarette, Ms. Lamorena or any other Planning Department staff member.

SF Urban Forest Coalition  
5758 Geary Blvd. #105  
San Francisco, CA 94121-2112  
E-mail: sfufc@mac.com  
FAX: (415) 831-3721  
Phone: (415) 831-3720

BY FACSIMILE

**IMMEDIATE DISCLOSURE REQUEST**

June 29, 2015

John H. Rahaim, Planning Director  
Sarah B. Jones, Director of Environmental Planning  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103-2479

This is an IMMEDIATE DISCLOSURE REQUEST submitted by SF Urban Forest Coalition (SFUFC) pursuant to Sections 67.25(a) and Section 67.27(b) of the San Francisco Sunshine Ordinance (Sunshine Ordinance) and Section 6253(b) of the California Public Records Act (CPRA) and any other applicable provisions of CPRA Records Act and the Sunshine Ordinance for complete copies in any form, format or media, including electronic media, in the custody or control of, maintained by or available to the Planning Department (Planning) of all records, including, without limitation, files, folders, emails, notes, memoranda and all other communications of any and every kind, including attachments, relating or with reference to or in connection with relating to or in connection with the environmental review conducted by the Planning Department's Environmental Planning staff of proposed legislation BOS File No. 150221 and its determination (Determination) "that the proposed amendments are not defined as a project under CEQA Guidelines Section 15378 and 15060(c) (2) because they do not result in a physical change in the environment" as stated in its letter Dated March 15, 2015 to Ms Angela Calvillo, Clerk and Supervisor Weiner, a copy of which is attached hereto.

Included in the records requested in this IMMEDIATE DISCLOSURE REQUEST are without limitation,

(a) Each and every draft of the Determination as well as every email, note, memorandum or any other communication, including attachments, of any and every kind to, from or among any one or more of (1) John H. Rahaim, Planning Director, (2) Sarah Jones, Director of Environmental Planning/Senior Environmental Planner, (3) Bill Wycko, former Chief, Major Environmental Analysis, (4) Viktoriya Wise, Deputy Director, Environmental Review, Aaron Starr, Manager of Legislative Affairs, (5) Dan Sider, Senior Advisor for Special Projects, (6) Monica Pereira, Environmental Planning, (7)

Exhibit #1

Joy Navarrete, Environmental Planning, and/or (8 ) any other person, whether or not a San Francisco City employee or official;

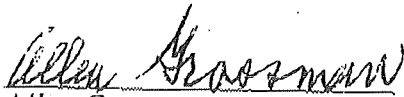
(b) Any entry to notation in any log, docket or similar compilation listing BOS File # 15022 as having been reviewed and the person (s) who reviewed that BOS File;

(c) Any files, notes or memoranda prepared or kept by the person(s) who reviewed that BOS File; and

(d) Any daily or other time sheets that reflect the time the person(s) who reviewed that BOS File devoted to it?

If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address. If the records are kept in some other format, please scan the relevant page(s) to PDF format and send them by email to the above email address.

This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly.



Allen Grossman,  
Executive Director

From: Allen Grossman <sfufc@mac.com>  
Subject: June 29, 2015 Immediate Disclosure Request.  
Date: July 27, 2015 at 1:57:03 PM PDT  
To: "Lamorena, Christine (CPC)"  
<christine.lamorena@sfgov.org>  
Cc: "Ionin, Jonas (CPC)" <jonas.ionin@sfgov.org>

Ms. Lamorena,

Among the records sent 10 days ago in response to this IDR (a) missing is the first page of the attached Executive Summary (draft?) #14 for the May 14, 2014 Planning Commission hearing, (b) a number of attachments are missing and (c) the emails transmitting some of the records are missing as well - they would disclose who prepared the emailed messages and the staff to whom each was sent, (d) the attached two pages of notes #18 are undated and their author is not identified - these notes seem to have been shared, so an email transmitting them would disclose that information and (e) the attached May 1, 2015 "Legislative Review" meeting notice ( #15) does not show who sent it, to whom it was sent or who from Planning's Legislative staff (Aaron Starr?) was to attend it.

Please forward the missing page, the various missing emails and any attachments that are not available on either Planning's or the BOS' websites.

