

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION**

November 1, 2010

**DATE THE DECISION ISSUED**

August 28, 2010

*NICK PASQUARIELLO v DEPARTMENT OF TECHNOLOGY (CASE NO. 10034)*

**FACTS OF THE CASE**

Nick Pasquariello ("Complainant") alleges that he made an Immediate Disclosure Request ("IDR") to Barry Fraser at the Department of Technology ("Department" or "Respondent") for all contracts between the Bay Area Video Coalition ("BAVC") and Salesforce.com, Inc. dba Delaware Salesforce.com ("Salesforce") in accordance with the August 20, 2009, contract between the City and BAVC ("contract") and that the Department did not provide the requested information.

**COMPLAINT FILED**

On June 28, 2010, Complainant filed a sunshine complaint against the Department.

**HEARING ON THE COMPLAINT**

On August 28, 2010, the Complainant presented his complaint before the Sunshine Ordinance Task Force ("Task Force"). Respondent was represented by Mr. Fraser.

Mr. Pasquariello said he submitted an application for time slots at BAVC/SF Commons offices on November 20, 2009, and one of the conditions he agreed to was that BAVC could scan his driver's license to be kept on file "for internal use only." On December 22, 2009, he faxed and sent a certified letter asking for clarification of BAVC's privacy and security protection of the scanned licenses. He said he also emailed the letter to BAVC's Board of Directors and received no response. He said that on February 23, 2010, BAVC's attorney, Krisana Hodges, told him that the scanning had been outsourced to Salesforce.com. On May 25, 2010, he said, Ms. Hodges offered to send him a copy of the contract between Salesforce.com and BAVC, but later she withdrew her offer.

Mr. Fraser, an analyst with the Department, said Mr. Pasquariello faxed an IDR on June 24, 2010, requesting copies of contracts between BAVC and Salesforce.com. He said the fax was not delivered to the appropriate Department staff and the Department became aware of it only after the Task Force notified it that Mr. Pasquariello had filed a complaint. He said the Department notified Mr. Pasquariello by mail that it had no records responsive to his request. However, on July 15, 2010, BAVC mailed Mr. Pasquariello a link to the Salesforce.com contract. The Department found out on August 2, 2010, that Mr. Pasquariello was not aware of BAVC's gesture. Mr. Pasquariello then requested that the

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Department download the document and provide it. The Department sent him a copy of the document via email. On August 5, 2010, after Mr. Pasquariello said he had difficulty with email attachments, the Department offered him a paper copy but it was not accepted because he already had a copy. On August 9, 2010, Mr. Pasquariello submitted another IDR to the department requesting a signed copy of the contract. The Department responded that it had no records responsive to the request. The document, he said, was a "click wrap" agreement and did not have a signature page. Mr. Fraser admitted that the Department was one day late in responding to the IDR, because of the fax's misplacement. He also said Mr. Pasquariello had earlier in the day shown him more details on the driver's license agreement and so would like more time to review his allegations. However, he said, if there were issues, it would be about contract compliance and not about sunshine violations.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Judging from the testimony and evidence presented, the Task Force finds that the Respondent violated the Ordinance.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the agency violated Sunshine Ordinance Section 67.25 by failing to respond to an Immediate Disclosure Request in a timely manner. The department shall arrange within 30 calendar days of the issuance of this Order of Determination to appear before the Education, Outreach and Training Committee.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 28, 2010, by the following vote: ( Johnson / Cauthen )

Ayes: Snyder, Cauthen, Manneh, Washburn, Wolfe, Johnson, Knee

Excused: Knoebber, Chan, Williams



Richard A. Knee, Chair, Sunshine Ordinance Task Force



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

c: Jerry Threet, Deputy City Attorney  
Jana Clark, Deputy City Attorney  
Nick Pasquariello, Complainant  
Barry Fraser, Respondent

\*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law and nominated by the Society of Professional Journalists, Northern California Chapter.