File No. 12011

SOTF Item No. 10
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

☐	☒	**Memo**
☐	☒	**Complaint**
☐	☒	**Response**
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OTHER

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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.

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

April 24, 2012:

LARS NYMAN VS. DEPARTMENT OF PUBLIC WORKS (12011)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Lars Nyman ("Complainant") alleges that the Department of Public Works ("DPW") has not adequately responded to his January 7, 2012 public records request for all public records related to the Montgomery/Alta Street tree project.

COMPLAINANT FILES COMPLAINT:

On February 16, 2012, Complainant filed this complaint against Frank Lee and DPW.

JURISDICTION:

DPW is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

- 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 the written justifications for withholding of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: On 01/07/2012, Complainant filed a request for public records from the Department of Public Works by email to Frank Lee for records in connection with the Montgomery/Alta Street tree project. As of February 16, 2012, he had not received any records in response to his request.

On 01/07/2012, Complainant sent an email to the Department of Public Works and Frank Lee requesting "...any and all public records... in connection with or with respect to... the Montgomery/Alta Street tree project". On 01/09/2012, Frank Lee acknowledged the request and stated that he would contact Complainant "as soon as the responsive documents are ready for you to view and will do so on or before Thursday, January 19, 2012". He further stated that "...the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure" and

"[t]here is no requirement that a department or officer construct a document to meet the specifications of the request."

On 01/09/2012, Complainant re-stated his request by email to Frank Lee to include ANY and ALL records and not narrow the scope of the request. He also stated that it was his "understanding that if you withhold any public record by claiming it is exempt then you need to let me know that you are doing so and what the reason is for you claiming the record is exempt", and that it was his "understanding that if you have electronic information in different places you do have a requirement of compiling it".

On 01/27/2012, having not heard from Department of Public Works or Frank Lee, Complainant emailed Frank Lee and asked if they were intending to provide him with the requested records. He received no immediate response from Department of Public Works or Frank Lee. On 02/03/2012, Complainant again emailed Frank Lee and asked if they were intending to provide him with the records I requested.

On 02/03/2012, Frank Lee replied to Complainant by email, stating "Yes, we intend to respond." However, as of the date of the complaint, they had not responded.

On March 5, 2012, DPW gave its first substantive response through Frank Lee to the Sunshine complaint, copying both the Complainant and the Task Force. In that email, which had a pdf file of documents attached to it, DPW stated:

> We have every intention to respond to Mr. Nyman's request. Unfortunately, the request for "all documents" requires a huge amount of time to research, including knowing where to look for responsive documents, and requires us to inspect a voluminous amount of documents to extract the ones that fit Mr. Nyman's request.
>
> Attached is the first set of responsive documents that we are making available to Mr. Nyman today. They are the emails to and from DPW employee Edmund Lee. The file consists of 1026 pages.

There followed a series of email from Frank Lee to Complainant, each of which contained a separate batch of responsive documents:

- Edmund Lee's emails (75 pages) – 3/5/12;
- drawing associated with the Montgomery-Alta construction (1 page) – 3/5/12;
- DPW employee Ramon Kong e emails (468 pages) – 3/8/12;
- attachments to DPW employee Ramon Kong's emails (52 pages) – 3/8/12;
- emails with attachments to and from DPW Director Ed Reiskin (648 pages) – 3/19/12;
- emails to and from DPW employee Carla Short & documents from Urban Forestry (62 pages) – 3/19/12;
- emails to and from DPW employee Patrick Rivera (396 pages) – 3/20/12.

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 3
RE: Complaint 12011: Nyman v. DPW

On March 19, 2012, Complainant responded to this email production of responsive documents from DPW by email to Frank Lee and the Task Force. In that email, he stated:

> I see there are a lot of redactions in your pdf files.
>
> Why do you do these redactions?
>
> Are these redactions justified, authorized and allowed under the Sunshine Ordinance Act of San Francisco and the California Public Records Act?
>
> Also, it is unfortunate that you are not honoring my request to provide the electronic records in their original format. This is what I requested: "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."
>
> Is there a reason why you do not provide the records in their original format?

