Date: Feb. 8, 2011

Item No. 6
File No. 10069

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom **Date:** Feb 1, 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.

SUNSHINE ORDINANCE
TASK FORCE

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ORDER OF DETERMINATION
January 28, 2011

DATE THE DECISION ISSUED
January 25, 2011

WILLIAM AND ROBERT CLARK v ARTS COMMISSION (CASE NO.10069)

FACTS OF THE CASE

Complainants William and Robert Clark allege that the San Francisco Arts Commission (the "Commission", or "Respondent") violated the Ordinance by failing to respond adequately to their November 8, 2010, public records request for documents and records that show how much salary and benefits were paid to Howard Lazar, Evelyn Russell and other Commission employees from the $118, 759 in salaries and $42, 820 in benefits reported to the Controller (presumably in connection with the Street Artists fee setting process)

COMPLAINT FILED

On December 17, 2010, the complainants filed a complaint alleging a public records violation.

HEARING ON THE COMPLAINT

On January 25, 2011, William Clark presented his case before the Task Force. The Respondent Agency was not represented. Howard Lazar of the Arts Commission was present at the start of the meeting but left a note that said he had to leave by 6:30 p.m. because he was the care-giver to a person in Marin. No one in the audience presented facts and evidence on behalf of the Commission.

Mr. Clark told the Task Force he has been trying to find out the salaries and paid benefits for Street Artists Program employees Howard Lazar and Evelyn Russell for the year 2009/10. He said he has also asked for the information verbally and has not received an answer. He said he specifically asked in a letter to Mr. Lazar on November 8 for a breakdown of the amount reported to the Controller Office as salaries and benefits. Mr. Lazar responded on November 22 with a letter and two printouts that no one understood. Mr. Clark said he wants the breakdown for budgetary reasons. He said Ms. Russell quit or was fired in February 2010 and so he would like to know where her salary and benefits were diverted or used. He also said he was told by Director of Cultural Affairs Luis R. Cancel at the last Arts Commission that he and his brother could not ask questions about the budget during Public Comment session, and if they did, they would be ignored.

ORDER OF DETERMINATION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Member Snyder said the Clarks' request was really clear and it appears that the agency's response is that to provide a breakdown is to create a record. He said he has researched this issue for another matter and that there is a doctrine that says government agencies are not required to create new records. He said there is a lot of case law, but they are not very clear about what constitutes a new record. In this case, he said, isolating one person's salary could not constitute the creation of a new record. The commission, he believes, has a record somewhere in its offices that says Mr. Lazar's salary for a certain month or year is x amount of dollars. He said if Mr. Lazar were present he could not see Mr. Lazar successfully arguing that such a record does not exist. It is clear, he said, the Commission did not provide the request and the requested information is public.

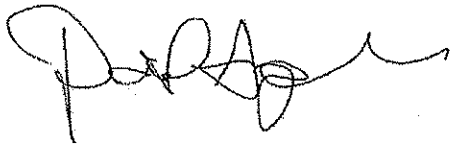
Member Knoebber said the Task Force could ask Mr. Lazar his salary orally and it would be difficult for him to say that he does not know. Vice Chair Wolfe said there has to be a document that shows how the Commission plans to spend the money the Clarks and other street artists give them. Member Johnson wanted to know if such information is available on the City website. DCA Threet said he is not aware of such a site but the Chronicle newspaper produced a spreadsheet last year that had the salaries and benefits of all City employees. Member Chan said asking Mr. Lazar his Civil Service classification and looking it up the list should produce immediate results.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Sunshine Section(s) 67.21(b) by not responding within the given time frame, 67.21(c) by failing to assist the requestor, and 67.26 by not keeping withholding to a minimum. The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on February 8, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 25, 2011, by the following vote: (Snyder / Knoebber)
Ayes: Snyder, Manneh, Washburn, Knoebber, Wolfe, Chan, Johnson, Knee
Excused: Cauthen

Richard A. Knee, Chair
Sunshine Ordinance Task Force



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

ORDER OF DETERMINATION

c: William and Robert Clark, Complainants
Howard Lazar, Respondent
Jerry Threet, Deputy City Attorney

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