



SUNSHINE ORDINANCE TASK FORCE
CITY AND COUNTY OF SAN FRANCISCO
AGENDA

Hearing Room 406
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

July 11, 2012 - 4:30 PM

Special Meeting

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

- Seat 1 (Vacant)
Seat 2 Richard Knee
Seat 3 Kitt Grant
Seat 4 Suzanne Manneh
Seat 5 Allyson Washburn
Seat 6 David Pilpel
Seat 7 (Vacant Until Sworn In) David Sims
Seat 8 Todd David
Seat 9 Chris Hyland
Seat 10 Louise Fischer
Seat 11 (Vacant)
Ex-officio (Vacant)
Ex-officio (Vacant)

2. Determine compliance with Sunshine Ordinance Section 67.30(a): "At all times the Task Force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government." (approximately 10 minutes) (Discussion and Action)

3. Sunshine Ordinance Task Force Bylaws. Proposal to change the definition of the majority required for voting to take action on substantive matters before the Task Force. (approximately 15 minutes) (Discussion and Action) (attachment)

In accordance to the Sunshine Ordinance Task Force's By-laws, Article VIII, Amendment of By-laws; Final action will not be taken on this item at the July 11, 2012 Task Force Meeting.

Article IV - Meetings

Section 7. Action at a Meeting; Quorum and Required Vote

The presence of a majority of the members (six members) of the Task Force shall constitute a quorum for all purposes. The affirmative vote of a majority of the members of the Task Force present (six votes) shall be required for the approval of all substantive matters. Procedural motions require an affirmative vote of a majority of the members present. If a quorum is not present, no official action may be taken, except roll call and adjournment.

4. Selection of Members to service on standing committees and appointment of its Chairs and Vice Chairs. (*approximately 15 minutes*) (Discussion and Action)
5. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. (No Action) *Public comment shall be taken at 5:00 pm or as soon thereafter as possible.*
6. **Approval of Minutes from the May 2, 2012, Regular Meeting.** (*approximately 5 minutes*) (Action) (*attachment*)
7. **Approval of Minutes from the June 6, 2012, Regular Meeting.** (*approximately 5 minutes*) (Action)
8. Review of outcomes from Joint Sunshine Ordinance Task Force and Ethics Commission Hearing. (*approximately 15 minutes*) (Discussion and Action)
9. **File No. 11083:** The Compliance and Amendments Committee has referred File No. 11083, Ray Hartz, Jr. against the Public Library, back to the Task Force for further action including a recommendation to the Ethics Commission. (*approximately 15 minutes*) (*Discussion and Action*) (*attachment*)
10. **File No. 11089:** Complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents. (*attachment*)
 - a) Determination of jurisdiction on complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents. (*approximately 5 minutes*) (*Discussion and Action*)
 - b) Hearing on complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents. (*approximately 30 minutes*) (Discussion and Action)
11. **File No. 12005:** Complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage. (*attachment*)
 - a) Determination of jurisdiction on complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage. (*approximately 5 minutes*) (*Discussion and Action*)
 - b) Hearing on complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage. (*approximately 30 minutes*) (*Discussion and Action*)

12. **File No. 12013:** Complaint filed by William Clark against Howard Lazar, Arts Commission for allegedly not providing documents of expenses charged to the Street Artist Program for FY 2010-2011. (*attachment*)
 - a) Determination of jurisdiction on complaint filed by William Clark against Howard Lazar, Arts Commission for allegedly not providing documents of expenses charged to the Street Artist Program for FY 2010-2011. (*approximately 5 minutes*) (*Discussion and Action*)
 - b) Hearing on complaint filed by William Clark against Howard Lazar, Arts Commission for allegedly not providing documents of expenses charged to the Street Artist Program for FY 2010-2011. (*approximately 30 minutes*) (*Discussion and Action*)
13. **File No. 12014:** Complaint filed by William Clark against Tom DeCaigny, Arts Commission for allegedly not providing an itemized list of expenditures for the Street Artist Program FY 2012-2013 budget. (*attachment*)
 - a) Determination of jurisdiction on complaint filed by William Clark against Tom DeCaigny, Arts Commission for allegedly not providing an itemized list of expenditures for the Street Artist Program FY 2012-2013 budget. (*approximately 5 minutes*) (*Discussion and Action*)
 - b) Hearing on complaint filed by William Clark against Tom DeCaigny, Arts Commission for allegedly not providing an itemized list of expenditures for the Street Artist Program FY 2012-2013 budget. (*approximately 30 minutes*) (*Discussion and Action*)
14. **File No. 12017:** Complaint filed by Ray Hartz, Jr. against Supervisor David Campos, Board of Supervisors for allegedly participating in the operation of the Bernal Library Art Project, violating the rights of citizens. (*attachment*)
 - a) Determination of jurisdiction on complaint filed by Ray Hartz, Jr. against Supervisor David Campos, Board of Supervisors for allegedly participating in the operation of the Bernal Library Art Project, violating the rights of citizens. (*approximately 5 minutes*) (*Discussion and Action*)
 - b) Hearing on complaint filed Ray Hartz, Jr. against Supervisor David Campos, Board of Supervisors for allegedly participating in the operation of the Bernal Library Art Project, violating the rights of citizens. (*approximately 30 minutes*) (*Discussion and Action*)
15. **Report: Education Outreach and Training Committee meeting of May 10, 2012.** (*approximately 5 minutes*) (*Discussion*)
16. **Report: Compliance and Amendments Committee meeting of May 15, 2012.** (*approximately 5 minutes*) (*Discussion*)

17. **Administrator's Report.** (*approximately 5 minutes*) (Discussion)
18. **Announcements, Comments, Questions, and Future Agenda Items.** (*approximately 10 minutes*) (Discussion and Action)
19. **ADJOURNMENT**

Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these document, please contact SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing;. These comments will be made a part of the official public record.

Hearing Procedures

- | | | |
|----|--|----------------------|
| 1. | Complainant presents his/her facts and evidence | 5 minutes |
| | Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. | City responds | 5 minutes |
| | Other parties of City respond | Up to 3 minutes each |
| | <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. | Matter is with the Task Force for discussion and questions. | |
| 4. | Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. | Matter is with the Task Force for motion and deliberation. | |
| 6. | Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at

Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact by mail: Sunshine Ordinance Task Force, 1 Dr. Carlton b. Goodlett Place, Room 244, San Francisco, CA 94102; phone at (415) 554-7724; fax at (415) 554-7854; or by email at sotf@sfgov.org.

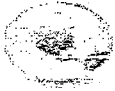
Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 37 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics.



Additional Advice re Majority Voting Requirement
Jerry Threet to: SOTF

06/28/2012 03:51 PM

Ms. Ausberry -

Please include this email in the packet for the agenda item regarding a change in the majority voting requirement for substantive issues.

Members -

Included in your agenda packet is a memoranda from Tom Owen of our office to the Sunshine Task Force from 2007, addressing the issue of whether the Task Force was subject to the requirements of Charter Section 4.104(b) regarding the majority voting requirement for taking substantive action. DCA Owens concluded, after thorough analysis, that the Task Force was subject to the requirements of that charter section. That section states that "the affirmative vote of a *majority of the members shall be required* for approval of any matter, and the body shall act by a majority . . . of all its *authorized members*." This has been the consistent advice of our office to the Task Force, including the advice I provided when the Task Force amended its bylaws last April, 2011 to allow it to take substantive action on a vote of the majority of members present.

During debate over this issue, some members of the Task Force and members of the public have suggested that, even if the Task Force is subject to the requirements of Section 4.104(b), those requirements may be met by a vote of a majority of the members present at a meeting, rather than a majority of the members authorized. This is inconsistent with the plain language of the charter section in question, as well as court precedent interpreting similar provisions. Therefore, Section 4.104(b) requires that any substantive action be approved by the vote of at least 6 members of the Task Force, a majority of the eleven voting seats authorized.

Charter Section 4.104(b) states, in relevant portion:

The presence of a majority of the members of an appointive board, commission or other unit of government shall constitute a quorum for the transaction of business by such body. [. . .] Unless otherwise required by this Charter, the affirmative vote of a majority of the members shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the members present constitute a quorum. All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members. Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present.

Section 4.104(b) requires that any substantive action be taken by "the affirmative vote of a *majority of the members shall be required* for approval of any matter, and the body shall act by a majority . . . of all its *authorized members*." Where this section intends that a majority of members *present* is sufficient, as with the number of members required to constitute a quorum or to take action on procedural matters, it clearly states this. This stands in contrast to the requirement that the affirmative vote of a majority of authorized members is required to take substantive action. Thus, the language of this section clearly requires an affirmative vote of 6 members of the Task Force to take substantive action.

The City Attorney's Office provided similar advice in Opinion 78-91, where it advised that a majority vote of 6 of the 11 members of the Board of Supervisors was necessary to fill a vacancy in the office of mayor caused by the assassination of Mayor Moscone, even though the number of Supervisors had been reduced by two, due to the assassination of Supervisor Milk and the resignation of Supervisor White. That opinion quoted 43 American Law Reports 2d 703 for the legal proposition that "the total original membership of the council has been held in numerous cases to be the base on which a determination

must be made as to whether a vote constitutes a majority. [. . .] The fact that some members [. . .] are absent at the time of the vote has been held not enough to vary the requirement that the necessary majority is that the full membership of the body."

Likewise, Opinion 78-91 cites *City of San Francisco v. Hazen* (1855) 5 Cal. 169, where the Court struck down ordinances passed by the Board of Supervisors that authorized the sale of certain real property owned by the City. The Court in that case stated that "[i]n construing statutes, force and effect should be given to every part of them. Thus, where a law is capable of two constructions, that one must be adopted which will preserve the sense, as well as the several parts, as of the whole Act." Employing this rule, the Court interpreted the charter in place at that time, which required that "no ordinance . . . shall be passed except by a majority of all the members elected." The Court decided that the word "elected" in that charter section must be given meaning to require a majority of all members, otherwise "the Board may be reduced to one member and he would be as competent to act as a full Board. Similarly, the term "authorized" in current charter Section 4.104(b) must be given meaning, lest it be considered redundant.

Thus, it is clear that, under section 4.104(b), any substantive action by the Task Force must be taken by the affirmative vote of 6 members.

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Counsel to Sunshine Task Force
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Date: Jan. 25, 2011

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Presentation by Allen Grossman
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Completed by: Chris Rustom

Date: Jan. 21, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

INTRODUCTION: SOTF MEETING QUORUM AND VOTING RULES

The public's rights of access to this City's public records and meetings were enhanced significantly with the its voters' adoption of the its Sunshine Ordinance over 10 years ago.

The single most important part of that law was the establishment of a unique body, the SOTF, as the quasi-judicial forum to resolve disputes between the public and the City officials, departments and agencies regarding open government matters, particularly access to public records. The SOTF affords the public a level playing field with expedited relief when these disputes arise; no need to file and pursue a lawsuit, necessary under state law without the SOTF.

Over the past few years the SOTF's ability to remedy violations and maintain that "level playing field" has been seriously compromised as a result of the City Attorney's advice regarding both minimum quorum and voting requirements.

When only six SOTF members attend a meeting - which has happened recently - the complainant will be denied access to records or the proper conduct of a meeting even if a five-member majority - 83% - vote "yes"; whereas, the respondent City department, official or agency will absolved by a single "yes" vote - 16.67%. Now, with only nine seats filled, the complainant will need no less a two-thirds majority.

Such a voting "rule" is manifestly unfair, untenable and cannot be justified under any appropriate standard. It is certainly contrary to the purposes of the constitutional and state law protections afforded the public for gaining access to public meetings and records.

The following Memorandum addresses in detail the three legal issues on which the City Attorney's advice was given and why, in my opinion, that advice, in each instance, was improper. In addition, it will show that, if the SOTF chooses to reject that advice on any of the three issues, the SOTF can adopt its own quorum and voting rules. This would put the complainant and the respondent on an equal footing on all disputes heard by the SOTF.

However, even if the City Attorney's advice on all three is correct, there is a partial but important solution involving disputes over disclosure of public records, which constitute most of the disputes heard by the SOTF. The proposal I made last month and repeat here effectively eliminates the egregious consequences of the existing voting procedure with respect to public records requests.

In short, the current SOTF voting procedure whether a requested record is disclosable should be reversed because under California law all public records are *presumptively* disclosable and the City's departments, officials and policy bodies have *the burden of establishing that a specific exemption from disclosure applies*. For that reason, a motion should not be for a determination of a "violation." Rather, the motion put to the vote should be for a determination that the specific exemption relied on by the respondent applies; and the burden of proving that exemption should rest on the respondent, not on the complainant to establish that it does not apply. Thus, in the case of the five to one vote that the complainant would now lose, the respondent would lose and be required to disclose the requested record, which is as it should be.

Respectfully Submitted,

Allen Grossman

MEMORANDUM

TO: SOTF MEMBERS
RE: SOTF MEETING QUORUM AND VOTING RULES
DATE: JANUARY 25, 2011

While the public statewide has constitutionally protected and state law rights to open government – access to public records and open meetings of state and local bodies - San Franciscans have expanded rights and protections from the San Francisco Sunshine Ordinance, a voter initiated and voted adopted law.

Probably the single most important one was the establishment of a unique body, the SOTF, as the quasi-judicial forum to resolve disputes between the public and the City officials, departments and agencies regarding open government matters.

The SOTF is designed to afford members of the public a level playing field with expedited relief when these disputes arise; no need to hire an attorney, file a lawsuit, take on the full might of the 200 lawyer city attorney's office or wait for the case to progress to a decision, all of which would be needed under the state laws without the SOTF.

That design is implemented in a number of ways:

- First, the SOTF is required to inform the petitioner of its determination whether the requested public record, is disclosable no more than 45 days from the time the petition is filed.
- Next, if the record is found disclosable, the SOTF must immediately order compliance; if the respondent fails to comply within five days the SOTF must to notify the district attorney or the attorney general to insure compliance.
- Lastly, throughout and prior to this entire procedure, The San Francisco City Attorney's office ...[can] not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public.”

Thus, it is critical that the SOTF not be hamstrung by imposed rules or procedures that prevent it from expeditiously carrying out its mandated responsibility to serve as the public's "court".

Nonetheless, that is exactly what has happened over the past few years as the SOTF's ability to remedy these violations and its ability to maintain that "level playing field" has been seriously compromised as result of the City Attorney's advice. That advice on several issues raised both the minimum quorum requirement and the voting threshold the public must reach to prevail. This advice has been given, notwithstanding the City Attorney's obligation under Sunshine Ordinance

that the "his office "act to protect and secure the rights of the people of San Francisco to access public information and public meetings..."

When only six SOTF members attend a meeting - which has happened recently - the complainant will be denied access to records or the proper conduct of a meeting even if a five-member majority - 83% - vote "yes"; whereas, the respondent City department, official or agency will absolved by a single "yes" vote - 16.67%. Now, with only nine seats filled, the complainant will need no less a two-thirds majority.

That voting "rule" is manifestly unfair, untenable and cannot be justified under any appropriate standard. It is certainly contrary to the purposes of the constitutional and state law protections afforded the public for gaining access to public meetings and records.

What follows is my presentation of the contested legal issues and some suggested solutions. I will try to minimize the legal content of the explanations, although these issues are 100% legal in nature.

Three Basic Questions to be Answered.

Three questions need answers before a definitive conclusion can be reached on the quorum and voting rules to which the SOTF is subject or, alternatively, which it may adopt for itself. They are:

First, is the San Francisco Sunshine Ordinance a wholly independent stand-alone law not subject to the San Francisco City Charter?

If the answer is "No", then the SOTF can adopt its own quorum and voting rules without regard any provisions in the City Charter.

Second, if the answer is "yes", are there any specific provisions in the City Charter that govern the SOTF quorum and voting procedures?

If the answer is "no", then the SOTF can adopt its own quorum and voting rules without regard any provisions in the City Charter

Third, if the answer is "yes", which ones are they and how should those rules be followed by the SOTF in its quorum and voting procedures?

The first question: Is the San Francisco Sunshine Ordinance a wholly independent stand-alone law not subject to the San Francisco City Charter?

Under the Brown Act:

A meeting is "... any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. [§54952.2(a)] and

Action taken at a meeting is"... a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority

of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance. [§54952.6]

The common rule is that a majority of the members of the body physically present constitute a quorum and the decision of a majority of those present constitutes action taken. There is nothing in the Brown Act that specifically negates that this rule when determining what constitutes a meeting and what constitutes action taken.

The Oakland Ethics Commission so states that in its digest of its own Sunshine Ordinance in the following quotation from its website:

“The Brown Act and Sunshine Ordinance do not expressly state how a public meeting must be conducted. There are issues that may arise at a public meeting however, that may affect whether the meeting complies with open meeting laws after the meeting begins.

“The following is a brief summary of those issues:

“Presence of a Quorum. □Unless otherwise provided in the city ordinance or resolution creating the local body, a majority of the members typically constitutes the quorum. A quorum is necessary before the local body can take any formal action; **a majority of a quorum is required to take action on behalf of the local body.** (Emphasis added.)

If that is the case under State law, the City Charter provision relied in by the City Attorney requiring a super majority is inapplicable under the Brown Act’s quorum and voting rules when fewer than all 11 members attend a SOTF meeting or when SOTF seats are vacant; thus, the SOTF meetings can be conducted by quorum and voting rules that it adopts consistent with its purposes and by Robert’s Rules of Order [SOTF By-Laws §5(a)].

However, the City Attorney is on record that the City Charter always “trumps” the San Francisco Sunshine Ordinance. For example:

- In a 2008 Memorandum, Paula Jesson, the Deputy City Attorney, acting in the capacity of the Supervisor of Records under Section 67.21(d) of the Sunshine Ordinance, wrote:

“In your email, you cite Section 67.36 of the Sunshine Ordinance, which states that the Ordinance “supersedes other local laws,” and you note that the Charter is local law too. **However, an ordinance cannot trump the Charter, which is the supreme local law...**”[Citations and quotations from cited cases omitted.]

- In his January 4, 2011 Memorandum to the SOTF regarding case # 10057, DCA Threet stated:

“Put simply, ... **Where an ordinance and the Charter are in conflict, the Charter must prevail.** (citation omitted) The Controller therefore cannot be prohibited by the Sunshine Ordinance from asserting this exemption.”

The full supremacy provision is clear and to the point: "The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply."

As some members know, my answer to the first question is "yes" because (1) the "supremacy" provision is effective and the Sunshine Ordinance is the operative law when there is a conflict with the City Charter and (2) in any case, the two State laws, the Brown Act and the CPRA, coupled with the authority that each law gives local agencies to expand public meeting and records access preempts those fields from any restrictive regulation by the local agency; the so-called "preemption" doctrine.

To my knowledge the City Attorney has never undertaken an honest in-depth analysis of these two issues: (a) whether the City Charter is, in fact, the "trumping" law, given that the San Francisco Sunshine Ordinance was a voter initiated and adopted law containing a supremacy provision superseding the City Charter when a conflict exists or (b) even if the SOTF is subject to the City Charter, whether the preemption doctrine prevents the Charter from imposing any restrictions on the SOTF, its expanded access to public meetings and records, its functions or its procedures.

The SOTF, as a body, can either accept the City Attorney's legal advice - by how many votes? - and not pursue the trumping issue any further; or it can reject the City Attorney's legal advice and adopt a set of rules that conform to the norm; i.e., a majority of filled seats constitute a quorum for a meeting and the vote of majority of that quorum constitutes action taken.

The second question: If the answer is "yes" - the Charter does "trump" the San Francisco Sunshine Ordinance - the only relevant section of the City Charter that could govern the SOTF quorum and voting procedures is Section 4.104(b), which provides, in part:

"The presence of a majority of the members of an appointive board, commission or other unit of government shall constitute a quorum for the transaction of business by such body. ... Unless otherwise required by this Charter, the affirmative vote of a majority of the members shall be required for the approval of any matter. All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members. ..."

The City Attorney's advice is found in DCA Thomas J. Owen's May 21, 2007 Memorandum:

"Since the Sunshine Ordinance Task Force is an "appointive board, commission or other unit of government" within the meaning of Charter Section 4.104(b), it is subject to the requirements that:

"(1) A quorum shall consist of the presence of a majority of the members of an appointive board, commission or other unit of government;

"(2) Unless the Charter requires otherwise, the affirmative vote of a majority of the members shall be required for the approval of any matter, and the body shall act by a majority, two-thirds, three-fourths or other vote of all of its authorized members; ...

“Therefore, the Task Force may not amend its by-laws to allow a majority of members present at a meeting - rather than a majority of the full-authorized membership of the Task Force-to make substantive decisions.” (Emphasis added.)

Whether or not §4.14(b) applies to the SOTF, the word “authorized” in Mr. Owen’s conclusion (2) is not found in §4.104(b) – a significant addition when there are vacant seats, as there have been on the SOTF for some months.

On the broader question, my answer is “no.” My opinion is that even if the City Charter “trumps” the Sunshine Ordinance Task Force, §4.104(b) does not apply to the SOTF. To be subject to §4.104(b) requirement, the SOTF must first be governed by Section 4.100 of Article IV:

“In addition to the office of the Mayor, the executive branch of the City and County shall be composed of departments, appointive boards, commissions and other units of government. To the extent law permits, each appointive board, commission, or other unit of government of the City and County established by state or federal law shall be subject to the provisions of this Article and this Charter.”

