

File No. 12014

SOTF Item No. 14

CAC Item No. \_\_\_\_\_

**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: June 6, 2012

Compliance and Amendments Committee

Date: \_\_\_\_\_

**CAC/SOTF**

Memorandum

Complaint and Supporting documents

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Completed by: Andrea Ausberry Date May 31, 2012

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

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



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

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

**MEMORANDUM**

*April 25, 2012:*

*WILLIAM & ROBERT CLARK VS. ARTS COMMISSION (12014)*

**COMPLAINT**

**THE COMPLAINANT ALLEGES THE FOLLOWING:**

Complainant William Clark alleges that the Arts Commission and Tom DeCaigny ("Commission") violated section 67.25(a) of the Ordinance by failing to properly respond to his Immediate Disclosure Request ("IDR") for an itemized list of expenditures for the proposed FY 2012-13 Street Artist Program budget amounting to \$262,313.

**COMPLAINANT FILES COMPLAINT:**

On March 7, 2012, Complainants filed a complaint with the Task Force alleging a violation of section 67.25(a).

**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 67.25 governs the timing of responses to IDRs.
- 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.

**APPLICABLE CASE LAW:**

None.

DATE: April 25, 2012  
PAGE: 2  
RE: Clark vs. Arts Commission (12014)

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## ISSUES TO BE DETERMINED

### Uncontested/Contested Facts:

On March 1, 2012, at 5:32 PM, Complainant sent Tom DeCaigny the following email:

At the January 30, 2012 Executive Committee meeting the Committee approved a proposed FY 2012-13 Street Artist Program budget amounting to \$262,313. At the meeting the public was not provided with an itemized list of expenditures for that proposed budget. Since the proposed Street Artist Program budget for FY 2012-13 is going to be voted on at the March 5, 2012 Arts Commission meeting which is only 5 days from now, I am making an Immediate Disclosure Request for an Itemized list of the expenditures in the proposed Street Artist Program budget for FY 2012-13 which amounts to \$262,313.

I am making this Immediate Disclosure Request pursuant to the provisions of the San Francisco Sunshine Ordinance.

Complainant further alleges that he checked his emails at 5 PM on March 2, 2012, and he had not received a response from Mr. DeCaigny. He then checked his emails the following night at 7:30 PM and noticed that he had an email from Mr. DeCaigny that was sent at 7:31PM on March 2, 2011. That email contained the following response to Complainant's IDR:

Thank you for your inquiry. The itemized list of expenditures for the proposed FY 2012-13 & 2013-14 Street Artists Program Budgets was posted earlier today. You can find the document here:  
<http://www.sfgov3.org/modules/showdocument.aspx?documentid=1656>

Complainant further alleges that the responsive public records included with Mr. DeCaigny's email provided only some of the information he requested, causing him to file this complaint.

On March 20, 2012, Mr. DeCaigny responded to the Sunshine Complaint by letter. That letter asserts that the responsive document, a link to which he provided to Complainant in his email response of March 2, 2012, contains an itemized list of both revenues and expenditures for the Street Artist Program budget for FY 2012-13 and FY 2013-14. Mr. DeCaigny therefore argues that he was fully responsive to the IDR.

### QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does the document linked to by the Commission in its email response include the itemized expenditures requested by Complainant?
- Do any other responsive documents exist in the custody and control of the Commission?
- What responsive document does Complainant assert exists but was not produced?

### LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the Commission timely respond to the request?
- Did the Commission fully respond to the request?

DATE: April 25, 2012  
PAGE: 3  
RE: Clark vs. Arts Commission (12014)

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**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

DATE: April 25, 2012  
PAGE: 4  
RE: Clark vs. Arts Commission (12014)

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

DATE: April 25, 2012  
PAGE: 5  
RE: Clark vs. Arts Commission (12014)

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concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

**SEC. 67.26. 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.



To:  
Cc:  
Bcc:  
Subject: Fw: My complaint

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## My complaint

Bill and Bob Clark to: sotf

03/07/2012 04:57 PM

Please respond to Bill and Bob Clark

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### Complaint Form

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

(\* Required field)