On March 20, 2012, Complainant again responded to this email production of responsive documents from DPW by email to Frank Lee and the Task Force. In that email, he stated:

> It seems like you have provided NO records after April 2011. For some reason, there are no records, no documents, no emails in your submissions dated after April 2011. However, such records do exist and such records were and are included in my request.
>
> Can you please provide ALL records, not only those prior to mid-April 2011, but ALL records per my request

DPW has not further responded to the Complaint, nor has it provided any additional information to the Task Force to explain its actions in responding to this request.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does DPW have further responsive records that it has not provided?
- What evidence does Complainant have that DPW may have such records?
- Did DPW redact records provided to Complainant?
- What is the basis for the redactions, if any?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did DPW timely respond to the request?
- Has DPW justified any withholding of records or information in accordance with the requirements of the Ordinance?
- Are DPW's justifications for any withholding within the exemptions allowed by the Ordinance and the PRA?

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 4
RE: Complaint 12011: Nyman v. DPW

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

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 5
RE: Complaint 12011: Nyman v. DPW

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.
(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

SEC. 67.25. IMMEDIACY OF RESPONSE.
(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.
(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.
(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.
(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

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.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)

SECTION 6253
(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 7
RE: Complaint 12011: Nyman v. DPW

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

Sunshine Complaint
complaints
to:
sotf
02/16/2012 04:47 PM
Show Details

To:sotf@sfgov.org
Email:complaints@sfgov.org
DEPARTMENT:Department of Public Works
CONTACTED:Frank Lee
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:
DESCRIPTION:[Since this online Complaint Form does not allow for submission of additional documents, I have emailed sotf@sfgov.org with 6 additional documents I would like to be considered part of this complaint.] On 01/07/2012, I filed a request for public records from the Department of Public Works by email to Frank Lee for records in connection with the Montgomery/Alta Street tree project. As of this date, I have not received any records in response to my request. The Department of Public Works is violating the San Francisco Sunshine Ordinance by not providing the request records and by not providing the records in a timely manner. Please, see the 6 additional documents submitted separately to sotf@sfgov.org. Below follows a summary of the email exchange. On 01/07/2012, I filed my request with the Department of Public Works and Frank Lee requesting "...any and all public records... in connection with or with respect to... the Montgomery/Alta Street tree project". I explicitly and clearly expressed that I requested ANY and ALL records and included a list of records that should be included. On 01/09/2012, Frank Lee acknowledged the request and stated that he would contact me "as soon as the responsive documents are ready for you to view and will do so on or before Thursday, January 19, 2012". He further stated that "...the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure" and "There is no requirement that a department or officer construct a document to meet the specifications of the request." On 01/09/2012, I re-stated my request to ensure that Frank Lee would indeed include ANY and ALL records and not narrow the scope of the request. I also stated that it was "my understanding that if you withhold any public record by claiming it is exempt then you need to let me know that you are doing so and what the reason is for you claiming the record is exempt", and that it was "my understanding that if you have electronic information in different places you do have a requirement of compiling it (per City Attorney's Office Sunshine training, "Rules of Conduct For Public Officials, 2010")". On 01/27/2012, having not heard from Department of Public Works or Frank Lee, I emailed Frank Lee and asked if they were intending to provide me with the records I requested. I received no response from Department of Public Works or Frank Lee. On 02/03/2012, I again emailed Frank Lee and asked if they were intending to provide me with the records I requested. On 02/03/2012, Frank Lee replied stating "Yes, we intend to respond." However, as of this date, they have not responded. Lars Nyman
HEARING:Yes
PRE-HEARING:No
DATE:02/16/2012
NAME:Lars Nyman
ADDRESS:
CITY:
ZIP:
PHONE:
CONTACT_EMAIL:upwardfacingdog@hotmail.com;
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No

Re: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works
Up Dog
to:
Lee, Frank W, SOTF
03/19/2012 07:19 PM
Cc:
"Threet, Jerry", "Hope Johnson"
Show Details

Mr. Lee,

I see there are a lot of redactions in your pdf files.

Why do you do these redactions?
Are these redactions justified, authorized and allowed under the Sunshine Ordinance Act of San Francisco and the California Public Records Act?

Also, it is unfortunate that you are not honoring my request to provide the electronic records in their original format. This is what I requested: "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."

Is there a reason why you do not provide the records in their original format?