The SOTF is not part of the “executive branch,” the head of which is the Mayor. It is a *unique* autonomous body created by the voter-initiated and adopted Sunshine Ordinance, and its powers, functions and operations are governed solely by that ordinance. For that reason, many provisions of Article IV do not and could not apply to the SOTF, particularly those in Section 4.102, which imposes certain duties on each “appointive board, commissions other unit of government.” Some of those duties are directly contrary to provisions in the Sunshine Ordinance pertaining to the SOTF, its relationship to the Mayor and its specific functions.

For example, under §4.102, the SOTF would be required to: (1) formulate and approve plans and programs and set policies consistent with the overall City and County objectives, as established by the Mayor, (2) develop an Annual Statement of Purpose outlining its areas of jurisdiction and goals, subject to review and approval by the Mayor, (3) approve applicable departmental budgets, (4) submit to the Mayor at least three qualified applicants, ... for the position of department head, (5) failure to act on the Mayor's recommendation for removal of a department head... and constitutes official misconduct, (6) exercise such other ...duties as shall be prescribed by the Board of Supervisors and (7) deal with administrative matters solely through the department head and any interference herein prohibited on the part of any member shall constitute official misconduct. (Emphasis added.)

The SOTF, as a body, can either accept the City Attorney’s legal advice - by how many votes? - and not pursue the six-vote minimum requirement any further or it can reject the City Attorney’s legal advice and adopt a set of rules that conform to the norm; i.e., a majority of filled seats constitute a quorum for a meeting and the vote of majority of that quorum constitutes action taken.

The Third Question: If the answer is “yes” - that the SOTF quorum and voting procedures are governed by Charter §4.104(b) - how should those rules be followed by the SOTF in its quorum and voting procedures? In deciding that question, one must also take into account, DCA Threet’s advice that in determining the number of SOTF members for purposes of §4.104(b), vacant seats are counted.

As noted above, the combination of requiring at least six votes in favor of a complainant's claim of a violation, plus the fact that there is an automatic "no" for each absent member and, currently, two more "nos" because two seats are vacant is simply not acceptable.

In my recent Memorandum to the SOTF members, my conclusions were that the requirements that a motion to find a "violation" and the complainant prove a "violation" when the dispute is whether a public record is exempt from disclosure were unnecessary. Rather, the motion should be for a "determination" whether the specific exemption relied on by the respondent applies; and the burden of carrying that burden forward should rest on the respondent, rather than requiring the complainant to establish the negative, that the claimed exemption does not apply.

In its simplest terms, the complainant would assert that the respondent has refused to provide the requested public records. The respondent would then cite the particular exemption that it claims applies to those records. At the hearing, the respondent would speak to the exemption issue first and the complainant would rebut the respondent's argument. The motion to be voted on would be "Does the claimed exemption apply to the requested records." To prevail the respondent would need at least six "yes" votes. Once this procedure was adopted, the playing field would be leveled and there would be no need to dispute the advice from the City Attorney's office on the voting issue.

However, there remain the other instances when the Sunshine Ordinance provisions are inconsistent or incompatible with those in the Charter, such the six-vote minimum, and those too will have to be addressed. For that reason, I have this final suggestion:

The SOTF should seek out an independent national law firm (with an office in San Francisco) to review the basic questions on a *pro bono* basis and give its opinion either way.



DENNIS J. HERRERA
City Attorney

THOMAS J. OWEN
Deputy City Attorney

DIRECT DIAL: (415) 554-4679
E-MAIL: thomas.owen@sfgov.org

MEMORANDUM

TO: Honorable Members
Sunshine Ordinance Task Force

FROM: Thomas J. Owen
Deputy City Attorney

DATE: May 21, 2007

RE: Application of Charter Section 4.104 to the Sunshine Ordinance Task Force

QUESTION PRESENTED

Is the Sunshine Ordinance Task Force ("Task Force") subject to the requirements of Charter Section 4.104 that:

- (1) A quorum shall consist of the presence of a majority of the members of an appointive board, commission or other unit of government;
- (2) The affirmative vote of a majority of the members shall be required for the approval of any matter, and the body shall act by a majority, two-thirds, three-fourths or other vote of all of its authorized members; and
- (3) Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present?

SHORT ANSWER

Yes, the Task Force is an "appointive board, commission or other unit of government" subject to the provisions of Charter Section 4.104.

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: May 21, 2007
PAGE: 2
RE: Application of Charter Section 4.104 to the Sunshine Ordinance Task Force

BACKGROUND

The Sunshine Ordinance Task Force is considering an amendment to its by-laws that would allow a majority of members present at a meeting to make substantive decisions on behalf of the Task Force, so long as a quorum of the Task Force was present. The Task Force is considering this amendment as an alternative to the current rule requiring a majority vote of the full authorized membership of the Task Force in order to adopt a substantive proposal, as provided in Charter Section 4.104(b). The Task Force has asked for advice on whether it is subject to the requirements of Section 4.104(b).

The Sunshine Ordinance Task Force. Section 67.30 of the San Francisco Administrative Code creates a Sunshine Ordinance Task Force. The Task Force consists of eleven voting members appointed by the Board of Supervisors. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, serve as non-voting members of the task force.

The Task Force is more than an advisory body to the Board of Supervisors. As the Sunshine Ordinance itself states, "Only a strong Open Government and Sunshine Ordinance, **enforced by a strong Sunshine Ordinance Task Force**, can protect the public's interest in open government." (SF Admin. Code § 67.1(e).)¹

The Task Force is responsible for advising the Board of Supervisors, but it is also charged with providing information to other City departments on appropriate ways in which to implement Chapter 67 of the Administrative Code, the Sunshine Ordinance ("Ordinance"). (§ 67.30(c).) The Task Force is charged with developing appropriate goals to ensure practical and timely implementation of the Sunshine Ordinance, and with proposing appropriate amendments to the Board of Supervisors. (*Id.*) The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with the Ordinance and related California laws by the City or any department, office, or official thereof; it must report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of the Ordinance. (*Id.*)

The Task Force must hear and decide appeals from persons who claim that they have been wrongfully denied access to public records. (§ 67.21(e).)

¹ All subsequent citations shall be to the San Francisco Administrative Code, unless otherwise indicated.

TO: Honorable Members
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In addition to the power specified above, the Task Force possesses such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative. (*Id.*) Administrative Code Chapter 12L authorizes the Task Force to issue advisory opinions regarding compliance with the Chapter to persons seeking access to financial information from non-profit organizations doing business with the City. (§ 12L.5(b).)

The Administrative Code specifically identifies members of the Task Force as "officers of the City and County." (§ 1.50.) Members are eligible to participate in the City's Health Service System under Administrative Code Section 16.700(c)(37).

Charter Section 4.104. Charter Section 4.104 includes three subsections. Subsection (a) addresses some of the powers and duties of "executive branch" boards and commissions:

Unless otherwise provided in this Charter, *each appointive board, commission or other unit of government of the executive branch of the City and County shall:*

1. Adopt rules and regulations consistent with this Charter and ordinances of the City and County. No rule or regulation shall be adopted, amended or repealed, without a public hearing. At least ten days' public notice shall be given for such public hearing. All such rules and regulations shall be filed with the Clerk of the Board of Supervisors.
2. Hold meetings open to the public and encourage the participation of interested persons. Except for the actions taken at closed sessions, any action taken at other than a public meeting shall be void. Closed sessions may be held in accordance with applicable state statutes and ordinances of the Board of Supervisors.
3. Keep a record of the proceedings of each regular or special meeting. Such record shall indicate how each member voted on each question. These records, except as may be limited by state law or ordinance, shall be available for public inspection. [Emphasis added.]

Subsection (b) of Section 4.104 addresses quorum and voting requirements for multi-member bodies "or other unit[s] of [City] government":

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: May 21, 2007
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RE: Application of Charter Section 4.104 to the Sunshine Ordinance Task Force

The presence of a majority of the members of *an appointive board, commission or other unit of government* shall constitute a quorum for the transaction of business by such body. Unless otherwise required by this Charter, the **affirmative vote of a majority of the members** shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the members present constitute a quorum. All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members. Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present. [Emphasis added.]

(Subsection (c) of Section 4.104, not as issue in this analysis, requires the Board of Supervisors to provide by ordinance for parental leave policies for members of "appointive boards, commissions or other units of government, . . .")

This memorandum addresses the question whether Section 4.104(b) applies to the Sunshine Ordinance Task Force.

ANALYSIS

Section 4.104(a) applies to "each appointive board, commission or other unit of government of the executive branch." But Section 4.104(b) is not specifically limited to the "executive branch." It addresses any "appointive board, commission or other unit of government." (See also SF Charter § 4.102 [also addressed to the executive branch]; cf. SF Charter § 4.101 [addressing "each appointive board, commission or advisory body of any kind established by this Charter or legislative act of the United States of America, the State of California or the Board of Supervisors"].) It is a well-recognized principle of statutory construction that when the legislature (or here, the electorate) has carefully employed a term in one place and has excluded it in another, that term should not be implied where it was excluded. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725.) While the Task Force is not specifically named a "board" or "commission", it clearly falls within the same class of entities—it is a formally-established, multi-member body existing as part of City government to conduct City business or otherwise exercise part of the City's sovereign power.

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: May 21, 2007

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RE: Application of Charter Section 4.104 to the Sunshine Ordinance Task Force

As described above, the Task Force does not simply advise the Board of Supervisors. The Task Force has a larger role in helping enforce the Sunshine Ordinance. (§ 67.1(e).) It hears and decides appeals filed by citizens who feel that a City officer or department has unlawfully refused to produce a particular document or documents. (§ 67.21(e).) It provides information to all other City departments on appropriate ways to implement the Sunshine Ordinance. (§ 67.30(c).) It develops goals to ensure practical and timely implementation of the Sunshine Ordinance, and may propose appropriate amendments to the Ordinance to the Board of Supervisors. (*Id.*) It monitors and reports on City compliance with the Ordinance and related California laws. (*Id.*) In addition, the Task Force is authorized to issue advisory opinions regarding compliance with Administrative Code Chapter 12L. (§ 12L.5(b).)

In carrying out these duties, the Task Force conducts City business and exercises part of the City's sovereign powers. It plays an active role in the ongoing implementation and enforcement of a City ordinance, both as to application of the existing law to particular facts and circumstances and as to the development and broader interpretation of the law. The Task Force accepts and hears complaints from the citizenry at large, addressing the conduct of any City department insofar as compliance with the Sunshine Ordinance is concerned. It is not subject to the direct oversight of any other City officer or agency.

It is noteworthy in this context that members of the Task Force are specifically identified as "officers of the City and County" in Administrative Code Section 1.50. A public office is ordinarily and generally defined to be the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public. (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1212.) The most general characteristic of a public officer, which distinguishes him from a mere employee, is that a public duty is delegated and entrusted to the officer, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which the officer, as agent, is acting. (*Id.*) Two elements are almost universally regarded as essential to a determination of whether one is a public officer: First, a tenure of office that is not transient, occasional or incidental, but is of such a nature that the office itself is an entity in which incumbents succeed one another, and, second, the delegation to the officer of some portion of the sovereign functions of government, either legislative, executive, or judicial. (*Id.*; internal quotations and citations omitted.)

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In *Dibb*, the court concluded that members of a county's "civilian law enforcement review board" were public or county officers because they were delegated the duty to hold hearings, administer oaths and issue subpoenas, all in order to investigate, on behalf of the board of supervisors, complaints about the official conduct of employees of the county sheriff's and probation departments. (*Id.*) This authorization of investigative power satisfied the requirement that the members exercise "some portion of the sovereign functions of government" or "part of the governmental functions" of the county in order to qualify as public officers. (*Id.*) "Accordingly, we conclude that members of the CLERB possess the essential attributes of county officers: They are appointed under the law for a fixed term of office and are delegated a public duty to investigate specified citizen complaints against county sheriff and probation department employees, and to make recommendations to the board of supervisors." (*Id.*)

The Sunshine Ordinance Task Force is created in writing and by law as a permanent, on-going body. (§ 67.30(a).) Members are appointed to fixed terms and incumbents succeed one another. (§ 67.30(b).) As part of their duties, they investigate and consider, on behalf of the City, citizen complaints against City departments in general regarding compliance with the Sunshine Ordinance and may make recommendations to other City officials regarding further enforcement. (§ 67.30(c).) Under the analysis in *Dibb*, members of the Task Force are public officers and exercise "some portion of the sovereign functions of government" or "part of the governmental functions" of the City.

Given the responsibilities of the Sunshine Ordinance Task Force and the status of its members as City officers, we conclude that the Task Force is an "appointive board, commission or other unit of government " within the meaning of subsection (b) of Charter Section 4.104.

CONCLUSION

Since the Sunshine Ordinance Task Force is an "appointive board, commission or other unit of government " within the meaning of Charter Section 4.104(b), it is subject to the requirements that:

- (1) A quorum shall consist of the presence of a majority of the members of an appointive board, commission or other unit of government;

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- (2) Unless the Charter requires otherwise, the affirmative vote of a majority of the members shall be required for the approval of any matter, and the body shall act by a majority, two-thirds, three-fourths or other vote of all of its authorized members; and
- (3) Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present.

Therefore, the Task Force may not amend its by-laws to allow a majority of members present at a meeting—rather than a majority of the full-authorized membership of the Task Force—to make substantive decisions.

cc: Ernie Llorente

Date: April 26, 2011

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Rules Committee recommendation
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Chris Rustom

Date: April 22, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



"David Snyder"
<DSnyder@sheppardmullin.com>

04/19/2011 11:11 AM

To <soif@sfgov.org>

cc

bcc

Subject FW: 'Majority vote' definition

Chris,

Could you please include this email in the packet for the April 26 regular meeting? Thank you.

In response to Rick's request of March 23 (see email below), I have put together some thoughts about the Rules Committee's proposal to change the Sunshine Ordinance Task Force bylines to redefine "majority vote."

I have reviewed the May 21, 2007 memorandum by Deputy City Attorney Thomas J. Owen; the December 7, 2010 and January 21, 2011 memoranda by Allen Grossman, and the February 14, 2011 report by Bruce Wolfe, all regarding the "majority vote" rule(s) of San Francisco City Charter Section 4.104.

I have not conducted any independent legal research, other than reviewing the pertinent Sunshine Ordinance and City Charter provisions. What follows is therefore an opinion based solely on my reading of the analyses noted above. I believe that to fully investigate this issue would take a considerable amount of time.

As a policy matter and a personal preference, I dislike the "majority vote" rule in the San Francisco City Charter as it has been applied by the Sunshine Ordinance Task Force. I think it can and has lead to nonsensical results. However, I have seen nothing in the analyses I have read to suggest that DCA Owen's analysis is incorrect as a matter of law. As much as I would personally like the rule to be different, I do not see a principled or credible way to avoid it. It is my view -- again, based solely on my reading of the above-noted analyses -- that a) the SOTF is subject as a general matter to the provisions of the City Charter; b) the SOTF is subject to Charter Section 4.104, and c) the interpretation of 4.104 which the City Attorney has espoused is legally correct.

Based on these three conclusions, I must come -- to my personal regret -- to the conclusion that DCA Owen's legal conclusions are sound, and that the rule as it has been interpreted is correct under the City Charter.

Sincerely,

David

David Snyder
Four Embarcadero Center
17th Floor
San Francisco, CA 94111

DSnyder@sheppardmullin.com
Direct: 415.774.3117
Fax: 415.403.6240

Circular 230 Notice: In accordance with Treasury Regulations we notify you that any tax advice given herein (or in any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of (i) avoiding tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or in any attachments).

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

From: Richard Knee [mailto:rak0408@earthlink.net]
Sent: Wednesday, March 23, 2011 1:27 PM
To: David Snyder
Cc: SOTF@SFGov.org; SFCityAtty Threet Jerry
Subject: 'Majority vote' definition.

David,

The SOTF Rules Committee is recommending a bylaws change to redefine "majority vote" on substantive matters as 50%+1 of the members present at a meeting.

Since you are our voting-member attorney, your input on this will be extremely important. Accordingly, I strongly encourage you to submit your thoughts on the matter to Chris Rustom by Tuesday, April 19, for inclusion in the information packet for the April 26 regular meeting.

Please do NOT communicate your thoughts on the matter directly to me or any other SOTF member, in order to avoid seriatim violation.

Thanks,
Rick

C: Chris Rustom, Jerry Threet



Richard Knee
<rak0408@earthlink.net>
04/17/2011 12:41 PM

To SOTF@SFGov.org
cc
bcc

Subject Fwd: Re: 'Majority' vote (one more time) – CORRECTION

Chris,

If there is still time to include the e-mail chain below in the information packet for the April 26 (not April 21) meeting, please do so. Otherwise, please print it out and distribute to SOTF members and public attendees at the meeting.

Thanks,
Rick

----- Original Message -----

Subject: Re: 'Majority' vote (one more time)
Date: Fri, 15 Apr 2011 16:39:13 -0700
From: Terry <terry@calaware.org>
To: Peter Scheer <pscheer@earthlink.net>
CC: Richard A. Knee <rak0408@earthlink.net>

No, I agree there's no legal bar to a procedural standard adopted to govern the decisional process of an essentially advisory body in municipal government. It forecloses no one's rights and, if proven unworkable or fraught with unforeseen problems, can always be tuned back to another rule.

On Apr 15, 2011, at 4:27 PM, Peter Scheer wrote:

> Rick,
>
> I don't see why not. It's a policy choice. Your current policy assures a near-consensus for all substantive actions. The new policy allows action to be taken by a minority of all members, but also makes it harder for a dissenting minority to block action (simply by not attending, like the Democrats in the Wisconsin legislature).
>
> These governance choices are not addressed by the Brown Act. I'm not aware of other laws that might impose quorum/majority requirements.
>
> Let's run this by Terry and see if he knows of anything that could restrict your choices.--Peter

>
>
>

-
> Peter Scheer, Executive Director
> FIRST AMENDMENT COALITION
> 534 4th St., Suite B
> San Rafael, CA 94901
> 415.460.5060 / 415.886.7081 (direct)
> pscheer@firstamendmentcoalition.org
> <http://www.firstamendmentcoalition.org>
>

-
> Defending freedom of speech and the public's right
> to know. Please support our work: <http://bit.ly/dy0dEI>
>

-
>
> On Apr 15, 2011, at 3:06 PM, Richard Knee wrote:
>

> SF Sunshine Ordinance Task Force will soon weigh a proposed
bylaw that would establish a "majority" vote on substantive
matters as 50%+1 of those attending a meeting, as long as a
quorum is present.

>
> The Task Force has 11 seats, meaning a quorum is 6 or more, and
the rule we've always followed is that 6 or more votes are
required to approve a motion on a substantive matter --
regardless of whether any seats are vacant and whether 9 or fewer
members are at a meeting.

>
> Under the proposed bylaw, the number of votes required for
approval would be 4 if only 6 or 7 members were present, and 5 if
8 or 9 members were present.

>
> Would that pass legal muster?
>

> Thanks,
> Rick
>

SAN FRANCISCO SUNSHINE ORDINANCE TASK FORCE

BY-LAWS

Article I – Name and Purpose

Section 1. Name

The name of this Task Force shall be the Sunshine Ordinance Task Force.

Section 2. Purpose

The Sunshine Ordinance Task Force is established by Chapter 67 of the San Francisco Administrative Code. The Task Force shall protect the public's interest in open government and shall carry out the duties enumerated in Chapter 67 of the San Francisco Administrative Code.

ARTICLE II – OFFICERS

Section 1. Officers

The Officers of this Task Force shall be a Chair and a Vice Chair.

Section 2. Terms of Office

The Officers shall hold offices for one year and until their successors are elected.

Section 3. Election of Officers

The Officers shall be elected at the first regular meeting of the Task Force held on or before July 1 of each year, or at a subsequent meeting, the date of which shall be fixed by the Task Force at the first regular meeting on or after July 1 of each year. If any Task Force office becomes vacant, that office shall be filled at the first meeting after the vacancy occurs.

ARTICLE III – DUTIES OF OFFICERS

Section 1. Duties of the Chair

The Chair shall preside at all meetings of the Task Force. The Chair, working with members of the Task Force and the staff, shall oversee the preparation and distribution of the agenda for the Task Force meetings. The Chair shall appoint all Committees and their chairs and shall perform all other duties as prescribed by the Task Force or by the By-Laws which are necessary or incident to the office. The Chair of the Task Force shall encourage Task Force members to participate on committees and shall ensure broad and diverse representation of Task Force members on all committees.

Section 2. Duties of the Vice Chair

In the event of the absence, or inability of the Chair to act, the Vice Chair shall preside at the meetings and perform the duties of the Chair. In the event of the absence of the Chair and the Vice Chair, the remaining Task Force members shall appoint one of the members to act temporarily as Chair.

ARTICLE IV – MEETINGS

Section 1. Regular Meetings

Regular meetings of the Task Force shall be held on the fourth Tuesday of the month at 4:00 p.m. at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 408, San Francisco, California.

