

Date: Oct. 12, 2010

Item No. 2

File No. 10035

SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
AGENDA PACKET CONTENTS LIST*

- Jurisdiction: Nick Pasquella v Bay Area Video Coalition**
-
-
-
-
-
-
-
-
-
-

Completed by: Chris Rustom

Date: Oct. 6, 2010

***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.

confidential
fax

To: Mr. Chris Rustom
Fax Number: 554 7854

From:
Fax Number:
Business Phone:
Home Phone:

Pages: 2
Date/Time: 7/2/2010 2:03:19 PM
Subject: New complaint against BAVC

Dear Chris Rustom,
On June 30, 2010 I FAXED the attached IMMEDIATE DISCLOSURE REQUEST to Mr. Ken Ikeda, Executive Director of BAVC.

Because Mr. Ikeda has not responded within 24 hours as required by law I believe Mr. Ikeda and BAVC are in violation of the Sunshine law. Please schedule a hearing before SOTF to hear this new complaint.
Nick Pasquariello
(415) 431-2990

IMMEDIATE DISCLOSURE REQUEST

Post Office Box 42791
San Francisco, California 94142
(415) 431-2990

June 30, 2010

Mr. Ken Ikeda
Executive Director
Bay Area Video Coalition (aka BAVC)
2727 Mariposa Street
San Francisco, California 94110
(415) 861-3282
(415) 861-4316 FAX

Dear Mr. Ikeda,

Re: BAVC contract of August 20, 2009

Please send me a copy of any and all contracts between Bay Area Video Coalition (aka BAVC) and Salesforce.com, Inc. dba Delaware Salesforce.com, 1 Market Street, Suite 300, San Francisco, California 94105.

Please also send me a copy of any and all contracts between Salesforce.com/Foundation, at the above address and BAVC.

This public records request is being made in accordance with the August 20, 2009 contract between the City and County of San Francisco, California and the Bay Area Video Coalition, sections cited below:

- Article 12 - Disclosure of Information and Documents and Article, section 12.2 – Sunshine Ordinance, and
- Article 13 – Assignments and Subcontracting, section 13.1, No Assignment By Grantee, section 13.3, Subcontracting
 - (a) Limitations and
 - (b) Terms of Subcontractsection 13.4 Grantee Retains Responsibility.

Your immediate attention to this matter would be much appreciated.

Yours truly,

Nick Pasquariello



Krisana Hodges
<krisana@hodgeslaw.net>
07/19/2010 04:27 PM

To sotf@sfgov.org
cc jpk@pobox.com, Ken Ikeda <ken@bavc.org>, Barry Fraser
<Barry.Fraser@SFGOV.ORG>, Ron.Vinson@sfgov.org
bcc

Subject Re: Sunshine Complaint Received: #10035_Nick
Pasquariello vs Dept. of Technology

Mr. Rustom,

Attached is a letter I sent to Mr. Pasquariello last week concerning this matter. The letter was sent on July 15, 2010, via US Mail, to the post office box identified in Mr. Pasquariello's correspondence. As you can see, the letter directs Mr. Pasquariello to a publicly available web site where he can review all of the information he is requesting.

Given that BAVC has already responded to Mr. Pasquariello's inquiry, BAVC respectfully requests that this matter be taken off calendar.

If this matter is not taken off calendar, BAVC respectfully submits that the Task Force has no jurisdiction over the matter and requests that Mr. Pasquariello's complaint be reviewed prior to hearing for an evaluation of its suitability for this forum. Mr. Pasquariello is asking for information about BAVC's routine business dealings with a third party technology provider supporting BAVC's overall contact management needs. This matter is simply a common business correspondence regarding a typical technology service. Mr. Pasquariello's letter has no direct connection to BAVC's contract with the City, is not seeking information enumerated in Section 12L, and does not concern any other subject matter within the purview of the Task Force. Finally -- and most importantly -- Mr. Pasquariello's request has been addressed and *resolved*. Mr. Pasquariello already has the information he is requesting through this complaint. There is simply no issue left for the Task Force to adjudicate, and no need for this matter to consume any of the valuable time and attention of the Task Force.

Please call or email if you require any additional information related to this matter.

Thank you for your time.