Sincerely,
Lars Nyman

From: Lee, Frank W
Sent: Monday, March 19, 2012 4:46 PM
To: SOTF ; Up Dog
Cc: Threet, Jerry ; Hope Johnson
Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

Today, we are making emails with attachments to and from DPW Director Ed Reiskin available to you. Attached is that file. It consists of 648 pages.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Lee, Frank W
Sent: Thursday, March 08, 2012 1:58 PM
To: SOTF; Up Dog
Cc: Threet, Jerry; Hope Johnson
Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

Attached is a file containing the attachments to DPW employee Ramon Kong's emails. This file consists of 52 pages.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Lee, Frank W
Sent: Thursday, March 08, 2012 1:57 PM
To: SOTF; Up Dog
Cc: Threet, Jerry; Hope Johnson
Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

Today, we are making emails to and from DPW employee Ramon Kong available to you. Attached are the emails. It consists of 468 pages.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Lee, Frank W
Sent: Monday, March 05, 2012 6:13 PM
To: Lee, Frank W; SOTF; Up Dog
Cc: Threet, Jerry; Hope Johnson
Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

Attached is the construction drawing associated with the Montgomery-Alta construction. Please see attached.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Lee, Frank W
Sent: Monday, March 05, 2012 6:12 PM
To: SOTF; Up Dog
Cc: Threet, Jerry; Hope Johnson
Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

Attached is a file containing the attachments to DPW employee Edmund Lee's emails. This file consists of 75 pages.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Lee, Frank W
Sent: Monday, March 05, 2012 6:09 PM
To: SOTF; Up Dog
Cc: Threet, Jerry; Hope Johnson
Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

We have every intention to respond to Mr. Nyman's request. Unfortunately, the request for "all documents" requires a huge amount of time to research, including knowing where to look for responsive documents, and requires us to inspect a voluminous amount of documents to extract the ones that fit Mr. Nyman's request.

Attached is the first set of responsive documents that we are making available to Mr. Nyman today. They are the emails to and from DPW employee Edmund Lee. The file consists of 1026 pages.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Andrea Ausberry [mailto:Andrea.Ausberry@sfgov.org] **On Behalf Of** SOTF
Sent: Wednesday, February 29, 2012 5:00 PM
To: Lee, Frank W; Up Dog
Cc: Threet, Jerry; Hope Johnson
Subject: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Good Afternoon,

Please delete prior email if received...

Mr. Nyman has filed two complaints with the Department of Public works. The documents attached are the correct corresponding documents submitted by the Complainant, when the complaint was filed.

Sincerely,

Andrea S. Ausberry
Administrator
Sunshine Ordinance Task Force
Office 415.554.7724 | Fax 415.554.5163
sotf@sfgov.org | www.sfbos.org
City Hall, 1 Dr. Carlton B. Goodlett Place, Rm. 244
San Francisco, CA 94102
Follow Us! | Twitter

Complete a Board of Supervisors Customer Service Satisfaction form by clicking HERE

Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

SOTF to: Up Dog, Frank.W.Lee 02/24/2012 05:25 PM

Sent by: Andrea Ausberry

Cc: Jerry Threet

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 **#12011** when submitting any new information and/or supporting documents pertaining to this complaint.

Both parties will be contacted once a hearing date is determined.

Complainants: Your attendance is required at this meeting/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 meeting/hearing.

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

Thank you,

Andrea S. Ausberry
Administrator
Sunshine Ordinance Task Force
Office 415.554.7724 | Fax 415.554.5163
sotf@sfgov.org | www.sfbos.org
City Hall, 1 Dr. Carlton B. Goodlett Place, Rm. 244
San Francisco, CA 94102
Follow Us! | Twitter

Complete a Board of Supervisors Customer Service Satisfaction form by clicking HERE

Up Dog

From: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Date: Friday, February 03, 2012 6:30 PM
To: "'Up Dog'" <upwardfacingdog@hotmail.com>
Subject: RE: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Nyman:

Yes, we intend to respond.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

-----Original Message-----
From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Friday, February 03, 2012 7:41 AM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

On January 7, 2012, I issued a public records request for "ANY and ALL records, regardless of source, in connection with or with respect to the Montgomery/Alta Street tree project".

I have not received ANY records from you in response to my January 7 request.

You and the Department of Public Works are violating the Sunshine Ordinance of San Francisco by not responding to my request. Are you intending to respond with the records I requested?

