

File No. 12013

SOTF Item No. 12
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

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Memo
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Complaint
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Response
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

OTHER

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

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 24, 2012:

WILLIAM & ROBERT CLARK VS. ARTS COMMISSION (12013) COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant William Clark alleges that the Arts Commission and Howard Lazar ("Commission") violated section 67.21(b) and 67.26 of the Ordinance by failing to properly respond to his request for documentation of the legal service expense charged to the Street Artist Program for the 2010-11 fiscal year amounting to \$20,396, including a breakdown in the following manner: subject matter of each time you asked the City Attorney for advice; date of each time you asked the City Attorney for advice; amount of time associated with each time you asked the City Attorney for advice; name of the attorney you talked to each time you asked the City Attorney for advice?

COMPLAINANT FILES COMPLAINT:

On February 29, 2012, Complainants filed a complaint with the Task Force alleging a violation of sections 67.21(b) and 67.26.

JURISDICTION

The Commission 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 Commission. The Commission 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 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

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

- Section 6253 governs the release of public records and the timing of responses.
- Section 6254(k) governs exemptions from disclosure of certain records
- Section 6276.04 governs exemptions from disclosure of records that constitute attorney client privileged communications or attorney work product

DATE: April 24, 2012
PAGE: 2
RE: Clark vs. Arts Commission (12013)

APPLICABLE CASE LAW:

See citations in analysis below.

ISSUES TO BE DETERMINED**Uncontested/Contested Facts:**

On February 1, 2012 Complainant sent Howard Lazar the following email:

Mr. Lazar, I noticed that the legal service expense charged to the Street Artist Program for the 2010-11 fiscal year amounted to \$20,396. I would like a breakdown of that expense in the following manner: What was the subject matter of each time you asked the City Attorney for advice? What was the date of each time you asked the City Attorney for advice? What was the amount of time associated with each time you asked the City Attorney for advice? What was the name of the attorney you talked to each time you asked the City Attorney for advise [sic]? I am requesting this information pursuant to the provisions of the San Francisco Sunshine Ordinance.

On February 10, 2012 Mr. Lazar responded to Complainant with the following email:

I am writing in response to your February 1, 2012 request for records. In your request, you asked for a breakdown of "the legal service expense charged to the Street Artists Program for the 2010-11 fiscal year," including the "date," "subject matter," and "amount" of each time [Howard Lazar] asked the City Attorney for advice as well as the "attorney name." In response to your request, we are providing the City Attorney billing records for the Street Artists Program for FY 2010-11, including the attorney, billing number, and general category of services. These records include billing for matters that relate to the Public Records Act and the Sunshine Ordinance ("Sunshine-related"), as well as for matters that are not Sunshine-related.

For records that are not Sunshine-related, we have redacted any parts that contain confidential attorney-client communications or attorney work product. The San Francisco Sunshine Ordinance provides that "[r]elease of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act in particulars not addressed by [the Sunshine Ordinance]" S.F. Admin. Code §67.21(k). The Public Records Act allows an agency to decline to disclose "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but limited to, provisions of the Evidence Code relating to privilege." Gov't Code §6254(k). California Evidence Code §954 protects from disclosure communications between attorneys and their clients. Similarly, the California Code of Civil Procedure §2018.030 protects from disclosure the work product of an attorney. The work product privilege protects any "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories . . ." (See, also, Cal. Gov't Code Sec. 6276.04.)

DATE: April 24, 2012
PAGE: 3
RE: Clark vs. Arts Commission (12013)

Please be aware that the City has in the past withheld time billing records that are not Sunshine-related based on the privileges just discussed. In this case, we find withholding unnecessary because we are able to separate and redact the protected information.

Complainant further alleges that the responsive public records included with Mr. Lazar's email did not contain all of the requested information, so on February 10, 2012 he sent Mr. Lazar another email stating:

Although you provided me with some of the information I requested, you didn't provide me with the most pertinent information which I requested. The pertinent information I requested which you did not provide me was the specific subject matter which required the Street Artist Program's staff to contact the City Attorney Office for its advice and counsel. All you sent me was a general description of the subject matter being discussed such as "Public Requests/Brown Act", "Phone Call", "Review", "Memo", "Other", "Conference (Client/Opp. Council/Staff)", "Sunshine Act Requests" and "Research". I am requesting the specific subject matter that required the need for the Street Artist Program to seek the advice and council of the City Attorney in each of the instances listed in the City Attorney billing record you provided me.