Krisana Hodges



100715 BAVC LTR NP Resp.pdf

Krisana M. Hodges, Esq.
HODGES LAW OFFICE
149 9th Street, Suite 201; San Francisco, CA 94103
415.648.4647 (office) • 415.449.6545 (fax)
krisana@hodgeslaw.net

This email and attachments may contain private, confidential or privileged material for the sole use of its intended recipient. If you are not the intended recipient, please notify me immediately and permanently delete this email and its attachments.

July 15, 2010

Via US Mail

Nick Pasquariello
PO Box 42791
San Francisco, CA 94142

Re: Inquiry regarding Salesforce.com

Dear Mr. Pasquariello,

As you know, I represent the Bay Area Video Coalition ("BAVC"). I write in response to your recent letter inquiring about BAVC's contracts with Salesforce.com.

Your letter references Section 12 of the Grant Agreement between BAVC and the City and County of San Francisco (the "City").¹ This provision concerns BAVC's acknowledgement that the City will make information related to its work with BAVC available to the public. I know of no provision in the Grant Agreement obligating BAVC to produce its business records and contracts to anyone who may make such a request, especially documents not specifically related to BAVC's work with the City and otherwise concerning BAVC's overall operations.

BAVC supports the City in its commitment to transparency. To that end, BAVC chooses to maintain a robust, dynamic web site with information about its current activities and ongoing operations. In addition, BAVC complies with the terms of the Grant Agreement and the relevant provisions of Administrative Code Section 12L, by making enumerated information available and inviting the public to attend open BAVC Board Meetings.²

¹ Section 12.2 reads in relevant part: "[BAVC] acknowledges and agrees that this Agreement and the application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communication between the City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded."

² If you would like to learn more about BAVC's compliance with Section 12L, please review the *BAVC Sunshine Compliance Policy*, available at http://www.bavc.org/index.php?option=com_content&task=view&id=2169&Itemid=1920.

As a private, non-profit entity with limited resources and experience in matters of public governance, BAVC believes its finite resources are best allocated to the support and provision of direct services to the diverse communities BAVC serves. BAVC does not have the resources to promptly and personally respond to broad requests for general information from members of the public. In addition, BAVC does not maintain public records.³ If you would like documents other than the information BAVC makes available online or through the BAVC Sunshine Compliance Policy, or if you would like to review public records related to BAVC or public access generally, I encourage you to submit a request for information directly to the San Francisco Department of Technology.

As a courtesy and in an effort to resolve this matter so that it does not continue to consume BAVC's resources, BAVC directs you to the salesforce.com Master Service Agreement ("MSA"), available online at <http://www.salesforcefoundation.org/products/msa>. The MSA governs BAVC's use of salesforce.com's services. As I have attempted to communicate to you via email several times before and have confirmed to you in person, BAVC has no record that a scan of any identification document you may have provided to BAVC was ever saved and entered into BAVC's electronic database or otherwise stored with salesforce.com.⁴

Finally, as I explained in my last letter to you and we have discussed in person, BAVC does not process correspondence sent from unregistered fax machines.⁵ BAVC welcomes correspondence via email through the SF Commons website. You may send correspondence via fax, provided that the fax delivery device you use complies with the law and that you include a return fax number so we may respond in kind. BAVC also accepts mail at SF Commons, 2727 Mariposa St., 2nd Floor, San Francisco, California 94110. You may call the SF Commons main office at 415.558.2123.

If you have questions about this matter, please contact me by phone at (415) 648-4647, or by email at krisana@hodeslaw.net.

Sincerely,



Krisana M. Hodges

³ The Sunshine Ordinance refers to the California Public Records Act definition of "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." CA Gov. Code § 6252(e).

⁴ BAVC's records show that you are not a Producer with SF Commons. If you wish to become a Producer, please note that you will need complete the necessary forms and provide proof of residence.

⁵ If you choose to continue to attempt to communicate with BAVC or my office in this way going forward, please be aware that we may not receive your correspondence and that you are not likely to receive a response.

September 7, 2010

Sunshine Ordinance Task Force
Jurisdiction Committee
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, California 94102-4689

Re: *Jurisdiction Defects regarding Complaint 10035*

Dear Mr. Rustom & Members of the Jurisdiction Committee,

I represent the Bay Area Video Coalition ("BAVC"), a California nonprofit corporation contracting with the San Francisco Department of Technology to provide public access services in San Francisco. BAVC's mission is to inspire social change by enabling the sharing of diverse stories through art, education and technology.

