Date February 28, 2012

Item No. 15 & 16
File No. 11090

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST

ITEMS

- [ ] [X] **Memorandum**
- [ ] [X] **Complaint submittal (Amended)**
- [ ] [X] **Correspondence**
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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.

CITY AND COUNTY OF SAN FRANCISCO

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OFFICE OF THE CITY ATTORNEY

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MEMORANDUM

February 22, 2012:

PATRICK MONETTE-SHAW VS. CONTROLLER'S OFFICE (11090)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Patrick Monette-Shaw alleges that the San Francisco Controller violated the Ordinance by failing to provide records in response to his October 5, 2011 email request for FY 2009-2010 CCSF employee payroll data from Monique Zmuda.

COMPLAINANT FILES COMPLAINT:

On or about October 21, 2011, Complainant filed a complaint with the Task Force alleging a violation of Sections §67.24, 67.26, and 67.34 of the Ordinance. On December 18, 2011, Complainant amended his complaint to add violations of section 67.21(i) of the Ordinance, CPRA §6253.9, and Government Code §34090 (dealing with record retention). On February 12, 2012, Complainant again amended his complaint, this time to remove the allegations of violations of section 67.21(i) of the Ordinance and Government Code §34090. After these amendments, Complainant's final complaint alleges violations of the following: sections 67.24, 67.26, and 67.34 of the Ordinance, and CPRA §6253.9.

JURISDICTION

The Controller is a charter department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint against the Controller. The Controller has not contested jurisdiction.[1]

APPLICABLE STATUTORY SECTION(S):

- S.F. Administrative Code Sections 67.24, 67.26, and 67. 34.
- Cal. Gov't Code Section 6253.9

APPLICABLE CASE LAW:

See any case law cited in analysis, below.

[1] Before Complainant's last amendment of his complaint, he alleged violations not within either the CPRA nor the Sunshine Ordinance, causing me to raise the issue of whether the Task Force had jurisdiction to consider these violations. Because Complainant has now removed these allegations, the jurisdiction issue is relatively simply, and uncontested.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts:

Complainants' Allegations

Complainant alleges that, on October 3, 2001, he requested that Ms. Zmuda provide him a file containing fiscal year data of employee salaries that the City had apparently already provided to San Francisco Chronicle reporters Matier and Ross for fiscal year ending June 2011. The next day, Ms. Zmuda provided the requested file in MS Excel format. She noted in her e-mail response: "As requested, the fiscal year employee payroll file [is enclosed.]"

Complainant further alleges that, on October 5, he responded to Ms. Zmuda, amending his records request, asking for the same data set for the fiscal year ending June 2010 that had been provided to Matier and Ross for fiscal year ending June 2011. His email notes that he already received a fiscal year 2010 salary report in a previous format. On October 6, Zmuda responded, saying "This is the format and prepared report that we provide on payroll information to all requestors. The report for FY 10 was in the same format. We will not be preparing any specialized report on salaries of City Employees."

Complainant further alleges that, in years past, the results of a completely different database "query" have been provided to him under separate reporting parameters and there is no "specialized" report, other than an alternate report Zmuda has previously reported to the press, but not to him. (Complainant provides no evidentiary support for the allegation that Zmuda previously provided the report in the new format to reporters but not to him.) He further argues that, given on-going public interest in this data, it should be a "stored" or "canned" report easily accessible, without requiring City employees to re-create the parameters to generate the report. He further argues that it is unlikely that editing a stored report to change reporting periods (reporting years) would take a competent database programmer more than 15 minutes to produce, or edit.

He further alleges that data for calendar year ending in December 2010 showed that there were 36,644 names on the list City of employees. In contrast, he alleges, the data Zmuda provided to both Matier and Ross, and subsequently to him, showed there were only 34,756 employees for the fiscal year ending in June 2011. From this contrast, complainant concludes that there are either approximately 2,000 fewer employees, or that there were almost 2,000 employees who were collecting City salaries under two separate job classification codes, or a combination of both.

Complainant further alleges that, on October 6, he responded to Ms. Zmuda, asking "you're kidding, right?" He further alleges that he noted to Zmuda that the format of the data she provided to Matier and Ross was not the format Complainant was provided for data in 2010 (or earlier), or he wouldn't have placed a new records request. He says he indicated to her that he received calendar year data from the Controller's Office in the past, and was now requesting fiscal year data. He allegedly further noted he was not asking for a new specialized report on salaries of City employees, but was simply asking that the parameters of the documents provided to Matier and Ross be changed to a different fiscal year, which he had not received.

Complainant further alleges that, on October 8, he again communicated with Ms. Zmuda, noting that the data provided to Matier and Ross differed in three ways from data previously provided to him. First, the data provided to Matier and Ross contained 12 fields, rather than the 11 fields of information previously provided to him. Importantly, the new, 12th field reports the "Full Time Equivalent" (FTE) status of each employee, which he had not previously received for earlier reporting periods. Second, the data provided to Matier and Ross aggregated under single entries those employees who worked in two different job classification codes, reporting their total salaries in a single entry. Third, the data provided to Matier and Ross involved a fiscal year ending in June, but complainant had previously requested, and received, payroll data for calendar years ending in December.

Complainant further alleges that, on October 19, Ms. Zmuda responded, indicating "we are not required to produce reports to meet public disclosure requests. We are required to provide information that already exists." Zmuda allegedly further responded that complainant's request was "unique," city-wide." Zmuda allegedly further argued that the Controller's "scarce" resources should provide the "most value to the greatest number of people." Complainant alleges that Zmuda's response did not provide a valid exemption under CPRA, and she offered no exemption to back her refusal to provide the requested data.

Complainant further alleges that, later in the day on October 19, Ms. Zmuda responded again, providing aggregate data for two Laguna Honda Hospital employees — Dr. Denis Bouvier and Madonna Valencia, RN — which complainant alleges he had not requested. Complainant alleges that Zmuda acknowledged in her first e-mail on October 19 that aggregating data for employees who are working in more than one job classification code is important, but she provided data for just two employees, leaving unanswered data about the other 1,998 potential employees working in more than one job code, as well as the FTE (Full-Time Equivalent) status of each and every of the City's 30,000-plus employees for the fiscal year ending in June 2010.

Complainant further alleges that, on December 10, 2011, he e-mailed Zmuda and Ben Rosenfield, the Controller, indicating that if the Controller's Office reconsidered its refusal to provide the records requested on October 3, 2010, he would withdraw his Sunshine complaint.

Complainant further alleges that, on December 12, Ms. Zmuda responded by e-mail, stating that if complainant was requesting an "old report in the old format for the fiscal year ending in June 2010," that she had that report, and would provide it. Complainant also alleges that Zmuda's email apparently said she could run a report using the "old" format previously provided to complainant on a calendar basis but instead using a fiscal year basis ending in June 2010. From this email, complainant concludes that "these queries are relatively easy to modify, and can be done so by Controller staff. [ ] If the Controller's Office can offer to me that it can modify the "old report's query" to change reporting periods from calendar years to fiscal years, it could just as easily change the underlying query for the "new" report by changing its query from FY 10-11 to FY 09-10, as I initially requested." Finally, complainant alleges that the email stated that the Controller's Office "no longer prepares the report in the old format," and that they "therefore, provide the 'new' report after this date." From this statement, complainant concludes that Zmuda is asserting that the Controller may independently determine when any document's

"business utility" has ended, and could, therefore, be deleted under City Administrative Code Section 8.1, a bald attempt to assert departmental policies can supersede State laws such as Government Code §34090 and CPRA §5243.9.

Complainant further alleges that, on December 15, 2011, Ms. Zmuda e-mailed him again stating that complainant had not responded to her previous email, and that she therefore didn't know if complainant wanted the "old report" for the prior period.

The Controller's Response

The Controller's December 20, 2011 response to the original complaint states that the fiscal year 2011 report and the previous fiscal year reports were based on different query structures for the underlying employee data. According to Ms. Zmuda, the most recent 2011 report combines all jobs held by an employee during the fiscal year into a single field for salary information and reports the job title listed on their requisition – it therefore combines their information into a single line per employee. This will be the format for such reports going forward. Ms. Zmuda further states that the older reports had a different format that included multiple listings for employees who were paid under multiple employee classifications, which required the reader to aggregate their salary data to obtain a total for each employee. Ms. Zmuda further stated that she offered to provide the FY 2010 salary report to complainant in its original format, but that he never responded to that inquiry. Beyond that, the Controller's response offers no explanations of their failure to provide to complainant the requested data in the requested format.

However, the Controller did offer a response in this regard in its emails to complainant. In her October 19, 2011 email to complainant, Ms. Zmuda states:

> I am looking at the resources that it will take to unwind the report that we improved (yes we consider the data that has combined the pay for employees who are working several jobs as a significant improvement because it allows requester to see the entire annual salary of employees, rather than pieces that would need to be manually added together). Please keep in mind that much of the information that you request that we provide DOES take time away from employees' performing their jobs. ***Even though raw data exists, it takes work to create, test, and produce reports. We are not required to produce reports to meet public disclosure requests. We are required to provide information that already exists.*** We do our best in the Controller's Office to create financial, payroll, budget, vendor and other reports that provide useful information to the public. We have tried to be considerate, respectful and reasonable throughout the many immediate requests that we work through.
>
> I will get back to you, but please understand that your request is unique city-wide and I need to use our scarce resources for those reports that provide the most value to the greatest number of people.
>
> [emphasis added.]

The Complainant's Supplemental Information

The Complainant provided additional information in support of his amended complaint on February 12, 2012. Among other things, he clarified that while Ms. Zmuda did provide him with responsive excel spreadsheets, these spreadsheets did not include a field of information re employee FTE status, which had been provided to Matier and Ross by the Controller. Complainant alleges:

> Ms. Zmuda provided me with two Excel file on January 12 containing a portion of the data I had requested for Fiscal Years 2009-2010 and 2008-2009. Both files "aggregated" multiple entries for a single employee into just one entry, but both files failed to provide the FTE status of each employee, as I had requested.
>
> When Zmuda sent me the Excel file in December for FY 10-11 that had apparently been provided to Matier and Ross, it contained the FTE status column.
>
> As shown at Enclosure 13, I e-mailed Ms. Zmuda also on January 12, reminding her that the FTE data was still not provided in the files she sent me on January 12.
>
> Five days later, on January 17, Ms. Zmuda e-mailed me an explanation (see Enclosure 14 at the last page of enclosures). She indicated: *"I do think that one file that was created a while ago from our staff had the number of hours worked (FTE* ***was not supposed to be included in the report*** *[given to Matier and Ross; emphasis and explanatory note added]."*
>
> On October 19 (see Enclosure 5) Ms. Zmuda asserted that "even though raw data exists" (for my new records request), it "takes work to create, test, and produce reports." The Controller's Office did, in fact, include this data to Matier and Ross, presumably whether tested or not.
>
> As I indicated on December 20 in my second supplementary document to SOTF, the sample she sent to SOTF on December 16 appears to have deliberately deleted the "FTE status" column shown in Enclosure 11. The two Excel files I received on January 12 containing the requested data for Fiscal Years 2009-2010 and 2008-2009 excluded the FTE column shown in Enclosure 11, that had been included in the data for FY 10-11 that was provided to Maier and Ross and sent to me on October 4.
>
> Notably, on December 22, Ms. Zmuda and I spoke by phone. She indicated that she would make inquiries of her staff on her return after the Christmas holidays to see if the reports I requested can be produced, given the fact that the City Controller's Office is migrating to a different system to generate these reports. During that phone call Ms. Zmuda asked me what I wanted the data for, and I told her that she must know that the Sunshine Ordinance precludes Departments from asking why records requests are being made. But with that caveat, she and I discussed the fact that the FTE status is of interest to City officials, particularly during budget planning, and she acknowledged the importance of the data. At no time did she indicate that the FTE status was not to have been provided [to Matier and Ross].

Complainant further alleges:

> Indeed, Ms. Zmuda did have her staff modify the "old" report to roll up multiple entries for a single employee into a single entry for each employee that she sent along in the two Excel spreadsheets on January 12.
>
> The FTE status column should be a relatively easy calculation while combining multiple entries for a single employee into a single entry, and could conceivably be calculated at the same time a given employee's multiple job classifications are aggregated into a single line:
>
> Employee total base pay in Job Classification #1
>
> ÷ Employee's hourly salary in Classification # 1
>
> = Hours worked annually in Classification # 1
>
> ÷ 2,080 work hours annually
>
> = **Estimate FTE status for Classification # 1**
>
> Employee total base pay in Job Classification #2
>
> ÷ Employee's hourly salary in Classification # 2
>
> = Hours worked annually in Classification # 2
>
> ÷ 2,080 work hours annually
>
> = **Estimate FTE status for Classification # 2**
>
> Estimate FTE status for Classification # 1
>
> + Estimate FTE status for Classification # 2
>
> = **Estimated Combined FTE Status**
>
> I have been waiting for this data for over four months, since first requesting it on October 5. During that time, the Controller's Office could have easily changed the underlying query for the "new" report from FY 10-11 to FY 09-10, as I initially requested, and should have been able to supply the FTE data that Mr. Threet acknowledged should already have been developed and tested prior to supplying it to Matier and Ross. Instead, the Controller's Office has dragged this case out for over four months, claiming that although the data apparently exists, the Controller's Office is unwilling to perform these basic calculations, even with a disclaimer that the FTE status would be "calculated' data.
>
> After all, Ms. Zmuda's e-mail of January 17 (Enclosure 14) specifically indicates the FTE number is a calculated based on the number of hours worked, which data the Controller must surely know in order to produce pay checks.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- How does Complainant allege the Controller violated section 67.24(c), governing the disclosure of "Personnel Information"?
- How does Complainant allege the Controller violated section 67.24(d), governing the disclosure of "Law Enforcement Information"?
- How does Complainant allege the Controller violated the provisions of section 6253.9 of the CPRA?
- Did the Controller withhold responsive information that was in its custody and control?
- What evidence does Complainant allege supports his allegation that the Controller has previously provided the report in the format he requested to reporters?
- What more would be required for the Controller to generate the report in the format requested by the Complainant, given that the query appears to already have been developed and tested for fiscal year 2011?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the Controller violate section 6253.9 of the PRA?
- Did the Controller violate section 67.24(c), governing the disclosure of "Personnel Information"?
- Did the Controller violate section 67.24(d), governing the disclosure of "Law Enforcement Information"?
- Did the Controller keep withholding, if any, to a minimum, as required by Section 67.26?
- Did the Controller "willfully fail" to discharge any of its duties under the Sunshine Ordinance, or the PRA, in violation of section 67.34?
- Does the Task Force have jurisdiction to consider and rule on alleged violations of records retention laws outside of the Sunshine Ordinance and PRA?

