

Date: July 14, 2009

Item No. 4
File No. 09034

SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
AGENDA PACKET CONTENTS LIST*

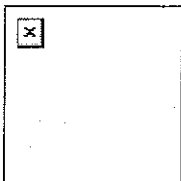
- Brian Tomina against the Dept. of Bldg.**
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Completed by: Chris Rustom Date: July 5, 2009

***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.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

July 6, 2009

Nick Goldman, Chair
Members of the Complaint Committee

Re: Brian Tomina v. the Department of Building Inspection (09034)

Dear Chair Goldman and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Brian Tomina against the San Francisco Department of Building Inspection.

BACKGROUND

Complainant Brian Tomina alleges that he made an Immediate Disclosure Request on June 9, 2009 and that the response of DBI was untimely and incomplete.

COMPLAINT

On June 24, 2009, Brian Tomina filed a complaint against the DBI alleging violations of the Sunshine Ordinance and the Public Records Act.

DBI'S RESPONSE

On July 2, 2009, DBI submitted a letter and documents in response to the complaint and stated that it had fully complied with the IDR and that the complaint was without merit and should be dismissed.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. The allegations are covered under (67.21 and 67.25) of the Ordinance.

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

Letter to the Complaint Committee

Page 2

July 6, 2009

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents and Section 67.25 covers Immediate Disclosure Requests. CPRA Section 6253 generally covers Public Records Requests.

In this case, Brian Tomina claims that the DBI was untimely and incomplete in its response to the IDR. DBI contends that its response was timely and complete as it was providing information on a rolling basis. The Task Force has jurisdiction to hear this complaint and will determine whether the DBI violated the Ordinance and/or the Public Records Act.



<complaints@sfgov.org>

06/25/2009 12:45 PM

To <soft@sfgov.org>

cc

bcc

Subject: Sunshine Complaint

Submitted on: 6/25/2009 12:45:08 PM

Department: Department of Building Inspection

Contacted: Sam Kwong & William Strawn

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: Sunshine Ordinance section 67.25

Description: I am writing to complain about the failure of the Department of Building Inspection to provide copies of public records in a timely manner as required by the Sunshine Ordinance.

On June 9th, I submitted an "Immediate Disclosure Request" to DBI requesting that certain documents be made immediately available to me. Despite the fact that the Sunshine Ordinance requires disclosure of these documents "no later than the close of business on the day following the day of the request," I did not receive the requested documents until June 17th.

After reviewing the documents and discovering that a number of documents were missing (e.g., missing emails for certain days), I submitted a supplemental immediate disclosure request on June 19th but have still not received the documents I have requested.

Both requests were regarding documents maintained by Sam Kwong and the person who I have been dealing with regarding the requests is DBI's Communications Manager William Strawn.

I request that the Sunshine Ordinance Task Force immediately require DBI to comply with my immediate disclosure request. In addition, I request the Sunshine Ordinance Task Force commence an immediate investigation into the failure of DBI to provide documents in a timely manner in order to determine whether their actions constitute willful failure to discharge their duties under the Sunshine Ordinance.

Hearing: Yes

Pre-Hearing: Yes

Date: 06/24/09

Name: Brian Tomina

Address:

City:

Zip:

Phone: 650-

Email: @gmail.com

Anonymous:

Confidentiality_Requested: Yes

William Strawn /DBI/SFGOV
07/02/2009 09:19 AM

To bttomina@gmail.com, SOTF/SOTF/SFGOV@SFGOV
cc "Lauren Yim" <lauren.yim@sfgov.org>,
william.strawn@sfgov.org
bcc

Subject Your public records' request is partially ready for pickup today, July 2, in Room 3036, Third Floor, 1660 Mission Street

July 2, 2009

Mr. Tomina -- Your public records' request, dated June 19, 2009, but received at DBI on June 23, 2009, as previously discussed with you, is ready for pickup in Room 3036, Third Floor, 1660 Mission Street -- earlier than my original pickup date estimate of Monday, July 6th.

Please note, per Mr. Kwong's notations on the attachment below, that your request for some of these documents is not yet fulfilled due to the fact that these documents are not public records until after a contract has been awarded. Similarly, while Mr. Kwong has provided some of the emails you requested, the Department is awaiting data recovery by the Department of Technology of the emails, and Mr. Kwong will then be reviewing those with the City Attorney for any required redaction(s) -- as I indicated in my email to you on June 26th. These latter records will ready for your pickup on July 14.

The total number of copied pages ready for pickup today is 64, with a copying charge due of \$6.40. You may use a credit card, or make your check payable to the Department of Building Inspection, or "DBI."

Thank you.