Section 2. Special Meetings

The Chair or a majority of the members of the Task Force may call special meetings.

Section 3. Notice of Meetings

The agendas of all regular meetings and notices and agendas of all special meetings shall be posted on the Task Force web site, at the meeting site, the San Francisco Main Library, Government Information Center and the office of the Task Force. Agendas and notices shall be mailed to each Task Force member and any person who files a written request for such notice with the Task Force.

Section 4. Cancellation of Meetings

The Chair may cancel a meeting if she or he is informed by the Task Force Administrator that a quorum of the body will not be present or if the meeting date conflicts with a holiday or other responsibilities of the Task Force members. Notices of cancellation shall be posted on the Task Force web site, at the meeting site, the San Francisco Main Library, Government Information Center, and the office of the Task Force. If time permits, notices of meeting cancellations shall be mailed to all members of the public who have requested, in writing, to receive notices and agendas of Task Force meetings.

Section 5. Conduct of Meetings

(a) All Task Force meetings shall be conducted in compliance with all applicable laws, including but not limited to the Ralph M. Brown Act (Government Code Section 54950 et. seq.), the San Francisco Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the Task Force's By-Laws. Except where state or local laws or other rules provide to the contrary, meetings shall be governed by Robert's Rules of Order.

(b) Subject to the availability of funds, the Task Force shall comply with the provisions of the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) that apply to Charter boards and commissions.

(c) When a member of the Task Force desires to address the Task Force, she or he shall seek recognition by addressing the Chair, and when recognized, shall proceed to speak. The member shall confine her or his comments or remarks to the question before the Task Force.

(d) Cell phones and pagers shall be turned off during meetings of the Task Force. The Chair may issue a warning to any member of the public whose pager or cell phone disrupts the Task Force meeting. In the event of repeated disruptions caused by pagers and cell phones, the Chair shall direct the offending member of the public to leave the meeting.

Section 6. Setting Agendas

The Task Force Administrator, at the direction of the Chair, shall prepare the agenda for meetings. The agenda for all regular meetings shall contain an item during which Task Force members may request items for the Task Force to consider at future meetings.

Section 7. Action at a Meeting; Quorum and Required Vote

The presence of a majority of the members (six members) of the Task Force shall constitute a quorum for all purposes. The affirmative vote of a majority of the members of the Task Force present (~~six votes~~) shall be required for the approval of all substantive matters. Procedural motions require an affirmative vote of a majority of the members present. If a quorum is not present, no official action may be taken, except roll call and adjournment.

Section 8. Voting and Abstention

Task Force members must be present to vote and participate. Teleconference participation is permitted as provided by Section 4.104 of the Charter. Each member present at a Task Force meeting shall vote "Yes" or "No" when a question is put, unless the member is excused from voting on a matter by a motion adopted by a majority of the members present or the member has a conflict of interest that legally precludes participation in the discussion and vote. The Task Force shall take action on items on the agenda by roll call, voice vote or by show of hands. The minutes shall reflect how each Task Force member voted on each item.

Section 9. Order of Business

The order of business at Task Force meetings may be:

- Call to Order
- Roll Call
- Approval of Meeting Minutes
- Hearings on the Jurisdiction and Hearing on the merits of Complaints
- Committee Reports
- Other Policy Matters
- Administrator's Report
- Future Agenda Items

The order of items on the agenda may be changed by action of the Task Force at any meeting. Public comment shall be specially set as the first new item considered after 5:00 p.m.

Section 10. Hearing Procedures for Complaints

The Complaint Committee and the full Task Force hearing complaints shall follow the following procedures.

1. Complainant presents his/her facts and evidence. (5 minutes)

- Other parties of Complainant present facts and evidence. (Up to 3 minutes each)
- 2. City responds. (5 minutes)
Other parties of City respond. (Up to 3 minutes each)
(The above total speaking times for Complainant and City to be the same.)
- 3. Matter is with the Task Force for discussion and questions to parties.
- 4. Respondent and Complainant present clarification/rebuttal based on Task Force discussions. (3 minutes)
- 5. Matter is with the Task Force for motion and deliberation.
- 6. Public Comment (Excluding Complainant and City response and witnesses.)
- 7. Vote by the Task Force (Public comment at the discretion of the Chair on each motion and/or new motion if vote fails.)

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Section 11. Public Comment

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the minutes. [§67.16]

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing; these comments will be made a part of the official public record. [§67.7-1 (c)]

The Task Force and all committees of the Task Force shall hold meetings open to the public in full compliance with state and local laws. The Task Force encourages the participation of all interested persons. Members of the public may address the Task Force on any matter within the subject matter jurisdiction of the Task Force for up to three minutes during public comment. The Chair may limit the time permitted for public comment consistent with state and local laws.

Section 12. Public Testimony

The Task Force and all committees of the Task Force shall hold meetings open to the public in full compliance with state and local laws. The Task Force encourages the participation of all interested persons. Members of the public may comment on every item on the Task Force agenda. Each person wishing to speak on an item before the Task Force shall be permitted to be heard once for up to three minutes.

ARTICLE V -- TASK FORCE RECORDS

Section 1. Minutes

Minutes shall be taken at every regular and special Task Force meeting and shall comply with the provisions of the San Francisco Sunshine Ordinance, including the provisions that apply to Charter boards and commissions. (See San Francisco Administrative Code, Chapter 67.16) Minutes shall be approved by the majority vote of the Task Force. In the event a committee does not meet for a period of six months after

its last meeting the minutes of that meeting shall be agendized at the full Task Force for review and approval.

Section 2. Public Review File

The Task Force shall maintain a public review file in compliance with the San Francisco Sunshine Ordinance. [See San Francisco Administrative Code, Section 67.23.]

Section 3. Records Retention Policy

The Task Force shall prepare, maintain and adopt a records retention and destruction policy as provided in Section 8.3 of the San Francisco Administrative Code.

Section 4. Tape Recordings

The Task Force shall audio record all regular and special meetings of the Task Force. The audio recordings shall be maintained in accordance with the San Francisco Sunshine Ordinance. [See San Francisco Administrative Code, Section 67.14(b)]

ARTICLE VI -- COMMITTEES

Section 1. Standing Committees

Upon approval by a majority of the members of the Task Force, the Task Force may form standing committees to advise the Task Force on its on-going functions. The standing committees shall be composed of members of the Task Force. Unless specified otherwise by the Task Force, the Chair of the Task Force shall appoint or remove the Chair and members of the Standing Committees~~name the Chair of the Standing Committees and its members.~~ The Chair of the Task Force shall encourage Task Force members to participate on committees and shall ensure broad and diverse representation of Task Force members on all committees.

The Task Force shall establish the following Standing Committees: Rules Committee, Education, Outreach and Training Committee, Complaints Committee and Compliance and Amendments Committee.

(a) Rules Committee

The Rules Committee shall review matters related to amendments to the Task Force by-laws and procedures for Task Force meetings and shall assist the Chair of the Task Force to ensure that all annual objectives enumerated in the Sunshine Ordinance are met by the Task Force.

(b) Education, Outreach and Training Committee

The Education, Outreach and Training Committee may monitor compliance with the Orders of Determination adopted by the Task Force; shall make recommendations to the Task Force regarding outreach and publicity to the media and to the general public about the Sunshine Ordinance and the Task Force.

(c) Complaint Committee

The Complaint Committee shall monitor the complaint process and make recommendations to the Task Force regarding how the complaints should be handled.

(d) Compliance & Amendments Committee

The Compliance and Amendments Committee shall ~~may~~ monitor compliance with the Orders of Determination adopted by the Task Force; shall recommend to the Task Force amendments to the Sunshine Ordinance regarding enforcement of the Orders of Determination; and shall consider and recommend any other additions, amendments, and changes to the Sunshine Ordinance as provided by members of the Task Force and from the general public. (Added 8/27/02)

Section 2. Special or Ad Hoc Committees

Upon approval by a majority of the members of the Task Force, the Task Force may form special or ad hoc committees. Special committees shall be formed for a specific purpose and cease to exist after completion of a designated task. Special committees may be composed of members of the Task Force and may include members of the public, city officials or city employees as well.

ARTICLE VII – ATTENDANCE

Members of the Task Force shall notify the Task Force Administrator if she or he is unable to attend a regular or special meeting of the Task Force. The Administrator of the Sunshine Ordinance Task Force shall notify any member who misses two meetings in any twelve month period of time that if the third absence occurs, the Task Force shall may notify the Board of Supervisors of the member's lack of attendance. If a member of the Task Force misses more than three regular meetings in any twelve-month period of time, the Task Force shall ~~may~~ notify the Board of Supervisors and request that action be taken to remove the member from the Task Force. ~~The Administrator of the Sunshine Ordinance Task Force shall notify any member who misses two meetings in any twelve month period of time that if the third absence occurs, the Task Force may notify the Board of Supervisors of the member's lack of attendance.~~

ARTICLE VIII - AMENDMENT OF BY-LAWS

The By-Laws of the Task Force may be amended by a vote of a majority of the members of the Task Force after presentation of the proposed amendments as an agenda item at a meeting of the Task Force. The Task Force shall give ten days notice prior to final action by posting on the Sunshine Ordinance Task Force website and by sending a copy to the Public Library Government Information Center before considering any amendments to its by-laws.

Adopted 8/22/2000
Amended 8/27/2002
Amended 3/25/2008
Amended 4/28/2009

File No. N/A

SOTF Item No. 6

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: July 11, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Completed by: Andrea Ausberry Date July 3, 2012

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The complete document is in the file.



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO

DRAFT - Minutes

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

May 2, 2012 – 4:00 PM

Regular Meeting

Members: Chair Hope Johnson, Bruce Wolfe (Vice-Chair),
Richard Knee, Suzanne Manneh, Allyson Washburn, Jay Costa,
Hanley Chan, Jackson West

1. **CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES (00:00:00 - 00:07:43)**

The meeting was called to order at 4:33 p.m. Vice Chair Wolfe, Members Snyder, Cauthen, Manneh, and Chan were noted absent. There was a quorum. Member Manneh was noted present at 5:38 p.m.

Chair Johnson appointed Vice Chair Wolfe to preside over the May 2, 2012, regular meeting.

There were no speakers.

2. **Supervisor of Records Report - Presented by Paula Jesson, Deputy City Attorney. (00:07:43 - 00:23:01)**

Paula Jesson, Deputy City Attorney, presented information concerning the Supervisor of Records Report and answered questions raised.

Speakers: Patrick Monette-Shaw spoke expressing concern with the supervisor of records report (see addendum); Peter Warfield spoke expressing objection with the report; Ray Hartz spoke expressing concern with the Supervisor of Records not being in compliance to respond to complaints; David Pilpel spoke expressing support for the report.

3. **Resolution to support SB1001 to protect California's political disclosure database, Cal-Access. (00:43:05 - 00:56:55)**

Emily Salgado, Office of Senator Leland Yee, presented information concerning the Supervisor of Records Report and answered questions raised.

Member Washburn, seconded by Member Johnson, moved to write a letter of support for the Senate Bill 1001.

Speaker: Patrick Monette-Shaw spoke in support of the Sunshine Ordinance Task Force supporting Senate Bill 1001.

The motion PASSED by the following vote:

Ayes: 6 - Costa, Knee, Washburn, West, Johnson, Wolfe

Absent: 2 - Chan, Manneh

4. **Resolution to support SB1003 to provide injunctive and declaratory relief on past actions by local agencies under the Ralph M. Brown Open Meetings Act. (00:56:56 - 01:13:10)**

Emily Salgado, Office of Senator Leland Yee, presented information concerning the Supervisor of Records Report and answered questions raised.

Member Knee, seconded by Member Costa, moved to write a letter of support for the Senate Bill 1003.

Speakers: Paul Courier spoke in support of the Sunshine Ordinance Task Force supporting Senate Bill 1001; Jason Grant Garza spoke expressing objection with Senate Bill 1003; Pastor Gavin spoke in support of closing the loop holes of the Brown Act; Doug Comstock spoke in support of Senate Bill 1003; Peter Warfield spoke in support of not having a statute of limitation.

The motion PASSED by the following vote:

Ayes: 7 - Costa, Knee, Manneh, Washburn, West, Johnson, Wolfe

Absent: 1 - Chan

5. **Survey of Costs of Compliance with Sunshine Ordinance. (01:13:10 - 01:57:12)**

Member Knee presented the item. Member Washburn expressed that overall according to the report the Sunshine Ordinance Task Force does not cost the City an exuberant amount of money. Chair Johnson expressed that Supervisor Wiener did not respond to her request to meet and that though the Board of Supervisors expresses their willingness to work in partnership with the Sunshine Ordinance Task Force (SOTF) the SOTF was not contacted and was alleviated from the survey process. Member Knee expressed that SOTF saves money in comparison to City overtime.

Speakers: Patrick Monette Shaw spoke in support of Member Knees comments; Michael Trellis spoke in support of Supervisor Wiener speaking to the SOTF regarding survey; Paul Courier spoke in support of a special meeting regarding the survey and that Supervisor Wiener should be required to attend; Pastor Gavin spoke expressing that Supervisor Wiener should speak before the SOTF and support of a special meeting regarding the survey; Jason Grant Garza spoke expressing the authority or lack of the SOTF has; Doug Comstock spoke expressing that Supervisor Wiener should be censured; Peter Warfield spoke expressing the cost of the violators of the Sunshine Ordinance and consultation with City attorneys; Derek Kerr spoke expressing disappoint with Supervisor Wiener for not responding to the SOTF.

No Action Taken

6. **Motion to schedule a Special Meeting in July 2012, due to Regular Meeting convening on July 4, 2012, a holiday. (01:57:13 - 01:59:22)**

Member Washburn, seconded by Member Johnson, moved to schedule a special meeting on July 11, 2012, depending on meeting room availability.

Speaker: David Pilpel spoke in support of waiting until new members are seated to make the vote to reschedule the regular July meeting day.

The motion PASSED by the following vote:

Ayes: 7 - Costa, Knee, Manneh, Washburn, Johnson, Wolfe

Absent: 2 - Chan, West

Recess 6:30 pm – 6:40 pm

7. **File No. 11084:** Reconsideration of File No. 11084 Complaint filed by Library Users Association against the Arts Commission for not providing an audio recording of a meeting. (01:59:23 - 02:33:22)

Vice Chair Wolfe provided a recap of the prior proceedings. The Sunshine Ordinance Task Force attorney advised that the file be heard as a hearing.

Peter Warfield (Complainant) provided an overview of the complaint and further requested the Task Force to find violation. There were no speakers in support of the Complainant. Julio Mantos (Respondent), Arts Commission, provided an overview of the Agency's defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent waived his right to rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Johnson, seconded by Member Costa, moved to find P.J. Johnson, former Chair of the Arts Commission in violation of Sunshine Ordinance Section 67.14(b) based on the failure to record its meeting. The Visual Arts Committee is a standing committee under the Arts commission; invite the current Chair of the Arts Commission to appear before the Education Outreach and Training Committee; and referral to Education Outreach and Training Committee to confirm that meetings will be recorded.

Speaker: Male Speaker spoke expressing concern for the Arts Commission's failure to record its meetings.

The motion PASSED by the following vote:

Ayes: 7 - Costa, Knee, Manneh, Washburn, Johnson, Wolfe

Noes: 1 - West

Absent: 1 - Chan

8. **File No. 11099:** Hearing on complaint filed by Jason Grant Garza against the Department of Public Health for allegedly not providing requested information. (02:33:23 - 03:02:12)

Jason Grant Garza (Complainant) provided an overview of the complaint and further requested the Task Force to find violation. There were no speakers in support of the Complainant. The Respondent was not present. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent was not present for the rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Costa, seconded by Member Knee, moved to find Barbara Garcia, Department of Public Health, in violation of Sunshine Ordinance 67.21 (e) based on failure to provide a representative to appear before the Task Force; referral to Education Outreach and Training Committee.

The motion PASSED by the following vote:

Ayes: 7 - Costa, Knee, Manneh, Washburn, Johnson, Wolfe
Absent: 2 - Chan, West

9. **File No. 12005:** Complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage. (03:02:14 - 03:02:23)

Member Knee, seconded by member Costa, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

By unanimous consent the item was CONTINUED to June 6, 2012.

10. **File No. 12011:** Complaint filed by Lars Nyman against Frank Lee, Department of Public Works for allegedly not providing requested records regarding the Montgomery - Alta Street Tree Project. (03:02:22 - 03:44:02)

Chair Johnson, seconded by Member Knee, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

Lars Nyman (Complainant) provided an overview of the complaint and further requested the Task Force to find violation. There were no speakers in support of the Complainant. Frank Lee (Respondent), Department of Public Works, provided an overview of the Agency's defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal and further requested the Task Force to dismiss the complaint. Complainant provided a rebuttal and further requested the Task Force to find violation.

Frank Lee (Respondent) stated he will speak with his IT department to obtain the original email formatting for Lars Nyman (Complainant).

Member Johnson, seconded by Member Costa, moved to find Frank Lee, Department of Public Works, in violation of Sunshine Ordinance Section 67.21 (a) for unreasonable delay and 67.26 based on failure to keep withholding to a minimum by redacting the contact information, 67.27 for failure to provide reason, 6253.9(a) of the California Public Records Act for failure to provide a copy of the requested document in electronic format requested; and referral to Compliance and Amendments Committee.

Speaker: Peter Warfield spoke providing information regarding redacting of personal email, addresses on documents.

The motion PASSED by the following vote:

Ayes: 7 - Knee, Manneh, Washburn, Wolfe
Noes: 1 - Costa, Johnson
Absent: 2 - Chan, West

Recess 9:10 PM – 9:15 PM

11. **File No. 12012:** Complaint filed by Lars Nyman against Frank Lee, Department of Public Works for allegedly not providing requested records and delayed response. (03:44:05 - 04:32:22)

Member Knee, seconded by Member Costa, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

Lars Nyman (Complainant) provided an overview of the complaint and further requested the Task Force to find violation. There were no speakers in support of the Complainant. Frank Lee (Respondent), Department of Public Works, provided an overview of the Agency's defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent waived his right to rebuttal. Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Johnson, seconded by Member Manneh, moved to find Frank Lee, Department of Public Works, in violation of Sunshine Ordinance Section 67.25 (b) for failure to provide document, 67.25(d) for failure to provide on rolling basis, 67.21 (e) failure to comply with the public records request, 6253 (c) of the California Public Records Act for failure to respond within 14-day extension; and referral to Compliance and Amendments Committee.

There were no speakers.

The motion PASSED by the following vote:

Ayes: 6 - Costa, Knee, Manneh, Washburn, Wolfe, Johnson

Absent: 2 - Chan, West

12. **File No. 12013:** Complaint filed by William Clark against Howard Lazar, Arts Commission for allegedly not providing documents of expenses charged to the Street Artist Program for FY 2010-2011. (04:32:23 - 05:02:12)

Member Johnson, seconded by Member Manneh, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

William Clark (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. Julio Mantos (Respondent), on behalf of Howard Lazar, Arts Commission, provided an overview of the Arts Commission's defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. Complainant responded to questions raised throughout the discussion and further requested the Task Force to find further violations. The Respondent provided a rebuttal and further requested the Task Force to dismiss the complaint. Complainant provided a rebuttal and further requested the Task Force to find violation.

Chair Johnson, seconded by Knee, moved to CONTINUE the item to June 6, 2012.

There were no speakers.

The motion PASSED by the following vote:

Ayes: 6 - Costa, Knee, Manneh, Washburn, Wolfe, Johnson

Absent: 2 - Chan, West

13. **File No. 12014:** Complaint filed by William Clark against Tom DeCaigny, Arts Commission for allegedly not providing an itemized list of expenditures for the Street Artist Program FY 2012-2013 budget. (05:02:12 - 05:02:18)

Member Costa, seconded by Member Manneh, moved to CONTINUE the item to June 6, 2012.

There were no speakers. **The motion PASSED without objection.**

14. **File No. 12015:** Complaint filed by William Clark against Ben Rosenfield, Controller, Controller's Office for allegedly not providing documents regarding the authorization of expenditures by the Street Artist Program. (05:02:18 - 05:32:21)

Chair Johnson, seconded by Member Manneh, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

Robert Clark (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. Monique Zmuda (Respondent), Controller's Office, provided an overview of the Agency's defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. Respondent provided a rebuttal and further requested the Task Force to dismiss the complaint. Complainant provided a rebuttal and further requested the Task Force to find violation.

Due to a lack of a motion, the Task Force FOUND NO VIOLATION.

15. **File No. 12016:** Complaint filed by Michael Petrelis against Castro Community Benefit District for allegedly not providing proper public notice of the agenda and accurate minutes. (05:32:22 - 05:32:33)

Member Knee, seconded by Member Washburn, moved to find no Jurisdiction.