SUGGESTED ANALYSIS

Jurisdiction

This suggested analysis is limited to the issue of whether the Task Force has jurisdiction to consider and make a determination on whether respondent has violated laws outside of the Sunshine Ordinance and the CPRA related to records retention. There are two sections of the Ordinance that deal with the authority of the Task Force to make determinations on alleged violations of law. Section 67.21(e), included in Article III of the Ordinance dealing with public records, mentions only determinations regarding whether a document is a public record. Section 67.30(c) of the Ordinance provides, among other things, that "[t]he Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated ***any provisions*** of this ordinance or the Acts." This section provides implied authority for the Task Force to hear complaints and make determinations regarding alleged violations of the Sunshine Ordinance and the CPRA. There is no provision of the Ordinance that provides even implied authority to hear complaints and make determinations regarding alleged violations

of other state and local laws governing record retention. The Task Force therefore lacks jurisdiction over these alleged violations.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

Memorandum

DATE: February 22, 2012
PAGE: 9
RE: Monette-Shaw vs. Controller (11090)

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

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.

(c) 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 under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of

the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the 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.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code

Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.
(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.
Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:
[. . .]
(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:
(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:
(i) Sex, age and ethnic group;
(ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
(iii) Years of employment in the private and/or public sector;
(iv) Whether currently employed in the same position for another public agency.
(v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.
(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.
(3) The job description of every employment classification.
(4) The exact gross salary and City-paid benefits available to every employee.
(5) Any memorandum of understanding between the City or department and a recognized employee organization.
(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.
(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) Law Enforcement Information.
The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:
(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
(2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
(3) The identity of a confidential source;
(4) Secret investigative techniques or procedures;
(5) Information whose disclosure would endanger law enforcement personnel; or
(6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite. This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.
No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.
The willful failure of any elected official, department head, or other 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.

CAL. GOV'T CODE §§ 6250 et seq. (Public Records Act)

6253.9. INFORMATION IN AN ELECTRONIC FORMAT; COSTS; APPLICATION; AVAILABILITY

(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

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Phone: (415) 292-6969 • e-mail: pmonette-shaw@eartlink.net

February 12, 2012

Andrea S. Ausberry
Assistant Clerk
San Francisco Board of Supervisors
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102-4689

Re: Amended Sunshine Complaint # 11090
Complaint Regarding Failure to Provide FY 09-10 Payroll Data

Dear Ms. Ausberry,

Complaint against which Department or Commission: • City Controller's Office

Name of individual(s) **responsible** at Department or Commission • Monique Zmuda, Deputy City Controller's

Alleged Violation: ☒ Public Records Access ☐ Public Meeting
Sunshine Ordinance Section(s) §67.24, §67.24(c)(7), §67.24(d), and 67.26

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ Yes ☐ No
Do you want a pre-hearing conference before the Complaint Committee? ☐ Yes ☒ No

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Please describe alleged violation.

1. Summary

I initially placed this Sunshine Complaint on October 20, 2011. On December 18, I supplied Supplementary information, and added §67.21i), CPRA §66253.9 and Government Code §634090. On December 20, I submitted a second supplementary document to SOTF on this complaint.

In this amended complaint, I am removing §67.21i), CPRA §66253.9 and Government Code §634090 from the potential alleged violations.

I have included in this amended complaint all of the previous enclosures, and have added three new enclosures:

- Enclosures 1 through 6 were submitted with the initial complaint on October 20, 2011.
- Enclosures 7 through 9 were added in the December 18 first supplementary submission.
- Enclosures 10 and 11 were added in the December 20 second supplementary submission.
- Enclosures 12 through 14 are new enclosures.

2. DCA Jerry Threet's Instructional Memorandum of January 19, 2012 Moot

Mr. Threet's instructional memo of January 19 should be ruled moot.

First, his conclusion that the Task Force does not have jurisdiction to hear this case solely because I alleged CPRA violations, blatantly ignores the fact that various sections of the Sunshine Ordinance — which is under the jurisdiction of SOTF — are alleged to have been violated. Therefore, regarding "severability," while there may be a question about whether SOTF has jurisdiction to consider CPRA violations, there is no question about whether severing the CPRA citation from the allegations of violations of Sunshine Ordinance sections would then somehow render the entire case as beyond SOTF's jurisdiction. I had a good laugh over Mr. Threet's interpretation.

Second, on January 12, a week ***before*** Mr. Threet wrote his instructional memo to SOTF, Ms. Zmuda had partially complied with this records request, as shown at Enclosure 12 on enclosure page #13, further mooting much of Mr. Threet's analysis. The Controller's Office has not contested jurisdiction of this complaint, as Mr. Threet must surely know. Threet must also surely know that SOTF has jurisdiction for the alleged violations of several Sunshine Ordnance sections.

3. Partial Receipt of Requested Records

As noted above, Ms. Zmuda provided me with two Excel file on January 12 containing a portion of the data I had requested for Fiscal Years 2009-2010 and 2008-2009. Both files "aggregated" multiple entries for a single employee into just one entry, but both files failed to provide the FTE status of each employee, as I had requested.

When Zmuda sent me the Excel file in December for FY 10-11 that had apparently been provided to Matier and Ross, it contained the FTE status column.

As shown at Enclosure 13, I e-mailed Ms. Zmuda also on January 12, reminding her that the FTE data was still not provided in the files she sent me on January 12.

Five days later, on January 17, Ms. Zmuda e-mailed me an explanation (see Enclosure 14 at the last page of enclosures). She indicated:

> *I do think that one file that was created a while ago from our staff had the number of hours worked (FTE **was not supposed to be included in the report** [given to Matier and Ross; emphasis and explanatory note added].*

On October 19 (see Enclosure 5) Ms. Zmuda asserted that "even though raw data exists" (for my new records request), it "takes work to create, test, and produce reports." The Controller's Office did, in fact, include this data to Mateier and Ross, presumably whether tested or not.

As I indicated on December 20 in my second supplementary document to SOTF, the sample she sent to SOTF on December 16 appears to have deliberately deleted the "FTE status" column shown in Enclosure 11. The two Excel files I received on January 12 containing the requested data for Fiscal Years 2009-2010 and 2008-2009 excluded the FTE column shown in Enclosure 11, that had been included in the data for FY 10-11 that was provided to Maier and Ross and sent to me on October 4.

Notably, on December 22, Ms. Zmuda and I spoke by phone. She indicated that she would make inquiries of her staff on her return after the Christmas holidays to see if the reports I requested can be produced, given the fact that the City Controller's Office is migrating to a different system to generate these reports. During that phone call Ms. Zmuda asked me what I wanted the data for, and I told her that she must know that the Sunshine Ordinance precludes Departments from asking why records requests are being made. But with that caveat, she and I discussed the fact that the FTE status is of interest to City officials, particularly during budget planning, and she acknowledged the importance of the data. At no time did she indicate that the FTE status was not to have been provided [to Matier and Ross].

During that phone call Ms. Zmuda asked me what I wanted the data for, and I told her that she must know that the Sunshine Ordinance precludes Departments from asking why records requests are being made. But with that caveat, she and I discussed the fact that the FTE status is of interest to City officials.

At no time did she indicate that the FTE status was not to have been provided.

Finally, Mr. Threet's January 19 misguided instructional memo noted (rightfully) on page 5:

> *What more would be required for the Controller to generate the report in the format requested by the Complainant, given that **the query appears to already have been developed and tested for fiscal year 2011**?* [emphasis added]

Given that the FTE status provided to Matier and Ross had already been developed and tested, I will repeat what I said in my first supplementary document to SOTF on December 18:

> *If the Controller's Office is capable of modifying the "old" report's underlying query from a calendar year to a fiscal year basis, it can just as easily change the underlying query for the "new" report from FY 10-11 to FY 09-10, as I initially requested. To claim it can change one of the queries to generate a revised report, but is not able to change the other query, is pure hubris.*

Indeed, Ms. Zmuda did have her staff modify the "old" report to roll up multiple entries for a single employee into a single entry for each employee that she sent along in the two Excel spreadsheets on January 12.

The FTE status column should be a relatively easy calculation while combining multiple entries for a single employee into a single entry, and could conceivably be calculated at the same time a given employee's multiple job classifications are aggregated into a single line:

Employee total base pay in Job Classifcation #1
÷ Employee's hourly salary in Classification # 1
= Hours worked annually in Classification # 1
÷ 2,080 work hours annually
= **Estimate FTE status for Classification # 1**

Employee total base pay in Job Classifcation #2
÷ Employee's hourly salary in Classification # 2
= Hours worked annually in Classification # 2
÷ 2,080 work hours annually
= **Estimate FTE status for Classification # 2**

Estimate FTE status for Classification # 1
+ Estimate FTE status for Classification # 2
= **Estimated Combined FTE Status**

I have been waiting for this data for over four months, since first requesting it on October 5. During that time, the Controller's Office could have easily changed the underlying query for the "new" report from FY 10-11 to FY 09-10, as I initially requested, and should have been able to supply the FTE data that Mr. Threet acknowledged should already have been developed and tested prior to supplying it to Matier and Ross. Instead, the Controller's Office has dragged this case out for over four months, claiming that although the data apparently exists, the Controller's Office is unwilling to perform these basic calculations, even with a disclaimer that the FTE status would be "calculated' data.

After all, Ms. Zmuda's e-mail of January 17 (Enclosure 14) specifically indicates the FTE number is a calculated based on the number of hours worked, which data the Controller must surely know in order to produce pay checks.

4. Remedy Sought

Should the Sunshine Ordinance Task Force find that this complaint has merit, I specifically request that the Task Force order the Office of the Controller — and Ms. Zmuda specifically — to immediately conclude producing the requested records, by including the FIE data missing for over four months.

Sincerely,

[Signed]

Patrick Monette-Shaw

Enclosures (as stated)

Enclosure 1: Monette-Shaw October 5, 2011 Supplemental Records Request to City Controller

Subject: REVISED MMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: pmonette-shaw@earthlink.net
Reply-To: Pmonette-shaw@earthlink.net
Date: 10/5/2011 6:36 PM
To: Monique.Zmuda@sfgov.org

Thanks for this data for FY ending June 2011, Monique.

Since the format of it differs slightly from the query **than is typically run** and provided to me for the end-of-Calendar-year reports (including aggregating a given employee's total earnings into a single entry, had they worked in two different job classification codes) I have been receiving, I am placing an additional Immediate Disclosure Request.

Please provide, for Fiscal Year ending June 30, 2010, the same data, in the same layout, as the data you provided for FY ending June 30, 2011.

Thanks.

Patrick Monette-Shaw

Enclosure 2: Monique Zmuda's October 5, 2011 Response

Subject: Re: REVISED MMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: Monique.Zmuda@sfgov.org
Date: 10/6/2011 2:31 PM
To: Pmonette-shaw@earthlink.net

Patrick,

This is the format and prepared report that we provide on payroll information to all requestors. The report for FY 10 was in the same format. We will not be preparing any specialized report on salaries of City Employees.

Monique

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org
Patrick Monette-Shaw

Enclosure 3: Monette-Shaw Response to Monique Zmuda, October 6, 2011

Subject: Re: REVISED MMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: Pmonette-shaw@earthlink.net
Date: 10/6/2011 10:51 PM
To: Monique.Zmuda@sfgov.org

Dear Ms. Zmuda,

You're kidding, right?

This is not the format I was provided data in 2010, or I wouldn't have placed a new records request. I've requested getting Calendar year data from the Controller's Office in the past; now I've requested Fiscal Year data.

I have not asked for any new specialized report on salaries of City employees, I simply asked that you change the reporting parameters to a different fiscal year, which I have not received. This should be a canned report.

Your response is a canard. Must I file a Sunshine Task Force complaint for non-responsiveness, to get a responsive record?