For instance, where it was listed as "Public Requests/Brown Act" then if that request is the result of a Sunshine Ordinance complaint provide me with the complaint number. If that request was not the result of a Sunshine Ordinance complaint then provide me with a list of the specific information and/or record(s) that was (were) requested. If it was listed as "Phone Call" then provide me with the specific subject matter that required the Street Artist Program to seek the advice and council of the City Attorney over the phone. If it was listed as "Review" then provide me with the specific subject matter which required the City Attorney to review. If it was listed as "Memo" then provide me with the specific subject matter of the memo. If it was listed as "Other" then provide me with the specific subject matter that required the Street Artist Program to seek the advice and council of the City Attorney. If it was listed as "Conference (Client/Opp. Council/Staff)" then provide me with the specific subject matter that required the need for the conference. If it was listed as "Sunshine Act Requests" then provide me with the specific subject matter of the request that was made and any related Sunshine Ordinance complaint number. If it was listed as "Research" then provide me with the specific subject matter that required research. I am making this request for public information pursuant to the provisions of the Sunshine Ordinance.

On February 16, 2012 Mr. Lazar responded via email, stating:

In response to your request for "the specific subject matter which required the Street Artist Program staff to contact the City Attorney Office for its advice and counsel," we have attached a pdf. Document of charts I kept entitled "2010-11 SAP STAFF HOURS SPENT ON SUNSHINE

DATE: April 24, 2012
PAGE: 4
RE: Clark vs. Arts Commission (12013)

REQUESTS" which include details on dates of conference with the City Attorney's office, the subjects of such conferences, and the amounts of time spent by Street Artists Program staff on subjects relative to Sunshine Ordinance matters.

For matters that are not Sunshine Ordinance-related, we are not required to disclose documents relating to City Attorney counsel requested and received by the Arts Commission. As we stated in our e-mail response to you on February 10th, the Public Records Act allows an agency to decline to disclose "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code Sec. 6254(k). California Evidence Code Sec. 954 protects from disclosure communications between attorneys and their clients. Similarly, California Code of Civil Procedure Sec. 2018.030 protects from disclosure the work product of an attorney. The work product privilege protects any "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories." Cal. Code Civ. Proc. Sec. 2018.030; see also Cal. Gov't Code Sec. 6276.04.

Complainant further alleges that the public records Mr. Lazar included in that email still didn't provide him with all the requested information so he sent Mr. Lazar the following email:

You are well aware of the fact that I am not asking for "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories." or any other communication, advice or information discussed between the Street Artist Program Staff and the City Attorney. I have only asked you to provide me with an explanation of what the specific subject matter was for each time the Street Artist Program staff consulted with the City Attorney on any matters related to the Street Artist Program during the 2010-11 fiscal year regardless of whether or not they were Sunshine Ordinance related.

I am reminding you the Sunshine Ordinance Task Force issued an Order of Determination in my complaint #11001 against the City Attorney in which the task force found that the City Attorney violated the Sunshine Ordinance for not providing me with a description of the subject matter for each and every time the Street Artist Program staff consulted with the City Attorney during a previous fiscal year. I am including an attachment with this email of the Sunshine Ordinance Task Force's Order of Determination for complaint #11001.

As of February 29, 2012 Complainant not received the additional information requested from Mr. Lazar.

On March 7, 2012, Mr. Lazar responded to the Sunshine Complaint by letter. That letter essentially repeated the same rationales from the above emails explaining why the Commission would not provide the additional information requested by Complainant.

DATE: April 24, 2012
PAGE: 5
RE: Clark vs. Arts Commission (12013)

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Has the Commission redacted information from the billing records requested by Complainant/?
- Have the records sought by complainant previously been disclosed by the Arts Commission to someone outside of an attorney client relationship? If so, to whom were they disclosed and under what circumstances?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the Commission timely respond to the request?
- If documents sought by the request were withheld by the Commission, did the Commission justify the withholding in writing as required by the Ordinance?
- Does the Commission's justification, if any, for withholding any responsive documents comply with the requirements of the Ordinance and the PRA?
- Do any records withheld by the Commission from disclosure constitute privileged information exempt from disclosure under the PRA and the Ordinance?
- If so, has the confidentiality of the privileged documents been partially or entirely waived under these circumstances?