The motion PASSED by the following vote:

Ayes: 5 - Costa, Knee, Manneh, Washburn, Vice Chair Wolfe,

Noes: 1 - Chair Johnson

Absent: 2 - Chan, West

16. **Approval of Minutes from the April 4, 2012, Regular Meeting.**

By unanimous consent the item was CONTINUED to June 6, 2012

There were no speakers. **The motion PASSED without objection.**

17. **Approval of Minutes from the October 25, 2011, Regular Meeting.**

By unanimous consent the item was CONTINUED to June 6, 2012

There were no speakers. **The motion PASSED without objection.**

18. **Approval of Minutes from the November 29, 2011, Special Meeting.**

By unanimous consent the item was CONTINUED to June 6, 2012

There were no speakers. **The motion PASSED without objection.**

19. **Approval of Minutes from the January 3, 2012, Special Meeting.**

By unanimous consent the item was CONTINUED to June 6, 2012

There were no speakers. **The motion PASSED without objection.**

20. **Approval of Minutes from the January 24, 2012, Special Meeting.**

By unanimous consent the item was CONTINUED to June 6, 2012

There were no speakers. **The motion PASSED without objection.**

21. **Approval of Minutes from the February 28, 2012, Regular Meeting.**

By unanimous consent the item was CONTINUED to June 6, 2012

There were no speakers. **The motion PASSED without objection.**

22. **Approval of Minutes from the March 7, 2012, Regular Meeting.**

By unanimous consent the item was CONTINUED to June 6, 2012

There were no speakers. **The motion PASSED without objection.**

23. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda.

Speakers: Doug Comstock spoke honoring Member Sue Cauthen; Patrick Monette-Shaw spoke honoring and presenting a gift to Member Knee; Jason Grant Garza spoke expressing concern with his complaints and read a statement from the Ethic Commission meeting regarding SOTF referrals; Ray Hartz spoke honoring Member Snyder; Peter Warfield spoke honoring Chair Johnson; Derek Kerr spoke honoring the Members of SOTF; Lars Nyman spoke honoring for the SOTF the Members; Pastor Gavin spoke reading a statement honoring the Members of SOTF; Paul Courier spoke expressing concern with central tabulation unit and praise for the Members of SOTF.

24. **Report: Compliance and Amendments meeting of March 20, 2012.**

In the interest of time, the report was not heard.

25. **Administrator's Report.**

In the interest of time, the report was not heard.

26. **Announcements, Comments, Questions, and Future Agenda Items.**

In the interest of time, the report was not heard.

27. **ADJOURNMENT**

There being no further business, the Task Force adjourned at the hour of 11:05 p.m.

Addendum

The following information is provided by a speaker, pursuant to Administrative Code Section 67.16. The content is neither generated by, nor subject to approval or verification of accuracy by, the Sunshine Ordinance Task Force.

Patrick Monette-Shaw submitted the following additional information for Public Comment as follows:

Agenda Item #2: Supervisor of Records Report by Paula Jesson (150 words)

I'm concerned by the presentation Deputy City Attorney Paul Jesson just delivered as the City Attorney's Supervisor of Records.

Her report claims that in 2011, the Supervisor of Records was only asked nine times to determine whether records requested actually involved "public records." The City Attorney's Office claimed in response to the Board of Supervisors Budget and Legislative Analyst, Harvey Rose's "Costs of Compliance with the Sunshine Ordinance" inquiry, that it had spent \$51,949 on the Supervisor of Records. At just nine inquiries during 2011, this averages \$5,775 per each inquiry, inflating costs directly attributable to costs of Sunshine, vs. costs due to CPRA.

Jesson claimed regarding records inquiry #7, that City Attorney Dennis Herrera's *Good Government Guide* asserts retrieval of records from backup tapes is analogous to getting lawfully-discarded records out of a City dumpster, which proves Herrera's *Good Government Guide* isn't worth the toilet paper it's written on.

Agenda Item on Public Comment (150 words)

As a member of the Sunshine Posse — a group of open government advocates concerned about knowing what San Francisco's government is doing on our behalf — I'm pleased to present this engraved paperweight tonight to outgoing Sunshine Task Force member Richard Knee.

It reads: "Richard Knee. In appreciation for service to the people of the City and County of San Francisco. Sunshine Ordinance Task Force."

Mr. Knee was first nominated in 2002 by the Society of Professional Journalists-Northern California Chapter's Freedom of Information subcommittee for a seat on the Sunshine Task Force. The Board of Supervisors confirmed his initial appointment, and the Board renewed his reappointments in 2004, 2006, 2008, and 2010. Richard served as the Task Force's chair person in 2009-010 and 2010-11.

Thank you, Richard, for your dedication and commitment to open government and freedom of information, and an admirable decade of service to San Franciscans.

File No. N/A

SOTF Item No. 7
CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: July 11, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Completed by: Andrea Ausberry Date July 3, 2012

Completed by: _____ Date _____

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The complete document is in the file.



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO

DRAFT MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

June 6, 2012 – 4:00 PM

Regular Meeting

Members: Kitt Grant (Chair), Louise Fischer (Vice-Chair)
Richard Knee, Suzanne Manneh, Allyson Washburn, David Pilpel,
David Sims, Todd David Chris Hyland, Jackson West

1. **Call to Order, Roll Call, and Agenda Changes.**

The meeting was called to order at 4:11 p.m. by the Sunshine Ordinance Task Force Administrator. Appointee David Sims and Member West were noted absent. There was a quorum.

Member Knee, seconded by Member Manneh, moved to EXCUSE Appointee Sims.

Speakers: Ray Hartz, Jr., Patrick Monette-Shaw, Michael Petrelis.

The motion PASSED without objection.

The Sunshine Administrator announced that File No. 12020 William Clark v. Arts Commission (Item No. 18) was withdrawn by the Complainant; File No. 12017 Ray Hartz, Jr. v Supervisor David Campos (Item No. 15) was requested by Supervisor Campos' Office (Respondent) to be heard earlier on the agenda due to the Respondents scheduling restraints.

Appointee Fischer, seconded by Member Grant, moved to hear File No. 12017 earlier on the agenda.

Speakers: William Clark, Michael Petrelis, Ray Hartz, Jr., Patrick Monette-Shaw, Mr. Kerr.

The motion FAILED by the following vote:

Ayes: 4 - Pilpel, Hyland, Fischer, Grant

Noes: 4 - Knee, Manneh, Washburn, David

Excused: 1 - Sims

Absent: 1 - West

Member Pipel, seconded by Member Knee, moved to change the order of the agenda. Hearing Item Nos. five (5) through nine (9) after Item No. 19.

Speakers: Patrick Monette-Shaw, Allen Grossman, Ray Hartz, Jr., spoke in favor of the motion, Peter Warfield spoke in support of hearing item no. 7 as ajenized, Male Speaker spoke against moving items.

The motion PASSED by the following vote:

Ayes: 8 - Knee, Manneh, Washburn, Pipel, David, Hyland, Fischer, Grant

Noes: 0 -

Excused: 1 - Sims

Absent: 1 - West

Recess 6:47 P.M. - 7:00 P.M.

2. **Swearing in of appointees not previously sworn in.**

Madeleine Licavoli, Deputy Director, Office of the Clerk of the Board of Supervisors swore-in appointee David Pipel into the office of Member of the Sunshine Ordinance Task Force.

3. **Annual Election of Officers (Bylaws Art. II).**

Member Knee, seconded by Member Manneh, moved to have the newly elected Chair resume the June 6, 2012 Sunshine Ordinance Meeting.

Speakers: Ray Hartz, Jr., Bruce Wolfe, Patrick Monette-Shaw, Peter Warfield.

The motion PASSED by the following vote:

Ayes: 0 -

Noes: 0 -

Excused: 1 - Sims

Absent: 1 - West

Member Fischer, seconded by Member Hyland, moved to continue the election Chair and Vice Chair to July meeting.

Speakers: Patrick Monette-Shaw, Ray Hartz, Jr., Paul Courier, Doug Comstock, Peter Warfield.

The motion FAILED by the following vote:

Ayes: 4 -

Noes: 4 -

Excused: 1 - Sims

Absent: 1 - West

Member Knee nominated Member Kitt Grant for Chair. Member Pipel was nominated for Chair.

Speakers: Patrick Monette-Shaw, Bruce Wolfe, Michael Petrelis, Peter Warfield, Pastor Gavin, Doug Comstock.

Member Pilpel withdrew his nomination.

The Member Grant was voted in as Chair by the following vote:

Member Grant: 8 - Knee, Manneh, Washburn, Pilpel, David, Hyland, Fischer, Grant
Excused: 1 - Sims
Absent: 1- West

Chair Grant presided over the remainder of the June 6, 2012, meeting.

Member Hyland, Fischer and Pilpel were nominated for Vice Chair.

Member Hyland withdrew his nomination.

Speakers: Peter Warfield, Bruce Wolfe, Ray Hartz, Jr., Michael Petrelis, Patrick Monette-Shaw, Pastor Gavin, Doug Comstock, Paul Couier.

The Member Fischer was voted in as Vice Chair by the following vote:

Fischer: 7 - Knee, Manneh, Washburn, Pilpel, David, Hyland, Fischer, Grant
Pilpel: 1 - Pilpel
Excused: 1 - Sims
Absent: 1- West

4. **Determine compliance with Sunshine Ordinance Section 67.30(a):** "At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government."

Angela Cavillo, Clerk of the Board of Supervisor, presented the history of the item. Jerry Threet, District Attorney advised the Task Force on Section 67.30(a).

Member Pilpel called Former Member Vice Chair Bruce Wolfe to speak on which he held in addition to other seats on the Task Force which continuously held a member that fulfilled the ADA requirement (Seats 6 - 11).

Member Knee, seconded by Member Manneh, moved to convene the Task Force meeting of June 6, 2012, and not to convene thereafter until a member is appointed by the Board of Supervisors to fulfill Section 67.30(a).

Motion withdrawn by Member Knee.

SUBSTITUTE MOTION

Member Knee, seconded by Member Manneh, moved to convene the June 6, 2012 meeting.

Member Knee, seconded by Member David, moved to adjourn the June 6, 2012 meeting.

The motion FAILED by the following vote:

Ayes: 4 - Knee, Pilpel, Hyland, Fischer

Noes: 4 - Grant, Manneh, Washburn, David

Excused: 1 - Sims

Absent: 1 - West

Member Fischer retracted her original vote. A recall was taken.

The motion PASSED by the following vote:

Ayes: 4 - Manneh, Washburn, David, Fischer

Noes: 3 - Knee, Pilpel, Hyland

Excused: 1 - Sims

Absent: 1 - West

5. **Recognition of exiting members for past service:** Hope Johnson, Richard Knee, Sue Cauthen, Hanley Chan, Jay Costa, David Snyder, James Knoebber, Bruce Wolfe.

NO ACTION TAKEN.

6. **Approval of Minutes from the May 2, 2012, Regular Meeting.**

NO ACTION TAKEN.

7. Taking action at a meeting. Quorum, required vote, Task Force's bylaws, and the City Charter Section 4.104.

NO ACTION TAKEN.

8. Review of outcomes from Joint Sunshine Ordinance Task Force and Ethics Commission Hearing.

NO ACTION TAKEN.

9. July 11, 2012, Special Meeting due to Regular scheduled meeting convening on July 4, 2012, holiday.

NO ACTION TAKEN.

10. **File No. 11083:** The Compliance and Amendments Committee has referred File No. 11083, Ray Hartz, Jr. against the Public Library, back to the Task Force for further action including a recommendation to the Ethics Commission.

NO ACTION TAKEN.

11. **File No. 11089:** Complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents.
 - a) Determination of jurisdiction on complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents.)
 - b) Hearing on complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents.

NO ACTION TAKEN.

12. **File No. 12005:** Complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage.
 - a) Determination of jurisdiction on complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage.
 - b) Hearing on complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage.

NO ACTION TAKEN.

13. **File No. 12013:** Complaint filed by William Clark against Howard Lazar, Arts Commission for allegedly not providing documents of expenses charged to the Street Artist Program for FY 2010-2011.
 - a) Determination of jurisdiction on complaint filed by William Clark against Howard Lazar, Arts Commission for allegedly not providing documents of expenses charged to the Street Artist Program for FY 2010-2011.
 - b) Hearing on complaint filed by William Clark against Howard Lazar, Arts Commission for allegedly not providing documents of expenses charged to the Street Artist Program for FY 2010-2011.

NO ACTION TAKEN.

14. **File No. 12014:** Complaint filed by William Clark against Tom DeCaigny, Arts Commission for allegedly not providing an itemized list of expenditures for the Street Artist Program FY 2012-2013 budget.
- a) Determination of jurisdiction on complaint filed by William Clark against Tom DeCaigny, Arts Commission for allegedly not providing an itemized list of expenditures for the Street Artist Program FY 2012-2013 budget.
 - b) Hearing on complaint filed by William Clark against Tom DeCaigny, Arts Commission for allegedly not providing an itemized list of expenditures for the Street Artist Program FY 2012-2013 budget.

NO ACTION TAKEN.

15. **File No. 12017:** Complaint filed by Ray Hartz, Jr. against Supervisor David Campos, Board of Supervisors for allegedly participating in the operation of the Bernal Library Art Project, violating the rights of citizens.
- a) Determination of jurisdiction on complaint filed by Ray Hartz, Jr. against Supervisor David Campos, Board of Supervisors for allegedly participating in the operation of the Bernal Library Art Project, violating the rights of citizens.
 - b) Hearing on complaint filed Ray Hartz, Jr. against Supervisor David Campos, Board of Supervisors for allegedly participating in the operation of the Bernal Library Art Project, violating the rights of citizens.)

NO ACTION TAKEN.

16. **File No. 12018:** Complaint filed by Ray Hartz, Jr. against Greg Suhr, Chief of Police for allegedly responding to an Immediate Disclosure Request late, incompletely, and unlawfully.
- a) Determination of jurisdiction on complaint filed by Ray Hartz, Jr. against Greg Suhr, Chief of Police for allegedly responding to an Immediate Disclosure Request late, incompletely, and unlawfully.
 - b) Hearing on complaint filed by Ray Hartz, Jr. against Greg Suhr, Chief of Police for allegedly responding to an Immediate Disclosure Request late, incompletely, and unlawfully.

NO ACTION TAKEN.

17. **File No. 12019:** Complaint filed by the Library Users Association against the Arts Commission for allegedly redacting contact information from supporters of retention of the Bernal Heights Branch Library, Victor Jara multi-cultural historic mural.
- a) Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting contact information from supporters of retention of the Bernal Heights Branch Library, Victor Jara multi-cultural historic mural.
 - b) Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting contact information from supporters of retention of the Bernal Heights Branch Library, Victor Jara multi-cultural historic mural.

NO ACTION TAKEN.

18. **File No. 12020:** Complaint filed by William Clark against the Arts Commission for allegedly not responding to a request for an audio copy of the Arts Commission March 5, 2012, meeting.
- a) Determination of jurisdiction on complaint filed by William Clark against the Arts Commission for allegedly not responding to a request for an audio copy of the Arts Commission March 5, 2012, meeting.
 - b) Hearing on complaint filed by William Clark against the Arts Commission for allegedly not responding to a request for an audio copy of the Arts Commission March 5, 2012, meeting.

NO ACTION TAKEN.

19. **File No. 12021:** Complaint filed by Larry Littlejohn against Bill Ahern, Medical Examiner for allegedly not providing Medical Examiner logbooks.
- a) Determination of jurisdiction on complaint filed by Larry Littlejohn against Bill Ahern, Medical Examiner for allegedly not providing Medical Examiner logbooks.
 - b) Hearing on complaint filed by Larry Littlejohn against Bill Ahern, Medical Examiner for allegedly not providing Medical Examiner logbooks.

NO ACTION TAKEN.

20. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. (No Action) *Public comment shall be taken at 5:00 pm or as soon thereafter as possible.*

21. **Report: Education Outreach and Training Committee meeting of May 10, 2012.**

NO ACTION TAKEN.

22. **Report: Compliance and Amendments Committee meeting of May 15, 2012.**

NO ACTION TAKEN.

23. **Administrator's Report.**

NO ACTION TAKEN.

24. **Announcements, Comments, Questions, and Future Agenda Items.**

NO ACTION TAKEN.

25. **ADJOURNMENT**

Member Knee, seconded by Member David, moved to ADJOURN.

There were no speakers. **The motion PASSED without objection.**

There being no further business, the Sunshine Ordinance Task Force adjourned at the hour of 8:37 p.m.

File No. 11083

SOTF Item No. 9

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: July 11, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Complaint and Supporting documents |
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Completed by: Andrea Ausberry Date July 3, 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.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

March 12, 2012

DATE THE DECISION ISSUED

December 14, 2011

RAY HARTZ v PUBLIC LIBRARY (CASE NO. 11083)

FACTS OF THE CASE

Complainant Ray Hartz alleges that the San Francisco Public Library ("Library") and City Librarian Luis Herrera violated the Sunshine Ordinance by failing to appropriately respond to his July 21, 2011 Immediate Disclosure Request ("IDR") for assistance identifying the existence, form, and nature of documents related to the financial relationship between the Library and the nonprofit Friends of the San Francisco Public Library ("Friends").

COMPLAINT FILED

On October 4, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against the Library and Mr. Herrera alleging violations of Sunshine Ordinance Sections 67.21(c), 67.21 (d), and 67.21(e).

HEARING ON THE COMPLAINT

On December 14, 2011, Ray Hartz presented his case to the Task Force. Library Commission Secretary Sue Blackman represented respondents Luis Herrera and the Library as their Custodian of Records.

Mr. Hartz submitted an IDR to Mr. Herrera on the evening of July 21, 2011, requesting assistance identifying documents that would provide enough information on the financial relationship between the Friends and the Library to enable him to identify and request specific records. He wanted to identify documents related to the amount of funds raised by Friends for fiscal years 2008 to 2010 and the actual amount received by the Library from Friends during that same time period.

On July 25, 2011, Mr. Hartz contacted Ms. Blackman to discuss his request. He alleged he advised her that he was requesting assistance identifying existing documents rather than the production of documents. He stated he specified his request included identifying audited documents provided by the Library to the Board of Supervisors, the Mayor's Office, and the Controller's Office accounting for specific use of funds from the Friends.

Ms. Blackman responded the same day. She produced several documents, advised that the request would be considered a standard request because it did not meet the criteria of an IDR, and invoked a 14 day extension of time to respond based on the voluminous nature of the request and the need to retrieve records from storage. Mr. Hartz stated only one of the documents received was responsive to his request. He responded to Ms. Blackman on July 26, stating the documents were nonresponsive and that by failing to assist him in identifying documents, she was limiting his search.

On August 4, 2011, Ms. Blackman produced additional documents in her final response. Mr. Hartz disputed the final production date, alleging final production was not made until August 25 and consisted of six electronic files totaling 13 pages. He alleged the Library failed to appropriately respond to his request for assistance because Ms. Blackman did not identify any audited expenditures by the Library and did not direct him to other knowledgeable departments or staff. He stated the documents produced identify the Library receiving or requesting funds from Friends but not how those funds were received or spent, indicating some documents were withheld. He stated one document included an entry for City Librarian Discretionary Funds of \$65,000 but no additional information on receipt or distribution.

Ms. Blackman stated the current complaint is similar to Mr. Hartz's Complaint No. 11055 heard by the Task Force on August 23, 2011. She stated no violation was found in the previous case and this new complaint should be dismissed. She further stated Mr. Hartz's claim that this is a new case with new facts is counter to Deputy City Attorney Jerry Threet's instructional letter indicating no new facts have been alleged.

Ms. Blackman stated the complaint should also be dismissed because the Library has fully responded to Mr. Hartz's request by providing him with all responsive documents. She stated she believed the request was related to the amount of money the Library received, and she had produced all documents she believed were responsive after a diligent search which included contacting the Librarian and Department Heads.

Upon further questioning by the Task Force, Ms. Blackman stated Friends pays for some material purchases directly and no funds are handled by the Library. She explained the City Librarian Discretionary Funds are received from Friends and used for additional funding of various programs. She stated she does not know whether receipts exist that document the use or breakdown of these funds, and indicated she would need to investigate further with accounting to identify such documents. She advised the Task Force that the Library is working with Friends to post expenditure documents online.

Ms. Blackman stated she had determined Mr. Hartz's request was not an IDR based on advice provided by the City Attorney's Office. She indicated the City Attorney's Office had since advised the Library that although it is within its right to invoke an extension of time to respond, the requester is the only one to determine if a request is intended to be an IDR.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that although the Library incorrectly reclassified the IDR as a standard request, it then treated the request as an IDR and responded in a timely manner.

The Task Force did not find persuasive respondents' statements that documents accounting for the use of funds may not exist. Based in part on Ms. Blackman's admission that she has no knowledge of whether documents exist related to Library expenditure of Friends' funds and in part on City policy requiring accounting for gifts, the Task Force found that the Library did not fully respond to the request. Based on written responses and statements at the hearing, the Task Force further found that the requester was not directed to contact other departments or staff that might have information such as the Library's accounting department or the City Controller's Office as required by Sunshine Ordinance Section 67.21(c).

DECISION AND ORDER OF DETERMINATION

The Task Force finds City Librarian Luis Herrera in violation of Sunshine Ordinance Sections 67.21(c) for failure to direct Mr. Hartz to the proper office or staff person to respond to his request to identify documents related to Library expenditures of Friends' funds and 67.26 for failure to keep withholding to a minimum by not including documents related to Library expenditures of Friends' funds in the documents identified.