Complaint against which Department or Commission \* SF Arts Commission

Name of individual contacted at Department or Commission

Alleged Violation: Tom DeCaigny

Public Records: \* Yes

Public Meeting: \* No

Date of meeting:

Sunshine Ordinance Section:

(If known, please cite specific provision being violated) Section 67.25(a)

Please describe alleged violation: \*On March 1, 2011 I sent Mr. DeCaigny the following email:

From: Bill and Bob Clark [Add to Address Book]

To: tom.decaigny@sfgov.org

Cc: howard.lazar@sfgov.org

Subject: IMMEDIATE DISCLOSURE REQUEST FOR INFORMATION

Date: Mar 1, 2012 5:32 PM

IMMEDIATE DISCLOSURE REQUEST

Mr. DeCaigny,

At the January 30, 2012 Executive Committee meeting the Committee approved a proposed FY 2012-13 Street Artist Program budget amounting to \$262,313. At the meeting the public was not provided with an itemized list of expenditures for that proposed budget. Since the proposed Street Artist Program budget for FY 2012-13 is going to be voted on at the March 5, 2012 Arts Commission meeting which is only 5 days from now, I am making an Immediate Disclosure Request for an Itemized list of the expenditures in the proposed Street Artist Program budget for FY 2012-13 which amounts to \$262,313.

I am making this Immediate Disclosure Request pursuant to the provisions of the San Francisco

Sunshine Ordinance.

I checked my emails at 5 PM the following day and I had not received a response from Mr. DeCaigny. I checked my emails the following night at 7:30 PM and noticed that I had an email from Mr. DeCaigny that was sent to me at 7:31 PM on March 2, 2011.

The email read as follows:

From: "DeCaigny, Tom" [Edit Address Book]  
To: Bill and Bob Clark  
Cc: "Lazar, Howard" , "Krell, Rebekah"  
Subject: Re: IMMEDIATE DISCLOSURE REQUEST FOR INFORMATION  
Date: Mar 2, 2012 7:31 PM  
Dear Mr. Clark:

Thank you for your inquiry. The itemized list of expenditures for the proposed FY 2012-13 & 2013-14 Street Artists Program Budgets was posted earlier today. You can find the document here: <http://www.sfgov3.org/modules/showdocument.aspx?documentid=1656>.

Sincerely,  
Tom DeCaigny

Tom DeCaigny  
Director of Cultural Affairs  
San Francisco Arts Commission  
25 Van Ness, Suite 345  
San Francisco, CA 94102

phone: (415) 252-2591  
fax: (415) 252-2595

The attachments in his email provided me with only some of the information I requested.

Therefore, I am filing this complaint.

William J. Clark

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

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

(Optional)  
Date: March 7, 2012  
Name: William J. Clark  
Address: P.O. Box 882252  
City: SF  
Zip: 94188  
Telephone: 415-822-5465  
Email: billandbbclark@access4less.net

If anonymous, please let us know how to contact you. Thank you.  
I request confidentiality of my personal information. No



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

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



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE  
MAYOR

TOM DECAIGNY  
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.SFARTSCOMMISSION.ORG

ARTSCOMMISSION@SFGOV.ORG

March 20, 2012

Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Pl., Room 244  
San Francisco, CA 94102

Re: Complaint 12014  
William J. Clark v. Arts Commission

Honorable Members of the Sunshine Ordinance Task Force:

I am writing in response to complaint #12014, submitted on March 7, 2012 by William J. Clark, and received by our office on March 14, 2012.

In his complaint, Mr. Clark says that he requested "an Itemized list of the expenditures in the proposed Street Artist Program budget for FY 2012-13 which amounts to \$262,313."

Mr. Clark's complaint acknowledges receipt of my response, which states, in part: "The itemized list of expenditures for the proposed FY 2012-13 & 2013-14 Street Artists Program Budgets was posted earlier today. You can find the document here: <http://www.sfgov3.org/modules/showdocument.aspx?documentid=1656>."

Mr. Clark's complaint then says: "The attachments in his email provided me with only some of the information I requested."