SUGGESTED ANALYSIS

To the extent details of attorney billing records reveal communications between the City Attorney's Office and the client department, or the thought processes of the Deputy City Attorney Office in providing legal services to a client department, those details may be confidential under either the attorney client privilege or the attorney work product doctrine, and therefore exempt from disclosure. The legal issues involved in such a determination are discussed below.

Attorney-Client Privilege

To the extent that details of client billing records would reveal confidential communications between an attorney and her client, they are protected by the attorney-client privilege.

Section 67.27 of the Sunshine Ordinance allows for "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, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority."

Records that contain attorney-client privileged information are protected from disclosure as a public record under Government Code §§ 6254(k) and 6276.04, and Evid. C. § 954. Gov't. Code § 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to [] state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Gov't. Code § 6276.04 includes among its specifically enumerated state laws exempting records from disclosure: "Attorney-client confidential communication,

DATE: April 24, 2012
PAGE: 6
RE: Clark vs. Arts Commission (12013)

Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code."

It is clear from these provisions that attorney-client privileged information is protected from disclosure under both the Public Records Act and the Sunshine Ordinance. In *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, the California Supreme Court held that the privilege protects from disclosure confidential communications between a city attorney and its municipal client even when not provided in connection to litigation. *City of Palmdale, supra*, 5 Cal.4th at 371. In discussing its holding, the court stated:

Open government is a constructive value in our democratic society. [] The attorney-client privilege, however, also has a strong basis in public policy and the administration of justice. The attorney-client privilege has a venerable pedigree that can be traced back 400 years. "[T]he privilege seeks to insure the 'right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice[.]'"

. . . .

A city [department] needs freedom to confer with its lawyers confidentially in order to obtain adequate advice, just as does a private citizen who seeks legal counsel []. The public interest is served by the privilege because it permits local government agencies to seek advice that may prevent the agency from becoming embroiled in litigation, and it may permit the agency to avoid unnecessary conflict with various members of the public.

City of Palmdale, supra, 5 Cal.4th at 380-381.

The attorney client privilege protects communication from an attorney to her City client. (Evid. C. § 954.) This is true even where the communication may not be written and oral statements but other means of communication. *Mitchell v. Sup. Ct (Shell Oil Co.)* (1984) 37 Cal.3d 591, 599-600. Thus, details of billing records are encompassed by the privilege.

Section 67.21(i) of the Ordinance provides that communications with the City Attorney's Office with regard to the Ordinance are public record subject to disclosure. While this may open to disclosure attorney client communications that otherwise would be protected by privilege, it extends only to communications with regard to the Ordinance, and not to other attorney client communications between the City Attorney and its client departments.

Attorney Work Product Doctrine

To the extent that details of client billing records would reveal the thought processes of an attorney in providing legal advice to her client, they are protected by the attorney work product doctrine.

Section 67.27 of the Sunshine Ordinance allows for "withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive

DATE: April 24, 2012
PAGE: 7
RE: Clark vs. Arts Commission (12013)

exemption is not forbidden to be asserted by this ordinance, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority." Gov't. Code Section 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is *exempted* [] *pursuant to* [] *state law, including, but not limited to*, provisions of the Evidence Code relating to privilege." Section 6726.04 of the Public Records Act specifically provides that attorney work product documents are exempt from disclosure as public records. That section in turn refers to Code of Civil Procedure Section 2018.030, which defines attorney work product to mean "[a] writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories[.]"

California courts have applied the work product privilege to exempt records from disclosure in the context of public records requests. (See e.g., *County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819, 833 [public agency may rely on the attorney work product privilege to decline to disclose a document].) The *Axelrad* court further held that the attorney work product privilege "is not limited to writings created by a lawyer in anticipation of a lawsuit. It applies as well to writings prepared by an attorney while acting in a nonlitigation capacity." (82 Cal.App.4th at p. 833.) Also, courts have expressly recognized that internal attorney memoranda, correspondence and notes fall squarely within the attorney work product privilege. (See e.g., *Hickman v. Taylor* (1947) 329 U.S. 495, 511; *Popelka, Allard, McCowan & Jones v. Superior Court* (1980) 107 Cal.App.3d 496, 500.)

