

File No. 12009

SOTF Item No. 21

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: April 4, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Completed by: Andrea Ausberry Date March 27, 2012

Completed by: _____ Date _____

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



DENNIS J. HERRERA
City Attorney

MICHAEL R. KARNs
Deputy City Attorney

Direct Dial: (415) 554-3970
Email: michael.karns@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Michael Karns
Deputy City Attorney
DATE: March 29, 2012
RE: Complaint No. 12009 – Grossman v. City Attorney's Office (Marisa Moret)

COMPLAINT

Allen Grossman ("Complainant") alleges that City Attorney Dennis Herrera and CAO Deputy Press Secretary Jack Song ("Song"), in his role as Public Information Officer for the City Attorney's Office ("CAO"), violated public records laws by failing to fully respond to his Immediate Disclosure Request ("IDR") dated January 3, 2012, and directed to Marisa Moret, Managing Attorney for the Office of the City Attorney ("Moret").

COMPLAINANT FILES COMPLAINT:

On January 18, 2012, Complainant filed this complaint against Moret, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Section 67.21(b), as well as Sections 6253(b) and 6253(c) of the California Public Records Act ("CPRA").

JURISDICTION

The City Attorney's Office ("CAO") is a City department, and therefore the Task Force generally has jurisdiction to hear a public records complaint against it and its staff. The CAO does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs written justifications for withholding of records

Section 6250 et seq. of Cal. Gov't Code (PRA)

- Section 6253 governs time limits for responding to public records requests.

BACKGROUND

Complainant sent an IDR to Moret on January 3, 2012, requesting in relevant part:

1. *General Fund budgets from July 1, 2008 to and including December 31, 2010.*

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: March 29, 2012
PAGE: 2
RE: Complaint No. 12009 – Grossman v. City Attorney's Office (Marisa Moret)

2. *Any baseline amounts allocated to each of the General Fund departments, including the Sunshine Ordinance Task Force (SOTF), in a General Fund budget prior to the General Fund budget for the fiscal year ended June 30, 2009.*
3. *The budgeted hours of legal services allocated to each of the General Fund departments, including the SOTF, for the fiscal years ended June 30, 2009, 2010, and 2011, respectively.*
4. *Historic levels of service to the SOTF, which, presumably, would have been referred to or reflected in any baseline budget for hours of legal work set for the General Fund departments.*
5. *Each job classification, job descriptions, job title and position that you held during the period commencing July 1, 2008 to and including December 31, 2011.*

On January 5, 2012, Song responded to this IDR by letter. Song's response references prior repeated requests made by Complainant of CAO for "records related to the establishment of legal budgets for general fund departments," and Song makes clear in his letter that "[CAO] have no additional documents responsive to these requests." A dispute concerning the prior requests has been before the Task Force as complaint 11056. In response to Complainant's request #5, Song provided the Appointment Processing forms for Moret and communicated that she has held the same position since July 1, 2008.

Song's response is the same for three public records requests from Complainant delivered to different individuals within CAO on January 5, 2012. These three separate requests, all identical in content, were delivered to: a) Scott Minty, IS Administrator; b) Marisa Moret, Managing Attorney; and c) Susana Martinez, CFO. All three of these requests are currently before the Task Force, as complaints 12008, 12009, and 12010, respectively.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What public records or information does Complainant allege is in the custody of the CAO that should have been provided but has not been provided by the CAO?
- What was the Task Force's determination on Complaint 11056?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did Song's timely respond to the records requests at issue?
- Did the CAO fail to provide responsive public records or information within its custody?
- If so, were such records or information exempt from production?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

Jan 18 12 04:30p Sunshine Ord. Task Force
01/18/2012 16:23 4158313721

415 831-7854
SFUFC/GROSSMAN

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BY FACSIMILE

SUNSHINE ORDINANCE COMPLAINT

Date: January 18, 2012

Complainant: Allen Grossman (Complainant).

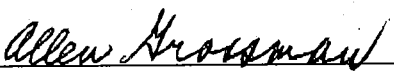
Respondents: Marisa Moret, Managing Attorney
Office of the San Francisco City Attorney.

Violations Alleged: Failure to respond to Complainant's Records Request dated January 3, 2012, in violation of Section 67.21(b) of the San Francisco Sunshine Ordinance (Sunshine Ordinance) and Sections 6253(b) and 6253(c) of the California Public Records Act.

Documents Submitted:

- (1) Copy of Email dated December 16, 2011 from Scott Minty to Marisa Moret.
- (2) Copy of Email dated December 29, 2011 from Jack Song, Public Information Officer, to Complainant.
- (3) Facsimile Cover Sheet dated January 3, 2012 re "Attached records request dated today."
- (4) Attached records request dated January 3, 2012.
- (5) Facsimile Transmission Verification.
- (6) January 5, 2012 Letter from Jack Song, Public Information Officer, to Complainant.