Sincerely,
Lars Nyman

-----Original Message-----
From: Up Dog
Sent: Friday, January 27, 2012 12:51 PM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

On January 7, 2012, I issued a public records request for "ANY and ALL records, regardless of source, in connection with or with respect to the Montgomery/Alta Street tree project". On January 9, 2012, you stated "I will contact you as soon as the responsive documents are ready for you to view and will do so on or before Thursday, January 19, 2012, as permitted by San Francisco Administrative Code § 67.21(b) and California Government Code § 6253(c).".

You did not contact me before Thursday, January 19, 2012 as you stated you would.
I have not received ANY records from you in response to my January 7 request.

You and the Department of Public Works are now in violation of the Sunshine Ordinance of San Francisco.

Are you intending to provide me with the records I requested or not?

Sincerely,
Lars Nyman

-----Original Message-----
From: Up Dog
Sent: Monday, January 09, 2012 5:21 PM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

>If I misunderstood your request, please let me know immediately.

As stated in my email, my request is for:

"any and all public records, in any form of media, in the custody or control of or maintained by the Department of Public Works or any staff member in connection with or with respect to the following:
- the Montgomery/Alta Street tree project".

That is the request.

I am requesting any and all public records as they are defined under the law, California Public Records Act and the San Francisco Sunshine Ordinance. As you know, the definition of a public record is very broad and inclusive and so is my request - ALL public records in connection with or with respect to the Montgomery/Alta Street project. The list I specified was an example of records that should be included, but NOT limited to such records - I am requesting ALL records.

You stated: "Please note that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure."

I am not sure what the difference between an "identifiable record" and a "record" is. It is my understanding that the San Francisco Sunshine Ordinance Act is more liberal (than the California Public Records Act) requiring you to produce records that the Public Records Act may not require you to produce. It is my understanding that you need produce any public record. It is also my understanding that if you withhold any public record by claiming it is exempt then you need to let me know that you are doing so and what the reason is for you claiming the record is exempt.

You stated: "There is no requirement that a department or officer construct a document to meet the specifications of the request."

It is my understanding that you have no obligation to create a document. However, it is my understanding that if you have electronic information in different places you do have a requirement of compiling it (per City Attorney's Office Sunshine training, "Rules of Conduct For Public Officials, 2010").

Sincerely,
Lars Nyman

-----Original Message-----
From: Lee, Frank W
Sent: Monday, January 09, 2012 4:18 PM
To: 'Up Dog'
Subject: RE: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Dear Mr. Nyman:

I am confirming that we received your Public Records Request, which we assigned as #RR009, today for the following:

* Any and all records, regardless of source, in connection with or with respect to the Montgomery/Alta Street tree project. This includes, but is not limited to: (1) communication between Department Of Public Works and other City departments, agencies, boards, etc.; (2) communication between Department Of Public Works and public utilities; (3) communication between Department Of Public Works and private businesses, corporations and citizens; (4) communication from and to any and all current and former employees of Department Of Public Works, incl. the current and former Director of Department Of Public Works; (5) meeting minutes, budgets, estimates; (6) records related to, or in connection with, the Montgomery/Alta Street project.

If I misunderstood your request, please let me know immediately.

Our department will identify and compile the requested information. The Sunshine Ordinance requires departments to respond as soon as possible or within ten calendar days from receipt of any records requests. Therefore, I will contact you as soon as the responsive documents are ready for you to view and will do so on or before Thursday, January 19, 2012, as permitted by San Francisco Administrative Code § 67.21(b) and California Government Code § 6253(c).

Please note that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Please see California Government Code § 6253(b).) The City's obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in its custody. (See San Francisco Administration Code § 67.20(b).) There is no requirement that a department or officer construct a document to meet the specifications of the request.

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Executive Assistant to the Director
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Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

-----Original Message-----
From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Saturday, January 07, 2012 12:33 PM

To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

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From: "Up Dog" <upwardfacingdog@hotmail.com>
Date: Friday, February 03, 2012 7:41 AM
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Cc: <upwardfacingdog@hotmail.com>
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

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I have not received ANY records from you in response to my January 7 request.

You and the Department of Public Works are violating the Sunshine Ordinance of San Francisco by not responding to my request. Are you intending to respond with the records I requested?