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 24, 2012
PAGE: 8
RE: Clark vs. Arts Commission (12013)

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 24, 2012
PAGE: 9
RE: Clark vs. Arts Commission (12013)

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.

(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.*

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. 67.27. 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.

DATE: April 24, 2012
PAGE: 10
RE: Clark vs. Arts Commission (12013)

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

§ 6254. EXEMPTION OF PARTICULAR RECORDS

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

ARTICLE 2. OTHER EXEMPTIONS FROM DISCLOSURE

III. § 6275. LEGISLATIVE INTENT; EFFECT OF LISTING IN ARTICLE

It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article. The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

JJJ. § 6276. RECORDS OR INFORMATION NOT REQUIRED TO BE DISCLOSED

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

§ 6276.04. "AERONAUTICS ACT" TO "AVOCADO HANDLER TRANSACTION RECORDS"

...

Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code.

...

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Chapter 4 (commencing with Section 2018.010), of Title 4, of Part 4 of the Code of Civil Procedure.



Sunshine Complaint
complaints
to:
sotf
02/29/2012 07:15 PM
Show Details

Follow Up:
Urgent Priority.

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:San Francisco Arts Commission

CONTACTED:Howard Lazar

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:Section 67.21(b) and Section 67.26

DESCRIPTION:On February 1, 2012 I sent Howard Lazar the following email: Mr. Lazar, I noticed that the legal service expense charged to the Street Artist Program for the 2010-11 fiscal year amounted to \$20,396. I would like a breakdown of that expense in the following manner: What was the subject matter of each time you asked the City Attorney for advice? What was the date of each time you asked the City Attorney for advice? What was the amount of time associated with each time you asked the City Attorney for advice? What was the name of the attorney you talked to each time you asked the City Attorney for advise? I am requesting this information pursuant to the provisions of the San Francisco Sunshine Ordinance. William J. Clark On February 10, 2012 Mr. Lazar sent me the following email: Dear Mr. Clark, I am writing in response to your February 1, 2012 request for records. In your request, you asked for a breakdown of "the legal service expense charged to the Street Artists Program for the 2010-11 fiscal year," including the "date," "subject matter," and "amount" of each time [Howard Lazar] asked the City Attorney for advice as well as the "attorney name." In response to your request, we are providing the City Attorney billing records for the Street Artists Program for FY 2010-11, including the attorney, billing number, and general category of services. These records include billing for matters that relate to the Public Records Act and the Sunshine Ordinance ("Sunshine-related"), as well as for matters that are not Sunshine-related. For records that are not Sunshine-related, we have redacted any parts that contain confidential attorney-client communications or attorney work product. The San Francisco Sunshine Ordinance provides that "[r]elease of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act in particulars not addressed by [the Sunshine Ordinance]" S.F. Admin. Code §67.21(k). The Public Records Act allows an agency to decline to disclose "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but limited to, provisions of the Evidence Code relating to privilege." Gov't Code §6254(k). California Evidence Code §954 protects from disclosure communications between attorneys and their clients. Similarly, the California Code of Civil Procedure §2018.030 protects from disclosure the work product of an attorney. The work product privilege protects any "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories . . ." (See,also, Cal. Gov't Code Sec. 6276.04.) Please be aware that the City has in the past withheld time billing records that are not Sunshine-related based on the privileges just discussed. In this case, we find withholding unnecessary because we are able to separate and redact the protected information. Sincerely, Howard Lazar, Street Artists Program Director The public records included in Mr. Lazar's

