

Date February 28, 2012

Item No. 21 & 22
File No. 11094

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

ITEMS

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Memorandum
Complaint submittal
Correspondence

OTHER

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Completed by: Andrea Ausberry **Date** February 22, 2012
Completed by: _____ **Date** _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

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MEMORANDUM

February 22, 2012:

CHARLES PITTS VS. COMMUNITY HOUSING PARTNERSHIP (11094) COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Charles Pitts ("Complainant") alleges that the San Francisco Community Housing Partnership ("CHP") has failed to adequately respond to his November 25, 2011 Immediate Disclosure Request ("IDR").

COMPLAINANT FILES COMPLAINT:

On December 1, 2011, Complainant filed this complaint against CHP and its staff person, Gail Gilman, alleging a violation of section 67.25A of the Sunshine Ordinance.

JURISDICTION:

CHP is a non-profit contractor with the City receiving over \$3M annually from the City and County of San Francisco, primarily from the Department of Human Services. If more than \$250,000 in grant money provided to CHP is received from or administered by DHS, the Task Force *would* have jurisdiction over CHP to adjudicate an alleged violation of Administrative Code section 12L.

CHP does not appear to be a body covered by the Sunshine Ordinance, and Complainant provided no evidence to show that it is such a body. If this is true, the Task Force would not have jurisdiction to adjudicate a complaint of a violation of that law.

APPLICABLE STATUTORY SECTION(S):

Section 12L of the San Francisco Administrative Code:

- Section 12L.1 addresses intent of this section.
- Section 12L.3(e) deals with definitions.
- Section 12L .5(a) deals with public access to records.

Section 67 of the San Francisco Administrative Code:

- Section 67.3 and 67.20 define the entities subject to the Ordinance, and "public information."
- Section 67.25 of the Ordinance governs Immediate Disclosure Requests

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APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED:**FACTUAL ISSUES:**

Uncontested/Contested Facts: Complainant alleges that on November 25, 2011, he made the following IDR to CHP:

"someone entered my room and plugged in my phone in [sic] (with out my permission or proper notice). I just noticed it today the plugging just happened with in the past week. I am requesting all information emails video letters, repair logs etc. about regarding [sic] who did this and or who authorized this"

Complainant's complaint simply alleges that CHP "did not respond to request" as of the time of its filing.

I have received no response from CHP at the time of this memorandum.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Is there some evidence alleged by complainant that would bring CHP within the category of bodies that are subject to the requirements of the Sunshine Ordinance?
- Did CHP ever respond to the IDR?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Is CHP subject to the requirements of the Sunshine Ordinance?
- Are the documents sought by complainant "public records" subject to disclosure under those statutes?
- If CHP is not subject to the Ordinance, is it subject to Admin. Code 12L?
- If so, are the documents sought by complainant required to be disclosed under 12L?

SUGGESTED ANALYSIS*Sunshine Ordinance*

CHP is a non-profit appears to be non-profit entity, and thus is not a body subject to the Sunshine Ordinance. See Administrative Code sections 67.3 and 67.20. Therefore, any records maintained and in the custody of CHP are neither "public records" as defined by PRA section 6252(c), nor "public information" as defined by Admin. Code § 67.20(b).

Administrative Code Chapter 12L

The requirements of Administrative Code Chapter 12L apply to nonprofits that receive "a cumulative total per year of at least \$250,000 in City-provided or City-administered funds." See Admin. Code § 12L.3(e). CHP appears to be a nonprofit subject to Chapter 12L.

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If the Task Force finds that Chapter 12L applies to CHP, then it must determine whether the records sought by Mr. Pitts are the types required to be provided by Admin. Code §12L.5(a). That provision requires disclosure of certain financial documents of the nonprofit, which do not appear to be the type of documents sought by Mr. Pitts.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

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CHAPTER 12L OF THE SAN FRANCISCO ADMINISTRATIVE CODE**SECTION 12L.1: INTENT**

a.) The intent of this Chapter is to establish a policy wherein the City ensures that non-profit organizations with which the City chooses to do business operate with the greatest possible openness and maintain the closest possible ties to communities they intend to serve. Section 12L.3(e) of the Administrative Code provides:

SECTION 12L.3: DEFINITIONS

e.) "Non-profit Organization" shall mean any corporation formed pursuant to California Corporations Code sections 500 et seq. for any public or charitable purpose, and/or any organization described with 26 USC section 501(c), which receives a cumulative total per year of at least \$250,000 in City-provided or City-administered funds.