Sincerely,

William Strawn



SKwongCommentsTomina.pdf

William Strawn
Communications Manager
Department of Building Inspection
San Francisco, CA 94103
william.strawn@sfgov.org
Tel. 415/558-6250 (O)
Blackberry: 415/850-9816

after contract consummation
- Copies of the RFPs for the 3 finalists

already provided in the last transmittal
- The information that was presented to the steering committee on or about June 5 in order for them to make a final determination on the winner.

waiting on DT
- Emails sent and received by Mr. Kwong from January 2009 – March 2009. Mr. Kwong indicated that he does not have emails from before March 3, so we are asking that DBI's information technology staff retrieve these emails from its systems.

none-sent
- Copies of all emails sent and received from the following dates: March 18, March 24-25, April 7-8, April 21, April 29-30, May 6, May 18-19, and June 9-June 19. *none-sent*

Thank you in advance for your assistance on this matter. Please feel free to contact me with any questions concerning this Immediate Disclosure Request.

Sincerely,

Brian Tomina

(650) 438-0184

bttomina@gmail.com

Please confirm that you received this.

Thank you,

Brian

Tomina

Please see the following Immediate Disclosure Request sent Friday, June 19, 2009 via fax @ 12:35 pm:

IMMEDIATE DISCLOSURE REQUEST PER SUNSHINE ORDINANCE

June 19, 2009

Mr. William Strawn
Communications Officer
Department of Building Inspection
1660 Mission Street
San Francisco, CA 94103
P: (415) 558-6250
F: (415) 558-6225

64 pages

Dear Mr. Strawn,

Thank you for your assistance in my previous request. I am now requesting the following as soon as possible:

- *after contract consummation*
Copy of the excel document that includes the pricing from the 2 finalists that did the demo.
- *after contract consummation*
Information and documents regarding how the financial stability for the competitors was determined. Any and all information, including, but not limited to information provided by the Controller's office and information provided by the companies that were shortlisted.

William Strawn/DBI/SFGOV
07/02/2009 09:55 AM

To SOTF/SOTF/SFGOV@SFGOV
cc Sam Kwong/DBI/SFGOV@SFGOV,
SOTF/SOTF/SFGOV@SFGOV, Vivian
Day/DBI/SFGOV@SFGOV, jeremy.hallisey@sfgov.org,
bcc
Subject Re: Sunshine Complaint Received: #09034_Brian Tomina vs
Dept. of Bldg. Inspection

History: This message has been forwarded.

July 2, 2009

Mr. Rustom/Members of the Task Force:

Thank you for your email notification dated June 29, 2009, informing the Department of Building Inspection about the Sunshine ordinance complaint number 09034 filed recently by Mr. Brian Tomina. As you will see in the attached documents, we believe this complaint is without merit.

We respectfully request the Task Force to review the Department's attachments below, and to consider the immediate dismissal of this complaint in as much as the department has been immediately responsive to Mr. Tomina's requests; has already provided him with 1,200 pages of requested public records; and has informed him of explicit delivery dates for the additional public records he has requested -- including a pickup notification for today -- excepting only those documents that are part of a yet-to-be-awarded contract and thus, per the Sunshine Ordinance, are not yet public records.

Thank you for your consideration.

Sincerely,

William Strawn



DBISoTFLtrHdReplyJuly2009.doc



ImmedDisloSKwongJune09.pdf



OrigJune23Ask.doc



LtrHdJune25DBIReply.doc



June2609DBIReply.doc



BTominaJune12June1609.pdf



July209PickUpNotice.doc



SKwongCommentsTomina.pdf

William Strawn
Communications Manager
Department of Building Inspection
San Francisco, CA 94103
william.strawn@sfgov.org
Tel. 415/558-6250 (O)
Blackberry: 415/850-9816

IMMEDIATE DISCLOSURE REQUEST PER SUNSHINE ORDINANCE

June 9, 2009

Ms Vivian Day
Department of Building Inspection

Dear Vivian,

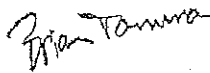
Pursuant to the City's Sunshine Ordinance, I want copies of all emails, letters, or other documents sent by Sam Kwong from December 1, 2008 through today. Because it is my understanding that Mr. Kwong may have begun deleting documents, please process this request as soon as possible

Please call me at (775) 230-9370 to let me know when I can pick these documents up.

Thank you for your prompt response. If you have any questions, please let me know.

Yours Truly,

Brian Tomina
(775) 230-9370



Cc: Mel Murphy, BIC President (via Commission Secretary)

*Bill,
I am forwarding
this to you via Vivian
Jim*

NOTE: FAX NEVER RECEIVED AT DBI ON JUNE 19, 2009 AND MR TOMINA INFORMED OF THIS ON JUNE 23, 2009, WHEN EMAIL REQUEST BELOW WAS RECEIVED BY DBI.

Please see the following Immediate Disclosure Request sent Friday, June 19, 2009 via fax @ 12:35 pm:

IMMEDIATE DISCLOSURE REQUEST PER SUNSHINE ORDINANCE

June 19, 2009

Mr. William Strawn

Communications Officer

Department of Building Inspection

1660 Mission Street

San Francisco, CA 94103

P: (415) 558-6250

F: (415) 558-6225

Dear Mr. Strawn,

Thank you for your assistance in my previous request. I am now requesting the following as soon as possible:

- Copy of the excel document that includes the pricing from the 2 finalists that did the demo.
- Information and documents regarding how the financial stability for the competitors was determined. Any and all information, including, but not limited to information provided by the Controller's office and information provided by the companies that were shortlisted.
- Copies of the RFPs for the 3 finalists
- The information that was presented to the steering committee on or about June 5 in order for them to make a final determination on the winner.
- Emails sent and received by Mr. Kwong from January 2009 – March 2009. Mr. Kwong indicated that he does not have emails from before March 3, so we are asking that DBI's information technology staff retrieve these emails from its systems.
- Copies of all emails sent and received from the following dates: March 18, March 24-25, April 7-8, April 21, April 29-30, May 6, May 18-19, and June 9-June 19.