email did not contain all of the information I requested so on February 10, 2012 I sent Mr. Lazar the following email: Mr. Lazar, Although you provided me with some of the information I requested, you didn't provide me with the most pertinent information which I requested. The pertinent information I requested which you did not provide me was the specific subject matter which required the Street Artist Program's staff to contact the City Attorney Office for its advice and counsel. All you sent me was a general description of the subject matter being discussed such as "Public Requests/Brown Act", "Phone Call", "Review", "Memo", "Other", "Conference (Client/Opp. Council/Staff)", "Sunshine Act Requests" and "Research". I am requesting the specific subject matter that required the need for the Street Artist Program to seek the advice and council of the City Attorney in each of the instances listed in the City Attorney billing record you provided me. For instance, where it was listed as "Public Requests/Brown Act" then if that request is the result of a Sunshine Ordinance complaint provide me with the complaint number. If that request was not the result of a Sunshine Ordinance complaint then provide me with a list of the specific information and/or record(s) that was(were) requested. If it was listed as "Phone Call" then provide me with the specific subject matter that required the Street Artist Program to seek the advice and council of the City Attorney over the phone. If it was listed as "Review" then provide me with the specific subject matter which required the City Attorney to review. If it was listed as "Memo" then provide me with the specific subject matter of the memo. If it was listed as "Other" then provide me with the specific subject matter that required the Street Artist Program to seek the advice and council of the City Attorney. If it was listed as "Conference (Client/Opp. Council/Staff)" then provide me with the specific subject matter that required the need for the conference. If it was listed as "Sunshine Act Requests" then provide me with the specific subject matter of the request that was made and any related Sunshine Ordinance complaint number. If it was listed as "Research" then provide me with the specific subject matter that required research. I am making this request for public information pursuant to the provisions of the Sunshine Ordinance. William J. Clark On February 16, 2012 Mr. Lazar sent me the following email: Mr. William Clark Dear Mr. Clark: In response to your request for "the specific subject matter which required the Street Artist Program staff to contact the City Attorney Office for its advice and counsel," we have attached a pdf. Document of charts I kept entitled "2010-11 SAP STAFF HOURS SPENT ON SUNSHINE REQUESTS" which include details on dates of conference with the City Attorney's office, the subjects of such conferences, and the amounts of time spent by Street Artists Program staff on subjects relative to Sunshine Ordinance matters. For matters that are not Sunshine Ordinance-related, we are not required to disclose documents relating to City Attorney counsel requested and received by the Arts Commission. As we stated in our e-mail response to you on February 10th, the Public Records Act allows an agency to decline to disclose "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code Sec. 6254(k). California Evidence Code Sec. 954 protects from disclosure communications between attorneys and their clients. Similarly, California Code of Civil Procedure Sec. 2018.030 protects from disclosure the work product of an attorney. The work product privilege protects any "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories ." Cal. Code Civ. Proc. Sec. 2018.030; see also Cal. Gov't Code Sec. 6276.04. Sincerely, Howard Lazar Street Artists Program Director Arts Commission The public records Mr. Lazar included in that email still didn't provide me with all the information I requested so I sent Mr. Lazar the following email: Mr Lazar, You are well aware of the fact that I am not asking for "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories ." or any other communication, advice or information discussed between the Street Artist Program Staff and the City Attorney. I have only asked you to provide me with an explanation of what the specific subject matter was for each time the Street Artist Program staff consulted with the City Attorney on any matters related to the Street Artist Program during the 2010-11 fiscal year regardless of whether or not the were Sunshine Ordinance related. I am reminding you the the Sunshine Ordinance Task Force issued an Order of Determination in my complaint #11001 against the City Attorney in which the task force found that the City Attorney violated the Sunshine Ordinance for not providing me with a description of the subject matter for each and every time the Street Artist Program staff consulted with the City Attorney during a

previous fiscal year. I am including an attachment with this email of the Sunshine Ordinance Task Force's Order of Determination for complaint #11001. William J. Clark As of today, February 29, 2012 I have not received the information I requested from Mr. Lazar. Therefore, I am filing this complaint against Mr. Lazar for violating Section 67.21(b) and Section 67.26 of the San Francisco Sunshine Ordinance.