SECTION 12L.5: PUBLIC ACCESS TO RECORDS

a) *Disclosure of Financial Information.* Subject to Section 12L.5(c) each nonprofit organization shall maintain and make available for public inspection and copying a packet of financial information concerning the nonprofit organization. The packet shall include, at a minimum, (1) the nonprofit organization's most recent budget as already provided to the City in connection with the nonprofit organization's application for, in or in connection with the review and/or renewal of, the nonprofit organization's contract, 2.) its most recently filed state and federal tax returns except to the extent those returns are privileged and 3.) any financial audits of such organization performed by or for the City and any performance evaluations of such organization by or for the City pursuant to a contract between the City and the nonprofit organization to the extent that such financial audits and performance evaluation i.) are in the nonprofit organization's possession, ii.) may be publicly disclosed under the terms of the contract between the City and the nonprofit organization, and iii.) relate the nonprofit corporation's performance under its contract with the City within the last two years.

CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE**SEC. 67.3. DEFINITIONS.**

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

[. . .]

(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;

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(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.

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).

**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.

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

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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.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

DEC - 1 8M 4: 34

RB

SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Community Housing Partnership

Name of individual contacted at Department or Commission Earl Gilman

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section 67.25.A
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

Did not respond to request

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
 Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹
Name CHAMLO RITTS Address _____

Telephone No. _____ E-Mail Address _____

Date _____ Signature _____

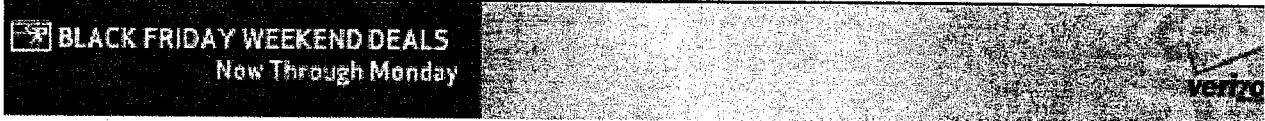
I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

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Netflix Try us for Free

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Mark as Unread | Print

Delete | Reply | Forward | Move...

- Folders**
- Inbox (15423)
 - Drafts (116)
 - Sent
 - Spam (141) [Empty]
 - Trash [Empty]
 - My Photos
 - My Attachments

67.25.a "Immediate Disclosure Request" Friday, November 25, 2011 5:31 PM

From: "CHARLES PITTS" <
To: GGilman@chp-sf.org

Gail Gilman

someone entered into my room and plugged in my phone in
 (with out my permission or proper notice)
 i just noticed it today the plugging just happened with in the past week
 i am requesting all information e-mails video letters,repair-logs
 ect about regarding who did this
 and or who authorized this

charles pitts

Chat & Mobile Text I am Offline

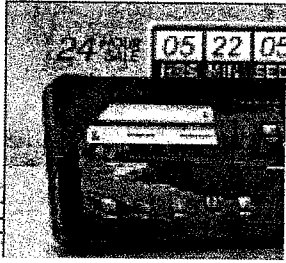
Delete | Reply | Forward | Move...

Previous | Next | Back to Messages

Select Message Encoding | Full Headers

- My Folders** [Add - Edit]
- 2008 SUNSHINE ...
 - 2009 JUNE SUNS...
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 - 2010 SUNSHINE
 - AAA BURKE ARMY...
 - AAA CRAIGS LIS...
 - AAA MEETINGS
 - AAA NEED TO KN...
 - ADDRESS
 - ATTACK FILES
 - audio
 - BANDS HELPING
 - BAY MUSIC AND
 - BOOM
 - C WIGGS
 - CELL PHONE

YOU TUBE (11)



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