In response to the complaint, please be advised that the document posted online with the agenda for the March 5, 2012 meeting of the full Arts Commission, entitled "Budgeted Revenues, Expenditures by Program," includes on page 2 an itemized list of both revenue and expenditures for the proposed Street Artists Program budget for FY 2012-13 and FY 2013-14, and is responsive to Mr. Clark's request. The document is still posted here: <http://www.sfgov3.org/modules/showdocument.aspx?documentid=1656>

For the convenience of the Task Force, we are attaching a copy of the document for your review.

Very truly yours,

  
Tom DeCaigny  
Director of Cultural Affairs



CITY AND COUNTY OF  
SAN FRANCISCO

TD/spr  
Encl

Program	Description	Title	FY11-12 Approved Budget	FY12-13 Proposed Budget	FY13-14 Proposed Budget
<b>Administration</b>					
	<b>Revenue:</b>				
		General Fund	713,136	460,673	431,106
		POP Concerts	772,606	450,817	440,365
		Overhead Recovery		401,076	495,112
	<b>Revenue Total:</b>		<b>1,485,742</b>	<b>1,312,566</b>	<b>1,366,583</b>
	<b>Expense:</b>				
		Salaries	747,294	719,701	722,470
		Mandatory Fringe Benefits	372,307	353,209	388,761
		Other Expenses	129,391	18,680	18,680
		City Department Work Orders	236,750	220,976	236,672
	<b>Expense Total:</b>		<b>1,485,742</b>	<b>1,312,566</b>	<b>1,366,583</b>
<b>Community Arts &amp; Education</b>					
	<b>Revenue:</b>				
		Cultural Centers Hotel Tax	1,516,000	1,516,000	1,516,000
		General Fund	582,602	776,195	792,266
		Grants for the Arts	441,229	441,229	441,229
		Capital Maintenance*	595,000	20,000	20,000
	<b>Revenue Subtotal:</b>		<b>3,134,831</b>	<b>2,753,424</b>	<b>2,769,495</b>
		WritersCorps Library Work Order	170,000	180,000	180,000
		DCYF Work Order	100,000	100,000	100,000
		Grants	107,600	107,600	107,600
	<b>Revenue Subtotal:</b>		<b>377,600</b>	<b>387,600</b>	<b>387,600</b>
		Arts Education Transit Advertising	133,017	133,017	133,017
		Street Smarts, Where Art Lives DPW Work Order	150,000	150,000	150,000
	<b>Revenue Subtotal:</b>		<b>283,017</b>	<b>283,017</b>	<b>283,017</b>
	<b>Revenue Total:</b>		<b>3,795,448</b>	<b>3,424,041</b>	<b>3,440,112</b>
	<b>Expense:</b>				
		Cultural Centers Salaries	144,092	284,461	285,555
		Mandatory Fringe Benefits	62,759	114,976	128,947
		Grants	2,124,238	2,124,238	2,124,238
		Overhead	106,659	107,666	108,672
		Other Expenses	102,083	102,083	102,083
		Capital Maintenance*	595,000	20,000	20,000
	<b>Expense Subtotal:</b>		<b>3,134,831</b>	<b>2,753,424</b>	<b>2,769,495</b>
		WritersCorps Salaries	134,735	141,672	142,217
		Benefits	59,856	63,193	70,526
		Program Expenses	183,009	182,735	174,857
	<b>Expense Subtotal:</b>		<b>377,600</b>	<b>387,600</b>	<b>387,600</b>
		Arts Education Salaries	62,972	108,458	108,876
		Street Smarts, Where Art Lives Benefits	22,040	47,991	53,577
		Program Expenses	198,005	126,568	120,564
	<b>Expenses Subtotal:</b>		<b>283,017</b>	<b>283,017</b>	<b>283,017</b>
	<b>Expense Total:</b>		<b>3,795,448</b>	<b>3,424,041</b>	<b>3,440,112</b>
<b>Cultural Equity Grants</b>	<b>Revenue:</b>				
		Hotel Tax	1,716,000	1,716,000	1,716,000
		General Fund	668,787	598,476	614,517
		Grants for the Arts	30,000	30,000	30,000
	<b>Revenue Total:</b>		<b>2,414,787</b>	<b>2,344,476</b>	<b>2,360,517</b>
	<b>Expense:</b>				
		Salaries	206,396	285,492	286,591
		Mandatory Fringe Benefits	91,179	120,826	135,143
		Temporary Staff	175,362	-	-
		Grants	1,823,527	1,823,527	1,823,527
		Overhead	101,077	97,385	98,010
		Other Expenses	17,246	17,246	17,246
	<b>Expense Total:</b>		<b>2,414,787</b>	<b>2,344,476</b>	<b>2,360,517</b>
<b>Gallery</b>	<b>Revenue:</b>				
		POP Concerts	20,000	341,789	352,241
		General Fund	10,000	10,000	10,000
		Grants for the Arts	25,000	25,000	25,000
	<b>Revenue Total:</b>		<b>55,000</b>	<b>376,789</b>	<b>387,241</b>
	<b>Expense:</b>				
		Salaries	-	181,571	182,270
		Mandatory Fringe Benefits	-	81,705	91,152
		Program expenses	55,000	55,000	55,000
		Overhead	-	58,513	58,819
	<b>Expense Total:</b>		<b>55,000</b>	<b>376,789</b>	<b>387,241</b>

