

File No. 11089

SOTF Item No. 11
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

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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
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: August 19, 2011
RE: *Complaint No. 11089, Robb Birkhead v. Jack Song, et al.*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Robb Birkhead ("Complainant") alleges that CAO Deputy Press Secretary Jack Song and the City Attorney's Office ("CAO") violated public records laws by failing to fully respond to his public records request dated September 20, 2011 but filed on October 17, 2011, by the October 31, 2011 legal deadline.

COMPLAINANT FILES COMPLAINT:

On November 1, 2011, Complainant filed this complaint, alleging violations of the public records laws.

JURISDICTION

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

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

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

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

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

MEMORANDUM

TO: Sunshine Task Force
DATE: December 28, 2011
PAGE: 2
RE: *Complaint No. 11089, Robb Birkhead v. Jack Song, et al.*

ISSUES TO BE DETERMINED

Contested/Uncontested Facts: Complainant alleges that he filed the public records request, which related generally to records regarding conflict waivers and outside counsel contracts for a 9-year period, on October 7, 2011. He further alleges that he received no response until he called the CAO on October 17, 2011 and spoke to Jack Song. Following that conversation, Mr. Birkhead alleges that Mr. Song sent him an email that day that invoked an extension of 14 days in order to review voluminous records that must be retrieved from storage. Complainant further alleges that he emailed Mr. Song on October 28, 2011 to inquire when he could pick up the requested records, and that Mr. Song responded at 4:00 p.m. on October 31, 2011 by indicating that the records were on a disk that could be picked up at the CAO's front desk. Complainant further alleges that he picked up the disk that day, but that the disk failed to include 5 out of six files that Mr. Song indicated would be on the disk.

The CAO, through Mr. Song, provided its response in an August 22, 2011 email with. Mr. Song's email is quoted at length, below:

As soon as Mr. Birkhead informed our office that not all of the documents listed in the cover letter were on the disk, we made him a new disk, which we provided on November 2, 2011. We informed him that it was a simple oversight. The response to Mr. Birkhead's request was 321 documents in PDF format, with a combined total of 1,429 pages. Because of the extensive nature of his request, the responsive documents could not be sent electronically, they had to be loaded on to a disk. The documents were gathered from several sections of our office, and at least a dozen staff members worked on reviewing, compiling and copying these documents. They were saved to a shared drive from which the disk was made. Due to a simple misunderstanding, not all of the documents on the shared drive were copied to the disk. As soon as we became aware of the problem, we apologized and corrected it.

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did Mr. Song timely respond to the records/information request at issue?
- Did the CAO fail to provide responsive public records or information within its custody?
- If so, were such records or information exempt from production?
- Did the CAO provide a written justification for withholding responsive documents?

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: December 28, 2011
PAGE: 3
RE: Complaint No. 11089, Robb Birkhead v. Jack Song, et al.

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**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.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, 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 by the supervisor of records that the record is public, the supervisor of records 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 supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the 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

MEMORANDUM

TO: Sunshine Task Force
DATE: December 28, 2011
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RE: *Complaint No. 11089, Robb Birkhead v. Jack Song, et al.*

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.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 28, 2011
PAGE: 5
RE: Complaint No. 11089, Robb Birkhead v. Jack Song, et al.

(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.

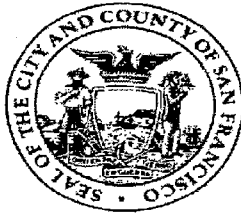
CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

(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 therefore. 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:

- (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.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2011 NOV -1 PM 4:55

AK

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://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Office of the City Attorney

Name of individual contacted at Department or Commission Steph Thompson and Jack Song

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section _____
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.
Please see attached

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹
Name Robb Birkhead Address _____

Telephone No. 832-818-5651 E-Mail Address JR.Birkhead@gmail.com

Date 11/1/2011 J. Robert Birkhead
Signature

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

November 1, 2011

Dennis J. Herrera, Esq.