HEARING:Yes

PRE-HEARING:No

DATE:2/29/12

NAME:William J. Clark

ADDRESS:P.O. Box 882252

CITY:SF

ZIP:94188

PHONE:415-822-5465

CONTACT_EMAIL:billandbobclark@access4less.net

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

2010-11

SAP STAFF
HOURS SPENT ON SUNSHINE REQUESTS

<u>REQUESTOR</u>	<u>HOURS SPENT (RESEARCH/DRAFT REPLY/COPYING/ SUNSHINE TASK FORCE HRNG)</u>		
WM + ROBT. CLARK	1.5		7/2; 7/9/10
PAULA DATESH	2.0		7/27/10 (REVIEW SOTF HRNG)
PAT LLOYD	5, 3, 3		7/27 Tape duplicating 8/3, 5/4, 8/5
WM + ROBT CLARK	1.2		NO EMAIL LETTER TO CITY ATTY RE: SOTF CLARK VS A/C MEMORANDUM PHONE DISCUSSION w/PT 7/27
MARC MELANCON/AMANDA NORDQUIST	3.0		9/13/10 TRANSFER OF 4/8 SARC AUDIO TAPE TO DIGITAL FILE + CD
INSPECTION OF FILES BY MELANCON/ NORDQUIST	1.0		9/14/10
MELANCON/NORDQUIST	3.5		9/15/10 RE-TRANSFER OF 4/8 SARC AUDIO TAPE TO 2 DIGITAL FILES AND TAPE BURNED TO 4 CDs / CD-Rs
SOTF (CLARKS V. A/C ETAL) COMPLAINT COMMITTEE	3.0		9/14/10 2 hrs prep / 1 hr. attend hearing
SOTF (" " ")	1.0		9/16 - email letter to city/att/pt on outcome of SOTF
SOTF (" " ")	4.0		9/24 - 1 hr prep to hearing 3 hrs @ hearing
SOTF (" " ")	2.0		10/4 - e-mail report to att on SOTF hearing + brief correspondence with pt
CLARKS	0.5	10/8	Draft of 14-day written letter to City Att review
"	0.5	10/13	Conference w/ City Att and sending of 14-day letter
ABDARIO	0.5	10/14	14-day written letter written + sent

ADDARIO	4.0	10/25/10	RECEIVED; LETTER; PHOTOLOGY ^{2 ADDARIO}
CLARKS	4.0	11/20-21	MYSSA VIGORIS DID THE PHOTOGRAPHING; LETT
SOTF/CLARK v. A/c)	5.0	10/26/10	Prep. of spread for SOTF 10/26/10
SOTF/CLARK v. A/c)	2.0	10/26/10	SOTF Hearing
CLARK	5.0	11/2/10	RESEARCH for 11/10 Request
"	1.0	11/5/10	DELIVERED hardcopy + e-mail
CLARK	1.00	11/9/10	14-day ext. response on 11/8 request
CLARK	2.00	11/10/10	14-day ext. response on 11/9 request
CLARK	2.00 3.00	11/15/10	- response letters delivered on 11/8 + 11/9 request
CLARK	8	11/15/10	- Temp employee submitting for City City Opinion reported by Clenden
CLARK	1.5	11/7/10	- Clarks 11/8 + 11/9 requests
CLARK	0.5	11/22/10	- Mailing of documents
CLARK	0.5	11/22/10	- Mailing of documents
CLARK	3.0	1/3/11	Draft of letter for City Atty review: #10069 SOTF
CLARK	0.5	1/4/11	Final letter #10069 drafted/mailed to SOTF
CLARK	1.0	1/6/11	response letter to 1/5/11 request
CLARK	1.00	1/10/11	Research How files for 1/5/11 request
CLARK	1.00	1/11/11	Research 1/11 request; questions to City Atty
CLARK	5.00	1/13/11	Research for (1/5/11 request)
CLARK	5.00	1/14/11	Draft of letter to City Atty + copies of documents (1/5/11 request)

CLARK	3.5	1/19/11	Conference w/City Atty; final draft + mailing of letter; copying of all documents
CLARK	2.0	1/25/11	(1/5/11 request) Attending 1/25 SOTF hearing
CLARK	<u>4.0</u>	2/3/11	← Copying + redaction of confidential details conf. w/City Atty; draft of letter
CLARK	2.0	2/4/11	Letter/conf. w/City Atty
CLARK	2.0	2/8/11	prep + SOTF hearing on #10069
	+ <u>4.0</u> hrs		(for temp personnel prep + attend hearing)
CLARK	3.0	2/9/11	Conf. w/City Atty on redaction of documents (#10069)
CLARK	<u>2.0</u>	2/10/11	Redaction of documents; draft letter (#10069)
CLARK	2.0	2/11/11	Further redaction; final draft of letter; conf. w/City Atty (#10069)
CLARK	2.5	3/1/11	2/3 request for docs; confer w/City Atty
CLARK	2.5	3/2/11	2/3 request; write + send letter + materials (copy & file).
CLARK	2.0	3/2/11	Clark response to 2/3 request + 2/21 request; confer w/City Atty on both
CLARK	3.0 + 1.0	3/3/11	Research re: 2/21 request; draft letter
CLARK	2.0	3/4/11	2/21 request research; draft response for 3/8 SOTF