Thank You,

Allen Grossman

Exhibit #2

From: Allen Grossman <sfufc@mac.com>  
Subject: Fwd: June 29, 2015 Immediate Disclosure Request. -- Missing Records  
Date: March 24, 2016 at 3:09:03 PM PDT  
To: "Lamorena, Christine (CPC)" <christine.lamorena@sfgov.org>

Ms. Lamorena,

In going back through the June 29, 2015 IDR file and checking my emails for last July and August,, I realized that the "missing" records mentioned in this email from last July were probably not sent me.. If I am mistaken, please resend the email transmitting them. If they wen't sent, please do so sometime in the next few days.

Thank You,

Allen Grossman  
SFUFC Executive Director

SF Urban Forest Coalition  
5758 Geary Blvd. #105  
San Francisco, CA 94121-2112  
Email: sfufc@mac.com  
FAX: (415) 831-3721  
Phone: (415) 831-3720

BY FACSIMILE

March 24, 2016

Ms. Christine Lamorena,  
Manager of Commission Affairs  
San Francisco Planning Department

Re: SF Urban Forest Coalition's June 29, 2015 Immediate Disclosure Request

Dear Ms. Lamorena,

After a second review of the records you sent in responsive to our June 29, 2015 IDR, we find that none of those 22 records are responsive to the IDR. In connection with that response, we note the following for your attention:

(1) The request focused solely on one aspect of the proposed legislation, i.e. those records "with reference to or in connection with ... the environmental review conducted by the Planning Department's Environmental Planning staff of proposed legislation BOS File No. 150221 and its determination (Determination) that the proposed amendments are not defined as a project under CEQA Guidelines Section 15378 and 15060(c) (2) because they do not result in a physical change in the environment" as stated in its letter dated March 15, 2015 to Ms Angela Calvillo, Clerk and Supervisor Weiner, a copy of which [was] attached ...to our Immediate Disclosure Request. [Emphasis Added.] It seems pretty clear what records were sought.

(2) Ms. Jones, as Director of Environmental Planning, undoubtedly knew what records were sought. A copy of the request was directed to her because most if not all the requested records were to be found within her group. Under Sunshine Ordinance sections 67.21(a) and 67.21(b), she was the "custodian" of any responsive records that existed when the request was submitted and she should have responded to our request.

(3) It is troubling that a CEQA "determination" was made - probably by Joy Navarrete, who signed off on the determination - with no other records documenting who actually reviewed the proposed legislation, when the determination was made, how much time was spent reviewing the proposed legislation and by whom nor are there any log entries to substantiate that review.

On page 5 of the Executive Summary for the Planning Commission May 14, 2015 hearing, the following statement was made:



**"ENVIRONMENTAL REVIEW**

"The proposed Ordinance is not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment."

Also, in the May 15, 2015 transmittal letter to the Clerk of the BOS, a similar statement is made:

"The Department determined that the proposed amendments are not defined as a project under CEQA Guidelines Section 15378 and 15060(c) (2) because they do not result in a physical change in the environment."

The fact that none of the responsive records came from the Environmental Review group, also seems odd, considering that that group was the only one authorized to make a CEQA determination.

(4) With the request's narrow focus and the limited Planning staff involved and the fact that the relevant records would have been created during the few months preceding the IDR and would have been readily available, Planning's failure to send any that were relevant would lead to the conclusion that none exist. If that conclusion is not correct, please forward the records that respond to the records request.

Your Very Truly,

Allen Grossman,  
Executive Director, SFUFC

Copy to: Sarah B. Jones,  
Director of Environmental Planning

On Mar 24, 2016, at 6:22 PM, Jones, Sarah (CPC)  
<[sarah.b.jones@sfgov.org](mailto:sarah.b.jones@sfgov.org)> wrote:

Dear Mr. Grossman-

We do not maintain separate records for legislative items that we review and conclude are not projects under CEQA. If, upon review, a piece of legislation could not have any potential to cause direct or indirect physical change in the environment we inform the Clerk of the Board to that effect and do not take in the legislation for environmental review.

Please contact Joy Navarrete (cc:ed on this email) if you have any further questions.