San Francisco City Attorney

1 Dr. Carlton B. Goodlett Jr. Place, Room 234

San Francisco, California 94102

Re: Public Records Request

Mr. Herrera:

On October 7, 2011, I filed a written public records request with the City Attorney's Office, care of Steph Thompson. On October 17, 2011, I called the City Attorney's Office to follow up on the request, as California State law dictates that a public entity has 10 days to respond to a written request. I then talked to Jack Song, who said he would look at my request and get back to me via e-mail. Mr. Song then sent me the attached e-mail, stating that he would be taking the full 14 days extra allowed by law to compile the information, making the date for compliance October 31, 2011.

On October 28, 2011, I e-mailed Mr. Song asking about when I could come pick up the information on the following Monday. I did not receive a response until late Monday evening, where Mr. Song told me the disk with the information I requested was available at the City Attorney's Office. However, when I went to pick up the materials, the disk was not ready. As you are aware it was required by law to be ready that day.

The following day, I returned to the City Attorney's Office and successfully obtained the disk. When I opened the disk, it only contained a fraction of the contents which Mr. Song said he would provide – namely one item as follows:

1) five folders labeled "Conflict Waiver Letters" which are responsive to item one of your request; (Correspondence with Jack Song)

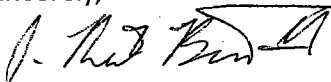
Every other item which Mr. Song said he would release, and is in fact required to be released by law, were missing – namely:

- 2) a folder labeled "Outside Counsel Contracts" which are responsive to item 2 of your request;
- 3) documents 00660669.pdf, Addendum1.pdf, 006982.pdf, and MOU re Allocation of MH Settlement [Executed].pdf are related to *People of the State of California v. Atlantic Richfield*, the lead paint case;
- 4) the document labeled PDF012.pdf is related to *City and County of San Francisco v. Morganite*;
- 5) the nine documents labeled "Farella" are related to *City and County of San Francisco v. Tutor-Saliba*; and
- 6) the documents labeled "Cochett" and "Executed CMS Settlement Agreement" are related to the *City and County of San Francisco v. Sempra Energy et al.*, which involved price fixing and unfair business practices against natural gas shelters. (Correspondence with Jack Song)

As you are well aware this is a clear violation of San Francisco's Sunshine Ordinance. I was promised materials and waited the maximum amount of time to receive the documents and then came to discover that these items were being withheld in violation of the law.

Please release these documents immediately also know that I am filing a complaint to the Sunshine Ordinance Task Force to help me obtain a resolution.

Sincerely,



Robb Birkhead

IMMEDIATE DISCLOSURE REQUEST

September 20, 2011

Dennis J. Herrera, Esq.
San Francisco City Attorney
1 Dr. Carlton B. Goodlett Jr. Place, Room 234
San Francisco, California 94102

Re: Public Records Act Request

Mr. Herrera:

This letter is a request for immediate disclosure of public records under the California Public Records Act (Cal. Gov. Code §§ 6250 *et seq.*) and the San Francisco Sunshine Ordinance (S.F. Admin. Code Chapter 67).

Throughout this request, the term “records” includes but is not limited to: any paper or electronic information; reports; evaluations; memoranda; correspondence; letters; emails; charts; graphs; meeting agendas and minutes; training materials; diagrams; forms; DVDs; tapes; CDs; requests for proposals or for qualifications and responses thereto; notes; or other similar materials. The period covered in this request is January 8, 2002 through the present. For purposes of these requests “the City” shall refer to the City and County of San Francisco and/or any of its elected officials, officers, employees, departments, divisions, or agencies.