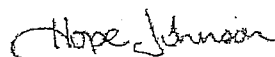
Mr. Herrera shall investigate the existence of the requested documents related to audited Library expenditures of Friends' funds, identify the documents within 5 business days of the issuance of this Order, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00 p.m. in Room 408 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on December 14, 2011, by the following vote: (Wolfe/Knee)

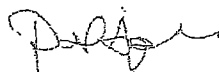
Ayes: 7 – Knee, Manneh, Washburn, Costa, Wolfe, West, Johnson

Noes: 2 – Snyder, Cauthen

Absent: 1 – Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Ray Hartz, Complainant
Luis Herrera, Respondent
Sue Blackman, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

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
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: December 13, 2011
RE: *Complaint No. 11083: Ray Hartz v. Library, et al.*

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz alleges that the San Francisco Public Library (the "Library"), as well as City Librarian Luis Herrera, violated the Sunshine Ordinance by failing to appropriately respond to his July 21, 2011 Immediate Disclosure Request ("IDR") pursuant to Ordinance section 67.21(c) for assistance in identifying the existence form and nature of documents related to the financial relationship of the Library with the Friends of the San Francisco Public Library (the "Friends").

COMPLAINANT FILES COMPLAINT:

On October 4, 2011, Mr. Hartz filed this complaint with the Task Force. It appears to be very similar, if not identical, to Mr. Hartz' July 26, 2011 complaint against the same parties, which the Task Force heard on August 23, 2011.

JURISDICTION

The Library has not contested jurisdiction to hear the complaint.

APPLICABLE STATUTORY SECTION(S):

Sunshine Ordinance (S.F. Administrative Code Section 67.1, et seq.)

- Section 67.21 governs responses to a public records request, including assistance to a requester of records.
- Section 67.25 governs immediacy of response.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Mr. Hartz alleges that on July 21, 2011, he made an Immediate Disclosure Request to Luis Herrera, City Librarian, for assistance under Section

FOX PLAZA • 1390 MARKET STREET, SEVENTH FLOOR • SAN FRANCISCO, CALIFORNIA 94102
RECEPTION: (415) 554-3800 FACSIMILE: (415) 437-4644

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Memorandum

DATE: December 13, 2011

PAGE: 2

RE: Complaint No. 11083: Ray Hartz v. Library, et al.

67.21(c) of the Ordinance in identifying the existence, form, nature, and location of documents related to the financial relationship of the Library with the Friends, including whether those records are exempt from disclosure, with enough specificity to enable a requester to identify records and make a request for them. Specifically, Mr. Hartz alleges he made this request with regard to amounts raised by Friends during fiscal years 2008-2009 and 2009-2010 and the amounts received by the Library from Friends during those same periods. Mr. Hartz further alleges that his request specified that the records should have sufficient specificity to allow the reader to ascertain the exact monetary value of any donations involved. Mr. Hartz further alleges that he contacted Sue Blackman by telephone on July 25, 2011 to clarify that his IDR was seeking specifically "assistance in identifying documents."

The Library's July 25, 2011 letter response, from Sue Blackman, stated that Mr. Hartz's request did not meet the criteria for an IDR and therefore would be treated like a standard request. The Library further stated that the request would require it to search voluminous, off-site records and therefore it was invoking a 14-day extension of the normal 7-day response time. This letter also included several identified documents which it asserted were responsive to the IDR.

Mr. Hartz alleges that the July 25, 2011 response of the Library "provided nothing of substance responsive to the request." Mr. Hartz further alleges that the invocation of a 14-day extension was improper because Ms. Blackman had failed to assist him in limiting the request. Finally, Mr. Hartz specifically alleges that the complaint is against Mr. Herrera, who remains responsible for Ms. Blackman's response since he delegated responsibility to her for it.

The Library and Herrera, through Ms. Blackman, do not contest the above facts, but do contest whether their actions constitute a violation of the Ordinance. Specifically, the Library notes that it provided documents to Mr. Hartz on July 25, 2011 which would help him identify documents related to his proposed request: two separate PowerPoint presentations; the Public-Private Support and Cooperation Framework for Branch Library Improvement Program (Framework document); and the Annual Report for 2007-08 and 2008-09 by the Library and the Friends. The Library further notes that, after providing these documents, it continued to search for other documents that might prove helpful to Mr. Hartz in his request. While that search was occurring, Mr. Hartz made a public records request on July 28, 2011, for records that were identified in some of the documents the Library provided to Mr. Hartz on July 25, 2011.

The Library further alleges that

Mr. Hartz' July 28, 2011 IDR referred to the Framework document and requested the Friends' "independently prepared audits" for years 2008, 2009 and 2010. We responded to his request the following day on July 29, 2011, with the "independently prepared audits" documents: The Friends and Foundation of the San Francisco Public Library/Financial Statements for the Years Ended June 30, 2010 and 2009/Report of Independent Auditors," and "The Friends and Foundation of the San Francisco Public Library/Financial Statements for the Years Ended June 30, 2009 and 2008/Report of Independent Auditors."

Memorandum

DATE: December 13, 2011

PAGE: 3

RE: Complaint No. 11083: Ray Hartz v. Library, et al.

Based on these allegations, the Library argues that it has complied with Section 67.21(c), and that it has appropriately assisted Mr. Hartz in identifying documents that might be responsive to his area of interest. The Library therefore requests the Complaint be dismissed.

Finally, the Library notes that Mr. Hartz filed a similar complaint, Complaint #11055, on July 26, 2011, which the Task Force heard on August 23, 2011, and no motion was made on the matter after hearing, concluding the matter without any order of determination against the Library or Mr. Herrera.

Mr. Hartz responded that "this is a new case with new facts, and, as such, should not be dismissed." *It is entirely unclear from the allegations what these new facts are, as none appear to have been alleged.*

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Is this complaint legally the same as that made by Complaint #11055?
- Did the hearing of the Task Force on Complaint #11055 finally adjudicate this matter, such that this complaint should be dismissed?
- Was the July 25, 2011 response of the Library timely?
- Did the Library or Mr. Herrera violate Section 67.21(c) of the Ordinance?

SUGGESTED ANALYSIS**Under Section 67.21(c) of the Ordinance:**

- Determine whether the Task Force should dismiss this complaint as having already been adjudicated.
- Determine whether Ms. Blackman's July 25, 2011 letter response assisted Complainant in the manner required by Section 67.21(c).
- If not, determine whether Mr. Herrera is legally responsible under the Ordinance for Ms. Blackman's failure.

Under Section 67.21 and 67.25 of the Ordinance:

- Determine whether the Library timely responded to any records request.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

Memorandum

DATE: December 13, 2011

PAGE: 4

RE: *Complaint No. 11083: Ray Hartz v. Library, et al.*

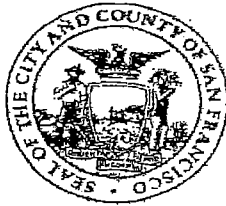
ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(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.

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.



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 SAN FRANCISCO PUBLIC LIBRARY

Name of individual contacted at Department or Commission LUIS HERRERA, CITY LIBRARIAN

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

Sunshine Ordinance Section 67.21(c), 67.21(d), 67.21(e)
 (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) Name RAY WHARTZ, JR Address 839 LEWENWORTH ST #304 SAN FRANCISCO CA 94109

Telephone No. (415) 345-9144 E-Mail Address RWHARTZJR@SBCGLOBAL.NET

Date 10/4/11 Signature Ray Whartz

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).

Wednesday, October 05, 2011

On Thursday, July 21, 2011 an Immediate Disclosure Request was filed with Luis Herrera, City Librarian. The request was for assistance in identifying documents in Mr. Herrera's custody which would provide information relating to the financial relationship between the Friends of the San Francisco Public Library and the San Francisco Public Library. On Monday, July 25, 2011, I contacted Ms. Blackman, Secretary of the Library Commission regarding this request which was delegated to her by Mr. Herrera. I attempted to clarify that my request was specifically for assistance in identifying documents, which would enable me to make a specific request for specific documents.

Ms. Blackman responded by close of day on Monday, July 25, 2011. Her response contained nothing of substance responsive to the request. One of the documents did contain information which helped me frame a request for two specific documents, subsequently received, which are not part of this complaint. Other documents provided were for time periods not requested and included other information not responsive to my request. In fact, two of the four documents provided were items I had specifically told Ms. Blackman by telephone I did not want! In addition, Ms. Blackman invoked a 14 day extension to answer the request without making any good-faith effort to assist me in limiting the request. My intent was, and remains, acquiring public records in the least demanding and/or complicated way possible. It was never my intent to ask for everything, but to get assistance in identifying documents which would provide needed information with minimal use of city resources.

Ms. Blackman subsequently provided additional documents which were responsive to the request. However, Ms. Blackman at no time provided assistance in identifying documents to enable me to frame a request as required by the Sunshine Ordinance, but, picked selected documents by some means quite unclear to me. She has placed me in the position of playing some guessing game as to how to identify what documents are available and responsive to this request.

The Ordinance section 67.21 (and my IDR quoting same) clearly indicates the responsibility that a custodian of records has in providing assistance 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 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.*"

It is my contention that other documents exist, either in Ms. Blackman's custody as Secretary of the Library Commission and/or the custody of Luis Herrera, the City Librarian, which are responsive to my request.

This complaint is specifically against Luis Herrera, to whom the request was submitted. Mr. Herrera delegated the response to Ms. Blackman and she subsequently failed to respond appropriately or on a timely basis. In fact, Ms. Blackman lacks the authority to respond to a public records request as she has without the approval and/or direction of Mr. Herrera.

IMMEDIATE DISCLOSURE REQUEST

Thursday, July 21, 2011

Luis Herrera, City Librarian

Mr. Herrera,

In accordance with Sunshine Ordinance Sec 67.21, I am requesting your assistance 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 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."

This request is for documents regarding the financial relationship of the San Francisco Public Library with the Friends of the San Francisco Public Library. Specifically the amounts raised by the Friends of the San Francisco Public Library during the fiscal years 2008 to 2009 and 2009 to 2010 and the amounts received by the San Francisco Public Library from the Friends of the San Francisco Public Library during those same periods. The figures relating to receipts by the San Francisco Public Library should contain enough information to ascertain the exact value, either in cash or in kind of all monies and/or materials actually received by the library during the two fiscal years indicated.

Sincerely,

Ray W. Hartz, Jr.

839 Leavenworth St, Apt 304

San Francisco CA 94109-6131

(415) 345-9144

www.ricobglobal.net

COPY

IMMEDIATE DISCLOSURE REQUEST



RE: #11083_Ray Hartz vs Luis Herrera, Public Library
Sue.A. Blackman to: soft@sfgov.org, rwhartzjr@sbcglobal.net
Cc: Luis Herrera

11/18/2011 12:08 PM

History: This message has been forwarded.

2 attachments



final 7.25.11.doc 8.4.11 response.doc

November 18, 2011

Members, Sunshine Ordinance Task Force
c/o Chris Rustom
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Complaint #11083 Ray W. Hartz v. Library Commission

Dear Task Force Members:

This letter responds to Complaint #11083, which was signed by Ray Hartz on October 4, 2011 and sent to the San Francisco Public Library "SFPL" on October 14, 2011.

For the reasons set forth below, the complaint is without merit and should be dismissed.

The Complaint

Mr. Hartz filed a similar complaint (Complaint #11055) with the Task Force regarding this same Immediate Disclosure Request on July 26, 2011. The Task Force heard Complaint #11055 on August 23, 2011 and no motion was made on the item and the matter was concluded.

The complaint alleges that Luis Herrera, the SFPL Librarian, violated Section 67.21 (c), (d) and (e) of the Administrative Code for failure to assist a member of the public's request for assistance in identifying documents in the Library's custody and for failure to respond appropriately or on a timely basis.

On Thursday evening, July 21, 2011 at the Library Commission an Immediate Disclosure Request (IDR) was handed to the City Librarian by Mr. Hartz. SFPL acknowledged Mr. Hartz' request on Monday, July 25, 2011 and provided Mr. Hartz with two separate PowerPoint presentations and the Public-Private Support and Cooperation Framework for Branch Library Improvement Program (Framework document). We also identified another document, the Annual Report for 2007-08 and 2008-09 by SFPL and the Friends of SFPL, which he might be interested in perusing. While SFPL requested a 14-day extension to identify additional types of documents that SFPL might have, SFPL did in fact respond to Mr. Hartz' request in an appropriate and timely manner.

Mr. Hartz responded on July 26, 2011 stating that our response was non-responsive. We replied on July 16, 2011 and disagreed with Mr. Hartz'

characterization of our timely response. Notwithstanding Mr. Hartz' allegations, SFPL continued to research his request.

Based on documents SFPL provided i.e. the two PowerPoint presentations and Framework document, Mr. Hartz submitted a subsequent IDR on July 28, 2011. Mr. Hartz' July 28, 2011 IDR referred to the Framework document and requested the Friends' "independently prepared audits" for years 2008, 2009 and 2010. We responded to his request the following day on July 29, 2011, with the "independently prepared audits" documents: The Friends and Foundation of the San Francisco Public Library/Financial Statements for the Years Ended June 30, 2010 and 2009/Report of Independent Auditors," and "The Friends and Foundation of the San Francisco Public Library/Financial Statements for the Years Ended June 30, 2009 and 2008/Report of Independent Auditors."

On August 4, 2011, (see attached) we followed up again and listed four additional documents which might be responsive to his first request.

Mr. Hartz states that "it is my contention that other documents exist, either in Ms. Blackman's custody as Secretary of the Library Commission and/or the custody of Luis Herrera, the City Librarian; which are responsive to my request." The Library has provided Mr. Hartz with documents responsive to his request and is not aware of any other documents that might be responsive to his request.

Conclusion

The Library believes it has fully complied with Administrative Code Section 67.21(c) in assisting Mr. Hartz to identify records and information that are responsive to his request or purpose of his request and we believe this Complaint should be dismissed.

We hope this letter will be of assistance to the Task Force. If I can be of further assistance with respect to this Complaint, please do not hesitate to contact me.

Sincerely,

Sue Blackman
Custodian of Records,
Library Commission Secretary

-----Original Message-----

From: sotf@sfgov.org [mailto:sotf@sfgov.org]
Sent: Thursday, November 17, 2011 11:07 AM
To: rwhartzjr@sbcglobal.net
Cc: Luis Herrera; Sue A. Blackman
Subject: #11083_Ray Hartz vs Luis Herrera, Public Library

Due to an increase in the amount of complaints received within the last two months, the Task Force is requesting that your complaint be heard at a later regular or special meeting date. Please let me know if you can accommodate the request.

Chris Rustom
Sunshine Ordinance Task Force
City Hall, Rm. 244, San Francisco, CA 94102 sotf@sfgov.org, (415) 554-7724;
fax: (415) 554-7854

Official SFPL Use Only

Official SFPL use only

July 25, 2011

Ray W. Hartz, Jr.
839 Leavenworth Street, Apt. 304
San Francisco, CA 94109-6131
Via email: rwhartzir@sbcglobal.net

Re: Immediate Disclosure Request

Dear Mr. Hartz:

I am writing in response to your immediate disclosure request hand delivered at the Library Commission meeting on Thursday, July 21, 2011. In order for the Library to more efficiently respond to any requests in the future, please see the attached Procedures for Public Records Request.

Your request is not "simple, routine or otherwise readily answerable" and does not meet the criteria for "immediate disclosure" under the San Francisco Sunshine Ordinance. (S.F. Adm. Code Sec. 67.25(a).) Accordingly, it is a standard public records request not subject to the expedited time limit for response that applies to an immediate disclosure request. Further, we must invoke an extension of 14 days because your request is voluminous, and we will have to retrieve records from off-site storage to respond to the request (Cal. Gov. Code Sec. 6253(c)).

In your request you ask for assistance in accordance with Sunshine Ordinance Sec. 67.21 in identifying "documents regarding the financial relationship of the San Francisco Public Library (SFPL) with the Friends (Friends) of the San Francisco Public Library. Specifically the amounts raised by the Friends during the fiscal years 2008 to 2009 and 2009 to 2010 and the amounts received by the SFPL from the Friends during those same periods. The figures relating to receipts by the SFPL should contain enough information to ascertain the exact value, either in case or in kind of all monies and/or materials actually received by the library during the two fiscal years indicated."

The Library is conducting a diligent search to identify documents responsive to your request. We have located two PowerPoint presentations given by the Friends to the Library Commission on March 5, 2009 and February 3, 2011, which are attached. Also attached is the Public-Private Support and Cooperation Framework for Branch Library Improvement Program and Neighborhood Library Campaign, "Framework" between SFPL and Friends. Other documents available are the 2007-08, 2008-09 Annual Report of the SFPL and Friends.

If you have further questions about this matter, please feel free to contact me.

Sincerely,

Sue Blackman
Library Commission Secretary/
Custodian of Records

August 4, 2011

Ray W. Hartz, Jr.
839 Leavenworth Street, Apt. 304
San Francisco, CA 94109-6131
Via email: rwhartzir@sbcglobal.net

Re: Immediate Disclosure Request

Dear Mr. Hartz:

I am writing in response to your immediate disclosure request hand delivered at the Library Commission meeting on Thursday, July 21, 2011. On July 25, 2011 we responded and provided you with several documents: two PowerPoint presentations given by the Friends to the Library Commission on March 5, 2009 and February 3, 2011 and the Public-Private Support and Cooperation Framework for Branch Library Improvement Program and Neighborhood Library Campaign. We also asked for a 14 day extension to allow us time to identify additional documents, which would be responsive to your request.

In your request you ask for assistance in accordance with Sunshine Ordinance Sec. 67.21 in identifying "documents regarding the financial relationship of the San Francisco Public Library (SFPL) with the Friends (Friends) of the San Francisco Public Library. Specifically the amounts raised by the Friends during the fiscal years 2008 to 2009 and 2009 to 2010 and the amounts received by the SFPL from the Friends during those same periods. The figures relating to receipts by the SFPL should contain enough information to ascertain the exact value, either in cash or in kind of all monies and/or materials actually received by the library during the two fiscal years indicated."

You followed up with another Immediate Disclosure Request on July 28, 2011 requesting the "independently prepared audits" for fiscal years 2008-09 and 2009-10." We responded to your request on July 29, 2011 with the documents you requested.

The Library has conducted a diligent search and has identified four additional documents which may be responsive to your request. These documents are the Friends Grant Funding Report; Check Voucher Register; Temporary Restricted Fund Balance and Traditionally Funded Grants.

If you have further questions about this matter, please feel free to contact me.

Sincerely,

Sue Blackman
Library Commission Secretary/
Custodian of Records



Re: #11083_Ray Hartz vs Luis Herrera, Public Library

Ray Hartz Jr

to:

Sue A. Blackman, soff@sfgov.org

11/18/2011 02:29 PM

Cc:

Luis Herrera

Hide Details

From: Ray Hartz Jr <rwartzjr@sbcglobal.net>

To: "Sue A. Blackman" <sblackman@sfpl.org>, "soff@sfgov.org" <soff@sfgov.org>

Cc: Luis Herrera <lherrera@sfpl.org>

November 18, 2011

Members, Sunshine Ordinance Task Force
c/o Chris Rustom
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Complaint #11083 Ray W. Hartz v. Library Commission

Dear Task Force Members:

In reference to the attached request from the City Librarian to dismiss this case, I would simply reply that the facts of the case have changed. While I felt at the time of the original case (and still do) that my complaint was valid, the Task Force declined to act. Subsequent events relating to the original request and the City Librarians response have altered significantly. This presented the need to file the new case.

This is a new case with new facts, and, as such, should not be dismissed.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Sue A. Blackman <sblackman@sfpl.org>
To: "sotf@sfgov.org" <sotf@sfgov.org>; "rwhartzjr@sbcglobal.net" <rwhartzjr@sbcglobal.net>
Cc: Luis Herrera <lherrera@sfpl.org>
Sent: Fri, November 18, 2011 12:08:35 PM
Subject: RE: #11083_Ray Hartz vs Luis Herrera, Public Library

November 18, 2011

Members, Sunshine Ordinance Task Force
c/o Chris Rustom
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Complaint #11083 Ray W. Hartz v. Library Commission

Dear Task Force Members:

This letter responds to Complaint #11083, which was signed by Ray Hartz on October 4, 2011 and sent to the San Francisco Public Library "SFPL" on October 14, 2011.

For the reasons set forth below, the complaint is without merit and should be dismissed.

The Complaint

Mr. Hartz filed a similar complaint (Complaint #11055) with the Task Force regarding this same Immediate Disclosure Request on July 26, 2011. The Task Force heard Complaint #11055 on August 23, 2011 and no motion was made on the item and the matter was concluded.

The complaint alleges that Luis Herrera, the SFPL Librarian, violated Section 67.21 (c), (d) and (e) of the Administrative Code for failure to assist a member of the public's request for assistance in identifying documents in the Library's custody and for failure to respond appropriately or on a timely basis.