-Sarah

**From:** Allen Grossman <[sfufc@mac.com](mailto:sfufc@mac.com)>  
**Subject:** Re: IDR - Urban Forest Coalition. re CDQA Records..  
**Date:** April 5, 2016 at 11:35:55 AM PDT  
**To:** "Jones, Sarah (CPC)" <[sarah.b.jones@sfgov.org](mailto:sarah.b.jones@sfgov.org)>  
**Cc:** [joy.navarrete@sfgov.org](mailto:joy.navarrete@sfgov.org), "Hwang, Lulu (CPC)" <[Lulu.Hwang@sfgov.org](mailto:Lulu.Hwang@sfgov.org)>, [John.Rahaim@sfgov.org](mailto:John.Rahaim@sfgov.org)

Dear Ms. Jones,

The Planning Department should have a log or other way to locate both "Categorical Exemptions" and "Case Files Environmental Review" as its website describes those two sets of records as records that are to be kept by the department according to the City's Index of Records as follows:

## Case Files Environmental Review

Category: Major Environmental Analysis

Remarks: Destroy if microfilmed/Optical Imaged  
retention type: 1 - Permanent retained on-site; 15 years retained off-site: Permanent

## Categorical Exemption

Category: Major Environmental Analysis

Remarks: Destroy if microfilmed/Optical Imaged  
retention type: 1 - Permanent retained on-site; 2 years retained off-site: Permanent

This is the link: [http://index.sfgov.org/#/agency\\_list/556bc154206cc24c3a7af90a](http://index.sfgov.org/#/agency_list/556bc154206cc24c3a7af90a)

Under the circumstances the Planning Department is either not following its own record retention policy, which is mandated under Section 67.29 of the Sunshine Ordinance or is violating its provisions.

Please advise.

Thank You,

Allen Grossman

Exhibit #6A

From: Allen Grossman <sfufc@mac.com>  
Subject: Fwd: IDR - Urban Forest Coalition. re CDQA Records..  
Date: April 5, 2016 at 11:41:57 AM PDT  
To: Sarah Jones <sarah.b.jones@sfgov.org>  
Cc: joy.navarrete@sfgov.org, "Hwang, Lulu (CPC)" <Lulu.Hwang@sfgov.org>, John.Rahaim@sfgov.org

Ms. Jones,

I should have included this sentence copied from the same page of the website:

"You may submit a request for any of the following records in accordance with applicable public records laws. The departments have included a direct link to some of the records; if there is no link for the record you are seeking, and/or you would like to request additional information regarding that record, please contact the department or division directly using the contact information provided for that specific record."

Allen Grossman,

SFUFC Executive Director

**From:** Allen Grossman [mailto:sfufc@mac.com]  
**Sent:** Friday, April 15, 2016 12:02 PM  
**To:** Navarrete, Joy (CPC) **Cc:** Silva, Christine (CPC); Hwang, Lulu (CPC); Jones, Sarah (CPC); Rahaim, John (CPC)  
**Subject:** Re: IDR - Urban Forest Coalition. CEQA Logs/.. **Importance:** High

Dear Ms. Navarette,

Would you please send me the link on the Planning Department's website to:

Case Files    Environmental Review  
Category:    Major Environmental  
                 Analysis

that shows the complete entry documenting the Planning Department's CEQA review of the 2010 Better Streets Plan (BOS File # 10194/Ordinance #310-10) as well as the EIR itself, together with copies of any notes, comments, memoranda, communications and any other records related to the CEQA review and the EIR.

If there is no link, please send me a copy of the complete entry documenting the Planning Department's CEQA review of the 2010 Better Streets Plan (BOS File # 10194/Ordinance #310-10) as well as the EIR itself, together with copies of any notes, comments, memoranda, communications or any other records related to the CEQA review and the EIR.

Consider this a public records request submitted in accordance with Sunshine Ordinance Section 67.21(b) , which provides, in part:

*" 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.”

Thank You,

Allen Grossman  
Executive Director  
SFUFC

From: "Jones, Sarah (CPC)" <sarah.b.jones@sfgov.org>  
Subject: RE: IDR - Urban Forest Coalition. CEQA Logs/..  
Date: April 15, 2016 at 1:30:17 PM PDT  
To: Allen Grossman <sfufc@mac.com>, "Navarrete, Joy (CPC)"  
<joy.navarrete@sfgov.org>  
Cc: "Silva, Christine (CPC)" <christine.l.silva@sfgov.org>, "Hwang, Lulu (CPC)"  
<lulu.hwang@sfgov.org>, "Rahaim, John (CPC)" <john.rahaim@sfgov.org>, "Varat,  
Adam (CPC)" <adam.varat@sfgov.org>, "Jain, Devyani (CPC)"  
<devyani.jain@sfgov.org>

Dear Mr. Grossman-

Joy was the staff contact I provided regarding review of Board-initiated legislation. Although the Better Streets Plan included legislative action, it was a plan that originated in this department and was not worked on by Joy.

