

File No. 12015

SOTF Item No. 14
CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

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



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

April 25, 2012:

WILLIAM & ROBERT CLARK VS. CONTROLLER (12015) COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant William Clark alleges that the Controller, Ben Rosenfield ("Controller"), violated section 67.21(b) of the Ordinance by failing to properly respond to his request for information pursuant to provisions of the San Francisco Sunshine Ordinance.

COMPLAINANT FILES COMPLAINT:

On March 7, 2012, Complainant filed a complaint with the Task Force alleging a violation of section 67.21(b).

JURISDICTION

The Controller is a department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Ordinance against the Controller. The Controller has not contested jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs responses to a public records request, and the format of requests and of responsive documents.
- Section 67.22 governs the release of oral public information.

Section 6250 et seq. of the Cal. Gov't Code

- Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

None.

DATE: April 25, 2012
PAGE: 2
RE: Clark vs. Controller (12015)

ISSUES TO BE DETERMINED

Uncontested/Contested Facts:

On February 18, 2012, Complainant sent Ben Rosenfield the following email:

At the Arts Commission Executive Committee meeting on January 30, 2012 the proposed Street Artist Program budget for FY 2012-13 was discussed. I received a copy of the proposed budget for FY 2012-13 on January 27, 2012.

On the spreadsheet of the proposed budget for FY 2012-13 the figures for the Street Artist Program budget for FY 2010-11 were included. In those figures were the estimated expenses which were approved by the Board of Supervisors for the FY 2010-11 budget and the actual expenses incurred by the Street Artist Program for FY 2010-11. I am including an attachment of that spreadsheet with this email.

I noticed that under the actual expenses for FY 2010-11 was a management and supervision charge of \$19,953. However, that management and supervision charge was not included and approved by the Board of Supervisors in the annual appropriation ordinance.

I also noticed that an actual expense of \$1,317 for security/ police at meetings was charged the Street Artist Program for FY 2010-11 which was not included in the Street Artist Program Budget approved by the Board of Supervisors.

In the SF Charter Article III Section 3.105(i) states that "i) All disbursements of funds in the custody of the Treasurer must be authorized by the Controller. No officer or employee shall bind the City and County to expend money unless there is a written contract or other instrument and unless the Controller shall certify that sufficient unencumbered balances are available in the proper fund to meet the payments under such contract or other obligation as these become due, or that he or she expects sufficient unencumbered balances to be available in the proper fund during the course of the budgetary cycle to meet the payments as they become due."

Also SF Administrative Code Section 10.06 ENCUMBRANCES states that "No obligation involving the expenditure of money shall be incurred or authorized by any officer, employee, board or Commission of the City and County unless the Controller first certifies that there is a valid appropriation from which the expenditure may be made, and that sufficient unencumbered funds are available in the treasury to the credit of such appropriation to pay the amount of such expenditure when it becomes due and payable."

Did you authorize the payment of that \$19,953 management and supervision charge for FY 2010-11?

DATE: April 25, 2012
PAGE: 3
RE: Clark vs. Controller (12015)

If your answer is yes then on what date did you authorize that management and supervision charge?

Did you authorize the payment of \$1,317 for security/ police at meetings for FY 2010-11?

If the answer is yes then on what date did you authorize that security/ police at meetings charge?

I also noticed that the Street Artist Program was only budgeted \$13,910 for City Attorney legal services for FY 2010-11 but the program actually spent \$20,396 for City Attorney legal services.

According to SF Administrative Code Section 10.05 ALLOTMENTS "The Controller in issuing warrants or checks or in certifying contracts or purchase orders or other encumbrances, pursuant to Section 10.06 of this Code, shall consider only the allotted portions of appropriation items to be available for encumbrance or expenditure and shall not approve the incurring of liability under any allotment in excess of the amount of such allotment.

After the allotment schedule has been established or fixed, as heretofore provided, it shall be unlawful for any department or officer to expend or cause to be expended a sum greater than the amount set forth for the particular activity in the said allotment schedule so established unless an additional allotment is made, as herein provided."

Did you authorize the Street Artist Program to spend \$6,486 more for City Attorney legal services than the \$13,910 approved by the Board of Supervisors?

If the answer is yes then on what date did you make that authorization?

I'm making this request for information pursuant to the provisions of the San Francisco Sunshine Ordinance.

Mr. Rosenfield responded on February 22, 2011 with the following email:

This email responds to your Information Request below. The Controller's Office is invoking the extension of time provided by the Sunshine Ordinance, Administrative Code Section 67.25(b). As permitted by Section 67.25(b), this Office will respond to your request within 10 business days of its receipt.

The Controller's Office is invoking the extension because your request is a "more extensive or demanding request" and is not a "simple routine or other readily answerable request" as described in Section 67.25(a). Some of the information you requested involves the need to consult with other departments, a reason for an extension under Section 67.25(b). We expect to respond to you within the 10 business day deadline and we will produce the information on a rolling basis as it is ready.

Complainant further alleges that, as of March 7, 2012, he had not received any further response from Mr. Rosenfield. The Controller has provided no response to this Complaint.