Patrick Monette-Shaw

Enclosure 4: Monette-Shaw More Diplomatic Response to Monique Zmuda, October 8, 2011

Subject: Let Me Try Again, More Diplomatically -- Re: REVISED MMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll
From: Pmonette-shaw@earthlink.net
Date: 10/8/2011 8:06 PM
To: Monique.Zmuda@sfgov.org
cc: Debbie.Toy@sfgov.org

Dear Ms. Zmuda,

Let me try again, more diplomatically --

1. You indicated in your response, below, that the new data I requested is in the same format you provide to all requestors. This is untrue, because:

a. The City Controller's Excel payroll data files I received on February 3, 17, 2010 and February 3, 2010, for **calendar** years 2009 and 2010, respectively, contained just 11 "fields" of information:

DEPARTMENT NAME
DEPT
LAST-NAME
FIRST-NAME
M-INIT
JOB-CLASS
JOB CLASS DESCRIPTION
REG PAY
OVERTIME
OTHER PAY
TOTAL PAY

But the data you provided Matier and Ross, contained 12 fields, not 11, adding a new field titled "***FY10-11 FTE***," reporting each employee's FTE status, which has not previously been provided to me for earlier Fiscal or Calendar Years.

b. I have previously requested **calendar year** data, but what you reported to Matier and Ross is **fiscal year** data. I am only seeking a similar fiscal-year data report for 2009-2010 as your office provided to Matier and Ross for FY 10-11, which I have not previously received.

c. The new file provided to Matier and Ross appears to "aggregate" a singe employee's multiple job classification code earnings into a single line per employee. For instance, Dr. Denis Bouvier was reported in the 2009 and 2010 files provided to me by the Controller's Office as having earned wages on two separate entries: Once as a 2230 Physician Specialist, and separately as a 2232, Senior Physician Specialist. Similarly, Madonna ValnciA is listed twice, in 2009 and 2010 data first as a 2322 Nurse Manager and also as a 2324 Nursing Supervisor, reporting two separate salaries.

But in the file provided to Matier and Ross, both Dr. Bouvier and nurse Madonna Valencia are reported just once, each, at their higher job classification codes, suggesting that the data provided to Matier and Ross is a different underlying query, not previously reported to me, by aggregating a single employee's multiple jobs with the City into a single-line entry, and reporting their combined job classification codes salaries into a single entry.

2. You indicated in your response, below, you would not provide a "specialzed" report. It does not appear that the data the Controller's Office provided to Matier and Ross is specialized, other than to report the additional FTE status. As such, it is not a "specialized" report, and simply amends what should be a stored query, to include a different reporting time period that includes the FTE status of each employee, which you have provided to Matier and Ross.

Having to utilize a different reporting period should not be misconstrued as "specialized" reporting, and shouldn't place an undue burden on the Controller's well-paid, and bloated, staff to run.

Let me know whether you're going to reconsider. I'd prefer not going down this Sunshine Ordinance lane, but am prepared to.

Patrick

Enclosure 5: Monique Zmuda's First October 19, 2011 Response

Subject: Re: Final Immediate Disclosure Request: Re: Let Me Try Again, More Diplomatically – Re: REVISED MMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: Monique.Zmuda@sfgov.org
Date: 10/19/2011 3:07 PM
To: Pmonette-shaw@earthlink.net

Patrick,

I am looking at the resources that it will take to unwind the report that we improved (yes we consider the data that has combined the pay for employees who are working several jobs as a significant improvement because it allows requester to see the entire annual salary of employees, rather than pieces that would need to be manually added together). Please keep in mind that much of the information that you request that we provide DOES take time away from employees' performing their jobs. Even though raw data exists, it takes work to create, test, and produce reports. We are not required to produce reports to meet public disclosure requests. We are required to provide information that already exists. We do our best in the Controller's Office to create financial, payroll, budget, vendor and other reports that provide useful information to the public. We have tried to be considerate, respectful and reasonable throughout the many immediate requests that we work through.

I will get back to you, but please understand that your request is unique city-wide and I need to use our scarce resources for those reports that provide the most value to the greatest number of people.

MZ

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

Enclosure 6: Monique Zmuda's Second October 19, 2011 Response

Subject: data on specific employees
From: Monique.Zmuda@sfgov.org
Date: 10/19/2011 3:22 PM
To: Pmonette-shaw@earthlink.net

Patrick,

In order to respond to your question about specific employees, here are the FY10-11 salary amounts broken out by job class for Denis Bouvier and Madonna Valencia taken from our Pay_2011 database . The total amounts tie to the original figures provided to you in the FY2010-11 All Employee Payroll file. I show the amounts by job class in a snapshot below .

FY 2010-11 Payroll Information from Pay_2011 Database

Dept	Dept Title	Last Name	First Name	MI	Job Class	Job Class Title	FY10-11 Regular Pay	FY10-11 Overtime Pay	FY
DPH	PUBLIC HEALTH	BOUVIER	DENIS	P	2230	PHYSICIAN SPECIALIST	$ 237,353	$ -	$
DPH	PUBLIC HEALTH	BOUVIER	DENIS	P	2232	SENIOR PHYSICIAN SPECIALIST	$ 92,514	$ -	$
DPH	PUBLIC HEALTH	VALENCIA	MADONNA	P	2322	NURSE MANAGER	$ 157,158	$ 7,214	$
DPH	PUBLIC HEALTH	VALENCIA	MADONNA	P	2324	NURSING SUPERVISOR	$ 20,821	$ -	$

I cannot spend any more of my time and my staff's time on this request. Thanks.

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

Enclosure 7[1]: Monette-Shaw December 10, 2011 E-mail to City Controller

From: pmonette-shaw@earthlink.net
To: Monique.Zmuda@sfgov.orgf
cc: Ben.Rosenfield@sfgov.org
Date: 12/10/2011 01:08 PM
Subject: Re: Sunshine Complaint Received: 11090_Patrick Monette-Shaw v Controller's Office

Dear Ms. Zmuda,

Should you decide to reconsider your refusal to provide the requested records, and actually produce them in short order, I am prepared to withdraw this Sunshine complaint.

Please advise.

Patrick Monette-Shaw

[1] I have continued numbering of enclosures from the initial October 20, 2011 complaint by incrementing the enclosure numbers to prevent confusion in referring to enclosures across documents submitted to SOTF.

Enclosure 8: City Controller's December 12, 2011 Response to Monette-Shaw

Subject: Re: Sunshine Complaint Received: 11090_Patrick Monette-Shaw v Controller's Office
From: Monique.Zmuda@sfgov.orgf
Date: 12/12/2011 11:36 AM
To: pmonette-shaw@earthlink.net
cc: Debbie.Toy@sfgov.org

Patrick,

If you are requesting the old report in the old format for fiscal year ending June 30 2010, I have that report and can provide it. However, we no longer prepare the report in the old format, and therefore we provide the new report after this date. Do you want the old report in the old format?

MZ

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

Enclosure 9: City Controller's December 15, 2011 Response to Monette-Shaw

Subject: Re: Sunshine Complaint Received: 11090_Patrick Monette-Shaw v Controller's Office
From: Monique.Zmuda@sfgov.orgf
Date: 12/15/2011 5:15 PM
To: pmonette-shaw@earthlink.net

You have not responded to my last email so I still don't know if you would like the old report for the prior period that is available.

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

Enclosure 10[2]: Deputy City Controller Zmuda October 4, 2011 E-mail Monette-Shaw

Subject: Re: IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: Monique.Zmuda@sfgov.org
Date: 10/4/2011 12:56 PM
To: pmonette-shaw@earthlink.net
cc: Debbie.Toy@sfgov.org
Attachment: FY 2010-11 All Employees Payroll-1.xlsx

Patrick,

As requested, the fiscal year employee payroll file.

mz

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

[2] I have continued numbering of enclosures from the initial October 20, 2011 complaint by incrementing the enclosure numbers to prevent confusion in referring to enclosures across documents submitted to SOTF.

Enclosure 11: Corrected "New Report" Screen Capture

Screen capture of page 1 of Excel File (FY 2010-11 All Employees Payroll-1.xlsx) e-mailed by Monique Zmuda to Patrick Monette-Shaw on October 4, 2011. Green shading in the FTE column added by Patrick Monette-Shaw. Note that the "FTEcolumn" between the "Job Class Title" column and "Regular Pay" column appears to have been **deleted** in the sample of the "new" report Ms. Zmuda provided to the Task Force on December 16, 2011. **Note:** The Excel file's underlying metadata does not show the name of the City Controller's staff that generated this report, but it does show that the Excel file was created on August 25, 2011.

CITY AND COUNTY OF SAN FRANCISCO
CONTROLLER'S PAYROLL PUBLIC INFORMATION
FISCAL YEAR 2010-2011
ALL DEPARTMENTS AND SALARIES

Internal Notes
Source: pay2011.mdb, QYR_FY 2010-11All Employees Payroll_8-25-11
Note: These records are taken from the Controller's payroll records and may not fully reflect individual payroll adjustments and therefore may not fully reconcile with W-2 records.

Dept	Dept Title	Last Name	First Name	MI	Job Class	Job Class Title	FY10-11 FTE	FY10-11 Regular Pay	FY10-11 Overtime Pay	FY10-11 Other Pay	FY10-11 Total Pay
AAM	ASIAN ART MUSEUM	ROBESON	WILBUR		8228	Museum Security Supervisor	0.11	$ 6,626	$ 46	$ 47	$ 6,718
AAM	ASIAN ART MUSEUM	KIDD	MICHAEL	A	8228	Museum Security Supervisor	1.00	$ 58,859	$ 606	$ 1,351	$ 60,817
AAM	ASIAN ART MUSEUM	NDOM	MAMADOU		8228	Museum Security Supervisor	1.00	$ 58,872	$ 3,230	$ 3,251	$ 65,354
AAM	ASIAN ART MUSEUM	TITIYEVSKIY	ARKADIY		8228	Museum Security Supervisor	0.93	$ 52,958	$ 2,134	$ 3,818	$ 58,911
AAM	ASIAN ART MUSEUM	MICHAELS	JAN	C	8226	Museum Guard	0.86	$ 51,967	$ 885	$ 2,255	$ 55,108
AAM	ASIAN ART MUSEUM	WHITE	WINSTON	D	8226	Museum Guard	0.88	$ 52,864	$ 6,087	$ 7,146	$ 66,097
AAM	ASIAN ART MUSEUM	JULATON	AL	T	8226	Museum Guard	0.87	$ 52,463	$ 217	$ -	$ 52,679
AAM	ASIAN ART MUSEUM	STEVENSON	BRENT	L	8226	Museum Guard	0.70	$ 42,330	$ 737	$ 888	$ 43,955
AAM	ASIAN ART MUSEUM	DELAROSA	JOSIE	C	8226	Museum Guard	0.87	$ 52,598	$ 79	$ 607	$ 53,284
AAM	ASIAN ART MUSEUM	WRIGHT	THOMAS		8226	Museum Guard	0.06	$ 2,466	$ -	$ -	$ 2,466
AAM	ASIAN ART MUSEUM	WI	NORBERTO	R	8226	Museum Guard	0.86	$ 52,496	$ 1,208	$ 6,354	$ 60,057
AAM	ASIAN ART MUSEUM	ARNOLD	RONNIE	E	8226	Museum Guard	0.87	$ 52,511	$ 1,796	$ 7,535	$ 61,841
AAM	ASIAN ART MUSEUM	HO	WILLIAM	W	8226	Museum Guard	0.79	$ 47,480	$ -	$ 888	$ 48,369
AAM	ASIAN ART MUSEUM	LARA	RODOLFO		8226	Museum Guard	0.87	$ 52,698	$ 8,641	$ 1,520	$ 62,859
AAM	ASIAN ART MUSEUM	KORBUT	VICTOR	S	8226	Museum Guard	0.51	$ 31,269	$ -	$ 303	$ 31,572
AAM	ASIAN ART MUSEUM	HUGH	KWOK	M	8226	Museum Guard	0.87	$ 52,510	$ 570	$ 6,615	$ 59,695
AAM	ASIAN ART MUSEUM	SULLIVAN	TIMOTHY	G	8226	Museum Guard	0.87	$ 52,352	$ 5,339	$ 2,521	$ 60,213
AAM	ASIAN ART MUSEUM	FIGUEROA	EDWIN	M	8226	Museum Guard	0.87	$ 52,698	$ 3,676	$ 6,063	$ 62,437
AAM	ASIAN ART MUSEUM	JONES	ROBERT		8226	Museum Guard	0.86	$ 51,782	$ 4,581	$ 470	$ 56,833
AAM	ASIAN ART MUSEUM	SHERRY	PATRICK	J	8226	Museum Guard	0.87	$ 52,691	$ -	$ 607	$ 53,298
AAM	ASIAN ART MUSEUM	CATO	D						224	$ 2,406	$ 55,248
AAM	ASIAN ART MUSEUM	MCGRAIL	L						78	$ 4,834	$ 55,830
AAM	ASIAN ART MUSEUM	DELA CRUZ	M						211	$ 122	$ 20,014
AAM	ASIAN ART MUSEUM	IBRAHIM	IE						9,494	$ 1,799	$ 63,990
AAM	ASIAN ART MUSEUM	WOON	K						2,147	$ 2,058	$ 56,917
AAM	ASIAN ART MUSEUM	OSORIO	LI						5,058	$ 2,589	$ 59,937
AAM	ASIAN ART MUSEUM	LEBBOS	E						340	$ -	$ 50,917
AAM	ASIAN ART MUSEUM	BERGERON	M						-	$ -	$ 16,865
AAM	ASIAN ART MUSEUM	WAITE	N						29	$ 282	$ 52,835
AAM	ASIAN ART MUSEUM	MANASIEVICI	A						58	$ 888	$ 53,644
AAM	ASIAN ART MUSEUM	GARCIA	JA						1,490	$ 3,143	$ 57,533
AAM	ASIAN ART MUSEUM	GOFF	S						1,228	$ 5,552	$ 56,773
AAM	ASIAN ART MUSEUM	MERCADO	FI						-	$ -	$ 458
AAM	ASIAN ART MUSEUM	HAND	R						-	$ -	$ 446

flect individual payroll adjustments and therefore may not fully reconcil

Job Class Title	FY10-11 FTE	FY10-11 Regular Pa
Museum Security Supervisor	0.11	$ 6,62
Museum Security Supervisor	1.00	$ 58,85
Museum Security Supervisor	1.00	$ 58,87
Museum Security Supervisor	0.93	$ 52,95
Museum Guard	0.86	$ 51,96
Museum Guard	0.88	$ 52,86
Museum Guard	0.87	$ 52,46
Museum Guard	0.70	$ 42,33
Museum Guard	0.87	$ 52,59
Museum Guard	0.06	$ 2,46

Enclosure 12: Deputy City Controller Zmuda's January 12, 2012 E-mail Monette-Shaw

Subject:	Re: Supplementary Information to Sunshine Complaint 11090, Patrick Monette-Shaw v Controller's Office
From:	Monique.Zmuda@sfgov.org
Date:	1/12/2012 4:22 PM
To:	pmonette-shaw@earthlink.net
cc:	Debbie.Toy@sfgov.org
Attachment:	**FY 2009-10 All Employees Payroll_New Format for Public.zip; FY 2008-09 All Employees Payroll_New Format for Public.zip**

Hello Patrick,

Please see the attached files on a zip to make it easier to send and receive. . I believe that the files gives information that you requested. Please advise.

mz

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

Enclosure 13: Monette-Shaw January 12, 2012, 2012 E-mail to Monique Zmuda

From: Monique.Zmuda@sfgov.org
To: pmonette-shaw@earthlink.net
cc: Debbie.Toy@sfgov.org
Date: 01/12/2012 10:57 PM
Subject: Re: Supplementary Information to Sunshine Complaint 11090, Patrick Monette-Shaw v Controller's Office

January 12, 2012

Hi Monique,

Thanks for sending along this partial data, but I don't think this is what we agreed on.