We request the following categories of records:

1. Records relating to requests to the City for a conflict waiver, regardless of whether the conflict was real or perceived, existing or hypothetical, or whether or not the waiver was required by law or ethical rule. For purposes of these requests, “conflict waiver” means the kind of written consent required under Rule 3-310 of the California Rules of Professional Conduct or any similarly-applicable ethical rule.
2. Records relating to the retention of outside legal counsel in contingent- or conditional-fee litigation. For purposes of these requests, “contingent- or conditional-fee litigation” shall mean litigation whether or not brought on behalf of the City, in which some or all of the outside legal counsel’s payment was intended to come from an eventual recovery in the action. For purposes of these requests, “outside legal counsel” means any attorney retained by the City – whether as an individual or through a law firm –

who was not at all times during the pendency of the matter an employee of the City.

3. Records relating to the contingent- or conditional-fees received by outside legal counsel retained by the City.
4. Records relating to the selection, contracting, and use of outside legal counsel by the City on any matter brought on behalf of the People of the State of California.

Should you believe that there is a basis for withholding any records, we request that you state the statutory or other authority upon which you withhold the responsive documents. We also request that you indicate every redaction, along with the basis upon which you have redacted information.

Thank you for your prompt attention to this matter. Please furnish all applicable records to Robb Birkhead. If you have questions, please contact me at 832-818-5651 or at JRBirkhead@gmail.com

Sincerely,

Robb Birkhead



Robb Birkhead <jrbirkhead@gmail.com>

Response to Public Records Request (10/7/2011)

3 messages

Jack Song <Jack.Song@sfgov.org>**Mon, Oct 17, 2011 at 3:41 PM**

To: JRBirkhead@gmail.com

Dear Mr. Birkhead:

This is in response to your public records request, dated September 20, 2011, but received by our office on October 7, 2011, for:

1. Records relating to requests to the City for a conflict waiver, regardless of whether the conflict was real or perceived, existing or hypothetical, or whether or not the waiver was required by law or ethical rule. For purposes of these requests, "conflict waiver" means the kind of written consent required under Rule 3-310 of the California Rules of Professional Conduct or any similarly-applicable ethical rule.
2. Records relating to the retention of outside legal counsel in contingent- or conditional-fee litigation. For purposes of these requests, "contingent- or conditional-fee litigation" shall mean litigation whether or not brought on behalf of the City, in which some or all of the outside legal counsel's payment was intended to come from an eventual recovery in the action. For purposes of these requests, "outside legal counsel" means any attorney retained by the City - whether as an individual or through a law firm - who was not at all times during the pendency of the matter an employee of the City.
3. Records relating to the contingent- or conditional-fees received by outside legal counsel retained by the City.
4. Records relating to the selection, contracting, and use of outside legal counsel by the City on any matter brought on behalf of the People of the State of California.

You request documents from January 8, 2002, through the present. Given the almost 10 years time span, we must invoke an extension of 14 days because your request is voluminous, and we must retrieve records from storage in order to respond to your request (Cal. Gov. Code Sec. 6253(c)). The due date for response is October 31, 2011.

Thank you for your understanding.

Best regards,

JACK SONG
Public Information Officer

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

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

Robb Birkhead <jrbirkhead@gmail.com>

Thu, Oct 28, 2011 at 3:27 PM

To: Jack Song <Jack.Song@sfgov.org>

Jack, just wanted to see what time on Monday I can come in to pick this up.

Robb Birkhead
C: 832-818-5651

On Mon, Oct 17, 2011 at 3:41 PM, Jack Song <Jack.Song@sfgov.org> wrote:
Dear Mr. Birkhead:

This is in response to your public records request, dated September 20, 2011, but received by our office on October 7, 2011, for:

1. Records relating to requests to the City for a conflict waiver, regardless of whether the conflict was real or perceived, existing or hypothetical, or whether or not the waiver was required by law or ethical rule. For purposes of these requests, "conflict waiver" means the kind of written consent required under Rule 3-310 of the California Rules of Professional Conduct or any similarly-applicable ethical rule.
2. Records relating to the retention of outside legal counsel in contingent- or conditional-fee litigation. For purposes of these requests, "contingent- or conditional-fee litigation" shall mean litigation whether or not brought on behalf of the City, in which some or all of the outside legal counsel's payment was intended to come from an eventual recovery in the action. For purposes of these requests, "outside legal counsel" means any attorney retained by the City - whether as an individual or through a law firm - who was not at all times during the pendency of the matter an employee of the City.
3. Records relating to the contingent- or conditional-fees received by outside legal counsel retained by the City.
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You request documents from January 8, 2002, through the present. Given the almost 10 years time span, we must invoke an extension of 14 days because your request is voluminous, and we must retrieve records from storage in order to respond to your request (Cal. Gov. Code Sec. 6253(c)). The due date for response is October 31, 2011.

