

Date: March 12, 2008

Item No. 3

File No. 07075

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Order Of Determination of Carroll vs MOH
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Completed by: Frank Darby

Date: March 6, 2008

***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



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

November 27, 2007

November 29, 2007

Laura Carroll
256 Presidio Ave #6
San Francisco, CA 94115

Douglas Shoemaker
Mayors Office of Housing
City Hall, Room 200
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Complaint #07075 by Laura Carroll against the Mayor's Office of Housing (MOH) for violation of Sections 67.21 and 67.26 of the Sunshine Ordinance for alleged failure to provide documents, and failure to keep withholding to a minimum.

Based on the information provided to the Task Force from the Complainant Laura Carroll, supporter Dee Modglin, Respondent Myna Melgar, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds the Mayor's Office of Housing in violation of Sections 67.21 of the Sunshine Ordinance for failure to respond in a timely manner. This matter is referred to the Compliance and Amendments Committee, for its December 12, 2007. Within 5 days of the Order of Determination, the MOH should produce to the Task Force and the complainant the correspondence from the City Attorney's Office specifying which documents MOH was advised to withhold from release on the basis of attorney-client privilege. The MOH is also instructed to double check to ensure that the withholding was as narrow as possible and whether redacted documents can be provided in certain circumstances.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on November 27, 2007 by the following vote: (Craven / Cauthen)

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Goldman, Williams

Absent: Chan

A handwritten signature in black ink, appearing to read "Doug Comstock".

Doug Comstock, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Myrna Melgar, MOH

Michael Marx and Laura Carroll
256 Presidio Avenue #6, San Francisco CA 94115
415 265 7768 cell, lcarroll88@msn.com email

March 5, 2008

Ms. Paula Jesson, Deputy City Attorney
Office of the City Attorney
City Hall, 1 Dr. Carlton B., Room 234
San Francisco, CA 94102

RE: Follow up on February 29th response to Petition to Supervisor of Records:
Request for City Attorney Review of Mayor's Office of Housing Privileged Documents/Files

Dear Ms. Jesson,

Thank you for your response dated February 29th, 2008. I understand that:

1. MOH has provided you all documents that it believes to be attorney client privileged from the bulleted categories outlined in my January 15th 2008 letter except for the two areas of records described in the second and third bullets.
2. Within about four weeks, MOH is to provide you attorney client privileged documents in the second and third bullet areas for your review, after which time, you will examine these records and issue a determination.
3. MOH is to provide me copies of the records you have determined are not protected and that you list on pages three and four of your February 29th letter. If there is a required time limit by which MOH is required to provide me with these records, please let me know.

The issue of the review of attorney client privilege as it relates to released unit documents remains. On page two of your February 29th, 2008 letter, you summarize what I wrote to you regarding MOH's inaccurate statement that I declined to review five boxes of records relating to released units, but do not respond to this issue in your letter.

As I indicated in my January 15th letter, Ms. Ruby Harris did not mention anything about boxes of released unit files on November 28th when I reviewed other documents she gave me, and our differing recollections do not matter in any event because I have already reviewed all of these records On April 30 and May 1, 2007. More specifically, on these dates, Ms. Harris was not involved in assisting me with the review of these documents. I spoke with Myrna Melgar to schedule the times/days for me to come in the MOH office, and when I was in the office, one of the employees (who I had also seen work the reception desk in their office) provided me with hundreds of documents related to released units for my in-office review.

It is this review that in part prompted my Sunshine Ordinance complaint last fall and what subsequently led to the SOTF's recommendation that I submit a petition to you. In my review of released unit documents, I found numerous files with only one page in it saying "Attorney Client Privilege", seemingly indicating the entire file had been redacted. I questioned this practice to the SOTF, and the SOTF suggested I request you examine MOH's privileged documents relating to released units for proper withholding.

You have noted that once I have conducted a review of these files I could file a petition to review all privileged documents related to released units. My review of these files has occurred, occurred nine months ago, and now, again, I make this petition to you in this letter. I request that all records related to all released units that are attorney client privileged be reviewed for proper withholding.

Continued...

Page Two – March 5, 2008 – Follow up on February 29th, 2008 letter

In section three of your letter on page four, regarding my request for your assistance in getting MOH to comply with section 67.21 (c) of the Sunshine Ordinance, you indicate that this is not in the scope of the role of the Supervisor of Records. Outside of the Sunshine Ordinance Task Force, can you tell me who has the authority to require MOH comply with this section of the Sunshine Ordinance? Any information you can give to refer me to the right department, official, etc. would be greatly appreciated.

Thank you very much for your assistance with these matters.