I write regarding Complaint 10035, and to address the Task Force's lack of jurisdiction over the subject matter of the Complaint. Mr. Nick Pasquariello filed Complaint 10035 against BAVC on July 2, 2010, concerning Mr. Pasquariello's June 30th request for BAVC's contract with third-party online service provider Salesforce.com.¹ In his June 30th letter, Mr. Pasquariello asked for "any and all contracts between Bay Area Video Coalition (aka BAVC) and Salesforce.com, Inc."

1. Complaint 10035 Does Not Comply with Section 12L

Section 12.L requires that nonprofit organizations contracting with the City make the following categories of documents available to the public upon request:

¹ Salesforce.com is an online contact management software company. BAVC uses its standard, publicly available features for routine contact management functions in connection with BAVC's various programs and overall operations.

Each nonprofit organization shall maintain and make available for public inspection and copying a packet of financial information concerning the nonprofit organization. The packet shall include, at a minimum,

1. the nonprofit organization's most recent budget as already provided to the City in connection with the nonprofit organization's application for, or in connection with the review and/or renewal of, the nonprofit organization's contract,
2. its most recently filed State and federal tax returns except to the extent those returns are privileged, and
3. any financial audits of such organization performed by or for the City and any performance evaluations of such organization performed by or for the City pursuant to a contract between the City and the nonprofit organization, to the extent that such financial audits and performance evaluations are in the nonprofit organization's possession, may be publicly disclosed under the terms of the contract between the City and the nonprofit organization, and relate to the nonprofit corporation's performance under its contract with the City within the last two years.

BAVC fully complies with Section 12.L by making all of the enumerated documents available to members of the public on request. BAVC posts online that these documents are available, and has a public Sunshine Compliance policy on its website with instructions on how members of the public can request these documents.

The documents Mr. Pasquariello requests with Complaint 10035 simply do not fall within the specific documents identified in Section 12.L. Moreover, the documents requested here concern BAVC's use of a third party vendor for administrative contact management functions impacting *all* of BAVC's operations, not only the public access services covered by the Grant Agreement. No part of Section 12.L requires an organization to produce on demand to the public concerning an organization's day-to-day business documents.

2. The Grant Agreement Does Not Require Production

Mr. Pasquariello's June 30th letter erroneously cited Section 12 of the Grant Agreement between BAVC and the Department of Technology (the "Grant Agreement") as supporting his request for documents.²

This Grant Agreement provision concerns BAVC's acknowledgement that the City will make certain information related to its contracting process available to the public. The

² Section 12.2 of the Grant Agreement reads in relevant part: "[BAVC] acknowledges and agrees that this Agreement and the application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communication between the City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded."

Grant Agreement does not require BAVC to produce business records or contracts generally, nor does it require BAVC to make documents available to members of the public on demand. Moreover, the limited documents covered by the Grant Agreement are closely related to BAVC's contract with the City. In this case, the documents requested concern BAVC's overall day-to-day operations across all of the organization's operations.

3. Mr. Pasquariello Received All Documents Requested

Section 12L and the Grant Agreement do not require BAVC respond to Mr. Pasquariello's document request; however, BAVC nonetheless answered Mr. Pasquariello's inquiry. BAVC directed Mr. Pasquariello to the information he requested, available online through the Salesforce.com web site (*see* July 15th Letter from Hodges to Pasquariello). In addition, BAVC included a print out of the document requested in a compact disc the organization recently mailed to Mr. Pasquariello. Finally, BAVC understands that the Department also sent the documents requested to Mr. Pasquariello in response to a separate public records request Mr. Pasquariello made of the Department in July.

BAVC has attempted to work with Mr. Pasquariello, providing him with reasonable information about BAVC's services and how he may work with BAVC as a public access producer if he so chooses. BAVC has several times provided Mr. Pasquariello with its Sunshine Compliance policy. At every turn, Mr. Pasquariello has not responded to BAVC's communications.

CONCLUSION

The Sunshine Ordinance is clear that Section 12L is "not intended to impose obligations equal to those of governmental agencies upon nonprofit organizations doing business with the City." Because Mr. Pasquariello seeks documents outside the scope of Section 12L and not otherwise within the jurisdiction of the Task Force, BAVC respectfully requests that the Task Force find that it has no jurisdiction over Complaint 10035.

If you have questions about this matter, please contact me by phone at (415) 648-4647, or by email at krisana@hodgeslaw.net.

Sincerely,

/Krisana M. Hodges/