After we spoke by phone before you went on vacation, saying you'd be back on 1/9, I thought we had agreed on what the definition of what you started describing as the "new format."

I recall that you told me that the cut-over to a new database would happen in early summer 2012, and that you have not actually cut over from being able to extract data from a Microsoft Access database still in production.

I thought we agreed that the "new format" included a single line entry for employees working in multiple job classification codes aggregated into a single line entry (but for two different fiscal years than Matier and Ross reported for FY 10-11), **and** that the new definition you introduced would include a "column" (field of information) aggregating and reporting each single employee's total FTE status, such that if one employee was working in more than one job classification code it might (for example) reflect they were a 1.38 FTE, vs. those employees who may hold a single position, say at 0.49 FTE status.

The two files you sent me today for FY 08-09 and FY 09-10, do appear to provide a single line entry for employees who may work on multiple "requisitions" aggregating their names into a one-line entry, but neither XLS file from the ZIP file includes the column reporting on each employee's FTE status. You didn't send me the other half of the "new format," since neither file contains the FTE status "column."

As I indicated, I'd be happy to withdraw my Sunshine complaint that is still pending, provided I receive the full "new format" that we discussed by phone, including the FTE status column.

Please advise.

Patrick Monette-Shaw

Enclosure 14: Deputy City Controller Zmuda's January 17, 2012 E-mail Monette-Shaw

Subject: Re: Supplementary Information to Sunshine Complaint 11090, Patrick Monette-Shaw v Controller's Office
From: Monique.Zmuda@sfgov.org
Date: 1/17/2012 11:09 AM
To: pmonette-shaw@earthlink.net
cc: Debbie.Toy@sfgov.org

Hello Patrick,

Single employees who may work in excess of 2080 hours per year are still considered one employee. If for example, one physician that had more than one appointment in two different healthcare settings worked in excess of 40 hours per pay period over the year, that the employee worked more than the typical employee with a set schedule, or 1.0 full time equivalent . However, this employee is treated as 1 employee in the civil service system and in the annual salary ordinance as well, and for the purpose of applying benefits such as health care and dental. The new system will only provide employees with multiple jobs with one pay check. Because we are a single employer, we must treat employees working in excess of 40 hours per week as one employee and must pay them consistent with their labor MOU and the fair labor standards act (that guarantees overtime etc. for certain classes of employees). Because of these reasons, we do not apply a formula to the hours worked to reach a full time equivalent number.

I do think that one file that was created a while ago from our staff had the number of hours worked (FTE was not supposed to be included in the report because of the reasons stated above) , but the standard report does not include FTE because this number is not actual, it is calculated based on the number of hours worked. I hope that this explanation helps. [Emphasis added]

mz

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

Patrick Monette-Shaw
975 Sutter Street, Apt. 6
San Francisco, CA 94109
Phone: (415) 292-6969 • e-mail: pmonette-shaw@eartlink.net

December 20, 2011

Chris Rustom
Task Force Administrator
Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Supplementary Information #2 Regarding Sunshine Complaint 11090:
Patrick Monette-Shaw v Controller's Office

Dear Mr. Rustom,

Complaint against which Department or Commission: • City Controller's Office

Name of individual(s) **responsible** at Department or Commission • Monique Zmuda, Deputy City Controller

Alleged Violation: ☒ Public Records Access ☐ Public Meeting

Sunshine Ordinance Section(s) **§67.21(i), §67.24, §67.24(c)(7), §67.24(d), §67.26, and §67.34, CPRA §6253.9, and Government Code §34090**

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ Yes ☐ No
Do you want a pre-hearing conference before the Complaint Committee? ☐ Yes ☒ No

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Supplementary Information — Part 2 — Regarding Sunshine Complaint 11090

1. Summary (Continued)

On Tuesday, December 20, I received the City Controller's Response to my Sunshine complaint #11090 that Ms. Zmuda wrote on Friday, December 16.

I don't know if she is trying purposefully to be disingenuous, but the sample "new format" of the payroll information is not the "new format" that she supplied to me on October 4. A screen capture of the data she provided as the "new report" on October 4 is at Enclosure 11.

The sample she sent to SOTF on December 16 appears to have deliberately deleted the "FTE status" column shown in Enclosure 11. Had Ms. Zmuda bothered to review the Excel file she e-mailed me on October 4, she would have seen that the "new format" sample she provided to the SOTF on December 16 is **not** the same format she provided me on October 4.

As I indicated in my first Supplementary Information dated December 18, maintaining the underlying queries to payroll information in both the "old format" and the "new format" is of interest to the general public, and perhaps City officials. The "old format" that lists multiple, separate rows of payroll data for each position in which a given employee works in more than one capacity is of interest to the public to show in which capacities these employees are working in. The "new format" is also of interest to the public to show a given employee's total FTE status. Since PeopleSoft, TESS and other City databases have the capability of storing and modifying various queries for various purposes, the Controller's Office should be required to maintain both the "old format" and "new format" underlying queries in order to provide the public with the option of reviewing the two data subsets which may be of interest to them. The Sunshine Ordinance's provision of providing greater access to records, rather than restricting access to records, should prevail.

I specifically ask the SOTF not to reschedule my hearing on January 3, given the inordinate amount of time it has taken the SOTF to schedule this hearing. I would prefer it if Ms. Zmuda can send an alternate employee knowledgeable about this matter instead of rescheduling the hearing around her availability.

Sincerely,

Patrick Monette-Shaw

Enclosures (as stated)

Enclosure 10[1]: Deputy City Controller Zmuda October 4, 2011 E-mail Monette-Shaw

Subject: Re: IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: Monique.Zmuda@sfgov.org
Date: 10/4/2011 12:56 PM
To: pmonette-shaw@earthlink.net
cc: Debbie.Toy@sfgov.org
Attachment: FY 2010-11 All Employees Payroll-1.xlsx

Patrick,

As requested, the fiscal year employee payroll file.

mz

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

[1] I have continued numbering of enclosures from the initial October 20, 2011 complaint by incrementing the enclosure numbers to prevent confusion in referring to enclosures across documents submitted to SOTF.

Enclosure 11: Corrected "New Report" Screen Capture

Screen capture of page 1 of Excel File (FY 2010-11 All Employees Payroll-1.xlsx) e-mailed by Monique Zmuda to Patrick Monette-Shaw on October 4, 2011. Green shading in the FTE column added by Patrick Monette-Shaw. Note that the "FTEcolumn" between the "Job Class Title" column and "Regular Pay" column appears to have been **deleted** in the sample of the "new" report Ms. Zmuda provided to the Task Force on December 16, 2011. **Note:** The Excel file's underlying metadata does not show the name of the City Controller's staff that generated this report, but it does show that the Excel file was created on August 25, 2011.

CITY AND COUNTY OF SAN FRANCISCO
CONTROLLER'S PAYROLL PUBLIC INFORMATION
FISCAL YEAR 2010-2011
ALL DEPARTMENTS AND SALARIES
Internal Notes
Source: pay2011.mdb, QYR_FY 2010-11All Employees Payroll_8-25-11
Note: These records are taken from the Controller's payroll records and may not fully reflect individual payroll adjustments and therefore may not fully reconcile with W-2 records.

Dept	Dept Title	Last Name	First Name	MI	Job Class	Job Class Title	FY10-11 FTE	FY10-11 Regular Pay	FY10-11 Overtime Pay	FY10-11 Other Pay	FY10-11 Total Pay
AAM	ASIAN ART MUSEUM	ROBESON	WILBUR		8228	Museum Security Supervisor	0.11	$ 6,626	$ 46	$ 47	$ 6,718
AAM	ASIAN ART MUSEUM	KIDD	MICHAEL	A	8228	Museum Security Supervisor	1.00	$ 58,859	$ 606	$ 1,351	$ 60,817
AAM	ASIAN ART MUSEUM	NDOM	MAMADOU		8228	Museum Security Supervisor	1.00	$ 58,872	$ 3,230	$ 3,251	$ 65,354
AAM	ASIAN ART MUSEUM	TITIYEVSKIY	ARKADIY		8228	Museum Security Supervisor	0.93	$ 52,958	$ 2,134	$ 3,818	$ 58,911
AAM	ASIAN ART MUSEUM	MICHAELS	JAN	C	8226	Museum Guard	0.86	$ 51,967	$ 885	$ 2,255	$ 55,108
AAM	ASIAN ART MUSEUM	WHITE	WINSTON	D	8226	Museum Guard	0.88	$ 52,864	$ 6,087	$ 7,146	$ 66,097
AAM	ASIAN ART MUSEUM	JULATON	AL	T	8226	Museum Guard	0.87	$ 52,463	$ 217	$ -	$ 52,679
AAM	ASIAN ART MUSEUM	STEVENSON	BRENT	L	8226	Museum Guard	0.70	$ 42,330	$ 737	$ 888	$ 43,955
AAM	ASIAN ART MUSEUM	DELAROSA	JOSIE	C	8226	Museum Guard	0.87	$ 52,598	$ 79	$ 607	$ 53,284
AAM	ASIAN ART MUSEUM	WRIGHT	THOMAS		8226	Museum Guard	0.06	$ 2,466	$ -	$ -	$ 2,466
AAM	ASIAN ART MUSEUM	WI	NORBERTO	R	8226	Museum Guard	0.86	$ 52,496	$ 1,208	$ 6,354	$ 60,057
AAM	ASIAN ART MUSEUM	ARNOLD	RONNIE	E	8226	Museum Guard	0.87	$ 52,511	$ 1,796	$ 7,535	$ 61,841
AAM	ASIAN ART MUSEUM	HO	WILLIAM	W	8226	Museum Guard	0.79	$ 47,480	$ -	$ 888	$ 48,369
AAM	ASIAN ART MUSEUM	LARA	RODOLFO		8226	Museum Guard	0.87	$ 52,698	$ 8,641	$ 1,520	$ 62,859
AAM	ASIAN ART MUSEUM	KORBUT	VICTOR	S	8226	Museum Guard	0.51	$ 31,269	$ -	$ 303	$ 31,572
AAM	ASIAN ART MUSEUM	HUGH	KWOK	M	8226	Museum Guard	0.87	$ 52,510	$ 570	$ 6,615	$ 59,695
AAM	ASIAN ART MUSEUM	SULLIVAN	TIMOTHY	G	8226	Museum Guard	0.87	$ 52,352	$ 5,339	$ 2,521	$ 60,213
AAM	ASIAN ART MUSEUM	FIGUEROA	EDWIN	M	8226	Museum Guard	0.87	$ 52,698	$ 3,676	$ 6,063	$ 62,437
AAM	ASIAN ART MUSEUM	JONES	ROBERT		8226	Museum Guard	0.86	$ 51,782	$ 4,581	$ 470	$ 56,833
AAM	ASIAN ART MUSEUM	SHERRY	PATRICK	J	8226	Museum Guard	0.87	$ 52,691	$ -	$ 607	$ 53,298
AAM	ASIAN ART MUSEUM	CATO	D						224	$ 2,406	$ 55,248
AAM	ASIAN ART MUSEUM	MCGRAIL	L						78	$ 4,834	$ 55,830
AAM	ASIAN ART MUSEUM	DELA CRUZ	M						211	$ 122	$ 20,014
AAM	ASIAN ART MUSEUM	IBRAHIM	IB						9,494	$ 1,799	$ 63,990
AAM	ASIAN ART MUSEUM	WOON	K						2,147	$ 2,058	$ 56,917
AAM	ASIAN ART MUSEUM	OSORIO	L						5,058	$ 2,589	$ 59,937
AAM	ASIAN ART MUSEUM	LEBBOS	E						340	$ -	$ 50,917
AAM	ASIAN ART MUSEUM	BERGERON	M						-	$ -	$ 16,865
AAM	ASIAN ART MUSEUM	WAITE	N						29	$ 282	$ 52,835
AAM	ASIAN ART MUSEUM	MANASIEVICI	A						58	$ 888	$ 53,644
AAM	ASIAN ART MUSEUM	GARCIA	J						1,490	$ 3,143	$ 57,533
AAM	ASIAN ART MUSEUM	GOFF	S						1,228	$ 5,552	$ 56,773
AAM	ASIAN ART MUSEUM	MERCADO	F						-	$ -	$ 458
AAM	ASIAN ART MUSEUM	HAND	R						-	$ -	$ 446

flect individual payroll adjustments and therefore may not fully reconcil

Job Class Title	FY10-11 FTE	FY10-11 Regular Pa
Museum Security Supervisor	0.11	$ 6,62
Museum Security Supervisor	1.00	$ 58,85
Museum Security Supervisor	1.00	$ 58,87
Museum Security Supervisor	0.93	$ 52,95
Museum Guard	0.86	$ 51,96
Museum Guard	0.88	$ 52,86
Museum Guard	0.87	$ 52,46
Museum Guard	0.70	$ 42,33
Museum Guard	0.87	$ 52,59
Museum Guard	0.06	$ 2,46