DATE: April 25, 2012
PAGE: 4
RE: Clark vs. Controller (12015)

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the Controller timely respond to the request?
- Did the Controller fully respond to the request?
- Is the Controller legally required to provide information in response to interrogatories, such as those included in Complainant's email request?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

DATE: April 25, 2012
PAGE: 5
RE: Clark vs. Controller (12015)

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.

[. . .]

(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 petitioner, 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 petitioner, the Sunshine Task Force may conduct a public hearing

DATE: April 25, 2012
PAGE: 6
RE: Clark vs. Controller (12015)

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.

SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.

Release of oral public information shall be accomplished as follows:

- (a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.
- (b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.
- (c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.
- (d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.
- (e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

DATE: April 25, 2012
PAGE: 7
RE: Clark vs. Controller (12015)

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. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.



To:
Cc:
Bcc:
Subject: Fw: 2nd complaint

Complaint Form

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco CA 94102
Tel. (415) 554-7724;
Fax (415) 554-7854
<http://sfgov.org/sunshine>

(* Required field)

Complaint against which Department or Commission * SF Controller
Name of individual contacted at Department or Commission Ben Rosenfield
Alleged Violation:
Public Records: * Yes
Public Meeting: * No
Date of meeting:
Sunshine Ordinance Section:
(If known, please cite specific provision being violated) Section 67.21(b)

Please describe alleged violation:

On February 18, 2012 I sent the Controller Mr. Rosenfield the following email:

Bill and Bob
Clark

access4less.net> Controller@sfgov.org
cc
02/18/2012 03:03 Debbie.Toy@sfgov.org,
PM Leo.Levenson@sfgov.org,
Mayoredwinlee@sfgov.org,
Rebekah.krell@sfgov.org,
Please respond to tom.decaigny@sfgov.org
Bill and Bob Subject
Clark Public information request

access4less.net>

Mr. Rosenfield,

At the Arts Commission Executive Committee meeting on January 30, 2012 the proposed Street Artist Program budget for FY 2012-13 was discussed. I received a copy of the proposed budget for FY 2012-13 on January 27, 2012.

On the spreadsheet of the proposed budget for FY 2012-13 the figures for the Street Artist Program budget for FY 2010-11 were included. In those figures were the estimated expenses which were approved by the Board of

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"No obligation involving the expenditure of money shall be incurred or authorized by any officer, employee, board or Commission of the City and County unless the Controller first certifies that there is a valid appropriation from which the expenditure may be made, and that sufficient unencumbered funds are available in the treasury to the credit of such appropriation to pay the amount of such expenditure when it becomes due and payable."

Did you authorize the payment of that \$19,953 management and supervision charge for FY 2010-11?

If your answer is yes then on what date did you authorize that management and supervision charge?

Did you authorize the payment of \$1,317 for security/ police at meetings for FY 2010-11?

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"The Controller in issuing warrants or checks or in certifying contracts or purchase orders or other encumbrances, pursuant to Section 10.06 of this

Code, shall consider only the allotted portions of appropriation items to be available for encumbrance or expenditure and shall not approve the incurring of liability under any allotment in excess of the amount of such allotment.

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Did you authorize the Street Artist Program to spend \$6,486 more for City Attorney legal services than the \$13,910 approved by the Board of Supervisors?

If the answer is yes then on what date did you make that authorization?

I'm making this request for information pursuant to the provisions of the San Francisco Sunshine Ordinance.

William J. Clark

Mr. Rosenfield responded on February 22, 2011 with the following email:

From: Controller.CON@sfgov.org [Edit Address Book]
To: Bill and Bob Clark
Cc: Controller@sfgov.org, Monique.Zmuda@sfgov.org
Subject: Public Information Request, Bill & Bob Clark, #2012-0006
Date: Feb 22, 2012 2:27 PM
Attachments: Copy of Street Artist Budget FY12-13 FY13-14.jpg

Gentlemen:

This email responds to your Information Request below. The Controller's Office is invoking the extension of time provided by the Sunshine Ordinance, Administrative Code Section 67.25(b). As permitted by Section 67.25(b)(a), this Office will respond to your request within 10 business days of its receipt.

The Controller's Office is invoking the extension because your request is a "more extensive or demanding request" and is not a "simple routine or other readily answerable request" as described in Section 67.25(a). Some of the information you requested involves the need to consult with other departments, a reason for an extension under Section 67.25(b). We expect to respond to you within the 10 business day deadline and we will produce the information on a rolling basis as it is ready.

Thank you.

As of today, March 7, 2012, I have not received any further response from Mr. Rosenfield.

Therefore, I am filing this complaint.

Do you wish a public hearing before the Sunshine Ordinance Task Force? * Yes

Do you also want a pre-hearing conference conference before the Complaint Committee? No

(Optional)

Date: March 7, 2012

Name: William J. Clark

Address: P.O. Box 882252

City: SF

Zip: 94188

Telephone: 415-822-5465

Email: billandbbclark@access4less.net

If anonymous, please let us know how to contact you. Thank you. .

I request confidentiality of my personal information. No

Notice: Personal Information that you provide is subject to disclosure under the California Public Records Act and the Sunshine Ordinance, except when confidentiality is specifically requested. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone Number, Fax Number, or Email address).

Last updated: 9/1/2009 10:40:32 AM