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Based on documents SFPL provided i.e. the two PowerPoint presentations and Framework document, Mr. Hartz submitted a subsequent IDR on July 28, 2011. Mr. Hartz' July 28, 2011 IDR referred to the Framework document and requested the Friends' "independently prepared audits" for years 2008, 2009 and 2010. We responded to his request the following day on July 29, 2011; with the "independently prepared audits" documents: The Friends and Foundation of the San Francisco Public Library/Financial Statements for the Years Ended June 30, 2010 and 2009/Report of Independent Auditors," and "The Friends and Foundation of the San Francisco Public Library/Financial Statements for the Years Ended June 30, 2009 and 2008/Report of Independent Auditors."

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Mr. Hartz states that "it is my contention that other documents exist, either in Ms. Blackman's custody as Secretary of the Library Commission and/or the custody of Luis Herrera, the City Librarian, which are responsive to my request." The Library has provided Mr. Hartz with documents responsive to his request and is not aware of any other documents that might be responsive to his request.

Conclusion

The Library believes it has fully complied with Administrative Code Section 67.21(c) in assisting Mr. Hartz to identify records and information that are responsive to his request or purpose of his request and we believe this Complaint should be dismissed.

We hope this letter will be of assistance to the Task Force. If I can be of further assistance with respect to this Complaint, please do not hesitate to contact me.

Sincerely,

Sue Blackman
Custodian of Records,
Library Commission Secretary

-----Original Message-----

From: sotf@sfgov.org [mailto:sotf@sfgov.org]

Sent: Thursday, November 17, 2011 11:07 AM

To: rwartzjr@sbcglobal.net

Cc: Luis Herrera; Sue A. Blackman

Subject: #11083_Ray Hartz vs Luis Herrera, Public Library

Due to an increase in the amount of complaints received within the last two months, the Task Force is requesting that your complaint be heard at a later regular or special meeting date. Please let me know if you can accommodate the request.

Chris Rustom
Sunshine Ordinance Task Force
City Hall, Rm. 244, San Francisco, CA 94102 sotf@sfgov.org, (415) 554-7724, fax: (415) 554-7854

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File No. 11089

SOTF Item No. 10
CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: July 11, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Memorandum |
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Completed by: Andrea Ausberry Date July 3, 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

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 petition, 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
PAGE: 4
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 JRBirkhead@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*;

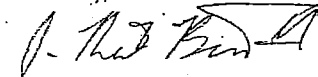
5) the nine documents labeled "Farella" are related to *City and County of San Francisco v. Tutor-Saliba*; and

6) the documents labeled "Colchett" 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>
To: JRBirkhead@gmail.com

Mon, Oct 17, 2011 at 3:41 PM

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.
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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](tel:(415)554-4653) Direct
[\(415\) 554-4700](tel:(415)554-4700) Reception
[\(415\) 554-4715](tel:(415)554-4715) Facsimile
[\(415\) 554-6770](tel:(415)554-6770) TTY
www.sfcityattorney.org

1/1/11

Gmail - Res e blic Records Request (10/7/2011)

Robb Birkhead <jrbirkhead@gmail.com>
To: Jack Song <Jack.Song@sfgov.org>

Fri, Oct 28, 2011 at 3:27 PM

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:
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(415) 554-4700 Reception
(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

://mail.google.com/mail/?ui=2&ik=1d7571b3d0&view=pt&q=jack song&...

2/5

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.
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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, 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 shellers.

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
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(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:

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Thank you for your understanding.

Best regards,

JACK SONG

1/1/11

Gmail - Rés e blic Records Request (10/7/2011)

Public Information Officer

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www.sfcityattorney.org



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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San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

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File No. 12005

SOTF Item No. 11
CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: July 11, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Completed by: Andrea Ausberry Date July 3, 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) 554-3714
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: March 22, 2012
RE: Complaint No. 12005, Anonymous v. Municipal Transportation Agency ("MTA")

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

The anonymous complainant ("Anonymous") alleges that the Municipal Transportation Agency ("MTA") violated public records laws by failing to adequately respond to their October 26, 2011 Immediate Disclosure Request ("IDR") for Muni camera footage pertaining to the intersection of 3d Street and Oakdale Avenue from July 16, 2011.

COMPLAINANT FILES COMPLAINT:

On January 9, 2012, Anonymous filed this complaint against MTA, alleging that Caroline Celaya of MTA failed to respond to the IDR within 24 hours and that MTA never produced the requested records.

JURISDICTION

MTA is a City department subject to the provisions of the Sunshine Ordinance. The Department 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 the 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.
- Section 6254(f) governs exemption from disclosure for law enforcement investigative files and related records.

APPLICABLE CASE LAW:

See cases cited in discussion, below

FOX PLAZA • 1390 MARKET STREET, 6TH FLOOR • SAN FRANCISCO, CALIFORNIA 94102-5408
RECEPTION: (415) 554-3800 • FACSIMILE: (415) 437-4644

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MEMORANDUM

TO: Sunshine Task Force
 DATE: March 22, 2012
 PAGE: 2
 RE: *Complaint No. 12005, Anonymous v. MTA*

ISSUES TO BE DETERMINED

Uncontested Facts: Anonymous alleges that on October 25, 2011, they personally delivered to Caroline Celeya, MTA, and IDR requesting Muni camera footage pertaining to the intersection of 3d Street and Oakdale Avenue on July 16, 2011. Anonymous further alleges that, as of January 9, 2012, MTA still had not communicated with them or released the records requested by the IDR.

Ms. Celaya responds that MTA did respond the day after the IDR was received, on October 26, 2011. MTA's response further alleges that the specific records requested were: 1) "camera footage from the T-Light Rail MUNI train that was present at 3rd Street and Oakdale Avenue between 4:20 p.m. and 4:55 p.m. on July 16, 2011" and 2) "surveillance camera footage from the three municipal cameras at the intersection of 3rd Street and Oakdale Avenue on the date July 16, 2011 for the time interval of 4:30 pm to 5:00 pm."

MTA states that it responded by letter on October 26, 2011 asserting an exemption to disclosure for the camera footage under Government Code section 6254(f) and Ordinance section 67.24(d). It further states that the letter was returned on November 7, 2011 with an insufficient address sticker, at which time MTA sought an email address from the complainant by calling the telephone number provided and then sent the letter to that email address.

MTA asserts that because the camera footage requested by the IDR was provided to a law enforcement agency for the purposes of an ongoing criminal investigation, MTA is not required to disclose that footage in response to the IDR. MTA further asserts that it need only provide the requested footage once the District Attorney or a court determines that a prosecution will not be sought of once the statute of limitations for filing charges has expired.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What was the purpose for which the cameras on the T-Light rail train were installed?
- What was the purpose for which the three municipal cameras located at 3rd Street and Oakdale Avenue were installed?
- Does MTA ordinarily maintain the cameras on the T-Light rail train and maintain custody of the footage recorded by that camera?
- Does MTA ordinarily maintain the three municipal cameras located at 3rd Street and Oakdale Avenue and maintain custody of the footage recorded by that camera?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the MTA violate the public records laws by failing to disclose the footage requested by the IDR from these cameras?

DISCUSSION

This discussion addresses the argument by MTA that it may withhold the camera recordings requested by Anonymous on the grounds that they have been provided to a law enforcement agency to assist in their criminal investigation. MTA makes this claim under Government Code section 6254 (f) and S.F. Administrative Code section 67.24(d). Section

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
PAGE: 3
RE: *Complaint No. 12005, Anonymous v. MTA*

6254(f) of the Government Code makes certain records related to law enforcement investigations exempt from disclosure, even though they may otherwise qualify as public records. Section 67.24(d) governs disclosure of records related to law enforcement investigations once an investigation is closed.

Section 6254 (f) exempts from disclosure two categories of records: 1) "records of . . . investigations conducted by . . . [a] local police agency" and 2) "investigatory . . . files compiled by any . . . local agency for correctional, law enforcement, or licensing purposes." See *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068. The first category, records of an investigation conducted by law enforcement, are exempt without regard for whether the prospect of enforcement proceedings are definite. *Haynie, supra*, 26 Cal.4th at 1069. The second category, investigatory files compiled by a local agency for law enforcement purposes, is exempt from disclosure only if the "prospect of enforcement proceedings [by the local agency that compiled the records] is concrete and definite." *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 212. If the primary purpose of compiling the records is not law enforcement and they were not being used for those purposes at the time of the request, then they are not exempt from disclosure. *Id.*; see also *Register Division of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 904 [holding sheriff's investigation report on throat slashing of prisoner in county jail not exempt from disclosure under section 6254 (f) because it was conducted primarily to determine the validity of a tort claim against the county.]

Based on the allegations of the parties, it appears that the records requested do not fall under the first category of records exempted by section 6254 (f), as they do not appear to be records of an investigation conducted by SFPD. Therefore, the question is whether the camera footage requested by the IDR constitutes investigatory files compiled by a local agency for law enforcement purposes, and thus falls under the second category of records exempted by section 6254 (f). It is unclear from the facts whether the records would qualify under the second category. This determination would depend in large part on the primary purpose for which the camera footage requested was recorded. Assuming that the footage in question is maintained and held in custody by MTA, for purposes related to the efficient operation of transit services, then it is questionable whether the exemption would apply. Assuming instead, however, that the footage is recorded for the purpose of investigating crimes that may occur on or around MTA vehicles, then it may qualify for the exemption if at the time of recording there was a "concrete and definite" prospect of enforcement proceedings related to events recorded in the footage.

Section 67.24(d) applies to govern disclosure where records pertain to investigations, arrests and other law enforcement activity, generally the same category as those subject to Section 6254 (f). Section 67.24(d) does not appear to create any exemptions to disclosure, but only to govern the circumstance under which records that are subject to the exemption of Section 6254(f) must eventually be disclosed.

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: March 22, 2012
PAGE: 4
RE: *Complaint No. 12005, Anonymous v. MTA*

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. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, *the following policies shall govern* specific types of documents and information and shall provide enhanced rights of public access to information and records:

(d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to *any investigation, arrest or other law enforcement activity* shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

SEC. 67.25. IMMEDIACY OF RESPONSE.

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
PAGE: 5
RE: *Complaint No. 12005, Anonymous v. MTA*

(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:

MEMORANDUM

TO: Sunshine Task Force
 DATE: March 22, 2012
 PAGE: 6
 RE: *Complaint No. 12005, Anonymous v. MTA*

- (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

(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:

- (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.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

SECTION 6254. EXEMPTION OF PARTICULAR RECORDS

(f) *Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by*

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
PAGE: 7
RE: *Complaint No. 12005, Anonymous v. MTA*

any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. ~~However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.~~

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

- (1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.
- (2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.
- (3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
PAGE: 8
RE: *Complaint No. 12005, Anonymous v. MTA*

scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.



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

RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO
 2012 JAN -9 PM 1:51

Complaint against which Department or Commission SFMFA

Name of individual contacted at Department or Commission Caroline Celaya

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

Sunshine Ordinance Section 67.25(a)
(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.

On October 26, 2011 after multiple attempts I was able to serve (in person) Ms. Celaya with an immediate disclosure request for Monic camera footage pertaining to the intersection of 3rd St + Oakdale Ave. on July 16th of 2011. continued ->

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) Name [Redacted] Address [Redacted] 16th St. Suite # [Redacted] (94103)

Telephone No. 415-[Redacted] E-Mail Address [Redacted]@gmail.com


Date: 01/09/2012 [Redacted]

I request confidentiality of my personal information. yes no

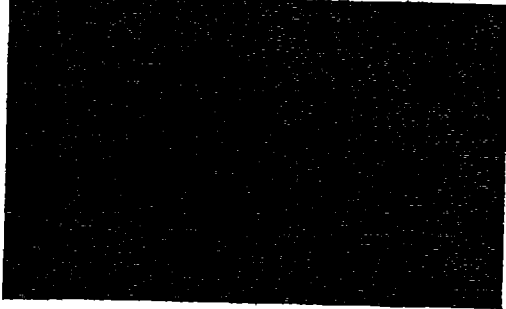
NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS 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).

07/31/08

No response was rendered from Ms. Celaya as of a week later. The ~~sta~~ ordinance requires a 24-hour response, or a legal justification for delay. I attempted to follow up multiple times by telephone and with in-person visits to the SFMTA office. As of the date of this complaint (01/09/2012) in contravention of San Francisco law, Ms. Celaya has not communicated with me nor released the requested records. I seek immediate resolution of this matter by the appropriate organs of government.



J. J. Stelley Foundation
2940 16th St. Suite # 209
San Francisco, CA 94103



Celaya, Caroline

From: Celaya, Caroline
Sent: Thursday, November 10, 2011 4:40 PM
To: [REDACTED]@gmail.com
Subject: [REDACTED] 10.26.11.pdf
Attachments: [REDACTED] 10.26.11.pdf

Per your request:

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

11/15/2011

P106

October 26, 2011

[REDACTED]
Co-Director
Education Not Incarceration/Idriss Stelley Foundation
1940 - 16th Street, Suite #209
San Francisco, CA 94103

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Lorena Bridges | Director
Christy Binkman | Director
Malcolm Heintzka | Director
Erica Oka | Director
Joel Ramus | Director
Edward D. Helskin | Director of Transportation

RE: Immediate Disclosure Request dated October 25, 2011

Dear Mr. Miller:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated October 25, 2011.

Records Requested

You have requested the surveillance camera footage from the T-Light Rail MUNI train that was present at 3rd St. + Oakdale Ave. between 4:20pm and 4:55pm on July 16, 2011. You have also requested the surveillance-camera footage from the three municipal cameras at the intersection of 3rd st. and Oakdale Ave. on the date of July 16, 2011 for the time interval of 4:30pm to 5:00pm.

Exemptions and Privileges

The video you have requested have been provided to a law enforcement agency for the purposes of an investigation. The SFMTA is not required to disclose videos submitted to law enforcement agencies in connection with ongoing criminal investigations. (California Government Code section 6254(f)). The Sunshine Ordinance recognizes the need to keep records related to pending investigations confidential. San Francisco Administrative Code Section 67.24(d) provides that disclosure of "records pertaining to any investigation, arrest, or other law enforcement activity" is only required once the District Attorney or court determines that a prosecution will not be sought or once the statute of limitations for filing charges has expired. As a result, we are unable to provide you with the videos you seek at this time.

Please do not hesitate to contact the Sunshine Request line at 415-701-4670 or sfntasunshinerequests@sfmta.com if you have any questions.

Sincerely,

Caroline Celaya

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinecke | Director
Bruce Oka | Director
Joël Ramos | Director
Edward D. Reilich | Director of Transportation

February 3, 2012

Hope Johnson
Chair, Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Complaint against the Municipal Transportation Agency
Complaint No. 12005

Dear Ms. Johnson:

I am writing in response to complaint #12005 filed by Anonymous. Anonymous complains that the San Francisco Municipal Transportation Agency ("SFMTA") failed to respond to his October 25, 2011, request for public records.

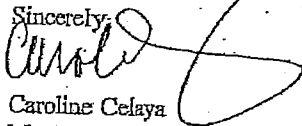
As explained below, the SFMTA did complete a response to this request within the time frame required by the Sunshine Ordinance.

On Tuesday, October 25, 2011, the SFMTA received an immediate disclosure request and sent a response on Wednesday, October 26, 2011. The request sought surveillance camera footage from the T-Light Rail MUNI train that was present at 3rd St. + Oakdale Ave. between 4:20pm and 4:55pm, and the surveillance camera footage from the three municipal cameras at the intersection of 3rd St. and Oakdale Ave. between 4:30pm to 5:00pm for July 16, 2011.

The SFMTA's October 26, 2011, response letter (copy attached) explained that the video requested had been provided to a law enforcement agency for the purposes of an investigation. The SFMTA is not required to disclose videos submitted to law enforcement agencies in connection with ongoing criminal investigations. (California Government Code section 6254(f)). The Sunshine Ordinance recognizes the need to keep records related to pending law enforcement investigations confidential. San Francisco Administrative Code Section 67.24(d) provides that disclosure of "records pertaining to any investigation, arrest, or other law enforcement activity" is only required once the District Attorney or court determines that a prosecution will not be sought or once the statute of limitations for filing charges has expired. As a result, we are unable to provide the requestor with the videos he sought at that time.

On November 7, 2011, the SFMTA's letter was returned with an insufficient address sticker and a call was placed to the requestor seeking an email address to send the letter. An email address was provided and the letter was sent via email on November 10, 2011 (copy attached).

Sincerely,



Caroline Celaya
Manager, Public Records Requests

File No. 12013

SOTF Item No. 12

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: July 11, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

- | | | |
|--------------------------|--------------------------|------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Memorandum |
| <input type="checkbox"/> | <input type="checkbox"/> | Order of Determination |
| <input type="checkbox"/> | <input type="checkbox"/> | Complaint and Supporting documents |
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OTHER

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

Completed by: Andrea Ausberry Date July 3, 2012

Completed by: _____ Date _____

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



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

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

MEMORANDUM

April 24, 2012:

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

THE COMPLAINANT ALLEGES THE FOLLOWING:

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

COMPLAINANT FILES COMPLAINT:

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

JURISDICTION

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

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs responses to a public records request, and the format of requests and of responsive documents.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

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

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

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

APPLICABLE CASE LAW:

See citations in analysis below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

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

LEGAL ISSUES/LEGAL DETERMINATIONS:

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

SUGGESTED ANALYSIS

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

Attorney-Client Privilege

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

Section 67.27 of the Sunshine Ordinance allows for "withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority."

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

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

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

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

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

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

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

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

Attorney Work Product Doctrine

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

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

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

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

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

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

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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.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. *All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.*

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

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

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

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

§ 6254. EXEMPTION OF PARTICULAR RECORDS

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

ARTICLE 2. OTHER EXEMPTIONS FROM DISCLOSURE

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

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

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

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

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

...

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

...

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

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



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

Follow Up:
Urgent Priority.

To:sotf@sfgov.org
Email:complaints@sfgov.org
DEPARTMENT:San Francisco Arts Commission
CONTACTED:Howard Lazar
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:

SECTIONS_VIOLATED:Section 67.21(b) and Section 67.26

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

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

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

HEARING:Yes

PRE-HEARING:No

DATE:2/29/12

NAME:William J. Clark

ADDRESS:P.O. Box 882252

CITY:SF

ZIP:94188

PHONE:415-822-5465

CONTACT_EMAIL:billandbobclark@access4less.net

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

Time for 0000496 - Artcom Street Artists Program
7/1/2010 thru 6/30/2011

File #	Date	Attorney Hours	Attorney Amount	Assistant Hours	Assistant Amount	Hours	Amount
0000496	07/06/10	0.25	46.00			0.25	46.00
0000496	07/07/10	0.25	46.00			0.25	46.00
0000496	07/08/10	0.25	46.00			0.25	46.00
0000496	07/22/10	0.25	53.50			0.25	53.50
0000496	08/05/10	1.00	214.00			1.00	214.00
0000496	08/23/10	0.50	118.50			0.50	118.50
0000496	08/23/10	1.25	267.50			1.25	267.50
0000496	08/23/10	0.75	160.50			0.75	160.50
0000496	08/24/10	0.50	118.50			0.50	118.50
0000496	08/24/10	3.00	642.00			3.00	642.00
0000496	08/25/10	0.25	53.50			0.25	53.50
0000496	08/25/10	3.00	642.00			3.00	642.00

File 12013

Time for 0000496 - Artcom Street Artists Program
7/1/2010 thru 6/30/2011

File #	Description	Date	Attorney		Assistant		Total	
			Hours	Amount	Hours	Amount	Hours	Amount
0000496	ARTCOM Street Artists Program Staff: Varah, Adine Cat: Public Requests/Brown Act	08/26/10	2.75	588.50			2.75	588.50
0000496	ARTCOM Street Artists Program Staff: Zarefsky, Paul Cat: Public Requests/Brown Act	08/26/10	1.00	214.00			1.00	214.00
0000496	ARTCOM Street Artists Program Staff: Varah, Adine Cat: Public Requests/Brown Act	08/27/10	2.75	588.50			2.75	588.50
0000496	ARTCOM Street Artists Program Staff: Delventhal, Buck Cat: Other	08/27/10	0.75	177.75			0.75	177.75
0000496	ARTCOM Street Artists Program Staff: Varah, Adine Cat: Review	08/27/10	0.25	53.50			0.25	53.50
0000496	ARTCOM Street Artists Program Staff: Zarefsky, Paul Cat: Public Requests/Brown Act	08/27/10	0.50	107.00			0.50	107.00
0000496	ARTCOM Street Artists Program Staff: Varah, Adine Cat: Review	09/07/10	0.25	53.50			0.25	53.50
0000496	ARTCOM Street Artists Program Staff: Varah, Adine Cat: Conference (Client/Opp. Counsel/Staff)	09/08/10	0.50	107.00			0.50	107.00
0000496	ARTCOM Street Artists Program Staff: Varah, Adine Cat: Public Requests/Brown Act	09/13/10	0.75	160.50			0.75	160.50
0000496	ARTCOM Street Artists Program Staff: Zarefsky, Paul Cat: Public Requests/Brown Act	09/13/10	0.25	53.50			0.25	53.50
0000496	ARTCOM Street Artists Program Staff: Zarefsky, Paul Cat: Public Requests/Brown Act	09/20/10	0.25	53.50			0.25	53.50
0000496	ARTCOM Street Artists Program Staff: Zarefsky, Paul Cat: Sunshine Act Requests	09/21/10	0.50	107.00			0.50	107.00