The Planning Department case file number for the Better Streets Plan is 2007.1238. From your request, it looks like you want to review that file and/or obtain certain records from it. I've added Devyani Jain and Adam Varat to this email since they were some of the people on our staff who worked on the project. For this request, please contact Christine Silva who can advise you on how to proceed.

Thank you-

-Sarah

---

**Sarah Bernstein Jones Environmental Review Officer**  
**Director of Environmental Planning**

Planning Department | City and County of San Francisco 1650 Mission Street, Suite 400,  
San Francisco, CA 94103 Direct: 415-575-9034 | Fax: 415-558-6409  
Email: [sarah.b.jones@sfgov.org](mailto:sarah.b.jones@sfgov.org)  
Web: [www.sfplanning.org](http://www.sfplanning.org)

CS

Exhibit #8

From: Allen Grossman <sfufc@mac.com>  
Subject: Re: IDR - Urban Forest Coalition. CEQA Logs/..  
Date: April 15, 2016 at 2:27:06 PM PDT  
To: "Jones, Sarah (CPC)" <sarah.b.jones@sfgov.org>  
Cc: "Silva, Christine (CPC)" <christine.l.silva@sfgov.org>, "Hwang, Lulu (CPC)" <lulu.hwang@sfgov.org>, "Rahaim, John (CPC)" <john.rahaim@sfgov.org>

Dear Ms. Jones,

You misunderstood my request.

The focus of the request was Planning's records referred to in the body of the request, namely these two files or folders, and the entries in them that relate to the Better Streets Plan, including, what I assumed to be the case, the EIR done by Planning.

Case Files Environmental Review  
Category: Major Environmental Analysis

Not knowing what other content or related files would be referred to in those files or folders on this CEQA review, given the importance of that legislation and the CEQA requirements that might apply to it, I expected there would be some other records that related to those requirements and what the EIR should cover. That is what a "case file" usually means.

I was also hoping that the public would have access to these files or folders through a link or links on its website.

So at this time there is no need to involve the planners on staff who worked on the legislation.

If Planning is not maintaining either of these two files or folders, please advise me.

Thank You,

Allen Grossman

Exhibit #9



Date: November 16, 2016.

To: Members of Ethics Commission

From: SF Urban Forest Coalition (SFUFC)

Re: Agenda Item 6/Response to Ethic Commission Staff's November 10, 2016 Report and Recommendations (Report) re SF Urban Forest Coalition Complaint #03-16061."

---

The Report is accurate and would be a suitable basis for dismissal of the SFUFC Complaint, if the Complaint had alleged a different set of facts and Sunshine Ordinance violations other than those actually alleged in the Complaint.

The violations claimed (as stated in the Complaint and the Report) are:

“(1) Willful failure to comply with the requirements of Section 67.29; (2) Willful failure to implement its own records retention requirements established by it pursuant to Section 67.29; (3) Willful failures to require that records regarding CEQA reviews be maintained and for public access.”

The Complaint's factual allegations – none of which were actually denied or disputed in the Report – related solely to the Planning Department's failure to comply with the requirements of Sunshine Ordinance section 67.29, and its own index of department records relating to its required reviews under the California Environmental Quality Act (CEQA).

The suggestion that there were hundreds of records to review came from the staffers at Planning with whom Ethics' staff spoke because Planning had also responded to a different and entirely separate records request submitted by SFUFC involving the Better Streets Plan, which, among other things, had been subject to a CEQA review. That request did not focus solely on the records kept by Planning with respect to its CEQA reviews and the Planning Department's indices with respect to its CEQA reviews as did the IDR, which is the subject of the Complaint. That confusion of the two different requests took Ethics Staff far afield from the Complaint's claimed violations of a specific section of the Sunshine Ordinance.

The key provision of the Sunshine Ordinance, Section 67.29, which has been effective since 2000 is captioned “INDEX TO RECORDS” and provides, in part:

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.* ... 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. ... *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.* ...The index shall be continuously maintained on the City's World Wide Website... [Emphasis Added.]