Sincerely,

Laura Carroll

Cc: Frank Darby (re: Complaint #07075, electronic copy), Douglas Shoemaker (electronic copy)

Michael Marx and Laura Carroll
256 Presidio Avenue #6, San Francisco CA 94115
503 332 5213 cell, lc Carroll88@msn.com email

December 18, 2007

Mr. Dennis Herrera, City Attorney of San Francisco
Office of the City Attorney
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102

RE: Request for City Attorney Review of Mayor's Office of Housing Privileged Documents/Files

Dear Mr. Herrera,

In your capacity of Supervisor of Records, I am writing to you at the recommendation of the Sunshine Ordinance Task Force (SOTF). At a recent hearing regarding my complaint against the Mayor's Office of Housing (MOH), the Task Force indicated that in the interest of ensuring withholding in relation to my records request has been as narrow as possible I ask your office to review documents and files the MOH has deemed attorney client privileged.

Earlier this year, I submitted a records request to the Mayor's Office of Housing. As part of their response to my request, I reviewed below market unit property files in their office, and found that a number of them just had one sheet in it stating attorney client privilege as per Government Code section 6254, suggesting the entire file had been deemed privileged.

In a subsequent records request I asked for copies of documents pertaining to recommendations to the City Attorney for changes to MOH's Condo Conversion program policies and procedures. MOH Deputy Director Doug Shoemaker has indicated all documents given to the City Attorney pertaining to proposed changes to program policies and procedures are privileged.

Sections 67.24bii and 67.26 of the Sunshine Ordinance, however, state that except for redacted parts of documents that reveal confidential communication between attorney and client (attorney opinion/advice), the public has the right to access the rest of a document and all other documents that were not privileged when they were received or created.

MOH has thus far indicated they will not release any documents or any portion of documents in both of these areas of request. I request that your office examine the legitimacy of their asserted privilege, and would like to ask you to have a neutral party in your office review all MOH privileged documents to ensure withholding of public records has been as narrow as possible. I request that the neutral party assigned to this not be the attorney or any staff that MOH has worked with regarding proposed MOH policy and procedure changes. For any record or part of a record MOH has improperly made privileged, I request their release.

Additionally, at the SOTF hearing on November 27th, along with citing MOH with a violation of the Sunshine Ordinance, the SOTF instructed MOH representative Ms. Myrna Melgar to provide me with the letter from the City Attorney's office to MOH regarding MOH records that have been redacted. To date I have not received a copy of this letter that as I understand it, is required when records are redacted. Any assistance in obtaining this letter would be greatly appreciated. Thank you very much for your assistance with these matters.

Sincerely,

Laura Carroll

Cc: Paula Jesson, Frank Darby (re: Complaint #07075), Douglas Shoemaker

**MAYOR'S OFFICE OF HOUSING
CITY AND COUNTY OF SAN FRANCISCO**



**GAVIN NEWSOM
MAYOR**

**MATTHEW O. FRANKLIN
DIRECTOR**

January 02, 2008

**Laura Carroll
720 South West Washington, Suite 660
Portland Oregon 97205**

**Re: Order of Determination of the Sunshine Ordinance Task Force for Complaint
#07075 against the Mayor's Office of Housing**

Dear Laura,

Enclosed please find written correspondence from me and Ruby Harris requesting guidance from the City Attorney on the application of the Sunshine Ordinance to the Condo Conversion Program. The task of double-checking to ensure that documents protected under attorney client privilege are appropriately so is currently being handled by the City Attorney's Office.

There is no document "from the City Attorney's Office specifying which documents MOH was advised to withhold from release on the basis of attorney-client privilege". However, the correspondence enclosed is released in the spirit of complying with the Task Force's directive documenting the nature of the communication between the Mayor's Office of Housing and the City Attorney regarding what must be disclosed under the Sunshine Ordinance in the context of the Condominium Conversion Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Myrna Melgar".


**Myrna Melgar
Director of Homeownership Programs**



Myrna
Melgar/OCDHH/MAYOR/SFG
OV

11/06/2007 01:46 PM

To Audrey Pearson/CTYATT@CTYATT
cc douglas.shoemaker@sfgov.org, Ruby
Harris/OCDHH/MAYOR/SFGOV@SFGOV
bcc

Subject Re: sunshine and state open records act (attorney client
privileged communication) 


Right, Audrey. We have been redacting social security and bank information from people's files. But Dee now has an extraordinary amount of information about her neighbors and her finances - how many assets they have, what their mortgages look like, whether or not they have assets, how much they have for retirement!. It seems so wrong to me that a person in a position of relative power (in this case on the board of the HOA) could have this kind of information about people.

I wonder what other strategies departments have used to protect their resources. For us, it's not an issue of not wanting to give out the information. It's an issue of having limited staff, and a lot of work, and having to fulfill these requests which then take our staff away from our stated mission, which is to provide housing opportunities to low income San Franciscans. Would your colleague who handles Sunshine know of other strategies?