Time for 0000496 - Artcom Street Artists Program
7/1/2010 thru 6/30/2011

File #	Date	Hours	Attorney Amount	Assistant Hours	Assistant Amount	Hours	Total Amount
0000496	10/01/10	0.25	53.50			0.25	53.50
0000496	10/07/10	0.50	118.50			0.50	118.50
0000496	10/07/10	1.25	267.50			1.25	267.50
0000496	10/08/10	1.00	214.00			1.00	214.00
0000496	10/13/10	1.25	267.50			1.25	267.50
0000496	10/18/10	0.25	53.50			0.25	53.50
0000496	10/20/10	0.25	53.50			0.25	53.50
0000496	10/20/10	0.50	107.00			0.50	107.00
0000496	11/08/10	1.75	374.50			1.75	374.50
0000496	11/09/10	0.50	118.50			0.50	118.50
0000496	11/09/10	0.50	111.50			0.50	111.50
0000496	11/10/10	4.25	909.50			4.25	909.50

Time for 0000496 - Artcom Street Artists Program
7/1/2010 thru 6/30/2011

File #	Description	Date	Attorney		Assistant		Total	
			Hours	Amount	Hours	Amount	Hours	Amount
0000496	ARTCOM Street Artists Program Staff: Delventhal, Buck	11/10/10	0.75	177.75			0.75	177.75
	Cat: Conference (Client/Opp. Counsel/Staff)							
0000496	ARTCOM Street Artists Program Staff: Delventhal, Buck	11/12/10	0.25	59.25			0.25	59.25
	Cat: Conference (Client/Opp. Counsel/Staff)							
0000496	ARTCOM Street Artists Program Staff: Delventhal, Buck	11/12/10	0.25	59.25			0.25	59.25
	Cat: Other							
0000496	ARTCOM Street Artists Program Staff: Varal, Adine	11/23/10	1.00	214.00			1.00	214.00
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia	12/06/10	0.50	107.00			0.50	107.00
	Cat: Research							
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia	12/07/10	0.50	107.00			0.50	107.00
	Cat: Other							
0000496	ARTCOM Street Artists Program Staff: Zarefsky, Paul	01/04/11	0.25	53.50			0.25	53.50
	Cat: Sunshine Act Requests							
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia	01/04/11	0.50	107.00			0.50	107.00
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia	01/11/11	0.25	53.50			0.25	53.50
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia	01/13/11	0.25	53.50			0.25	53.50
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia	01/14/11	0.50	107.00			0.50	107.00
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Zarefsky, Paul	01/18/11	0.25	53.50			0.25	53.50
	Cat: Public Requests/Brown Act							

Time for 0000496 - Artcom Street Artists Program
7/1/2010 thru 6/30/2011

File #	Description	Date	Attorney Hours	Attorney Amount	Assistant Hours	Assistant Amount	Total Hours	Total Amount
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia Cat: Public Requests/Brown Act	01/18/11	1.50	321.00			1.50	321.00
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia Cat: Public Requests/Brown Act	01/19/11	0.50	107.00			0.50	107.00
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia Cat: Public Requests/Brown Act	01/25/11	0.50	107.00			0.50	107.00
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia Cat: Public Requests/Brown Act	02/01/11	0.50	107.00			0.50	107.00
0000496	ARTCOM Street Artists Program Staff: Varah, Adine Cat: Public Requests/Brown Act	02/02/11	1.75	374.50			1.75	374.50
0000496	ARTCOM Street Artists Program Staff: Salveson, Elizabeth Cat: Public Requests/Brown Act	02/03/11	0.50	111.50			0.50	111.50
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia Cat: Public Requests/Brown Act	02/03/11	1.00	214.00			1.00	214.00
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia Cat: Public Requests/Brown Act	02/07/11	0.50	107.00			0.50	107.00
0000496	ARTCOM Street Artists Program Staff: Salveson, Elizabeth Cat: Public Requests/Brown Act	02/08/11	0.50	111.50			0.50	111.50
0000496	ARTCOM Street Artists Program Staff: Salveson, Elizabeth Cat: Public Requests/Brown Act	02/09/11	0.50	111.50			0.50	111.50
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia Cat: Public Requests/Brown Act	02/09/11	1.25	267.50			1.25	267.50
0000496	ARTCOM Street Artists Program Staff: Elizondo, Virginia Cat: Public Requests/Brown Act	02/10/11	0.75	160.50			0.75	160.50

Time for 0000496 - Artcom Street Artists Program
7/1/2010 thru 6/30/2011

File #	Date	Hours	Attorney Amount	Assistant Hours	Assistant Amount	Hours	Total Amount
0000496	02/10/11	0.50	107.00			0.50	107.00
0000496	02/11/11	0.50	107.00			0.50	107.00
0000496	03/01/11	0.50	107.00			0.50	107.00
0000496	03/01/11	0.50	107.00			0.50	107.00
0000496	03/02/11	1.75	374.50			1.75	374.50
0000496	03/03/11	0.75	160.50			0.75	160.50
0000496	03/07/11	1.75	374.50			1.75	374.50
0000496	03/10/11	1.75	374.50			1.75	374.50
0000496	03/11/11	1.00	229.00			1.00	229.00
0000496	03/11/11	3.75	802.50			3.75	802.50
0000496	03/14/11	0.75	160.50			0.75	160.50
0000496	03/21/11	0.25	53.50			0.25	53.50

Time for 0000496 - Artcom Street Artists Program
7/1/2010 thru 6/30/2011

File #	Date	Attorney Hours	Attorney Amount	Assistant Hours	Assistant Amount	Total Hours	Total Amount
0000496	03/29/11	1.75	374.50			1.75	374.50
0000496	03/31/11	0.25	53.50			0.25	53.50
0000496	04/04/11	1.00	214.00			1.00	214.00
0000496	04/06/11	1.25	267.50			1.25	267.50
0000496	04/07/11	0.75	160.50			0.75	160.50
0000496	04/12/11	0.75	177.75			0.75	177.75
0000496	04/12/11	3.25	695.50			3.25	695.50
0000496	04/13/11	0.25	53.50			0.25	53.50
0000496	04/22/11	2.75	588.50			2.75	588.50
0000496	04/25/11	1.00	214.00			1.00	214.00
0000496	04/27/11	1.75	374.50			1.75	374.50
0000496	04/28/11	1.75	374.50			1.75	374.50

Time for 0000496 - Artcom Street Artists Program
7/1/2010 thru 6/30/2011

File #		Date	Hours	Attorney Amount	Hours	Assistant Amount	Hours	Total Amount
0000496	ARTCOM Street Artists Program Staff: Varah, Adine	05/03/11	0.25	53.50			0.25	53.50
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Varah, Adine	05/04/11	2.75	588.50			2.75	588.50
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Varah, Adine	05/31/11	1.25	267.50			1.25	267.50
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Varah, Adine	06/08/11	0.50	107.00			0.50	107.00
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Varah, Adine	06/16/11	2.75	588.50			2.75	588.50
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Varah, Adine	06/17/11	1.75	374.50			1.75	374.50
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Varah, Adine	06/20/11	1.75	374.50			1.75	374.50
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Varah, Adine	06/21/11	3.25	695.50			3.25	695.50
	Cat: Public Requests/Brown Act							
0000496	ARTCOM Street Artists Program Staff: Varah, Adine	06/23/11	1.00	214.00			1.00	214.00
	Cat: Review							
0000496	ARTCOM Street Artists Program Staff: Varah, Adine	06/28/11	0.25	53.50			0.25	53.50
	Cat: Public Requests/Brown Act							
	Total records printed:		94	\$20,396.25	0.00	\$0.00	94.75	\$20,396.25

Time for 0000496 - Artcom Street Artists Program
7/1/2010 thru 6/30/2011

Date	Hours	Attorney Amount	Hours	Assistant Amount	Hours	Total Amount
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Search Criteria:
File Number = 0000496
Time Date from 07/01/10 to 06/30/11
Billing Status = Both

2010-11

SAP STAFF
HOURS SPENT ON SUNSHINE REQUESTS

REQUESTOR HOURS SPENT (RESEARCH/DRAFT REPLY/COPYING/
SUNSHINE TASKFORCE HANG)

WM + ROBT. CLARK 1.5 7/2; 7/9/10

PAULA DATESH 2.0 7/27/10 (REVIEW
SOTE HANG)

PBT LLOYD 5, 3, 3 7/27 TAKE Duplicating
8/3, 8/4, 8/5

WM + ROBT CLARK 1.2 AC EMAIL LETTER TO
CITY ATTY RE: SOTF
CLARK VS AC MURKIN
PHONE DISCUSSION w/ CITY

MARC MELANCON/NORDQUIST 3.0 9/13/10
TRANSFER OF 7/8 SOTF
AUDIO TAP TO MURKIN
FILE + CD

INSPECTION OF FILES BY MELANCON/NORDQUIST 1.0 9/14/10

MELANCON/NORDQUIST 3.5 9/15/10 RE TRANSFER OF
9/8 SOTF AUDIO TAP
TO 2 DISK FILES
AND TAP. BUFFER TO
4 CDs / CD R WITNES

SOTF (CLARKS V. A/C ET AL) 3.0 9/14/10 2 hrs prep/
COMPLAINT 1 hr attend
COMMITTEE AS MEETING

SOTF (" " ") 1.0 9/16 - email letter to
Luis/Adria/IT
on outline of SOTF

SOTF (" " ") 4.0 9/28 - 7 hr prep in hang;
3 hrs @ hang;

SOTF (" " ") 2.0 10/4 - 6 mail prep. & letter
on SOTF hang
+ letter to Luis/Adria/IT
on SOTF

CLARKS 0.5 10/8 2 hrs prep. & letter
letter to Luis/Adria/IT

" 0.5 10/13 Conference in 2nd City Hall
with hanging of 14 min letter

ADDARIO 0.5 10/14 14 day prep. & letter
letter to Luis/Adria/IT

ADDARIO	4.0	10/25/10	RESEARCH LETTER; PHOTOGRAPH
CLARKS	4.0	11/20-21	ALYSSA LIEBOWITZ DID THE PHOTOGRAPHS; LETT
SOTF/CLARK v. A/c)	5.0	10/26/10	Rep. of speech for SOTF 10/26/10
SOTF/CLARK v. A/c)	2.0	10/26/10	SOTF Hearing
CLARK	5.0	11/2/10	RESEARCH for 11/10 Request
"	1.0	11/5/10	DELIVERED handwritten to SOTF
CLARK	1.00	11/9/10	14-day ext. response on 11/8 request
CLARK	2.00	11/10/10	14-day ext. response on 11/9 request
CLARK	3.00	11/15/10	- response letter dated 11/8 + 11/9 report
CLARK	8	11/15/10	- Temp employee excluding full time agreement rejected by Clark
CLARK	1.5	11/7/10	- Clark 11/8 + 11/9 reports
CLARK	0.5	11/22/10	- Mailing of documents
CLARK	0.5	11/22/10	- Mailing of documents
CLARK	3.0	1/3/11	Draft of letter for City Atty review: #10069 SOTF
CLARK	0.5	1/4/11	Final letter #10069 draft mailed to SOTF
CLARK	1.0	1/6/11	response letter to 1/5/11 request
CLARK	1.00	1/10/11	Research Hour files for 1/5/11 request
CLARK	1.00	1/11/11	Research 1/11 request; question to City Atty
CLARK	5.00	1/13/11	Research for (1/5/11 request)
CLARK	5.00	1/14/11	Draft of letter to City Atty + copies of documents (1/5/11 request)

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

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

CLARK	7.0	3/24/11	Records, docs, + draft letters for 3/17 + 3/18 requests (for City Atty review).
CLARK	2.0	3/25/11	Draft letter/prepare docs for 3/18 request; scanning of documents for City Atty review
CLARK	0.25	3/29/11	Order w/ City Atty on 3/17 request
CLARK	2.0; 3.0	3/30/11	Redaction of document re 3/17 + 3/18 requests; final drafts of letter; photocopying all; further cont. w/ City Atty
CLARK	2.0	4/6/11	Research & respond to 3/23 request

CLARK	2.5 2.5	4/7/11	Cont. w/ City Atty: #11019 + #11023 + #11008 Letter to SOTF: #11019 #11023
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186 hours spent (since 7/1/10) as of 4/7/11 on SOTF/public records matters

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

CLARK 8 4/26/11 (8 hrs. - rep. by temp. personnel) SOTF hearings on # 11019 & # 11008

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

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

70F.5 hrs. spent thus far since July 1st and reported at 5/11/11 SAPC

CLARK 1.0 5/25/11 e-mail response to 5/13/11 e-mailed question "Another public information Request."

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

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

CLARK 1.0 7/8/11 Making audiotape of 5/25/11 SAPC tape as per 5/25/11 request

CLARK 1.5 7/9/11 Making audiotape of 11/12/08 (Tape 1) as per 5/25/11 request

CLARK 1.5 7/10/11 Making of audiotape of 11/12/08 (Tape 2) as per 5/25/11 request

CLARK	2.5	6/13/11	Making audiotapes of 4/13/10 SATC (Type 1 & 2) as per 5/31 request
C. LLOYD	3.0	6/15/11	Making audio tapes of 5/16/10 ASACM evidence mtg as per 6/9 request
CLARK	3.5	6/20/11	Draft response ^{letters} to SETF #11037 and #11040, Concur w/City Atty
CLARK	1.0 + 0.5	6/21/11	Confer w/City Atty on #11037 & #11040 drafts; finalize drafts & send to SETF
CLARK	2.0	6/28/11	Preparation for #11037 #11040 for 4/8 trngs

END FY 2010-11



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
CHAIR

ELSA DECAIGNEY
PRESIDENT
CIVIC ARTS

PROGRAMS

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

ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.354.6050

WWW.SFARTSCOMMISSION.ORG
ARTSCOMMISSION@SFGOV.ORG

March 7, 2012

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

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

Dear Committee Members:

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

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

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

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



CITY AND COUNTY OF
SAN FRANCISCO

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

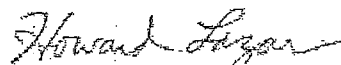
For matters that were not Sunshine Ordinance-related, we supplied Mr. Clark with the following written explanation: *"For matters that are not Sunshine Ordinance-related, we are not required to disclose documents relating to City Attorney counsel requested and received by the Arts Commission. As we stated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

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

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

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

Sincerely,



Howard Lazar
Street Artists Program Director

Attachment

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

File No. 12014

SOTF Item No. 13

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: July 11, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

- | | | |
|--------------------------|-------------------------------------|------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Memorandum |
| <input type="checkbox"/> | <input type="checkbox"/> | Order of Determination |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Complaint and Supporting documents |
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Completed by: Andrea Ausberry Date July 3, 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
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)

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 7:31 PM 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)

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)

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)

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

My complaint

Bill and Bob Clark to: soft

03/07/2012 04:57 PM

Please respond to Bill and Bob Clark

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
415.354.6080

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.



CITY AND COUNTY OF
SAN FRANCISCO

Very truly yours,


Tom DeCaigny
Director of Cultural Affairs

TD/spr
Encl

Arts Commission - March 2, 2012
Budgeted Revenues Expenditures by Program

Program	Description	Title	FY11-12. Approved Budget	FY12-13 Proposed Budget	FY13-14 Proposed Budget
Administration					
	Revenue:				
		General Fund	713,136	460,673	431,106
		POP Concerts	772,605	450,817	440,365
		Overhead Recovery		401,076	495,112
	Revenue Total:		1,485,742	1,312,566	1,366,583
	Expense:				
		Salaries	747,294	719,701	722,470
		Mandatory Fringe Benefits	372,307	353,209	388,781
		Other Expenses	129,391	18,680	18,680
		City Department Work Orders	236,750	220,976	235,672
	Expense Total:		1,485,742	1,312,566	1,366,583
Community Arts & Education					
	Revenue:				
		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
	Revenue Subtotal:		3,134,831	2,753,424	2,769,495
		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
	Revenue Subtotal:		377,600	387,600	387,600
		Arts Education			
		Transit Advertising	133,017	133,017	133,017
		Street Smarts, Where Art Lives			
		DPW Work Order	150,000	150,000	150,000
	Revenue Subtotal:		283,017	283,017	283,017
	Revenue Total:		3,795,448	3,424,041	3,440,112
	Expense:				
		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	106,559	107,666	108,672
		Other Expenses	102,083	102,083	102,083
		Capital Maintenance*	595,000	20,000	20,000
	Expense Subtotal:		3,134,831	2,753,424	2,769,495
		WritersCorps			
		Salaries	134,735	141,672	142,217
		Benefits	59,856	63,193	70,526
		Program Expenses	183,009	182,735	174,857
	Expense Subtotal:		377,600	387,500	387,600
		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
	Expenses Subtotal:		283,017	283,017	283,017
	Expense Total:		3,795,448	3,424,041	3,440,112
Cultural Equity Grants					
	Revenue:				
		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
	Revenue Total:		2,414,787	2,344,476	2,360,517
	Expense:				
		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	97,365	98,010
		Other Expenses	17,246	17,246	17,246
	Expense Total:		2,414,787	2,344,476	2,360,517
Gallery					
	Revenue:				
		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
	Revenue Total:		55,000	376,789	387,241
	Expense:				
		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
	Expense Total:		55,000	376,789	387,241

Arts Commission - March 2, 2012
 Budgeted Revenues Expenditures by Program

Program	Description	Title	FY11-12 Approved Budget	FY12-13 Proposed Budget	FY13-14 Proposed Budget
Public Art	Revenue:				
		2% Art Enrichment Fund	1,817,553	1,437,660	1,054,444
		Transit Advertising	109,586	109,585	109,586
		JC DeCaux	4,000	4,000	4,000
	Revenue Total:		1,931,139	1,551,245	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
		Total Project Cost			
Civic Collection	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
Street Artists	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	16,307	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
Civic Design	Revenue:				
		Fee for Service	155,459	150,000	150,000
	Revenue Total:		155,459	150,000	150,000
	Expense:				
		Salaries	63,357	75,295	75,565
		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
Municipal Symphony/Concerts	Revenue:				
(Charter Mandated Set Aside)		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.

File No. 12017

SOTF Item No. 14

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: July 11, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

- | | | |
|--------------------------|-------------------------------------|------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Memorandum |
| <input type="checkbox"/> | <input type="checkbox"/> | Order of Determination |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Complaint and Supporting documents |
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OTHER

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Completed by: Andrea Ausberry Date July 3, 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

TO: Sunshine Ordinance Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: May 24, 2012
RE: Complaint 12017 – Hartz v. Supervisor Campos

BACKGROUND:

Complainant Ray Hartz ("Complainant") alleges that Supervisor David Campos (the "Supervisor") violated the Sunshine Ordinance by "instigat[ing] the Bernal Library Art Project (BLAP)" which "met on multiple, unannounced occasions for meetings about which the public was not notified to allow attendance or participation. These meeting had no agendas, no minutes, no recorded votes, and the list goes on and on. They made their decisions completely out of sight of the public in contravention of the Sunshine Ordinance and the Brown Act."

COMPLAINT

On March 16, 2012, Mr. Hartz filed a complaint with the Task Force alleging multiple violations of the Ordinance.

JURISDICTION

The Supervisor has not contested jurisdiction to hear the complaint.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.3 defines policy bodies and passive meeting bodies.
- Section 67.4 governs passive meetings.
- Section 67.5 provides that meetings of policy bodies shall be open and public and subject to the requirements of the Brown Act.
- Section 67.6 governs the establishment of regular public meetings, their time and place; notice of special meetings; and procedures for cancelation of a meeting.
- Section 67.7 governs descriptions of agenda items for a public meeting.
- Section 67.7-1 deals with the notice to be provided by City agencies to residents regarding any activity that may affect their property or the neighborhood.
- Section 67.9 provides requirements for agendas for public meetings.
- Section 67.13 governs accessibility of public meetings to the disabled.
- Section 67.14 governs audio and video recording of public meetings.
- Section 67.15 deals with requirements for public comment on items on an agenda.
- Section 67.16 governs minutes of public meetings of boards and commissions enumerated in the Charter.

FOX PLAZA • 1390 MARKET STREET, 7TH FLOOR • SAN FRANCISCO, CALIFORNIA 94102-5408
RECEPTION: (415) 554-3800 • FACSIMILE: (415) 437-4644

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MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: May 24, 2012
PAGE: 2
RE: Complaint 12017 - Hartz v. Supervisor Campos

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges the following¹:

Supervisor Campos colluded with the Library Commission to instigate the Bernal Library Art Project (BLAP). The BLAP was set-up to make decisions about public art on a public building, for which public funds are to be expended. The Supervisor selected, for unknown reasons an individual who proceeded to select a number of others to serve in what he has continually misrepresented as a "community process," which for most of their dealings, was anything but open to the community or the public. Members (names unknown) met on multiple, unannounced occasions for meetings about which the public was not notified to allow attendance or participation. These meeting had no agendas, no minutes, no recorded votes, and the list goes on and on. They made their decisions completely out of sight of the public in contravention of the Sunshine Ordinance and the Brown Act. The total cost of this project currently exceeds \$180,000 in cost and includes monies from the San Francisco Arts Commission, The Friends of the San Francisco Public Library, and funds from the Branch Library Improvement Project (BLIP). It was initially presented as a "restoration project" estimated at just over \$18,000 and has ballooned to more than ten times the original figure.