Sincerely,
Lars Nyman

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From: Up Dog
Sent: Friday, January 27, 2012 12:51 PM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

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Our department will identify and compile the requested information. The Sunshine Ordinance requires departments to respond as soon as possible or within ten calendar days from receipt of any records requests. Therefore, I will contact you as soon as the responsive documents are ready for you to view and will do so on or before Thursday, January 19, 2012, as permitted by San Francisco Administrative Code § 67.21(b) and California Government Code § 6253(c).

Please note that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Please see California Government Code § 6253(b).) The City's obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in its custody. (See San Francisco Administration Code § 67.20(b).) There is no requirement that a department or officer construct a document to meet the specifications of the request.

I will attempt to email responsive documents to you, if you provided an email address. Hard copies of any 8.5x11 documents that are made available to you will cost $0.10 per copy, as allowed by the San Francisco Administrative Code § 67.28(c). This section states "a fee not to exceed 10 cents per page may be charged." Postage would be extra. Checks should be made out to "The Department of Public Works."

Our office is located at:

City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Public Records Requests to the Department of Public Works could be sent directly to me via email at Frank.W.Lee@sfdpw.org or via Fax at (415) 522-7727. My direct telephone number is (415) 554-6993.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

-----Original Message-----
From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Saturday, January 07, 2012 12:33 PM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

--- BACKGROUND ---

Over the last 8 months, I have requested information and public records from the Department Of Public Works about the Montgomery/Alta Street project that involved cutting down or saving a tree and to repair the street.

I have requested public records about:
- the approval or authorization of the project but have been told no such records exist.
- the approval or authorization of the initial budget for the project but have been told no such records exist.
- the approval or authorization of spending public funds beyond the initial budget but have been told no such records exist.

Because of the lack of important, critical and key records produced, I am therefore now forced to issue a "blanket" request of ALL records related to this project.

--- SUNSHINE ORDINANCE REQUEST ---

This is a public records request pursuant to the provisions of California Public Records Act and the San Francisco Sunshine Ordinance for copies of any and all public records, in any form of media, in the custody or control of or maintained by the Department of Public Works or any staff member in connection with or with respect to the following:

- the Montgomery/Alta Street tree project

Note, I am requesting ANY and ALL records, regardless of source, in connection with or with respect to the Montgomery/Alta Street tree project.

This includes, but is not limited to:
- communication between Department Of Public Works and other City departments, agencies, boards, etc.
- communication between Department Of Public Works and public utilities
- communication between Department Of Public Works and private businesses, corporations and citizens
- communication from and to any and all current and former employees of Department Of Public Works, incl. the current and former Director of Department Of Public Works
- meeting minutes, budgets, estimates
- records related to, or in connection with, the Montgomery/Alta Street project

Again, I am requesting ANY and ALL records in connection with or with respect to the Montgomery/Alta Street tree project - the above list is only an example of records that are being requested. I know the project started in 2010, extended into 2011 and that there exist records from 2012, however I do not know the date of genesis of this project.

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 them to PDF format and send them by email to the above email address. If the volume of requested records precludes delivery by email, please let me know of other delivery options, e.g. CD, DVD or ftp.

Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

Up Dog

From: "Up Dog" <upwardfacingdog@hotmail.com>
Date: Saturday, January 07, 2012 12:32 PM
To: "Frank W Lee" <Frank.W.Lee@sfdpw.org>
Cc: <upwardfacingdog@hotmail.com>
Subject: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

--- BACKGROUND ---

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Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

[redacted]

From: Rivera, Patrick
Sent: Thursday, June 10, 2010 5:15 PM
To: Reiskin, Ed
Cc: Sweiss, Fuad
Subject: Re: Montgomery St. median tree

Ok, I'll let you know who can meet with you and Carla.