Patrick Monette-Shaw
975 Sutter Street, Apt. 6
San Francisco, CA 94109
Phone: (415) 292-6969 • e-mail: pmonette-shaw@eartlink.net

December 18, 2011

Chris Rustom
Task Force Administrator
Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Supplementary Information Regarding Sunshine Complaint 11090:
Patrick Monette-Shaw v Controller's Office
(Complaint Regarding Failure to Provide FY 09-10 Payroll Data)

Dear Mr. Rustom,

Complaint against which Department or Commission: • City Controller's Office

Name of individual(s) **responsible** at Department or Commission • Monique Zmuda, Deputy City Controller's

Alleged Violation: ☒ Public Records Access ☐ Public Meeting

Sunshine Ordinance Section(s) §67.21(i), §67.24, §67.24(c)(7), §67.24(d), §67.26, and §67.34, CPRA §6253.9, and Government Code §34090

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ Yes ☐ No
Do you want a pre-hearing conference before the Complaint Committee? ☐ Yes ☒ No

Supplementary Information Regarding Sunshine Complaint 11090

Please describe alleged violation.

1. Summary

Please note the addition of **Sunshine Ordinance §67.21(i), CPRA §6253.9**, and **Government Code §34090** added to the alleged violation section above, noted in red.

An additional issue has surfaced in this Sunshine complaint concerning whether City agencies that had previously and historically provided reports in one format can simply delete the old report's underlying queries, and provide a different, modified report using a new query.

This possibly goes to an issue raised in the *George Wooding v Recreation and Parks Department* Sunshine Case #11049, regarding Government Code §34090 that stipulates that unless otherwise provided by law, only with ***approval of a legislative body by resolution*** and the *written consent the City Attorney*, heads of City departments may destroy City records after a document is no longer required, but §34090 does not authorize destruction of records less than two years old. Further, §34090.7 provides that only **duplicates** of City records less than two years old may be destroyed if no longer required.

An additional issue has surfaced in this Sunshine complaint concerning whether City agencies that had previously and historically provided reports in one format can simply delete the old report's underlying queries, and provide a different, modified report using a new query ... since Government Code §34090 ***does not authorize destruction of records less than two years old***.

- On December 10, 2011 (see Enclosure 7), I e-mailed Monique Zmuda, Deputy City Controller, and Ben Rosenfield, the City Controller, indicating that if the Controller's Office reconsidered its refusal to provide the records I had requested on October 3, 2010, that I was prepared to withdraw Sunshine complaint #11090.
- Two days later, on December 12, Ms. Zmuda responded (see Enclosure 8) by e-mail. Her response was confusing, introducing language that was difficult to follow describing "old" and "new" reports. She indicated that if I was requesting an "old report in the old format for the fiscal year ending in June 2010," that she has that report, and would provide it. It appears she may not have understood that I had requested on October 3, the "**new** report," ***but for a different fiscal year*** than the Controller's Office appears to have provided to Matier and Ross at the *Chronicle*.
  - The "old" report had previously listed duplicate City employees who may have worked in more than one job classification code, or in several "requisitions" for the same job classification code. The "old" report also did not

list the full-time equivalent (FTE) status of each employee in each job (requisition) they worked in, and the "old" report was based on calendar years.

- The "new" report that first surfaced with publication of Matier and Ross' article in the *Chronicle* is a fiscal year (not calendar year) report, which listed the FTE status of each City employee for the fiscal year ending in June 2011, and the "new" report combined each employee who worked in multiple job classification codes or multiple requisitions into a single line. On October 19, 2011 (see Enclosure 5 in my initial October 20 Sunshine Complaint), Ms. Zmuda alleged that combining the employees who worked in several jobs into a single line was a significant improvement to the report "because it allows a [records] requester to see the entire annual salary [paid to a given] employee" rather than having to add together the separate jobs for a single employee "manually."
- Notably, Zmuda appeared to say on December 12 that she could run a report using the "old" format previously provided to me on a calendar basis by apparently changing the underlying query to use a fiscal year basis (ending in June 2010), instead. This suggests that these queries are relatively easy to modify, and can be done so by Controller staff. This runs counter to her argument on October 19, that the Controller's staff has "scarce resources" to create, test, and produce reports. ***If the Controller's Office can offer to me that it can modify the "old report's query" to change reporting periods from calendar years to fiscal years, it could just as easily change the underlying query for the "new" report by changing its query from FY 10-11 to FY 09-10, as I initially requested.***

- Astoundingly, Zmuda further indicated on December 12 that the Controller's Office "no longer prepares the report in the old format," and that they "therefore, provide the 'new' report after this date." Zmuda appears to be echoing Olive Gong's testimony during the *George Wooding v Recreation and Parks Department* Sunshine Case #11049 in which Gong asserted that RPD's Record Retention and Destruction policy permitted RPD employees to independently determine when any document's "business utility" had ended, and could, therefore, be deleted under City Administrative Code Section 8.1, a bald attempt to assert departmental policies can supersede State laws such as **Government Code §34090** and **CPRA §5243.9**.

Zmuda appears to be echoing Olive Gong's testimony during the *George Wooding v Recreation and Parks Department* Sunshine Case #11049, in which Gong asserted that RPD's Record Retention and Destruction policy permitted RPD employees to independently determine when any document's "business utility" had ended, and could, therefore, be deleted under City Administrative Code Section 8.1.

- On December 15, 2011 (see Enclosure 9), Ms. Zmuda e-mailed me again indicating I had not responded to her (I'm still trying to figure out what she meant by "old" report and "new report"), and that she didn't know if I wanted the "old report" for the prior period (which I don't need, and hadn't asked for, assuming she means the old report that listed each individual who worked in multiple job requisitions and without the FTE status of each employee, since I already have that data on a calendar year basis).

2. Potential Inaccuracies in Ms. Zmuda's Responses

- On October 19 (see Enclosure 5 in initial Sunshine complaint), Ms. Zmuda indicated the "changed" salary data report was an "improvement" because it allows records requestors to see the combined total salary of a single employee may have earned working in various City positions (multiple job classifications, or multiple requisitions within a single job classification code). It is not an "improvement," but a step backward, when records requestors are not provided the raw data showing which City employees worked in ***multiple capacities*** during a single reporting period.
- Also on October 19 (Enclosure 5), Ms. Zmuda asserts that "even though raw data exists" (for my new records request), it "takes work to create, test, and produce reports." She asserted that the City Controller is not required to produce reports to meet public records requests; they are required only "to provide information that already exists."
  - The "new" report already exists, and can be easily modified to change the reporting period from the year ending in June 2011 (provided to Matier and Ross) to the year ending in June 2010, with a few short minutes of staff time. It is known that one of the City's payroll subsystems, PeopleSoft, can and does easily store modifiable, programmable queries, that can be used as a template for creating other, similar reports. It is thought another of the City's payroll subsystems, TESS, can also be programmed to hold, modify, and retain recurring reports. To this extent, given that two different underlying queries have previously been programmed and used, the data and procedures to extract this data already exists. The so-called "old" report Zmuda refers to has been provided to me, to the *San Francisco Examiner* and *San Francisco Chronicle*, and to other Sunshine advocates, including to Myrna Lim, since at least the year 2007.

– Ms. Zmuda also claimed on October 19 (Enclosure 5) that my request was "unique city-wide [sic: citywide]," asserting scarce Controller resources should provide reports that "provide the most value to the greatest number of people." My request is not unique, and has been provided to members of the public and to the news media for a number of years, albeit in the previously unchanged format. The data I requested is certainly "useful" to the larger public, and does not provide an inordinate time commitment on City Controller staff.

The "old" format of the data — displaying each name of City employees who worked in more than one job classification code or in more then one requisition for the same job classification code — is likely useful information for both the Board of Supervisors, City managers, and members of the public, and provides greater access to records to the greatest number of people, contrary to Ms. Zmuda's assertion to the contrary.

- October 6 (Enclosure 2), Ms. Zmuda asserted the Controller's Office would not be preparing any "specialized reports" on City employee salaries. Then on December 12, Zmuda said (Enclosure 8) that not only would the Controller "no longer prepare the report in the old format," but that it would "provide only the new report after this date (presumably beginning on December 12)." Yet, Zmuda offered to provide me with the "old report" in the "old format," but altering the report from a calendar year to a fiscal year basis, which she suggested was do-able. ***If the Controller's Office is capable of modifying the "old" report's underlying query from a calendar year to a fiscal year basis, it can just as easily change the underlying query for the "new" report from FY 10-11 to FY 09-10, as I initially requested. To claim it can change one of the queries to generate a revised report, but is not able to change the other query, is pure hubris.***

I have years of experience myself writing relational database multi-table lookup queries in Microsoft Access, and I know editing an existing query to change reporting periods is neither rocket science nor time consuming. I am also advised by programmers who have worked in PeopleSoft and TESS that modifying an extant query to change reporting periods typically takes less than five minutes. To the extent **CPRA §6253.9 requires public agencies to make reasonable efforts to extract data stored in databases, my records request would involve minimal time on the Controller's staff.**

Zmuda offered to provide me with the "old report" in the "old format," but altering the report from a calendar year to a fiscal year basis, which she suggested was do-able. ***If the Controller's Office is capable of modifying the "old" report's underlying query from a calendar year to a fiscal year basis, it can just as easily change the underlying query for the "new" report from FY 10-11 to FY 09-10, as I initially requested. To claim it can change one of the queries to generate a revised report, but is not able to change the other query, is pure hubris.***

3. Remedy Sought

As I requested in my October 20 initial complaint, I ask that the Controller's Office be ordered to produce the records I first requested three months ago, on October 3. In addition, I ask that SOTF instruct the Controller's Office that it must preserve both the "old" query and the "new" query for submission of future records requests. After all, both those queries were created at taxpayer expense, and should be preserved as the basis for modifying future records requests.

Sincerely,

[Signed]

Patrick Monette-Shaw

Enclosures (as stated)

Enclosure 7[1]: Monette-Shaw December 10, 2011 E-mail to City Controller

From: pmonette-shaw@earthlink.net
To: Monique.Zmuda@sfgov.orgf
cc: Ben.Rosenfield@sfgov.org
Date: 12/10/2011 01:08 PM
Subject: Re: Sunshine Complaint Received: 11090_Patrick Monette-Shaw v Controller's Office

Dear Ms. Zmuda,

Should you decide to reconsider your refusal to provide the requested records, and actually produce them in short order, I am prepared to withdraw this Sunshine complaint.

Please advise.

Patrick Monette-Shaw

[1] I have continued numbering of enclosures from the initial October 20, 2011 complaint by incrementing the enclosure numbers to prevent confusion in referring to enclosures across documents submitted to SOTF.

Enclosure 8: City Controller's December 12, 2011 Response to Monette-Shaw

Subject: Re: Sunshine Complaint Received: 11090_Patrick Monette-Shaw v Controller's Office
From: Monique.Zmuda@sfgov.orgf
Date: 12/12/2011 11:36 AM
To: pmonette-shaw@earthlink.net
cc: Debbie.Toy@sfgov.org

Patrick,

If you are requesting the old report in the old format for fiscal year ending June 30 2010, I have that report and can provide it. However, we no longer prepare the report in the old format, and therefore we provide the new report after this date. Do you want the old report in the old format?

MZ

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

Enclosure 9: City Controller's December 15, 2011 Response to Monette-Shaw

Subject: Re: Sunshine Complaint Received: 11090_Patrick Monette-Shaw v Controller's Office
From: Monique.Zmuda@sfgov.orgf
Date: 12/15/2011 5:15 PM
To: pmonette-shaw@earthlink.net

You have not responded to my last email so I still don't know if you would like the old report for the prior period that is available.

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

Subject: Re: Supplementary Information to Sunshine Complaint 11090, Patrick Monette-Shaw v Controller's OPffice
From: pmonette-shaw
To: sotf, Hope Johnson, "Bruce Wolfe, MSW", Bruce Wolfe
Date: 12/20/2011 04:11 PM

Yes, I am supplementing my complaint with both the material I sent you yesterday, and material I am about to send you this afternoon. The addition of other CPRA citations in yesterday's supplementary submission should not be construed as an "amendment" that justifies postponing my case.