CLARK	0.5	3/7/11	2/21 request; confer w/ City Atty
CLARK	2.5	3/8/11	2/4 request: make audio files of 1/12/11 SARC mtg
CLARK	2.0	3/9/11	2/11 request: make CDs + prep for meeting
X CLARK	4.0	3/8/11	SOTF #10074: Brief ^{re: documents} re: 3/8/11, ^{re: documents} 4 hrs (min) for rep.
CLARK	3.5	3/9/11	Draft letters for SOTF #11007 + #11008
CLARK	3.5	3/10/11	Draft letters #11007 + #11008; confer w/ City Atty; confer w/ City Atty on 2/3 request
CLARK	7.0	3/14/11	Confer w/ City Atty / final draft of letter to Clark re: 2/21 request; copying documents; prep for meeting ; reply to 3/9 request + documents; letter to SOTF re: Complaint #10007
CLARK	1.0; 1.0; 1.0	3/18/11	3/17 request for personnel info: Alyssa Brown; 14-day ext letter + research; 3/18 request for personnel info: Howard Lazar; conf w/ City Atty; 14-day ext. letter research
CLARK	5.5	3/21/11	Prepare/draft response to SOTF #11008, review 1/12/11 SARC audiotape
CLARK	<u>3.0</u>	3/22/11	Prepare responses to SOTF #10074, #11007, #11008 #11008 for 3/22 SOTF hearing; brief Julie Mattoz (temp personnel)
	+ <u>8</u>		temp personnel briefing + attending 3/22 SOTF hearings (3); temp personnel report to the rel hearings

CLARK	7.0	3/24/11	Reccards, docs. + draft letters for 3/7 + 3/18 requests (for City Atty review).
CLARK	2.0	3/25/11	Re-Draft letter/prepare docs for 3/18 request; scanning of documents for City Atty review
CLARK	0.25	3/29/11	Confer w/ City Atty on 3/17 request
CLARK	2.0; 3.0	3/30/11	Redaction of document re 3/18 + 3/17 requests; final draft of letter; photocopying all; further conf w/ City Atty
CLARK	2.0	4/6/11	Research & respond to 3/23 request
CLARK	2.5 2.5	4/7/11	Cont/ City Atty: #11019 + #11023 + #11008 Letter to SOTF: #11019 #11023

186 hours spent (since 7/1/10)
as of 4/7/11 on SOTF/public records matters

CLARK	.5	4/14/11	e-mail + attachment re: 4/12/11 City Atty clarification
MELANCON	1	4/15/11	Letter (14 day ext.) + response + e-mail to Melancon re: 4/13 request
NORDQVIST	.5	4/22/11	Letter-response (14-day ext.) + email to Nordqvist
MELANCON	3.0	4/22/11	By Asth scanning + emailing docs to City Atty re: 4/13 request
MELANCON	3, 2	4/26/11	Letter-response to 4/13 request; review of docs w/ City Atty; redactions; photocopying

CLARK 8 4/26/11 (^{8 hrs.} rep by temp personnel) SOTF hearings on # 11009 & # 11008

MELANCON 2.0 4/27/11 → Final letter + copying of docs in 4/13 request; email letter

NORDBQUIST 1.5, 1 5/4/11 Re 4/21/11 request; scanning & transmitting documents to City Atty; drafting letter-response; confer w/City Atty; final letter + doc

208.5 hrs spent thus far since July 1st and reported at 5/11/11 SAPC

CLARK 1.0 5/25/11 e-mail response to 5/13/11 emailed guidance "Another public & domain Request"

CLARK 1.0 6/6/11 Research on Request of 5/25, 5/27, 5/28, 5/31, and 6/05/11

CLARK 1.0 6/7/11 Making audiotape of 5/9/09 SAPC tape & e-mailing it to Clark (5/25 request)

CLARK 1.0 7/8/11 Making audiotape of 5/15/08 SAPC tape as per 5/28/11 request

CLARK 1.5 7/9/11 Making audiotape of 11/12/08 (Tape 1) as per 5/28/11 request

CLARK 1.5 7/14/11 Making audiotape of 11/12/08 (Tape 2) as per 5/28/11 request

CLARK	2.5	6/13/11	Making audio files of 4/13/10 SATC (Type 1 + 2) as per 5/31 request
C. LLOYD	3.0	6/15/11	Making audio files of 5/16/10 ABCOM evidentiary as per 6/4 request
CLARK	3.5	6/20/11	Draft responses ^{letters} to SOTF #11037 and #11040; confer w/City Atty
CLARK	1.0 + .05	6/21/11	Confer w/City Atty on #11037 + #11040; draft & send to SOTF
CLARK	2.0	6/28/11	Preparation for #11037 + #11040 for 6/28 hrs
<hr/> END FY 2010-11 <hr/>			