Patrick

On Jun 10, 2010, at 3:15 PM, "Reiskin, Ed" <Ed.Reiskin@sfdpw.org> wrote:

> Hi Patrick:
>
> I'd like to have the appropriate engineers (Reza, Stephan?) meet me
> and Carla Short some time soon on site to review this issue. At nor
> thbound Montgomery at Alta, there's a tree leaning over the street,
> which is believed to be causing damage to the street and to private
> property across the street. Some neighbors think there may be some
> larger dynamic (hillside slippage/movement). I'd like an engineerin g
> perspective on what's happening, and also an evaluation of the ret
> aining wall.
>
> Please let me know who best to include so I can schedule.
>
> Thanks.
>
> Ed
>
> _____
> From: Short, Carla
> Sent: Thursday, June 10, 2010 3:00 PM
> To: Reiskin, Ed
> Subject: FW: Montgomery St. median tree
>
>
>
>
>
> *********
> Carla Short
> Urban Forester
> Department of Public Works
> Bureau of Urban Forestry
> 415.641.2674
>
> _____
> From: Short, Carla
> Sent: Thursday, June 10, 2010 10:39 AM
> To: Falvey, Christine
> Subject: RE: Montgomery St. median tree
>
>

* To view full document
Request file # 12011

E. Reiskin emails pp 648

Construction Project Update

SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS

www.sfgov.org/dpw

UPDATE: Montgomery/Alta Project

Montgomery Street Improvements Completion

Thank you for your support and patience as the Department of Public Works (DPW) underwent and completed the repair and restoration of the roadway along Montgomery Street. The project resulted in the installation of new American with Disabilities curb ramps, the construction of a chicane/bulbout around the Italian Stone Pine Tree, new landscaping in the form of a mini community garden, and new street repavement; thereby calming down vehicular traffic for the safety of pedestrians in addition to rehabilitating the street.

The Department of Parking and Traffic has affixed reflectors and applied reflective paint to improve night visibility of the chicane/bulb-out.

Street Parking Impacts and Emergency Access

DPW and the San Francisco Municipal Transportation Agency (SFMTA) have worked together to maintain safe access and preserve as much parking as possible; while promoting safety and protecting the tree.

During our post construction walk-thru, we have found it necessary to include additional red "no-parking" zone at the northeast corner of Montgomery and Alta Street in order to maintain a safe path of travel for emergency vehicles. This change will reduce curb space by 21 ft. (approx. 2.5 parking spaces). We apologize for any inconvenience this might create. If you have questions or concerns, please contact the department.

Add twitter and facebook logos here

CONTACT INFORMATION

DPW PUBLIC AFFAIRS
Ms. Dadisi Najib
415-437-7018
dadisi.najib@sfdpw.org

Visit us at: www.sfdpw.org

Call with questions Thank you for your support of this project.

* To view full document
Request file # 12011

pp 95
E. Lee emails Attachments

Lee, Edmund

From: Chan, Gloria
Sent: Thursday, April 07, 2011 6:15 PM
To: Lee, Edmund
Subject: RE: Montgomery
Attachments: image001.jpg; image002.jpg

Thanks Edmund for reviewing. I expect another hit piece on this project ☺

From: Lee, Edmund
Sent: Thursday, April 07, 2011 2:28 PM
To: Chan, Gloria
Cc: Najib, Dadisi; Kong, Ramon; Folks, Tom
Subject: RE: Montgomery

Gloria,

Other than the comments Tom suggested, I do not have any additional comments.

Edmund Lee
DPW-BOE
Streets and Highways
554-8258

From: Folks, Tom [mailto:Tom.Folks@sfmta.com]
Sent: Thursday, April 07, 2011 2:20 PM
To: Chan, Gloria; Lee, Edmund
Cc: Najib, Dadisi; Kong, Ramon
Subject: FW: Montgomery
Importance: High

Hi Gloria,
I made a few suggested edits that you'll see in the attachment. (FYI—we've stopped using the DPT name and go by SFMTA now.)
Tom

From: Chan, Gloria [mailto:Gloria.Chan@sfdpw.org]
Sent: Thursday, April 07, 2011 2:08 PM
To: Folks, Tom; Lee, Edmund
Cc: Najib, Dadisi; Velasco, Manito; Kong, Ramon
Subject: RE: Montgomery
Importance: High

Thanks Dadisi for putting this together.

Ed/Tom...Please review flyer that will go out to residents to ensure language is okay and accurate. Dadisi will be going door to door and we will be mailing these out to residents today.