Therefore, I see no reason why this case has to be postponed until January 24.

On December 8, you e-mailed me assigning case # 11090, and scheduling the hearing for January 3. You specifically wrote:

"Any support documents to be considered by Task Force members, prior to the hearing, must be submitted by 4:00 P.M. Tuesday, December 27, 2011."

So the supplementary document I sent you yesterday and the material I'm about to send you should be considered "supporting documents" submitted by the December 27 deadline for the January 3 hearing.

Thanks.

Patrick Monette-Shaw

sotf@sfgov.org wrote:

> Mr. Patrick Monette-Shaw,
>
> Do you wish to amend your complaint. If you do, you will have to wait
> untill January 24, 2011, for your complaint to be heard.
>
> Chris Rustom
> Sunshine Ordinance Task Force
> City Hall, Rm. 244, San Francisco, CA 94102
> sotf@sfgov.org, (415) 554-7724, fax: (415) 554-7854

From: pmonette-shaw <Pmonette-shaw@earthlink.net>
To: sotf@sfgov.org
Date: 12/19/2011 05:06 PM
Subject: Supplementary Information to Sunshine Complaint 11090, Patrick Monette-Shaw v Controller's OPffice

Dear Mr. Rustom,

Please find enclosed Supplementary Information to Sunshine Complaint 11090. Please distribute to Task Force members prior to the January 3, 2012 SOTF hearing on this complaint.

Thanks.

Patrick Monette-Shaw

(See attached file: att1ks4d.pdf)

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller

Monique Zmuda
Deputy Controller

December 16, 2011

Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Dear Mr. Rustom,

Re: Complaint 110-90

This letter is to respond to the complaint made to the Sunshine Ordinance Task Force by Mr. Patrick Monette-Shaw regarding the Controller's Employee Payroll Report.

The Controller's Office provided the Employee Payroll Report to Mr. Monette-Shaw as originally requested for fiscal year ending June 30, 2011. He subsequently asked for the report in the same format for FY 2010. For the FY 10-11 report, the Controller made an improvement to the file to combine salary earned by each employee who worked in multiple jobs during the annual period. The older file separated salary information for employees who worked in each job class during the year. The new file is based on a query design that includes only one record per employee based on the job class listed on their requisition. This newer report summarizes pay for all job classes that the employee worked in that time period. See the attached sample.

I offered to provide to Mr. Monette-Shaw the older report in its original format, which is available. He has not yet responded whether he wishes to receive this report. I also advised Mr. Monette-Shaw that the Controller's Office runs these reports on a regular basis but we do not have the report in the original format going forward.

I have enclosed a copy of each of the two reports for your information. Thank you.

Sincerely,

Monique Zmuda
Deputy Controller

CITY AND COUNTY OF SAN FRANCISCO
CONTROLLER'S PAYROLL PUBLIC INFORMATION
FISCAL YEAR 2008-2009
DATA SET OF DEPARTMENT OF PUBLIC HEALTH SALARIES

OLD FORMAT SHOWING 2 RECORDS FOR AN EMPLOYEE

DEPARTMENT NAME	DEPT	LAST-NAME	FIRST-NAME	M-INIT	JOB-CLASS	JOB CLASS DESCRIPTION	08-09 REG PAY	08-09-OVERTIME	08-09 OTHER PAY	08-09-TOTAL PAY
DPH-COMM HEALTH NETWORK	81	BOUVIER	DENIS	P	2230	PHYSICIAN SPECIALIST	$91,138.23	$0.00	$0.00	$91,138.23
DPH-COMM HEALTH NETWORK	81	BOUVIER	DENIS	P	2232	SENIOR PHYSICIAN SPECIALIST	$137,853.72	$0.00	$0.00	$137,853.72
DPH-COMM HEALTH NETWORK	81	BOWER	MEGAN		P103	SPECIAL NURSE	$7,906.86	$0.00	$18.79	$7,925.65
DPH-COMM HEALTH NETWORK	81	BOWMAN	ANITA	E	2302	NURSING ASSISTANT	$60,274.21	$17,521.54	$5,695.72	$83,491.47
DPH-COMM HEALTH NETWORK	81	BOWMAN	SARAH	L	2277	POST M.D. III	$10,571.52	$0.00	$0.00	$10,571.52
DPH-COMM HEALTH NETWORK	81	BOWSER	LORRAINE		2606	SENIOR FOOD SERVICE WORKER	$6,549.07	$0.00	$39.62	$6,588.69
DPH-COMM HEALTH NETWORK	81	BOYLE	KAREN	A	P103	SPECIAL NURSE	$7,506.87	$0.00	$73.12	$7,579.99
DPH-COMM HEALTH NETWORK	81	BOYLE	KAREN	A	2320	REGISTERED NURSE	$67,483.88	$1,640.17	$2,689.10	$71,813.15
DPH-COMM HEALTH NETWORK	81	BOYLE	WILLIAM		2232	SENIOR PHYSICIAN SPECIALIST	$17,011.60	$0.00	$1,701.16	$18,712.76
DPH-COMM HEALTH NETWORK	81	BRACE	BIBI	F	2302	NURSING ASSISTANT	$4,154.13	$489.54	$1,325.59	$5,969.26
DPH-COMM HEALTH NETWORK	81	BRACEROS	REMILDA	M	P103	SPECIAL NURSE	$63,273.63	$0.00	$2,697.59	$65,971.22
DPH-COMM HEALTH NETWORK	81	BRACEROS	REMILDA	M	2320	REGISTERED NURSE	$93,866.18	$8,274.18	$5,238.48	$107,378.84
DPH-COMM HEALTH NETWORK	81	BRADEN	SEAN	P	P103	SPECIAL NURSE	$40,156.20	$4,260.59	$4,227.53	$48,644.32
DPH-COMM HEALTH NETWORK	81	BRADFORD	CATHARINE	H	2273	POST M.D. I	$21,791.71	$0.00	$0.00	$21,791.71
DPH-COMM HEALTH NETWORK	81	BRADFORD	PRESTON	L	2585	HEALTH WORKER I	$41,918.89	$2,689.78	$500.75	$45,109.42
DPH-COMM HEALTH NETWORK	81	BRADLEY	RYAN		2279	POST M.D. IV	$4,398.84	$0.00	$0.00	$4,398.84
DPH-COMM HEALTH NETWORK	81	BRADLEY-MOORI	MARIA		2275	POST M.D. II	$13,160.58	$0.00	$0.00	$13,160.58
DPH-COMM HEALTH NETWORK	81	BRAGG	STEVEN		1842	MANAGEMENT ASSISTANT	$25,483.85	$0.00	$0.00	$25,4[illegible]
DPH-COMM HEALTH NETWORK	81	BRAHMAN	ALEXANDER		2586	HEALTH WORKER II	$52,739.05	$0.00	$2,144.01	$54,8[illegible]
DPH-COMM HEALTH NETWORK	81	BRANDMAN	DANIELLE		2279	POST M.D. IV	$16,275.71	$0.00	$0.00	$16,275.71
DPH-COMM HEALTH NETWORK	81	BRANDT	BRIAN	M	2604	FOOD SERVICE WORKER	$2,800.66	$0.00	$167.25	$2,967.91
DPH-COMM HEALTH NETWORK	81	BRANDT	DAVID	R	2556	PHYSICAL THERAPIST	$80,589.94	$0.00	$100.00	$80,689.94
DPH-COMM HEALTH NETWORK	81	BRANDT	MARILYN	E	2548	OCCUPATIONAL THERAPIST	$101,665.38	$0.00	$3,021.95	$104,687.33
DPH-COMM HEALTH NETWORK	81	BRANT	DENISE	R	2430	MEDICAL EVALUATIONS ASSISTANT	$23,825.21	$0.00	$72.00	$23,897.21
DPH-COMM HEALTH NETWORK	81	BRAUCHY	ELENA	A	2320	REGISTERED NURSE	$57,305.70	$1,356.00	$5,528.87	$64,190.57
DPH-COMM HEALTH NETWORK	81	BRAXTON JR	KENNETH	E	2305	PSYCHIATRIC TECHNICIAN	$40,565.25	$410.85	$3,109.20	$44,085.30
DPH-COMM HEALTH NETWORK	81	BRAY	JEANINE	D	2587	HEALTH WORKER III	$56,631.11	$0.00	$1,016.06	$57,647.17
DPH-COMM HEALTH NETWORK	81	BRAYTON	KIMBERLY	M	2275	POST M.D. II	$12,280.36	$0.00	$0.00	$12,280.36
DPH-COMM HEALTH NETWORK	81	BREIZ	AUDREY		2302	NURSING ASSISTANT	$10,683.10	$39.08	$928.55	$11,650.73
DPH-COMM HEALTH NETWORK	81	BRENNAN	ANN	M	2328	NURSE PRACTITIONER	$3,693.22	$0.00	$1,760.55	$5,453.77
DPH-COMM HEALTH NETWORK	81	BRENNAN	ANN	M	2322	NURSE MANAGER	$131,472.44	$1,917.90	$47,825.86	$181,216.20
DPH-COMM HEALTH NETWORK	81	BRENNAN	NORA		2323	CLINICAL NURSE SPECIALIST	$116,052.91	$351.36	$2,588.20	$118,992.47
DPH-COMM HEALTH NETWORK	81	BRENNER	STACY	R	2273	POST M.D. I	$17,193.46	$0.00	$0.00	$17,193.46
DPH-COMM HEALTH NETWORK	81	BRESS	JOSHUA	N	2275	POST M.D. II	$12,338.04	$0.00	$0.00	$12,338.04
DPH-COMM HEALTH NETWORK	81	BREYER	BENJAMIN		2283	POST M.D. VI	$20,163.53	$0.00	$0.00	$20,163.53
DPH-COMM HEALTH NETWORK	81	BRIGHAM	FREDERICK	A	2736	PORTER	$42,055.00	$2,547.53	$2,218.22	$46,820.75
DPH-COMM HEALTH NETWORK	81	BRIGHAM	MISCHA	D	9924	PUBLIC SERVICE AIDE-HEALTH SERVICES	$15,139.74	$0.00	$0.00	$15,139.74
DPH-COMM HEALTH NETWORK	81	BRIM	SUSAN		2273	POST M.D. I	$20,792.09	$0.00	$0.00	$20,792.09
DPH-COMM HEALTH NETWORK	81	BRINAS	EDWINA	V	P103	SPECIAL NURSE	$51,505.35	$0.00	$2,795.80	$54,301.15
DPH-COMM HEALTH NETWORK	81	BRINAS	EDWINA	V	2320	REGISTERED NURSE	$100,968.92	$6,192.47	$8,216.52	$115,377.91
DPH-COMM HEALTH NETWORK	81	BRIOSOS	DARNEL	S	2390	CENTRAL PROCESSING AND DISTRIBUTION TECHNICIAN	$62,966.82	$3,603.94	$4,581.31	$71,152.07
DPH-COMM HEALTH NETWORK	81	BRISCOE	HEATHER	L	2275	POST M.D. II	$10,281.70	$0.00	$180.00	$10,461.70
DPH-COMM HEALTH NETWORK	81	BRISTER	GWEN	D	2736	PORTER	$48,528.00	$1,692.60	$624.00	$50,844.60
DPH-COMM HEALTH NETWORK	81	BRIZZOLARA	MEGAN		P103	SPECIAL NURSE	$11,841.90	$0.00	$1,260.13	$13,102.03
DPH-COMM HEALTH NETWORK	81	BRIZZOLARA	MEGAN		2320	REGISTERED NURSE	$53,776.09	$4,701.06	$8,264.19	$66,741.34
DPH-COMM HEALTH NETWORK	81	BRODY	DAVID	A	2273	POST M.D. I	$27,389.58	$0.00	$0.00	$27,38[illegible]
DPH-COMM HEALTH NETWORK	81	BROGONIA	CONCEPCION	C	2618	FOOD SERVICE SUPERVISOR	$54,439.42	$1,051.66	$1,419.27	$56,9[illegible]
DPH-COMM HEALTH NETWORK	81	BROOKS	JOHNNIE	M	1464	MEDICAL CLERK STENOGRAPHER	$13,519.90	$0.00	$0.00	$13,51[illegible]
DPH-COMM HEALTH NETWORK	81	BROOKS	VICTORIA	A	1404	CLERK	$46,433.00	$536.71	$624.00	$47,593.71
DPH-COMM HEALTH NETWORK	81	BROSAS	MILAGROS	M	2320	REGISTERED NURSE	$109,394.00	$0.00	$250.00	$109,644.00
DPH-COMM HEALTH NETWORK	81	BROSNAN	JOAN	T	2320	REGISTERED NURSE	$109,233.05	$81.94	$3,440.73	$112,755.72
DPH-COMM HEALTH NETWORK	81	BROWN	CYNTHIA	M	P103	SPECIAL NURSE	$3,185.28	$0.00	$0.00	$3,185.28
DPH-COMM HEALTH NETWORK	81	BROWN	CYNTHIA	M	2320	REGISTERED NURSE	$87,128.60	$1,890.90	$538.55	$89,558.05
DPH-COMM HEALTH NETWORK	81	BROWN	DEBBIE	L	2303	MENTAL HEALTH REHABILITATION WORKER	$42,344.74	$15,763.54	$4,143.23	$62,251.51
DPH-COMM HEALTH NETWORK	81	BROWN	DEBORAH		2230	PHYSICIAN SPECIALIST	$138,405.50	$0.00	$3,683.49	$142,088.99
DPH-COMM HEALTH NETWORK	81	BROWN	DENISE	A	2314	PUBLIC HEALTH TEAM LEADER	$47,454.27	$3,811.50	$3,116.76	$54,382.53
DPH-COMM HEALTH NETWORK	81	BROWN	DORIS	J	2312	LICENSED VOCATIONAL NURSE	$64,849.01	$8,371.64	$720.21	$73,940.86
DPH-COMM HEALTH NETWORK	81	BROWN	ELIZABETH		2273	POST M.D. I	$21,591.79	$0.00	$120.00	$21,711.79
DPH-COMM HEALTH NETWORK	81	BROWN	IAN		2275	POST M.D. II	$14,570.06	$0.00	$0.00	$14,570.06
TOTALS							**$2,668,568.85**	**$89,196.48**	**$138,666.36**	**$2,896,431.69**