Complainant requests a public hearing before the Sunshine Ordinance Task Force.
No pre-hearing conference before the Complaint Committee is requested.


Allen Grossman,
111 30th Avenue
San Francisco, CA 94121
Phone: (415) 831-3720
FAX: (415) 831-3721
Email: grossman356@mac.com

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01/18/2012 16:23 4158313721

415 334-7854
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General Fund budgets
Scott Minty to: Marisa Moret

12/16/2011 05:41 PM

History: This message has been replied to and forwarded.

Marisa,

I don't believe I ever heard back from you or Susana confirming that we are reusing the General Fund budget hours from last fiscal year for this fiscal year. Is that the plan?

Please advise.

Thanks,
Scott

Jan 18 12 04:30p

Sunshine Ord. Trans. Force

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From: Jack Song <Jack.Song@sfgov.org>
Date: December 29, 2011 5:13:59 PM PST
To: grossman356@mac.com
Subject: Responsive Document to Public Record Request

Dear Mr. Allen Grossman:

This responds to your IDR received by our office on December 28, 2011, for:

1. A copy of the original dated email from Scott Minty to Marisa Moret.

We sent you a copy of the original email on December 27, 2011.

2. "Susana" is Susana Martinez, the Chief Financial Officer of the City Attorney's Office.

3. Copies of communications between Scott Minty, and Marisa Moret and Susana Martinez regarding "General Fund budgets" from July 1, 2008 to present.

We have no additional documents responsive to your request.

4. The job classifications and job descriptions for Scott Minty, Marisa Moret, and Susana Martinez.

Job classifications: Marisa Moret AB44; Susan Martinez: 0931, Scott Minty: 1024. The job descriptions are attached.

Best regards,

JACK SONG
Public Information Officer

OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

(415) 554-4653 Direct
(415) 554-4700 Reception
(415) 554-4715 Facsimile
(415) 554-6770 TTY
www.sfcityattorney.org

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Sunshine Ord. Task Force

415-554-7854

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ALLEN GROSSMAN
111 30th AVENUE
SAN FRANCISCO, CALIFORNIA 94121-1005
TELEPHONE: (415) 831-3720
FACSIMILE: (415) 831-3721
Email: grossman356@mac.com

FACSIMILE TRANSMITTAL

To: Marisa Moret, Managing Attorney
Office of the San Francisco City Attorney

FAX Number: (415) 554-4715

Phone Number: (415) 554-4653

Number of Pages: 3, including cover sheet

Date: January 3, 2012

From: Allen Grossman

Message: Attached is records request dated today. If there is any question regarding the request, please contact the requestor at (415) 831-3720.

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

Jan 18 12 04:30p

Sunshine Ord. Task Force

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Allen Grossman
111 30th Avenue
San Francisco, CA 94121-1005
Email: grossman356@mac.com
Phone: (415) 831-3720
FAX: (415) 831-3721

BY FACSIMILE

January 3, 2012

Marisa Moret, Esq.
Managing Attorney,
Office of San Francisco City Attorney
City Hall, Room 234
San Francisco, CA 94102

This is a request pursuant to Section 67.27(b) of the San Francisco Sunshine Ordinance (Sunshine Ordinance) and Section 6253(b) of the California Public Records Act (CPRA) and any other applicable provisions of the CPRA and the Sunshine Ordinance for copies of any and all public records, including, without limitation, copies of all memoranda, emails or other communications to or from you to any other employees in the Office of the City Attorney, including, without limitation, Scott Minty and Susana Martinez, in any form of media, in your custody or control or maintained by you, including those archived, in connection with, with respect or reference to or that include or show:

- (1) General Fund budgets from July 1, 2008 to and including December 31, 2010;
- (2) Any baseline amounts allocated to each of the General Fund departments, including the Sunshine Ordinance Task Force (SOTF), in a General Fund budget prior to the General Fund budget for the fiscal year ended June 30, 2009;
- (3) The budgeted hours of legal services allocated to each of the General Fund departments, including the SOTF, for the fiscal years ended June 30, 2009, 2010 and 2011, respectively;
- (4) Historic levels of service to the SOTF, which, presumably, would have been referred to or reflected in any baseline budget for hours of legal work set for the General Fund departments; and
- (5) Each job classification, job descriptions, job title and position that you held during the period commencing July 1, 2008 to and including December 31, 2011.

This Request is submitted to you as "a custodian" of a public record, as defined in Section 67.21(a) of the Sunshine Ordinance, to wit: "Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record)..." Accordingly, please respond directly to this request as the "custodian" of the public records referred to in paragraphs (1) - (5) above rather than through Mr. Jack Song, the Deputy Press Secretary, or another member of Mr. Herrera's staff.