Thank you in advance for your assistance on this matter. Please feel free to contact me with any questions concerning this Immediate Disclosure Request.

Sincerely,

Brian Tomina

(650) 438-0184

bttomina@gmail.com



June 25, 2009

Mr. Brian Tomina
bttomina@gmail.com

Mr. Tomina:

Per my research on your recent public records' request, which I received via email on June 23rd, we are assembling the documentation and I will notify you about the estimated total number of pages to be copied, and the estimated copying charges, just as soon as I have that information.

Per advice from the City Attorney, I also want to let you know that while we will provide you with copies of the scoring and evaluation documents, as well as the names of those serving on the evaluation team, we are not able to provide you with copies of responses to the RFP, or any competitive pricing, nor with any communications between the department and the bidders. The latter documentation is not yet a public record, pending ongoing negotiations and due to the fact that no contract on the RFP has yet been awarded.

As you may know, under the Sunshine ordinance, Section 67.24, sub-section (e), which addresses contracts, bids and proposals, records on such information are available upon request "...after a contract has been awarded...."

Thank you for your request. I will be in touch with you as soon as I have the records within the Department's possession.

Sincerely,

William Strawn

June 26, 2009

Mr. Tomina -- Hello and thanks for your message, as I was just about to send you this one.

Per Mr. Kwong, we will have all of your public records' request EXCEPT the emails' request, on the Third Floor of 1660 Mission Street, Room 3036, for pickup on Monday, July 6, after 2 p.m. We estimate there will be 200 pages, or a copying charge of \$20 to be paid when you or your representative come to collect these records. You may use a credit card, or make your check payable to the Department of Building Inspection, or "DBI," and sign the release form that will be with your documents.

Because your request for all of Sam Kwong's emails from January 2009 through March 2009 requires our Information Technology division to work with the Department of Technology to obtain these files, Mr. Kwong estimates he will have the email files for your pickup on Tuesday, July 14, after 2 p.m.

Thank you.

Sincerely,

William Strawn

William Strawn/DBI/SFGOV

06/16/2009 04:07 PM

To: Brian Tomina <bttomina@gmail.com>

cc: William Strawn, lauren.yim@sfgov.org

bcc:

Subject: Re: Update on your Sunshine Request

June 16, 2009

Mr. Tomina -- You will be able to pick up your requested public records at DBI's Public Information Counter at 1660 Mission Street after 10 a.m. tomorrow, Wednesday, June 17, 2009.

There are 1,200 pages so the copying charge owed is \$120.00. Cash is acceptable, or, as I said earlier, a check payable to "DBI."

Thank you.

William Strawn

William Strawn
Communications Manager
Department of Building Inspection
San Francisco, CA 94103
william.strawn@sfgov.org
Tel. 415/558-6250 (O)
Blackberry: 415/850-9816



Brian Tomina
<bttomina@gmail.com>
06/12/2009 08:46 AM

To william.strawn@sfgov.org
cc
bcc

Subject Tomina Public Request

Mr. Strawn:

I apologize for all of the communications problems I have had with your office and really appreciate your understanding. You can reach me at this email, bttomina@gmail.com or my new phone number (650) 438-0184. Thank you again for your cooperation in this matter and your patience. I look forward to hearing from you early to mid next week.

Best,

Brian Tomina
650-438-0184

July 2, 2009

Mr. Tomina -- Your public records' request, dated June 19, 2009, but received at DBI on June 23, 2009, as previously discussed with you, is ready for pickup in Room 3036, Third Floor, 1660 Mission Street -- earlier than my original pickup date estimate of Monday, July 6th.

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Sincerely,

William Strawn

Tomina

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64 pages

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after contract consummation

- Copies of the RFPs for the 3 finalists

already provided in the last transmittal

- The information that was presented to the steering committee on or about June 5 in order for them to make a final determination on the winner.

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- Emails sent and received by Mr. Kwong from January 2009 – March 2009. Mr. Kwong indicated that he does not have emails from before March 3, so we are asking that DBI's information technology staff retrieve these emails from its systems.

- Copies of all emails sent and received from the following dates: March 18, March 24-25, April 7-8, April 21, April 29-30, May 6, May 18-19, and June 9-June 19.

none-sent

none-sent

Thank you in advance for your assistance on this matter. Please feel free to contact me with any questions concerning this Immediate Disclosure Request.

Sincerely,

Brian Tomina

(650) 438-0184

bttomina@gmail.com

Please confirm that you received this.

Thank you,

Brian