From: Folks, Tom [mailto:Tom.Folks@sfmta.com]
Sent: Thursday, April 07, 2011 1:57 PM

Kong, Ramon

From: DeVinny, James
Sent: Tuesday, April 12, 2011 2:42 PM
To: Chan, Gloria; Najib, Dadisi
Cc: Kong, Ramon; Lee, Edmund; McDaniels, Chris
Subject: RE: Planting Bed, Montgomery Street ,San Francisco

I'm jumping into the middle of this, but I believe it's been Urban Forestry's (Carla's) understanding that the chicane planting would be installed and maintained by the neighbors, subject to DPW review and approval. The vegetation shouldn't encroach into the street and safety and visibility would dictate a height limit of around 3', since the chicane is in a high-volume foot-traffic area and adjacent to an intersection, which has already been pinched by the chicane itself. I think the size and depth of the chicane allows plenty of options, considering the many constraints.

When Carla returns, I'll follow up regarding whether her intention was to create an official maintenance agreement with the Telegraph Hill Dwellers.

James DeVinny
ISA Certified Arborist
Urban Forestry Inspector
City & County of San Francisco
Department of Public Works
Urban Forestry Permits and Policy
2323 Cesar Chavez St
San Francisco, CA 94124

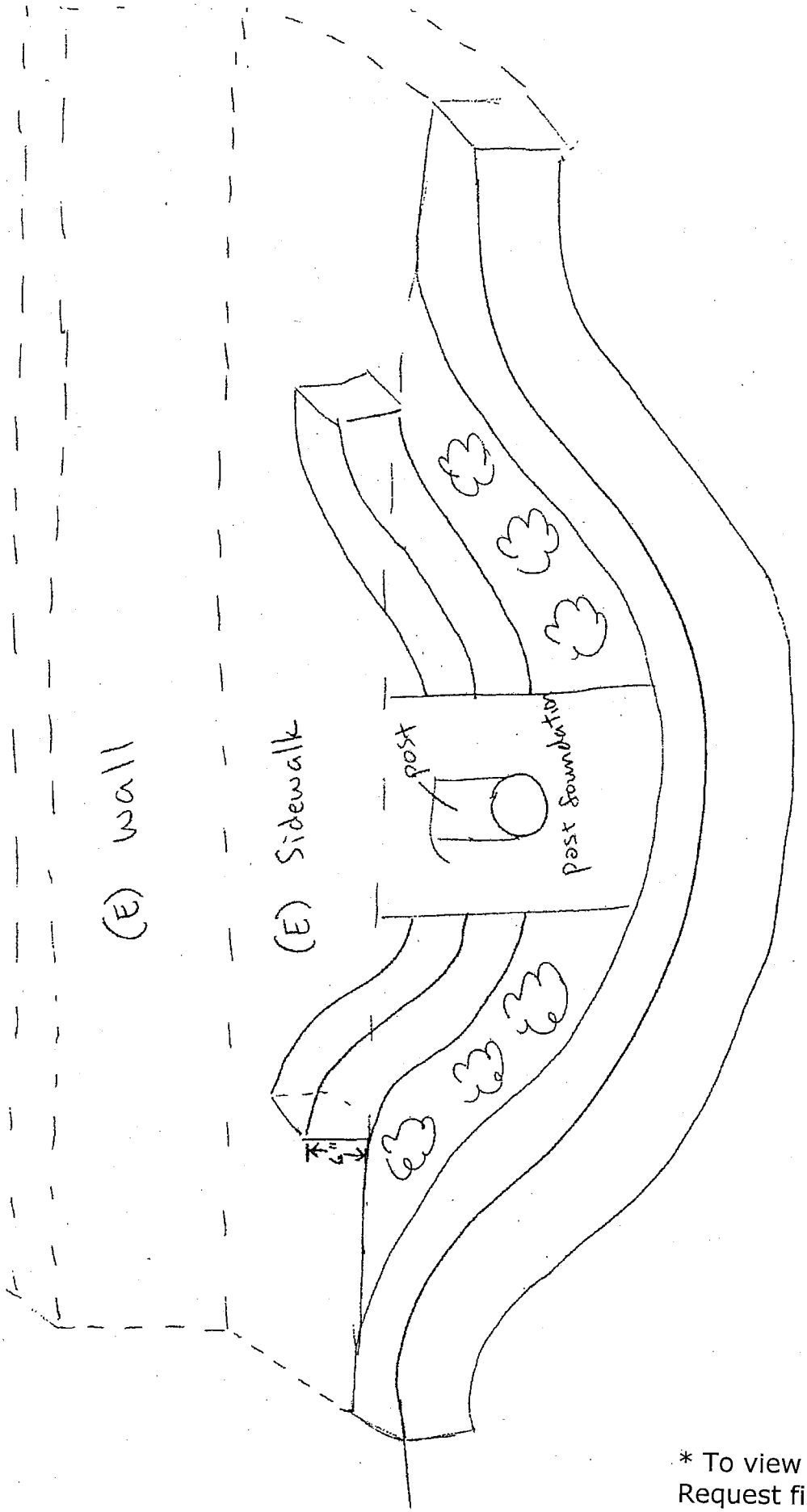
(415) 641-2675 p
(415) 695-2147 f
james.devinny@sfdpw.org