The Library Commission attempted to reach agreement over the art on the Bernal Heights Library. When this was not accomplished including the public, they simply worked with Supervisor Campos to set-up a secretive process, through which they could push the desired outcome of members of the Library Commission and the Friends of the San Francisco Public Library.

I have asked for any documents from Supervisor Campos, the Public Library, the Library Commission and the Arts Commission to indicate whether those persons/bodies made any attempt to comply with the requirements for public meetings. From what they have provided me, they made no attempt to do so. Quite the contrary, the decisions were made out of sight of the public, and presented to the Library Commission as a "fait accompli."

¹ These detailed allegations were provided in an email from Complainant dated April 17, 2012, which was in response to a request by the Administrator for additional detail about the complaint. The addressees of this email did not include the Supervisor or his staff. Given that the Supervisor's response to the complaint predates these detailed allegations, it is unclear whether they had an opportunity to address these additional details.

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: May 24, 2012
PAGE: 3
RE: Complaint 12017 – Hartz v. Supervisor Campos

I would contend that Supervisor Campos, as member of the Board of Supervisors representing the Bernal neighborhood and an attorney, should have worked with the Library Commission to ensure the public business was conducted in full sight of the public. He should also taken necessary steps to ensure the records of all proceedings were accessible to citizens interested in considering the actions of the BLAP and the Library Commission in their handling of the Bernal Library art project.

In short, my review has raised the question as to whether ANY of the requirements of the Sunshine Ordinance and/or the Brown Act were followed.

The Supervisor responded to the complaint through his aide, Hillary Ronen, in a letter dated March 21, 2012. In that response, the Supervisor states that he attempted to help create a community process to mediate a dispute among Bernal Heights neighbors about artwork at the local library. The Supervisor states that the individuals who participated in this process were not members of a policy body, nor were they members of a body formed to advise the Supervisor on any policy matter (i.e., a "passive meeting body"). The Supervisor therefore concludes that the group of neighbors meeting about this issue were not subject to the requirements of the Sunshine Ordinance governing public meetings.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- How was the group in question formed?
- How were the members of the group in question chosen?
- What was the role of Supervisor Campos in the formation, meetings, and maintenance of the group?
- What was the purpose of the group?
- Did the group make formal recommendations as to how to resolve the dispute over artwork at the Library?
- Did the group advise Supervisor Campos with regard to how the dispute over artwork at the Library should be resolved?
- Did Supervisor Campos advise or direct the group with regard to whether its meetings should be public or how those meetings should be conducted?
- In what way or on what basis does Complainant allege that the Supervisor is responsible for the conduct of the BLAP?
- In what way or on what basis does Complainant allege that the Supervisor violated Section §67.7-1 of the Ordinance?
- In what way or on what basis does Complainant allege that the Supervisor violated Section §67.13 of the Ordinance?
- In what way or on what basis does Complainant allege that the Supervisor violated Section §67.14 of the Ordinance?
- In what way or on what basis does Complainant allege that the Supervisor violated Section §67.16 of the Ordinance?

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: May 24, 2012
PAGE: 4
RE: Complaint 12017 – Hartz v. Supervisor Campos

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Under §67.3(d), is the BLAP a "policy body" under the Ordinance? Is it an "advisory committee" created at the initiative of the Board of Supervisors, under §67.3(d)(4)?
- Under §67.3(c), is the BLAP a "passive meeting body" under the Ordinance? Is it an "advisory committee" created by the initiative of Supervisor Campos, under §67.3(c)(1)?
- If a passive meeting body, did the BLAP violated the requirements of §67.4 for passive meetings?
- If a policy body, were its meetings open and public as required by § 67.5?
- If a policy body, were its meetings open and public as required by § 67.5?
- If a policy body, was it an advisory body so as to be exempt from the requirements of §67.6(a)?
- If not an advisory policy body, did it comply with the requirements of §67.6(a) as to establishing regular meeting times and places?
- If a passive meeting body, did it comply with the requirements of §67.6(e) for meetings and notice?
- If a policy body, did it comply with the requirements of §67.7 regarding agendas for its meetings?
- If the BLAP was required to provide notice to neighbors under some other provision of law, did that notice comply with the requirements of §67.7-1?
- If a policy body, did it comply with the requirements of §67.9 regarding making available to the public those documents provided to members of the policy body as part of their agenda packet?
- If a policy body, did it comply with the requirements of §67.13(a), regarding accessibility of meeting to the disabled and prohibitions on excluding others on the basis of class characteristics?
- If a policy body, did it comply with those requirements of §67.14 that apply to such bodies, regarding video or audio recording of meetings?
- If a policy body, did it comply with the requirements of §67.15, regarding public testimony at public meetings?

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 Ordinance Task Force
DATE: May 24, 2012
PAGE: 5
RE: Complaint 12017 – Hartz v. Supervisor Campos

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.3. DEFINITIONS.**

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

(a) "City" shall mean the City and County of San Francisco.

(b) "Meeting" shall mean any of the following:

(1) A congregation of a majority of the members of a policy body at the same time and place;

(2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or

(3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

(4) "Meeting" shall not include any of the following:

(A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;

(B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or

(C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(C-1)* The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.

(D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

(c) "Passive meeting body" shall mean:

(1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;

(2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;

(3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.

MEMORANDUM

TO: Sunshine Ordinance Task Force
 DATE: May 24, 2012
 PAGE: 6
 RE: Complaint 12017 – Hartz v. Supervisor Campos

- (4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;
- (5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating city policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;
- (d) "Policy Body" shall mean:
- (1) The Board of Supervisors;
 - (2) Any other board or commission enumerated in the charter;
 - (3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;
 - (4) Any advisory board, commission, committee or body, created by the initiative of a policy body;
 - (5) Any standing committee of a policy body irrespective of its composition.
- (6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by charter or by ordinance or resolution of the Board of Supervisors.
- (7) Any advisory board, commission, committee, or council created by a federal, state, or local grant whose members are appointed by city officials, employees or agents. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)
- [Editor's note: The drafters of Proposition G (November 2, 1999) inadvertently omitted section 67.3(b)(4)(C-1), formerly section 67.3(b)(4)(D), from the text of the ordinance submitted to the voters.]*

SEC. 67.4. PASSIVE MEETINGS.

- (a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.
- (1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.
 - (2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.
 - (3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.
 - (4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.
 - (5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City and County of San Francisco.

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(6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.

(b) To the extent not inconsistent with state or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this article. In case of inconsistent requirements under the Brown Act and this article, the requirement which would result in greater or more expedited public access shall apply. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.6. CONDUCT OF BUSINESS; TIME AND PLACE FOR MEETINGS.

(a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.

(b) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City and County of San Francisco or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City and County of San Francisco.

(c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.

(d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

(e) Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it advises, is required.

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(f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

(g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in section 67.7(c), and mailed notice if sufficient time permits. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.7: AGENDA REQUIREMENTS; REGULAR MEETINGS.

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting."

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours."

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

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SEC. 67.7-1. PUBLIC NOTICE REQUIREMENTS.

- (a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.
- (b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.
- (c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted. (Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

SEC. 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.

- (a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.
- (b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.
- (c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.
- (d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.
- (e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.13. BARRIERS TO ATTENDANCE PROHIBITED.

- (a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be

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present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

SEC. 67.14. TAPE RECORDING, FILMING AND STILL PHOTOGRAPHY.

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.15: PUBLIC TESTIMONY.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

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TO: Sunshine Ordinance Task Force
DATE: May 24, 2012
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SEC. 67.16. MINUTES.

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)



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 BOARD OF SUPERVISORS

Name of individual contacted at Department or Commission DAVID CAMPOS

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

Sunshine Ordinance Section ALL RELATING TO PUBLIC MEETINGS
(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.

SUPERVISOR DAVID CAMPOS INVESTIGATED AND PARTICIPATED IN THE SETUP AND OPERATION OF THE BERNAL LIBRARY ART PROJECT (BLAP) IN WAYS THAT VIOLATED ALL RIGHTS OF CITIZENS TO ATTEND AND PARTICIPATE IN THE WORKINGS OF GOVERNMENT.

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) Name RAY WHARTZ, JR Address 839 LEAVENWORTH ST #304 SAN FRANCISCO CA 94109

Telephone No. (415) 345-9144 E-Mail Address RWHARTZJR@SBCGLOBAL.NET

Date MARCH 16, 2012 Signature Ray Whartz

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).



Fw: STATEMENT OF INTENTIONS
Ray Hartz Jr
to:
SOTF
05/16/2012 10:38 AM
Cc:
MSW Bruce Wolfe, david.campos, sean.elsbernd
Show Details

Dear Ms. Ausberry,

Would you please include this email chain in the documents for the SOTF hearing #12017 Hartz v Supervisor David Campos.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

----- Forwarded Message -----

From: "david.campos@sfgov.org" <david.campos@sfgov.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Sent: Wed, February 15, 2012 6:09:59 PM
Subject: Re: STATEMENT OF INTENTIONS

Mr. Hartz,

I have nothing to hide and would be proud and honored to appear before any body to defend my record. Thank you for your message.

David Campos
District 9 Supervisor

On Feb 15, 2012, at 5:35 PM, "Ray Hartz Jr" <rwhartzjr@sbcglobal.net> wrote:

Supervisor Campos,

I don't want anything from you.

Why you have let yourself become involved in this is beyond me. How you can possibly continue to voice that this was a "community process" when only a very small group of carefully selected people had anything to do with it or any knowledge of it is beyond me.

I'm looking at a series of actions involving \$20,000 of Public Library Funds and \$50,000 from an Arts Commission grant, and other monies which are being used for a project over which there was no public oversight. If you don't see that as a problem, then, maybe that's the problem.

Since I don't expect you would dare show your face before the Sunshine Ordinance Task Force, I'm certain I will find myself fascinated by whatever attempt your staff makes to defend this debacle.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: "david.campos@sfgov.org" <david.campos@sfgov.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Sent: Wed, February 15, 2012 5:18:37 PM
Subject: Re: STATEMENT OF INTENTIONS

Mr. Hartz,

My staff sent you a series of emails giving you the information we have. I have forwarded those emails to you again sir. What else do you want from me?

David Campos
District 9 Supervisor

On Feb 15, 2012, at 5:02 PM, "Ray Hartz Jr" <rwhartzjr@sbcglobal.net> wrote:

Supervisor Campos,

I've seen enough!

I'm filing a series of complaints with the Sunshine Ordinance Task Force against you, the Library Commission, the Public Library and the Arts Commission for this "community process" which is nothing but an knowing and willful series of actions done with the intention to evade every single requirement regarding public meetings laid down in the Brown Act and the Sunshine Ordinance. These actions involve a public building, public art and public money and is being done without ANY public oversight and/or participation, meaningful or otherwise. The limited presentations at the Library Commission and/or the Arts Commission served as nothing but lip service to the legal requirements.

I am extremely surprised that, with an election coming up, you would have chosen to be a part of this deception, and continue to defend it.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government



Re: Request for Additional Info - Case No. 12017 Hartz v Supervisor Campos, Board of Supervisors
Ray Hartz Jr

to:

sotf

04/17/2012 08:21 PM

Cc:

Hope Johnson, Jerry Threet, James Chaffee, Peter Warfield, MSW Bruce Wolfe, jsabatini
Show Details

To all members of the Sunshine Ordinance Task Force,

Supervisor Campos colluded with the Library Commission to instigate the Bernal Library Art Project (BLAP). The BLAP was set-up to make decisions about public art on a public building, for which public funds are to be expended. The Supervisor selected, for unknown reasons an individual who proceeded to select a number of others to serve in what he has continually misrepresented as a "community process," which for most of their dealings, was anything but open to the community or the public. Members (names unknown) met on multiple, unannounced occasions for meetings about which the public was not notified to allow attendance or participation. These meetings had no agendas, no minutes, no recorded votes, and the list goes on and on. They made their decisions completely out of sight of the public in contravention of the Sunshine Ordinance and the Brown Act. The total cost of this project currently exceeds \$180,000 in cost and includes monies from the San Francisco Arts Commission, The Friends of the San Francisco Public Library, and funds from the Branch Library Improvement Project (BLIP). It was initially presented as a "restoration project" estimated at just over \$18,000 and has ballooned to more than ten times the original figure.

The Library Commission attempted to reach agreement over the art on the Bernal Heights Library. When this was not accomplished including the public, they simply worked with Supervisor Campos to set-up a secretive process, through which they could push the desired outcome of members of the Library Commission and the Friends of the San Francisco Public Library.

I have asked for any documents from Supervisor Campos, the Public Library, the Library Commission and the Arts Commission to indicate whether those persons/bodies made any attempt to comply with the requirements for public meetings. From what they have provided me, they made no attempt to do so. Quite the contrary, the decisions were made out of sight of the public, and presented to the Library Commission as a "fait accompli."

I would contend that Supervisor Campos, as member of the Board of Supervisors representing the Bernal neighborhood and an attorney, should have worked with the Library Commission to ensure the public business was conducted in full sight of the public. He should also taken necessary steps to ensure the records of all proceedings were accesible to citizens interested in considering the actions of the BLAP and the Library Commission in their handling of the Bernal Library art project.

In short, my review has raised the question as to whether ANY of the requirements of the Sunshine Ordinance and/or the Brown Act were followed.

Just for sake of clarity, the "community process" evaded each of the below listed sections of the Sunshine Ordinance:

Sunshine Ordinance Sec. 67.5 MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF THE BROWN ACT;
Sunshine Ordinance Sec. 67.6 CONDUCT OF BUSINESS; TIME AND PLACE FOR MEETINGS;
Sunshine Ordinance Sec. 67.7 AGENDA REQUIREMENTS; REGULAR MEETINGS;
Sunshine Ordinance Sec. 67.7.1 PUBLIC NOTICE REQUIREMENTS;
Sunshine Ordinance Sec. 67.9 AGENDAS AND RELATED MATERIALS; PUBLIC RECORDS;
Sunshine Ordinance Sec. 67.13 BARRIERS TO ATTENDANCE PROHIBITED;
Sunshine Ordinance Sec. 67.14 TAPE RECORDING, FILMINS AND STILL PHOTOGRAPHY;
Sunshine Ordinance Sec. 67.15 PUBLIC TESTIMONY;
Sunshine Ordinance Sec. 67.16 MINUTES.

The very worst aspect is that Supervisor Campos has stated that this method of dealing with public business should serve as "a model" for future projects. If this is permitted it would sound a "death knell" for public participation in public meeting regarding many matters in which "private interests" would then be allowed to push private agendas contrary to public policies and the public interest.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: "sotf@sfgov.org" <sotf@sfgov.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: Hope Johnson <hopeannette@earthlink.net>; Jerry.Threet@sfgov.org
Sent: Tue, April 17, 2012 6:59:08 PM
Subject: Request for Additional Info - Case No. 12017 Hartz v Supervisor Campos, Board of Supervisors

Mr. Hartz,

The SOTF Office is requesting additional details about your complaint (referenced above) or specific examples of violations with respect to specific sections of the ordinance.

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
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From: SOTF/SOTF/SFGOV@SFGOV
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>, David Campos/BOS/SFGOV@SFGOV, Sheila Chung Hagen/BOS/SFGOV@SFGOV, Hillary Roner/BOS/SFGOV@SFGOV

Cc: Hope Johnson <hopeannette@earthlink.net>, Jerry Threet/CTYATT@CTYATT, dsnyder@sheppardmullin.com
Date: 03/20/2012 09:10 AM
Subject: Sunshine Complaint Received: Case No. 12017 Ray Hartz, Jr. v Supervisor David Campos, Board of Supervisors
Sent by: Andrea Ausberry@SFGOV

Good Morning,

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 12017** 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

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Re: Sunshine Complaint Received: Case No. 12017 Ray Hartz, Jr. v Supervisor David Campos, Board of Supervisors
Ray Hartz Jr

to:
Hillary.Ronen, soff
03/23/2012 10:52 AM

Cc:
Andrea.Ausberry, david.campos, dsnyder, Hope Johnson, Jerry.Threet, Sheila.Chung.Hagen, James Chaffee, Peter Warfield, sean.elsbernd, Luis Herrera, Jill Bourne, Almer Castillo, "sue.a.blackman@sfgov.org", Doug Comstock, Allen Grossman, kimo, Pmonette-shaw
Show Details

Members of the Sunshine Ordinance Task Force,

I am glad to see the response from Supervisor Campos' office. I am also glad that the supervisor will personally defend his actions in this case before the SOTF.

From an email exchange between myself and Supervisor Campos:

Mr. Hartz,

I have nothing to hide and would be proud and honored to appear before any body to defend my record. Thank you for your message.

**David Campos
District 9 Supervisor**

It will enable the Task Force to get some direct and complete answers, rather than explanations from persons sent to defend what someone else did or said. That, in and of itself, will be new and refreshing.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: "Hillary.Ronen@sfgov.org" <Hillary.Ronen@sfgov.org>

To: soff@sfgov.org

Cc: Andrea.Ausberry@sfgov.org; david.campos@sfgov.org; dsnyder@sheppardmullin.com; Hope Johnson <hopeannette@earthlink.net>; Jerry.Threet@sfgov.org; Ray Hartz Jr <rwhartzjr@sbcglobal.net>; Sheila.Chung.Hagen@sfgov.org

Sent: Wed, March 21, 2012 5:14:38 PM

Subject: Re: Sunshine Complaint Received: Case No. 12017 Ray Hartz, Jr. v Supervisor David Campos, Board of Supervisors

Please find this office's response to Complaint No, 12017. Feel free to contact me with any questions.

Sincerely,
Hillary Ronen

Hillary Ronen
Legislative Aide
Supervisor David Campos
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Phone: 415-554-7729
Email: hillary.ronen@sfgov.org

From: SOTF/SOTF/SFGOV
To: Ray Hartz Jr <rhartzjr@sbcglobal.net>, David Campos/BOS/SFGOV@SFGOV, Sheila Chung Hagen/BOS/SFGOV@SFGOV, Hillary Ronen/BOS/SFGOV@SFGOV
Cc: Hope Johnson <hopeannette@earthlink.net>, Jerry Threat/CTYATT@CTYATT, dsnyder@sheppardmullin.com
Date: 03/20/2012 09:09 AM
Subject: Sunshine Complaint Received: Case No. 12017 Ray Hartz, Jr. v Supervisor David Campos, Board of Supervisors
Sent by: Andrea Ausberry

Good Morning,

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 12017 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.

[attachment "1_Complaint Procedures_4-28-09_Final.pdf" deleted by Hillary Ronen/BOS/SFGOV] [attachment "12017_Complaint form_031612.pdf" deleted by Hillary Ronen/BOS/SFGOV]

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

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Member, Board of Supervisors
District 9



City and County of San Francisco

DAVID CAMPOS

March 21, 2012

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

RE: Complaint filed by Mr. Ray W. Hartz, Jr.

Dear Honorable Task Force Members:

Please consider this letter a response to Mr. Ray W. Hartz, Junior's March 16, 2012 complaint against this office. Mr. Hartz alleges, "Supervisor David Campos instigated and participated in the set-up and operation of the Bernal Library Art Project (BLAP) in ways that violated all rights of citizens to attend and participate in the workings of government." Mr. Hartz also claims that this office violated all sections of the Sunshine Ordinance that relate to public meetings.

The Sunshine Ordinance requires that meetings of any *policy body* be open and public. San Francisco Administrative Code §67.5 (emphasis added) The Sunshine Ordinance also requires that officials make every effort to provide public access to "passive meeting bodies." San Francisco Administrative Code §67.4(a) A "passive meeting body" is defined as an *advisory committee* created by the initiative of a member of a policy body, including the Board of Supervisors. San Francisco Administrative Code §67.3(c)(1) (emphasis added)


Supervisor Campos helped create a community process in order to resolve a neighborhood dispute over a mural on the Bernal Heights library building. One group of neighbors wanted to preserve the existing mural while another group wanted to replace the existing mural with a new piece of artwork. Supervisor Campos offered to help mediate and facilitate a resolution to the conflict. The individuals involved in this effort were not a policy body and were not formed in order to advise Supervisor Campos on any policy matters. Therefore, this office does not believe it violated any section of the Sunshine Ordinance.

District Supervisors perform dispute resolution services for their constituents all the time. It is a core function of the job and works to save the City and its residents time, money, and frustration.

City Hall • 1 Dr. Carlton B. Goodlett Place • Room 244 • San Francisco, California 94102-4689
(415) 554-5144 • Fax (415) 554-6255 • TDD (415) 554-5227 • David.Campos@sfgov.org

I hope that this letter responds to Mr. Hartz' concerns and obviates the need for a hearing on the matter. We are happy to answer any questions you may have about the complaint. Thank you for your attention to this matter.

Sincerely,



Hillary Roren