SAN FRANCISCO ARTS COMMISSION

IRWIN M. LEE
MAYOR

TOM DECAIGNE
DIRECTOR OF
CULTURAL AFFAIRS

PROGRAMS

CIVIC ART COLLECTION
CIVIC DESIGN REVIEW
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PUBLIC ART
STREET ARTISTS LICENSES

ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.554.6080

WWW.SFARTS.COMMISSION.DIG

ARTS.COMMISSION@SFGOV.ORG

March 7, 2012

Honorable Members, Sunshine Ordinance Task Force
Office of the Clerk, Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

RE: Sunshine Ordinance Task Force - #12013 William v. Arts
Commission

Dear Committee Members:

The San Francisco Arts Commission (the "Commission") is submitting this response to Complaint #12013, William and Robert Clark v. Arts Commission, which your office forwarded to the Commission on March 2, 2012, at 3:21 p.m.

We note that in the complaint Mr. Clark states that he wrote to Street Artists Program Director Howard Lazar that, while he was "not asking for 'writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories' or any other communication, advice or information discussed between[n] the Street Artist Program Staff and the City Attorney," he was asking for "an explanation of what the specific subject matter was for each time the Street Artist Program staff consulted with the City Attorney on any matters related to the Street Artist Program during the 2010-11 fiscal year regardless of whether or not the[y] were Sunshine Ordinance related."

In his complaint, Mr. Clark then states that "the Sunshine Ordinance Task Force issued an order of Determination in my complaint #11001 against the City Attorney in which the task force found that the City Attorney violated the Sunshine Ordinance for not providing me with a description of the subject matter for each and every time the Street Artist Program staff consulted with the City Attorney during a previous fiscal year" and that "As of today, February 29, 2012 I have not received the information requested from Mr. Lazar."



CITY AND COUNTY OF
SAN FRANCISCO

This is to inform you that on February 16, 2012 the Arts Commission sent Mr. Clark a Pdf document of charts kept by Program Director Lazar entitled "2010-11 SAP STAFF HOURS SPENT ON

SUNSHINE REQUESTS" (please see attached) which included details on dates of conference with the City Attorney's office, the subjects of such conferences, and the amounts of time spent by Street Artists Program staff on subjects relative to Sunshine Ordinance matters.

For matters that were not Sunshine Ordinance-related, we supplied Mr. Clark with the following written explanation: *"For matters that are not Sunshine Ordinance-related, we are not required to disclose documents relating to City Attorney counsel requested and received by the Arts Commission. As we stated in our e-mail response to you on February 10th, the Public Records Act allows an agency to decline to disclose [r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code Sec. 6254(k), California Evidence Code Sec. 954 protects from disclosure communications between attorneys and their clients. Similarly, California Code of Civil Procedure Sec. 2018.030 protects from disclosure the work product of an attorney. The work product privilege protects any 'writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories ...' Cal. Code Civ. Proc. Sec. 2018.030; see also Cal. Gov't Code Sec. 6276.04."*

It is our understanding that the protection from disclosure of "communications between attorneys and their clients" would also include protection from the disclosure of the nature of topic or subject matter of such communications. For this reason, we declined to furnish such information to Mr. Clark.

In summary, the Arts Commission responded to Mr. Clark with documents to the fullest extent of the law.

We respectfully request that you please take this into consideration as you assess this matter.

Sincerely,



Howard Lazar

Street Artists Program Director

Attachment

**Cc: The Honorable JD Beltran, President, Arts Commission
The Honorable Sherene Melania, Vice-President, Arts Commission
The Honorable Greg Chew, Chairman, and Commissioners John
Calloway, Amy Chuang, and Jessica Silverman - Street Artists
Committee
Mr. Tom DeCaigny, Director of Cultural Affairs
Ms. Rebekah Krell, Deputy Director
Ms. Alyssa Licouris, Street Artists Program Assistant**