Thank you for your understanding.

Best regards,

JACK SONG
Public Information Officer

OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
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(415) 554-4653 Direct
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(415) 554-4715 Facsimile
(415) 554-6770 TTY
www.sfcityattorney.org

Jack.Song@sfgov.org <Jack.Song@sfgov.org>

Mon, Oct 31, 2011 at 4:01 PM

To: jrbirkhead@gmail.com

Dear Mr. Robb Birkhead:

This responds to your Immediate Disclosure request for public records dated September 20, 2011, received by our office on October 7, 2011, for:

1. Records relating to requests to the City for a conflict waiver, regardless of whether the conflict was real or perceived, existing or hypothetical, or whether or not the waiver was required by law or ethical rule. For purposes of these requests, "conflict waiver" means the kind of written consent required under Rule 3-310 of the California Rules of Professional Conduct or any similarly-applicable ethical rule.
2. Records relating to the retention of outside legal counsel in contingent- or conditional-fee litigation. For purposes of these requests, "contingent- or conditional-fee litigation" shall mean litigation whether or not brought on behalf of the City, in which some or all of the outside legal counsel's payment was intended to come from an eventual recovery in the action. For purposes of these requests, "outside legal counsel" means any attorney retained by the City - whether as an individual or through a law firm - who was not at all times during the pendency of the matter an employee of the City.
3. Records relating to the contingent- or conditional-fees received by outside legal counsel retained by the City.
4. Records relating to the selection, contracting, and use of outside legal counsel by the City on any matter brought on behalf of the People of the State of California.

You requested documents from January 8, 2002, to the present.

On October 17, 2011, we notified you that given the voluminous nature of your request, and the need to retrieve closed files, the we needed to invoke an extension of 14 days.

As I informed you on October 17-, because of the large volume of documents you requested, they could not be emailed, so we prepared a disk of the responsive documents. The disk is available for pickup at the office. Room 234 in San Francisco City Hall, City Attorney's Office

On the disk you will find: 1) five folders labeled "Conflict Waiver Letters" which are responsive to item one of your request; 2) a folder labeled "Outside Counsel Contracts" which are responsive to item 2 of your request; 3) documents 00660669.pdf, Addendum1.pdf, 006982.pdf, and MOU re Allocation of MH Settlement [Executed].pdf are related to *People of the State of California v. Atlantic Richfield*, the lead paint case; 4) the document labeled PDF012.pdf is related to *City and County of San Francisco v. Morganite*; 5) the nine documents labeled "Farella" are related to *City and County of San Francisco v. Tutor-Saliba*; and 6) the documents labeled "Cotchet" and "Executed CMS Settlement Agreement" are related to the *City and County of San Francisco v. Sempra Energy et al.*, which involved price fixing and unfair business practices against natural gas shelters.

We are continuing to gather additional information responsive to your request for fees received by outside counsel, and will forward this information as soon as it is finally compiled. In the *Sempra* case, the City did not pay fees to the Cotchet firm, rather the City received a portion of the settlement funds, this information is in the Cotchet parts 1 and 2 documents.