CITY AND COUNTY OF SAN FRANCISCO
CONTROLLER'S PAYROLL PUBLIC INFORMATION
FISCAL YEAR 2010-2011
DATA SET OF DEPARTMENT OF PUBLIC HEALTH SALARIES

NEW FORMAT SHOWING 1 RECORD FOR AN EMPLOYEE

Dept	Dept Title	Last Name	First Name	MI	Job Class	Job Class Title	FY10-11 Regular Pay	FY10-11 Overtime Pay	FY10-11 Other Pay	FY10-11 Total Pay
DPH	PUBLIC HEALTH	BOUVIER	DENIS	P	2232	Senior Physician Specialist	$ 329,867	$ -	$ 2,465	$ 332,332
DPH	PUBLIC HEALTH	BOWDEN	DARLENE	C	1822	Administrative Analyst	$ 67,994	$ -	$ -	$ 67,994
DPH	PUBLIC HEALTH	BOWE	CORRIE	L	2903	Eligibility Worker	$ 35,033	$ 90	$ 4,853	$ 39,975
DPH	PUBLIC HEALTH	BOWMAN	ANITA	E	2303	Patient Care Assistant	$ 58,170	$ 16,907	$ 7,752	$ 82,829
DPH	PUBLIC HEALTH	BOX	CANDY		2806	Disease Control Investigator	$ 65,955	$ -	$ -	$ 65,955
DPH	PUBLIC HEALTH	BOYLE	KAREN	A	2320	Registered Nurse	$ 105,879	$ -	$ 6,228	$ 112,107
DPH	PUBLIC HEALTH	BRACEROS	REMILDA	M	2320	Registered Nurse	$ 134,744	$ -	$ 14,251	$ 148,995
DPH	PUBLIC HEALTH	BRADEN	SEAN	P	P103	Special Nurse	$ 11,621	$ -	$ 2,006	$ 13,627
DPH	PUBLIC HEALTH	BRADFORD	PRESTON	L	2585	Health Worker I	$ 45,207	$ 4,003	$ 2,093	$ 51,303
DPH	PUBLIC HEALTH	BRADFORD	JANE		2322	Nurse Manager	$ 166,701	$ -	$ -	$ 166,701
DPH	PUBLIC HEALTH	BRADLEY	JOHN	D	7342	Locksmith	$ 77,837	$ 8,147	$ 4,279	$ 90,263
DPH	PUBLIC HEALTH	BRAGG	STEVEN		1842	Management Assistant	$ 30,513	$ -	$ -	$ 30,513
DPH	PUBLIC HEALTH	BRAHMAN	ALEXANDER		2586	Health Worker II	$ 27,072	$ -	$ 1,209	$ 28,281
DPH	PUBLIC HEALTH	BRAININ-RODRIGUEZ	LAURA		2846	Nutritionist	$ 84,407	$ -	$ 1,120	$ 85,527
DPH	PUBLIC HEALTH	BRANDON	KELLY	M	2320	Registered Nurse	$ 80,314	$ -	$ 12,073	$ 92,387
DPH	PUBLIC HEALTH	BRANDT	BRIAN	M	2604	Food Service Worker	$ 14,615	$ 4,864	$ 1,899	$ 21,377
DPH	PUBLIC HEALTH	BRANDT	DAVID	R	2556	Physical Therapist	$ 81,689	$ -	$ 100	$ 81,789
DPH	PUBLIC HEALTH	BRANDT	MARILYN	E	2548	Occupational Therapist	$ 82,652	$ -	$ 894	$ 83,546
DPH	PUBLIC HEALTH	BRANT	DENISE	R	2430	Medical Evaluations Assistant	$ 23,880	$ -	$ 7	$ 23,887
DPH	PUBLIC HEALTH	BRANZUELA	ANNA		2806	Disease Control Investigator	$ 65,955	$ -	$ -	$ 65,955
DPH	PUBLIC HEALTH	BRAXTON JR	KENNETH	E	2305	Psychiatric Technician	$ 2,621	$ -	$ -	$ 2,621
DPH	PUBLIC HEALTH	BRAY	JEANINE	D	2587	Health Worker III	$ 31,046	$ -	$ 520	$ 31,567
DPH	PUBLIC HEALTH	BRAZIS	CHRISTINE	A	2305	Psychiatric Technician	$ 41,615	$ -	$ -	$ 41,615
DPH	PUBLIC HEALTH	BREEDY	STEFANIE	L	2930	Psychiatric Social Worker	$ 78,001	$ -	$ -	$ 78,001
DPH	PUBLIC HEALTH	BREHMER	JAMES	E	1054	IS Business Analyst-Principal	$ 116,458	$ -	$ 6,336	$ 122,794
DPH	PUBLIC HEALTH	BREIZ	AUDREY		2303	Patient Care Assistant	$ 2,003	$ -	$ 56	$ 2,059
DPH	PUBLIC HEALTH	BRENNAN	ALICIA	M	2931	Marriage, Family And Child Counselor	$ 261	$ -	$ -	$ 261
DPH	PUBLIC HEALTH	BRENNAN	NORA		2323	Clinical Nurse Specialist	$ 136,822	$ 500	$ 250	$ 137,573
DPH	PUBLIC HEALTH	BREWSTER	TOCHIA		2586	Health Worker II	$ 51,500	$ -	$ 12	$ 51,512
DPH	PUBLIC HEALTH	BRIDGES	ANGELA	K	P103	Special Nurse	$ 18,537	$ -	$ 1,104	$ 19,640
DPH	PUBLIC HEALTH	BRIGGS	VITALINE	R	2930	Psychiatric Social Worker	$ 6,039	$ -	$ 247	$ 6,286
DPH	PUBLIC HEALTH	BRIGHAM	FREDERICK	A	2736	Porter	$ 45,445	$ -	$ 3,902	$ 49,346
DPH	PUBLIC HEALTH	BRIGHAM	TANGERINE	M	955	Deputy Director V	$ 186,615	$ -	$ 3,994	$ 190,608
DPH	PUBLIC HEALTH	BRINAS	EDWINA	V	2320	Registered Nurse	$ 138,759	$ -	$ 14,537	$ 153,296
DPH	PUBLIC HEALTH	BRIOSO	LEILA	C	1654	Accountant III	$ 88,018	$ -	$ -	$ 88,018
DPH	PUBLIC HEALTH	BRIOSOS	DARNEL	S	2390	Central Processing And Distribution Tech	$ 61,274	$ 6,636	$ 5,665	$ 73,575
DPH	PUBLIC HEALTH	BRISTER	GWEN	D	2736	Porter	$ 47,219	$ -	$ 2,836	$ 50,055
DPH	PUBLIC HEALTH	BRIZZOLARA	MEGAN		2320	Registered Nurse	$ 65,149	$ -	$ 12,568	$ 77,717
DPH	PUBLIC HEALTH	BROBERG	LILY	A	P103	Special Nurse	$ 56,769	$ -	$ 2,440	$ 59,210
DPH	PUBLIC HEALTH	BROCHER	MARK	O	9924	Public Service Aide - Health Services	$ 7,405	$ -	$ -	$ 7,405
DPH	PUBLIC HEALTH	BRODIT	MARIA LUZ	B	P103	Special Nurse	$ 170,497	$ 166	$ 13,420	$ 184,083
DPH	PUBLIC HEALTH	BROOKS	VICTORIA	A	1404	Clerk	$ 42,358	$ 65	$ 586	$ 43,010
DPH	PUBLIC HEALTH	BROOKS LICHTER	MEGAN	V	2320	Registered Nurse	$ 99,457	$ -	$ 18,930	$ 118,388
DPH	PUBLIC HEALTH	BROSAS	MILAGROS	M	2320	Registered Nurse	$ 119,583	$ -	$ 334	$ 119,917
DPH	PUBLIC HEALTH	BROSNAN	JOAN	T	2320	Registered Nurse	$ 116,143	$ -	$ 2,481	$ 118,624
DPH	PUBLIC HEALTH	BROWN	RUSSELL	A	P103	Special Nurse	$ 76,643	$ 8,321	$ 4,956	$ 89,920
DPH	PUBLIC HEALTH	BROWN	MEGHAN	N	P103	Special Nurse	$ 42,869	$ -	$ 1,208	$ 44,077
DPH	PUBLIC HEALTH	BROWN	BETHANY	E	2930	Psychiatric Social Worker	$ 76,925	$ -	$ 317	$ 77,242
DPH	PUBLIC HEALTH	BROWN	JESSICA	M	2920	Medical Social Worker	$ 67,666	$ -	$ 250	$ 67,916
DPH	PUBLIC HEALTH	BROWN	TWILA	M	2324	Nursing Supervisor	$ 86,915	$ -	$ -	$ 86,915
DPH	PUBLIC HEALTH	BROWN	CYNTHIA	M	2320	Registered Nurse	$ 94,164	$ -	$ 45	$ 94,209
DPH	PUBLIC HEALTH	BROWN	DENISE	A	2314	Public Health Team Leader	$ 66,372	$ 2,805	$ 9,006	$ 78,182
DPH	PUBLIC HEALTH	BROWN	DORIS	J	2312	Licensed Vocational Nurse	$ 63,362	$ 2,453	$ 3,592	$ 69,407
DPH	PUBLIC HEALTH	BROWN	LORRAINE		2310	Surgical Procedures Technician	$ 53,980	$ 2,234	$ 3,401	$ 59,614
DPH	PUBLIC HEALTH	BROWN	MAMIE	L	2303	Patient Care Assistant	$ 50,499	$ 46	$ 6,579	$ 57,124
DPH	PUBLIC HEALTH	BROWN	DEBBIE	L	2303	Patient Care Assistant	$ 24,311	$ 1,886	$ 3,662	$ 29,860
DPH	PUBLIC HEALTH	BROWN	DEBORAH		2230	Physician Specialist	$ 140,735	$ -	$ 10,444	$ 151,179
DPH	PUBLIC HEALTH	BROWN	PATRICIA	A	1708	Senior Telephone Operator	$ 48,452	$ 2,103	$ 4,974	$ 55,529
DPH	PUBLIC HEALTH	BROWN	TONY	L	1022	IS Administrator II	$ 78,772	$ -	$ 5,915	$ 84,687
Totals							**$ 4,291,363**	**$ 61,227**	**$ 205,794**	**$ 4,558,384**

Patrick Monette-Shaw
975 Sutter Street, Apt. 6
San Francisco, CA 94109
Phone: (415) 292-6969 • e-mail: pmonette-shaw@eartlink.net

October 20, 2011

Chris Rustom
Task Force Administrator
Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Complaint Regarding Failure to Provide FY 09-10 Payroll Data

Dear Mr. Rustom,

Complaint against which Department or Commission: • City Controller's Office

Name of individual(s) **responsible** at Department or Commission • Monique Zmuda, Deputy City Controller's

Alleged Violation: ☒ Public Records Access ☐ Public Meeting
Sunshine Ordinance Section(s) §67.24, §67.24(c)(7), §67.24(d), 67.26, and 67.34

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ Yes ☐ No
Do you want a pre-hearing conference before the Complaint Committee? ☐ Yes ☒ No

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Please describe alleged violation.

1. Summary

I initially requested FY 10-11 City payroll data from Ms. Zmuda, which she supplied (documents not enclosed). I subsequently amended my request to obtain the same data set for FY 09-10, which Ms. Zmuda has emphatically and repeatedly refused to provide.

To date, Zmuda has refused to provide the requested data, and she's done so without providing any legal citations that permit her to justify withholding of requested data.

Here's the chronology:

- On October 3, 2001, I requested that Ms. Zmuda provide me a file containing fiscal year data of employee salaries that the City had apparently already provided to *San Francisco Chronicle* reporters Matier and Ross [e-mail request not enclosed] for fiscal year ending June 2011.
- On October 4, Ms. Zmuda replied within 24 hours, providing the requested file in MS Excel format. She noted in her e-mail response: "As requested, the fiscal year employee payroll file [is enclosed.]"
- On October 5, I responded to Ms. Zmuda, **amending** my records request, asking for the same data set for year ending June 2010 that had been provided to Matier and Ross for fiscal year ending June 2011 (see Enclosure 1).
- On October 6, Zmuda responded, saying "This is the [same] format and prepared report that we provide on payroll information to all requestors. The report for FY 10 [previously provided to you] was in the same format. We will not be preparing any specialized report on salaries of City Employees" (see Enclosure 2).

  She may not be telling the truth. In years past, the results of a completely different database "query" have been provided to me under separate reporting parameters. There is no "specialized" report, other than an ***alternate*** report Zmuda has previously reported to the press, but not to me. Given on-going public interest in this data, it should be a "stored" or "canned" report easily accessible, without requiring City employees to re-create the parameters to generate the report. It is unlikely that editing a stored report to change reporting periods (reporting years) would take a competent database programmer more than 15 minutes to produce, or edit.

