

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
May 19, 2011

DATE THE DECISION ISSUED
May 5, 2011

ANDREW SISNEROS V SF MUNICIPAL TRANSPORTATION AGENCY (CASE NO. 11016)

FACTS OF THE CASE

Complainant Andrew Sisneros alleges that the Municipal Transportation Agency ("MTA") failed to adequately respond to his February 9, 2011, public records request for "any and all documents related to the Drive Cam on Coach 8344 (including but not limited to reports, logs of maintenance records, and inspections) from the dates October 5, 2010, through November 30, 2010."

COMPLAINT FILED

On March 9, 2011, Mr. Sisneros filed a complaint against the MTA.

HEARING ON THE COMPLAINT

On May 5, 2011, Mr. Sisneros presented his case to the Task Force. The MTA was represented by Caroline Celaya and Ayn Antonio.

Mr. Sisneros, an MTA coach operator, told the Task Force that the MTA denied him access to a report on alleged tampering with a camera aboard a coach. He said his request was not related to an invasion of privacy and the attorney-client privilege did not apply. He said the MTA could have given him the report and redacted what was necessary. Moreover, he alleged the MTA, did not keep withholding to a minimum and failed to give him proper justification for withholding the document.

Ms. Celaya, an assistant to the MTA's Board secretary as well as the agency's public records request coordinator, said the MTA received the request on February 9, and that the MTA produced a copy of a photograph. She said the MTA did not provide a copy of an email chain and a six-minute clip from a driver cam because those were in the personnel files of MTA employees.

Ms. Celaya said Mr. Sisneros had access to his personnel file and has seen the email chain and the video. The video was not released because the agency did not know how to blur the faces in the video, she said. Ms. Celaya told the Task Force that staff was advised by the City Attorney's Office that the email was not redactable. Members questioned

Ms. Celaya as to why the faces in the video could not be blurred and why a video taken in a public bus and in a public setting, where one could not have any reasonable expectation of privacy, was subject to any privacy protection.

As to the tampering report sought by Mr. Sisneros, Ms. Antonio said she asked Paul Williamson, maintenance supervisor for Kirkland Division, to investigate. She said he told her there was no evidence of misuse.

Members questioned Ms. Antonio as to whether it is standard MTA practice to not create a written report under such circumstances. Ms. Antonio said that if Mr. Williamson had found something he would provide a written report, but as Task Force members were highlighting the need for a report for Mr. Sisneros to have, she would ask Mr. Williamson to create the document.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented, the Task Force finds that under Section 67.21(c) of the Sunshine Ordinance, the MTA should have told the requestor where to go to get documents such as logs and driver cam maintenance records. The Task Force further finds that the MTA violated Section 67.21(b) for failing to orally provide Mr. Sisneros the results of Mr. Williams' investigation into the report of tampering.

Finally, the task force finds that the MTA violated Section 67.26 for failing to release redacted versions of the documents questioned, because it was clear from MTA testimony that portions of the documents did not include information subject to withholding under the Sunshine Ordinance.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Sunshine Ordinance Sections 67.21(c) by not assisting the requestor gain access to the drive cam records, 67.22(b) by not providing oral information regarding the tampering report, and 67.26 by not keeping withholding to a minimum. The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday June 14, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on May 5, 2011, by the following vote: (Wolfe / Knoebber)

Ayes: Snyder, Cauthen, Manneh, Knoebber, Costa, Wolfe, Johnson, Knee

Absent: West

Excused: Washburn, Chan



Richard A. Knee, Chair
Sunshine Ordinance Task Force



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

c: Andrew Sisneros, Complainant
Caroline Celaya, Respondent
Ayn Antonio, Respondent
Jerry Threet, Deputy City Attorney

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