Certain documents have been withheld, and certain portions of documents redacted, because they are exempt from disclosure under the attorney-client and attorney work product privileges. The Public Records Act does not require an agency to provide "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." (California Government Code Section 6254(k).) California Evidence Code Section 954 protects from disclosure communications between attorneys and their clients. Disclosure of communications between this office and our client departments would chill the ability of both attorney and client to discuss candidly with each other issues on which legal advice is sought. Further, California Business and Professions Code Section 6068(e) requires attorneys to keep inviolate the confidential communications of clients. Therefore, we decline to disclose any records reflecting those communications. Additionally, certain documents have been withheld as exempt from disclosure under the attorney work product privilege. See California Government Code Section 6254(k) (public agencies not required to disclose documents where disclosure is exempted or prohibited by federal or state law) and California Code of Civil Procedure Section 2018.030 (protecting as work product writings that reflect an attorney's impressions, conclusions, opinions or legal research or theories). See also California Government Code Section 6276.04 (recognizing as exempt from disclosure under Section 6254(k) of the Public Records Act materials covered by the attorney-client and attorney work product privileges).

Best regards,

JACK SONG
Public Information Officer

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

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

From: Robb Birkhead <rbirkhead@gmail.com>
To: Jack Song <Jack.Song@sfgov.org>
Date: 10/28/2011 03:27 PM
Subject: Re: Response to Public Records Request (10/7/2011)

Jack, just wanted to see what time on Monday I can come in to pick this up.

Robb Birkhead
C: [832-818-5651](tel:832-818-5651)

On Mon, Oct 17, 2011 at 3:41 PM, Jack Song <Jack.Song@sfgov.org> wrote:
Dear Mr. Birkhead:

This is in response to your public records request, dated September 20, 2011, but received by our office on October 7, 2011, for:

1. Records relating to requests to the City for a conflict waiver, regardless of whether the conflict was real or perceived, existing or hypothetical, or whether or not the waiver was required by law or ethical rule. For purposes of these requests, "conflict waiver" means the kind of written consent required under Rule 3-310 of the California Rules of Professional Conduct or any similarly-applicable ethical rule.
2. Records relating to the retention of outside legal counsel in contingent- or conditional-fee litigation. For purposes of these requests, "contingent- or conditional-fee litigation" shall mean litigation whether or not brought on behalf of the City, in which some or all of the outside legal counsel's payment was intended to come from an eventual recovery in the action. For purposes of these requests, "outside legal counsel" means any attorney retained by the City - whether as an individual or through a law firm - who was not at all times during the pendency of the matter an employee of the City.
3. Records relating to the contingent- or conditional-fees received by outside legal counsel retained by the City.
4. Records relating to the selection, contracting, and use of outside legal counsel by the City on any matter brought on behalf of the People of the State of California.

You request documents from January 8, 2002, through the present. Given the almost 10 years time span, we must invoke an extension of 14 days because your request is voluminous, and we must retrieve records from storage in order to respond to your request (Cal. Gov. Code Sec. 6253(c)). The due date for response is October 31, 2011.

Thank you for your understanding.

Best regards,

JACK SONG

Public Information Officer

OFFICE OF CITY ATTORNEY DENNIS HERRERA

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Re: Complaint #11089 Robb Birkhead v. City Attorney's Office
Jack Song to: SOTF

11/22/2011 04:23 PM

History: This message has been forwarded.

Re: Complaint #11089 Robb Birkhead v. City Attorney's Office

Dear Sunshine Ordinance Task Force,

This is in response to Mr. Birkhead's complaint, dated November 1, 2011, that he received an incomplete disk of the documents that were responsive to his request. As soon as Mr. Birkhead informed our office that not all of the documents listed in the cover letter were on the disk, we made him a new disk, which we provided on November 2, 2011. We informed him that it was a simple oversight. The response to Mr. Birkhead's request was 321 documents in PDF format, with a combined total of 1,429 pages. Because of the extensive nature of his request, the responsive documents could not be sent electronically, they had to be loaded on to a disk. The documents were gathered from several sections of our office, and at least a dozen staff members worked on reviewing, compiling and copying these documents. They were saved to a shared drive from which the disk was made. Due to a simple misunderstanding, not all of the documents on the shared drive were copied to the disk. As soon as we became aware of the problem, we apologized and corrected it.

Best regards,

JACK SONG
Public Information Officer

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