Program	Description	Title	FY11-12 Approved Budget	FY12-13 Proposed Budget	FY13-14 Proposed Budget
<b>Public Art</b>					
	Revenue:				
		2% Art Enrichment Fund	1,817,553	1,437,660	1,054,444
		Transit Advertising	109,586	109,586	109,586
		JC DeCaux	4,000	4,000	4,000
	Revenue Total:		1,931,139	1,551,246	1,168,030
	Expense:				
		Salaries	500,098	593,757	593,757
		Mandatory Fringe Benefits	175,034	237,503	237,503
		Overhead	114,714	116,622	118,529
		Other Expenses	113,586	113,586	113,586
		Artist Services	914,121	489,778	104,655
		Special Projects	113,586	113,586	113,586
	Expense Total:		1,931,139	1,664,832	1,281,616
		<b>Total Project Cost</b>			
<b>Civic Collection</b>					
	Revenue:				
		General Fund	-	255,500	265,118
		2% Art Enrichment Fund	49,491	36,256	36,256
		Airport Work Order	31,025	31,025	31,025
		Capital Maintenance*	75,000		
	Revenue Total:		155,516	322,781	332,399
	Expense:				
		Salaries	9,222	178,521	179,208
		Mandatory Fringe Benefits	3,680	77,229	86,225
		Overhead	49,491	49,877	50,264
		Other Expenses	18,123	17,154	16,702
		Capital Maintenance*	75,000		
	Expense Total:		155,516	322,781	332,399
<b>Street Artists</b>					
	Revenue:				
		License Fees	262,313	262,313	262,313
		Interest Earned	-	568	568
		Fund Balance	-	31,821	1,331
	Revenue Total:		262,313	294,702	264,212
	Expense:				
		Salaries	123,372	125,000	126,300
		Mandatory Fringe Benefits	55,448	63,568	70,811
		Overhead	29,675	33,684	34,063
		Management Supervision	18,085	18,307	18,757
		Legal Services	20,396	20,396	20,396
		Other Expenses	30,842	32,416	29,516
	Expense Total:		277,818	293,371	299,843
<b>Civic Design</b>					
	Revenue:				
		Fee for Service	155,459	150,000	150,000
	Revenue Total:		155,459	150,000	150,000
	Expense:				
		Salaries	63,357	75,295	75,585
		Mandatory Fringe Benefits	29,429	32,789	36,632
		Overhead	-	16,585	16,700
		Other Expenses	62,673	25,331	21,083
	Expense Total:		155,459	150,000	150,000
<b>Municipal Symphony Concerts</b>					
(Charter Mandated Set Aside)	Revenue:				
		General Fund	1,985,087	1,985,087	1,985,087
	Revenue Total:		1,985,087	1,985,087	1,985,087
	Expense:				
		Contract (SF Symphony)	1,985,087	1,985,087	1,985,087
	Expense Total:		1,985,087	1,985,087	1,985,087

\*The Capital Planning Committee will determine the Art Commission's capitol fund allocation in May.