The California Environmental Quality Act (CEQA) was adopted in 1970 and Chapter 31 of the San Francisco Administrative Code (CEQA Procedures and Fees) implementing it in the 1970s. The Planning Department (through its Environmental Planning Group) undoubtedly has completed hundreds or, possibly thousands, of CEQA reviews of many kinds, including legislation, such as the Better Streets Plan. As it turns out Planning never maintained an index or other compilation of any of those CEQA reviews, including those where an exemption applies.

The IDR (on which the Complaint is based) that was submitted to Planning Director Rahaim had as its sole focus "records maintained by or in the custody of the Planning Department relating to *"the environmental review conducted by the Planning Department's Environmental Planning staff of proposed legislation BOS File No. 150221 and its determination ..."*that the proposed amendments are not defined as a project under CEQA Guidelines Section 15378 and 15060(c) (2) ..." adding that: "included in the records requested ... are ...(b) Any entry to notation in any log, docket or similar compilation listing BOS File # 15022 as having been reviewed and the person (s) who reviewed that BOS File;..."

In April 2016, SFUFC wrote Sarah Jones, the then Director of Planning's Environmental Group, specifically that:

"The Planning Department should have a log or other way to locate both "Categorical Exemptions" and "Case Files Environmental Review" *as its website describes those two sets of records as records that are to be kept by the department according to the City's Index of Records as follows:* [Emphasis Added.]

#### **Case Files Environmental Review**

Category: Major Environmental Analysis

Remarks: Destroy if microfilmed/Optical Imaged

retention type: 1 - Permanent retained on-site: 15 years retained off-site: Permanent

#### **Categorical Exemption**

Category: Major Environmental Analysis

Remarks: Destroy if microfilmed/Optical Imaged

retention type: 1 - Permanent retained on-site: 2 years retained off-site: Permanent

"This is the link: [http://index.sfgov.org/#/agency\\_list/556bc154206cc24c3a7af90a](http://index.sfgov.org/#/agency_list/556bc154206cc24c3a7af90a)

“Under the circumstances the Planning Department is either not following its own record retention policy, which is mandated under Section 67.29 of the Sunshine Ordinance, or is violating its provisions.”

There can be no question that the entire discussion of what the SFUFC believed was the obligation of the Planning’s Environmental Review group when dealing with CEQA reviews of all kinds was compliance with Section 67.29 and its own filings with the City Administrator. It was because there were no records of having done so that the issue of its non-compliance became paramount and the basis for the Complaint.

The Report does not focus on the need for such compliance as follows:

“Seperately, (sic) Mr. Grossman’s complaint also states that the Planning Department did not make the files he requested available for the public to download from the Planning Department’s website. No City law, however, requires the Planning Department to do so. Mr. Grossman alleges that Section 67.29 of the Sunshine Ordinance requires such availability, but section 67.29 only requires the City Administrator to prepare a “public records index” that simply identifies the “types of information and documents maintained” by each city department, agency, board, commission, and elected officer. *The purpose of the index is to “clearly indicate where and how records” of each type are kept and must be “sufficient to aid the public in making an inquiry or a request to inspect” a document. Id. ...*To be thorough, Staff contacted the City Administrator’s Office and confirmed that the Planning Department has complied with section 67.29 of the Sunshine Ordinance.” [*Emphasis Added.*]

EC’s Staff apparently believes that the Planning Department’s merely setting up two indices to keep track of its CEQA reviews, but not including any such reviews in the index, is compliance with Section 67.29. As it says: “section 67.29 only requires the City Administrator to prepare a “public records index” that simply identifies the “types of information and documents maintained” by each city department, agency, board, commission, and elected officer.” But if those two indices are completely empty notwithstanding many years of CEQA reviews, how does it meet the standard that Section 67.29 and the Report states it must, namely that it: “*must be sufficient to aid the public in making an inquiry or a request to inspect” a document?* The Report made no mention of the fact that the index must describe *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.* We would expect an organization by proceeding or project, by legislation number, or even by date, as well as how and where those records are kept, which would allow a member of the public to identify records relevant to his purpose.

The Report shows a complete disinterest in “public access,” which, after all, is the reason that section 67.29 exists. The Report also shows no understanding that the Sunshine Ordinance was enacted to promote public access, a constitutionally guaranteed right in California, in many ways, including access through the Internet to government bodies’ websites. The public already has access to many of the Planning Department’s records through its website. So why not its CEQA reviews and related records? The violations claimed do in fact exist. If the Commission denies the public’s right to such a simple and basic tool as the Report recommends it deny, then of what use is a constitutional guaranteed right when applied to two empty indices?