Data for ***calendar year*** ending in December 2010 showed that there were 36,644 names on the list City of employees. The data Zmuda provided to both Matier and Ross, and subsequently to me, showed there were only 34,756 employees for the ***fiscal year*** ending in June 2011. This means that there are either approximately 2,000 fewer employees, or that there were almost 2,000 employees who were collecting City salaries under two separate job classification codes, or a combination of both.

- On October 6, I responded to Ms. Zmuda (see Enclosure 3), asking if she was kidding me. I noted that the format of the data provided to Matier and Ross was not the format I was provided data in 2010 (or earlier), or I wouldn't have placed a new records request. I indicated to her that I had been getting ***calendar year*** data from the Controller's Office in the past, and was now requesting ***fiscal year*** data. I noted I was not asking for a new specialized report on salaries of City employees, I was simply asking that the parameters of the documents provided to Matier and Ross be changed to a different fiscal year, which I had not received.
- On October 8, I circled back with Ms. Zmuda (see Enclosure 4), trying to be more diplomatic. I noted that the data provided to Matier and Ross differed in three ways from data previously provided to me:

  1) That the data provided to Matier and Ross contained 12 fields, rather than the 11 fields of information previously provided to me. Importantly, the new, 12th field reports the "Full Time Equivalent" (FTE) status of each employee, which I have not previously received for earlier reporting periods.

  2) The data provided to Matier and Ross aggregated under single entries those employees who worked in two different job classification codes, reporting their total salaries in a single entry.

  3) The data provided to Matier and Ross involved a ***fiscal year*** ending in June, but I have previously requested, and have received, payroll data for ***calendar years*** ending in December.
- Eleven days later, at **3:07 p.m.** on October 19, Ms. Zmuda responded (see Enclosure 5), indicating "we are not required to produce reports to meet public disclosure requests. We are required to provide information that already exists." Zmuda further claimed my request was "unique," city-wide [sic]. She further claimed the Controller's "scarce" resources should provide the "most value to the greatest number of people."

  Zmuda's response did not provide a valid exemption under CPRA, and indeed, Ms. Zmuda offered no exemption to back her refusal to provide the requested data. To my knowledge, there is nothing in either CPRA or San Francisco's Sunshine Ordinance that permits withholding of records based on the "most value to the greatest number of people."

- Also on October 19, Ms. Zmuda responded again at **3:22 p.m.** (see Enclosure 6), providing aggregate data for two Laguna Honda Hospital employees — Dr. Denis Bouvier and Madonna Valencia, RN — which I had not requested from Zmuda, and which I had already figured out from calendar year data previously provided.

  Although Zmuda acknowledged in her first e-mail on October 19 that aggregating data for employees who are working in more than one job classification code is important, she provided data for just two employees, leaving unanswered data about the other 1,998 potential employees working in more the one job code. And still unanswered, is the FTE (Full-Time Equivalent) status of each and every of the City's 30,000-plus employees, which Zmuda has refused to provide for the ***fiscal year*** ending in June 2010.

It is inconceivable that the Mayor and the Board of Supervisors are not already receiving the same information that I have requested, even if in a different format. This information must already exist.

In addition, I believe CPRA requires that data stored in a database is **not** information that has not been previously produced in a report; instead, I believe the applicable law is that public agencies that have information stored in a database must make reasonable efforts to provide the requested data.

2. Remedy Sought

Should the Sunshine Ordinance Task Force find that this complaint has merit, I specifically request that the Task Force order the Office of the Controller — and Ms. Zmuda specifically — to immediately produce the requested records.

Sincerely,

[Signed]

Patrick Monette-Shaw

Enclosures (as stated)

Re: Sunshine Complaint Received: 11090_Patrick Monette-Shaw v Controller's Office

Monique Zmuda to: SOTF 12/16/2011 04:33 PM
Cc: monique.zmuda, Debbie Toy

Mr. Rustom

Attached is a letter explaining the Controller's procedure for developing the Employee Payroll Report, which is subject to Mr. Monetter-Shaw's complaint. I have also attached a copy of the format of the older report that is requested for the committee's information.

Please note that I have asked Mr. Monette-Shaw if he wished the older report in the format in which it exists, and he has not responded to me.

As stated in my earlier email, I will be out of town on January 3, 2012 and cannot attend the hearing. Please let me know when this item will be heard. I will continue to attempt to settle this issue with Mr. Monette-Shaw until that time.

Thank you.

SOFTemployeesalaryreport_20111216162342.PDF

Payroll Data showing 2 records and 1 record for employee.xls

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

SOTF	This e-mail is to confirm that the attached compl...	12/08/2011 11:12:19 AM

From: SOTF/SOTF/SFGOV

To:	pmonette-shaw@earthlink.net, Monique Zmuda/CON/SFGOV@SFGOV, controller@sfgov.org, Ben Rosenfield/CON/SFGOV@SFGOV
Cc:	Jerry Threet/CTYATT@CTYATT
Date:	12/08/2011 11:12 AM
Subject:	Sunshine Complaint Received: 11090_Patrick Monette-Shaw v Controller's Office

This e-mail is to confirm that the attached complaint has been received. The Department is required to submit a response to the charges to the Task Force within five business days of receipt of this notice. Please refer to complaint number #11090 when submitting any new information and/or supporting documents pertaining to this complaint.

A hearing is scheduled with the full Sunshine Ordinance Task Force to hear the merits of the complaint and issue a determination.

Date: Tuesday, January 3, 2012
Location: City Hall, Room 408
Time: 4:00 P.M.

Complainants: Your attendance is required at this hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, attendance by the custodian of records or a representative of your department, who can speak to the matter, is required at the hearing.

Any support documents to be considered by Task Force members, prior to the hearing, must be submitted by 4:00 P.M. Tuesday, December 27, 2011.

Also, attached is the Sunshine Ordinance Task Force's complaint procedures.


11090_Complaint.pdf


1_Complaint Procedures_4-28-09 _Final.pdf

Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
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Enclosure 1: Monette-Shaw October 5, 2011 Supplemental Records Request to City Controller

Subject: REVISED MMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: pmonette-shaw@earthlink.net
Reply-To: Pmonette-shaw@earthlink.net
Date: 10/5/2011 6:36 PM
To: Monique.Zmuda@sfgov.org

Thanks for this data for FY ending June 2011, Monique.

Since the format of it differs slightly from the query **than is typically run** and provided to me for the end-of-Calendar-year reports (including aggregating a given employee's total earnings into a single entry, had they worked in two different job classification codes) I have been receiving, I am placing an additional Immediate Disclosure Request.

Please provide, for Fiscal Year ending June 30, 2010, the same data, in the same layout, as the data you provided for FY ending June 30, 2011.

Thanks.

Patrick Monette-Shaw

Enclosure 2: Monique Zmuda's October 5, 2011 Response

Subject: Re: REVISED MMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: Monique.Zmuda@sfgov.org
Date: 10/6/2011 2:31 PM
To: Pmonette-shaw@earthlink.net

Patrick,

This is the format and prepared report that we provide on payroll information to all requestors. The report for FY 10 was in the same format. We will not be preparing any specialized report on salaries of City Employees.

Monique

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org
Patrick Monette-Shaw

Enclosure 3: Monette-Shaw Response to Monique Zmuda, October 6, 2011

Subject: Re: REVISED MMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: Pmonette-shaw@earthlink.net
Date: 10/6/2011 10:51 PM
To: Monique.Zmuda@sfgov.org

Dear Ms. Zmuda,

You're kidding, right?

This is not the format I was provided data in 2010, or I wouldn't have placed a new records request. I've requested getting Calendar year data from the Controller's Office in the past; now I've requested Fiscal Year data.

I have not asked for any new specialized report on salaries of City employees, I simply asked that you change the reporting parameters to a different fiscal year, which I have not received. This should be a canned report.

Your response is a canard. Must I file a Sunshine Task Force complaint for non-responsiveness, to get a responsive record?

Patrick Monette-Shaw

Enclosure 4: Monette-Shaw More Diplomatic Response to Monique Zmuda, October 8, 2011

Subject: Let Me Try Again, More Diplomatically -- Re: REVISED MMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll
From: Pmonette-shaw@earthlink.net
Date: 10/8/2011 8:06 PM
To: Monique.Zmuda@sfgov.org
cc: Debbie.Toy@sfgov.org

Dear Ms. Zmuda,

Let me try again, more diplomatically --

1. You indicated in your response, below, that the new data I requested is in the same format you provide to all requestors. This is untrue, because:

a. The City Controller's Excel payroll data files I received on February 3, 17, 2010 and February 3, 2010, for **calendar** years 2009 and 2010, respectively, contained just 11 "fields" of information:

DEPARTMENT NAME
DEPT
LAST-NAME
FIRST-NAME
M-INIT
JOB-CLASS
JOB CLASS DESCRIPTION
REG PAY
OVERTIME
OTHER PAY
TOTAL PAY

But the data you provided Matier and Ross, contained 12 fields, not 11, adding a new field titled "***FY10-11 FTE***," reporting each employee's FTE status, which has not previously been provided to me for earlier Fiscal or Calendar Years.

b. I have previously requested **calendar year** data, but what you reported to Matier and Ross is **fiscal year** data. I am only seeking a similar fiscal-year data report for 2009-2010 as your office provided to Matier and Ross for FY 10-11, which I have not previously received.

c. The new file provided to Matier and Ross appears to "aggregate" a singe employee's multiple job classification code earnings into a single line per employee. For instance, Dr. Denis Bouvier was reported in the 2009 and 2010 files provided to me by the Controller's Office as having earned wages on two separate entries: Once as a 2230 Physician Specialist, and separately as a 2232, Senior Physician Specialist. Similarly, Madonna ValnciA is listed twice, in 2009 and 2010 data first as a 2322 Nurse Manager and also as a 2324 Nursing Supervisor, reporting two separate salaries.

But in the file provided to Matier and Ross, both Dr. Bouvier and nurse Madonna Valencia are reported just once, each, at their higher job classification codes, suggesting that the data provided to Matier and Ross is a different underlying query, not previously reported to me, by aggregating a single employee's multiple jobs with the City into a single-line entry, and reporting their combined job classification codes salaries into a single entry.

2. You indicated in your response, below, you would not provide a "specialzed" report. It does not appear that the data the Controller's Office provided to Matier and Ross is specialized, other than to report the additional FTE status. As such, it is not a "specialized" report, and simply amends what should be a stored query, to include a different reporting time period that includes the FTE status of each employee, which you have provided to Matier and Ross.

Having to utilize a different reporting period should not be misconstrued as "specialized" reporting, and shouldn't place an undue burden on the Controller's well-paid, and bloated, staff to run.

Let me know whether you're going to reconsider. I'd prefer not going down this Sunshine Ordinance lane, but am prepared to.

Patrick

Enclosure 5: Monique Zmuda's First October 19, 2011 Response

Subject: Re: Final Immediate Disclosure Request: Re: Let Me Try Again, More Diplomatically -- Re: REVISED MMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: Monique.Zmuda@sfgov.org
Date: 10/19/2011 3:07 PM
To: Pmonette-shaw@earthlink.net

Patrick,

I am looking at the resources that it will take to unwind the report that we improved (yes we consider the data that has combined the pay for employees who are working several jobs as a significant improvement because it allows requester to see the entire annual salary of employees, rather than pieces that would need to be manually added together). Please keep in mind that much of the information that you request that we provide DOES take time away from employees' performing their jobs. Even though raw data exists, it takes work to create, test, and produce reports. We are not required to produce reports to meet public disclosure requests. We are required to provide information that already exists. We do our best in the Controller's Office to create financial, payroll, budget, vendor and other reports that provide useful information to the public. We have tried to be considerate, respectful and reasonable throughout the many immediate requests that we work through.

I will get back to you, but please understand that your request is unique city-wide and I need to use our scarce resources for those reports that provide the most value to the greatest number of people.

MZ

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

Enclosure 6: Monique Zmuda's Second October 19, 2011 Response

Subject: data on specific employees
From: Monique.Zmuda@sfgov.org
Date: 10/19/2011 3:22 PM
To: Pmonette-shaw@earthlink.net

Patrick,

In order to respond to your question about specific employees, here are the FY10-11 salary amounts broken out by job class for Denis Bouvier and Madonna Valencia taken from our Pay_2011 database . The total amounts tie to the original figures provided to you in the FY2010-11 All Employee Payroll file. I show the amounts by job class in a snapshot below .

FY 2010-11 Payroll Information from Pay_2011 Database

Dept	Dept Title	Last Name	First Name	MI	Job Class	Job Class Title	FY10-11 Regular Pay	FY10-11 Overtime Pay	FY
DPH	PUBLIC HEALTH	BOUVIER	DENIS	P	2230	PHYSICIAN SPECIALIST	$ 237,353	$ -	$
DPH	PUBLIC HEALTH	BOUVIER	DENIS	P	2232	SENIOR PHYSICIAN SPECIALIST	$ 92,514	$ -	$
DPH	PUBLIC HEALTH	VALENCIA	MADONNA	P	2322	NURSE MANAGER	$ 157,158	$ 7,214	$
DPH	PUBLIC HEALTH	VALENCIA	MADONNA	P	2324	NURSING SUPERVISOR	$ 20,821	$ -	$

I cannot spend any more of my time and my staff's time on this request. Thanks.

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org