

**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
Jamiene 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