In accordance with Section 67.25(d) of the Sunshine Ordinance, please provide the copies of any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis.

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If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address. If the records are kept in some other format, please scan the relevant page(s) to PDF format and send them by email to the above email address. This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly.

Allen Grossman
Allen Grossman

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Sunshine Ord. Team Force

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TRANSMISSION VERIFICATION REPORT

TIME : 01/03/2012 11:53
NAME : SFUFC/GROSSMAN
FAX : 4158313721
TEL : 4158313720
SER.# : G0J395977

DATE, TIME	01/03 11:52
FAX NO./NAME	5544715
DURATION	00:00:53
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

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Sunshine Ord. Task Force

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CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JACK SONG
Public Information Officer

Jan. 5, 2012

Mr. Allen Grossman
Transmitted via email to grossman356@mac.com

Mr. Grossman:

This responds to your request dated December 30, 2011, and three redundant requests dated January 3, 2012, addressed to different members of this office, for documents related to the establishment of baseline budgets for General Fund departments, and information regarding Marisa Moret, Scott Minty and Susana Martinez.

As we informed you several times regarding your continued requests for records related to the establishment of legal budgets for general fund departments, we have no additional documents responsive to these requests.

Additionally, you asked what positions in this office have been held by Marisa Moret, Scott Minty and Susana Martinez since July 1, 2008, through December 31, 2011. All have held the same positions since the July 1, 2008. The Appointment Processing forms, with redaction of confidential info, for each are attached.

In the past six months, our office has received more than 12 immediate disclosure requests from you and we believe that we have fulfilled your requests in a timely manner without compromising our services to every other San Franciscan. However, most of your 12 immediate disclosure requests were inquiring for *same or similar* information. Consequently, we have also gone above and beyond what is required by the Sunshine Ordinance and applicable public information law to provide you with the information that may be to your interest, in addition to responsive documents.

It was not until at the December 13th, 2011 Sunshine Ordinance Task Force complaint hearing where you finally revealed your intention for sending 12 immediate disclosure requests to our office - you wanted to determine on your own as to why the City Attorney's Office is unable to provide the Sunshine Ordinance Task Force with a fulltime deputy city attorney to advise and staff the Task Force. Your inquiry could have simply been answered by our office if you were upfront with your true intentions. At the same meeting, I publically welcomed you to come to our office so we can easily answer your questions relating to the City Attorney's Office's budgetary process. We would be glad to do so; that is our job. To date, you have not taken us up on our offer but instead continue to ask for the same documents previously requested.

Jan 18 12 04:30p

Sunshine Ord. Task Force

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CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

Letter to Mr. Allen Grossman

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January 5, 2012

Again, as I have stated previously at the hearing, despite of the budgetary constraints, department heads are encouraged and welcome to meet with the City Attorney's Office to discuss the most pressing legal priorities, and to identify strategies and resources for meeting those needs and possibilities for other funding sources in order to minimize service reduction. Most importantly, despite that many departments exceed their allocation of legal counsel hours from the City Attorney's Office, we continue to provide legal services for these departments as best we can given our own budget restrictions. Often we exceed the budgeted amounts as we have every year with the Sunshine Ordinance Task Force.

The City Attorney's Office takes very seriously its obligations under the Sunshine Ordinance and other public information laws. At the same time we owe a duty to the nearly 800,000 other residents of this City to fulfill all of our duties, which include responding to other requests for public records from others. You are doubtless aware that your most recent 2012 immediate disclosure requests were redundant. Out of respect for the limited resources available to this office to fulfill its public obligations to other citizens and departments, I would ask you to henceforth limit your inquiries to direct, precise, none-repetitive inquiries. This correspondence concludes your requests on matters relating to "baseline budget for General Fund Department." Should you have additional questions, I extend the offer to meet with you in person.

Jack Song
Public Information Officer

Jan 18 12 04:30p Sunshine Ord. Task Force
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RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2012 JAN 19 AM 8:26

ALLEN GROSSMAN

111 30th AVENUE

SAN FRANCISCO, CALIFORNIA 94121-1005

TELEPHONE: (415) 831-3720

FACSIMILE: (415) 831-3721

Email: grossman356@mac.com

FACSIMILE TRANSMITTAL

To: Chris Rustom, Administrator
At: Sunshine Ordinance Task Force
FAX Number: (415) 554-7854
Phone Number: (415) 554-7724
Number of Pages: 10, including cover sheet
Date: January 18, 2012
From: Allen Grossman
Message: Sunshine Ordinance Complaint against Marisa Moret, Managing Attorney, Office of San Francisco City Attorney

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PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

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