SF Department of Public Works: Greening

From: Lee, Edmund
Sent: Tuesday, April 12, 2011 2:05 PM
To: Chan, Gloria; McDaniels, Chris; Najib, Dadisi
Cc: DeVinny, James; Kong, Ramon
Subject: RE: Planting Bed, Montgomery Street ,San Francisco

Gloria,

The chicane was designed per SFMTA approval. SFMTA had a traffic safety concern with the curb height of the chicane being too high, residents had a concern with the chicane being too shallow. In addition, a curb height too high would require reinforcement as well as a footing. This is essentially a retaining wall design, which would be more costly in both design and construction phases. All concerns considered, the current design was the end result. Regarding the planter areas, it is my understanding that the residents would work with Carla to determine what could be planted in the planters.



* To view full document
Request file # 12011

R. Kong attachment #52

Rivera, Patrick

From: Falvey, Christine
Sent: Tuesday, September 07, 2010 3:52 PM
To: Rivera, Patrick
Cc: Nuru, Mohammed; Short, Carla; Lee, Edmund; Kong, Ramon; Velasco, Manito
Subject: chronicle request for information
Attachments: RE: Montgomery and Alta Cost Estimate; FW: Montgomery and Alta Cost Estimate; Montgomery and Alta Cost Estimate

Importance: High

Hi Patrick, I am double checking the costs I am providing to chronicle.

The attached emails state:

Paving and Curb Ramp Work = $98,000
Chicane = $3,000 construction cost ($900 design cost)
Tree Support = $4,200 construction cost ($1,400 design cost).

(Josef verbally gave me the design costs)

This is a total of $107,500, however, I only gave the Chronicle the cost of the chicane and the tree support. ($9,500), since the roadway repair and curb ramps are not associated with protecting the tree.

Are my assumptions accurate and costs accurate?

[redacted]

From: Haase, Mike
Sent: Friday, May 21, 2010 7:47 AM
To: Short, Carla
Subject: Fw: 2 Leaning Pine Trees & Buckled Street at Montgomery/Alta

Michael D. Haase
Office of the City Attorney
Assistant Chief of Claims & Investigations
875 Stevenson Street, Suite 440
San Francisco, CA 94103

PHONE: 415-554-5845
FAX: 415-554-7890

-----Forwarded by Mike Haase/CTYATT on 05/20/2010 02:36PM -----

Delivery Failure Report

Your document: 2 Leaning Pine Trees & Buckled Street at Montgomery/Alta
was not delivered to: Carla.Short@sfdpw.org
because: Error transferring to 10.1.3.216; SMTP Protocol Returned a Permanent Error 554 Relay rejected for policy reasons.

What should you do?

- You can resend the undeliverable document to the recipients listed above by choosing the Resend button.
- Once you have resent the document you may delete this Delivery Failure Report.
- If resending the document is not successful you will receive a new failure report
- Unless you receive other Delivery Failure Reports, the document was successfully delivered to all other recipients.

Routing Path:

lng01b01/SFGOV, lng01b01/SFGOV, lng01b01/SFGOV, lnh01a01/SFGOV, lnm06a01/CTYATT

Mike Haase <Mike.Haase@sfgov.org>

02:20 PM MST Today

To:Carla.Short@sfdpw.org

cc:

Subject:2 Leaning Pine Trees & Buckled Street at Montgomery/Alta

* To view full document
Request file # 12011

C. Short emails pg 62