Myrna Melgar
Director of Homeownership Programs
Mayor's Office of Housing
1 South Van Ness Ave., 5th Floor
San Francisco CA 94103
(415)701-5531

Audrey Pearson/CTYATT@CTYATT

Audrey
Pearson/CTYATT@CTYATT
11/06/2007 12:12 PM

To Myrna Melgar/OCDHH/MAYOR/SFGOV@SFGOV
cc douglas.shoemaker@sfgov.org, Ruby
Harris/OCDHH/MAYOR/SFGOV@SFGOV
Subject Re: sunshine and state open records act (attorney client
privileged communication) 

The two laws work somewhat in concert, but the local, "more open" Sunshine Ordinance would trump any "less open" state law. The state law sets the minimum access standard, and local governments can be even more open, if they so choose. (Admin Code Sec 67.36.)

Generally (but not always), information that can be withheld under the state law can also be withheld under the Sunshine Ordinance. Under state law if the local agency decides that the interest in keeping information private outweighs the public interest in disclosure, the local agency can keep it private. This *would* be a very useful exemption, as it covers documents not specifically exempted in the law, but, in San Francisco, staff can't use it (because of the Sunshine Ordinance). (Admin Code 67.24(i)). So unless there is a specific exemption for a particular type of record, the City cannot withhold it. It was my understanding that Ruby (?) has been doing a lot of redacting of private information. Is there other information in the files that is possibly non-disclosable?

The SOTF has jurisdiction to hear complaints about compliance with the Sunshine Ordinance as well as Brown Act/Public Records Act (Admin Code sec 67.30(c).)

Call me to discuss some other strategies.

Audreyl

Audrey Williams Pearson
Deputy City Attorney
San Francisco City Attorney's Office
Direct: (415) 554-4621
Fax: (415) 554-4757
Myrna Melgar/OCDHH/MAYOR/SFGOV@SFGOV



Myrna
Melgar/OCDHH/MAYOR/SF
GOV@SFGOV

11/06/2007 09:35 AM

To: audrey.pearson@sfgov.org
cc: Ruby Harris/OCDHH/MAYOR/SFGOV@SFGOV,
douglas.shoemaker@sfgov.org
Subject: sunshine and state open records act (attorney client
privileged communication)

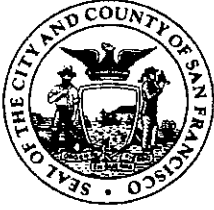
Hi Audrey,

Here is another thought: I remember that the State Open Records act specifically exempts information about people in public and subsidized housing from being given out - presumably to protect people's privacy. So, 1- Does the State's Open Records Act supercede the Sunshine ordinance? and 2- Could we apply this here to folks in units that are subsidized by the City.

The other question I had was about tonight's hearing. Laura Carroll's request was very specifically under the State Open Records act, not under the Sunshine ordinance. So since tonight's hearing is jurisdictional, do you think we could say that this is not a sunshine issue, but a state open records issue?

Myrna Melgar
Director of Homeownership Programs
Mayor's Office of Housing
1 South Van Ness Ave., 5th Floor
San Francisco CA 94103
(415)701-5531

MAYOR'S OFFICE OF HOUSING
CITY AND COUNTY OF SAN FRANCISCO



GAVIN NEWSOM
MAYOR

MATTHEW O. FRANKLIN
DIRECTOR

FACSIMILE TRANSMITTAL SHEET

TO: AUDREY PEARSON

FROM: RUBY HARRIS

COMPANY: CITY ATTORNEY

DATE: 9/19/07

FAX NUMBER: (415) 554-4757

TIME: 8:45 AM

PHONE NUMBER: (415) 554-4621

PHONE NUMBER: (415) 701-5517

RE: MAYOR'S OFFICE RETENTION POLICY

TOTAL NO. OF PAGES INCLUDING COVER: 9

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Hi Audrey,

Myrna and I wanted to share this retention policy with you and would like to discuss it with you in regard to our recent sunshine request.

Thanks,


Ruby Harris

Project Manager, Single Family Housing Programs
Mayor's Office of Housing
Phone: (415) 701-5517
Fax: (415) 701-5501
ruby.harris@sfgov.org

1 SOUTH VAN NESS AVENUE - FIFTH FLOOR ♦ SAN FRANCISCO,
CALIFORNIA 94103

PHONE (415) 701-5500 ♦ FAX (415) 701-5501 ♦ TDD (415) 701-5503



COPY

MAYOR'S OFFICE
RECORDS AND DOCUMENT RETENTION AND DISPOSAL SCHEDULE

The Mayor's Office Record Retention and Destruction Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a records retention and destruction schedule.

This policy covers the records and documents, regardless of physical form or characteristics, which have been made or received by the Mayor's Office in connection with the transaction of public business.

PART I POLICY AND PROCEDURES:

A. RETENTION POLICY

The Mayor's Office shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference, or to comply with contractual or legal requirements, or for other purposes as set forth below. For record retention and destruction purposes, the term "record" is defined as set forth in Section 8.1 of the San Francisco Administrative Code. Documents and other materials that do not constitute "records" under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified in Part II. The records of the Mayor's Office shall be classified for purposes of retention and destruction as follows:

Category 1: Permanent Retention. Records that are permanent or essential shall be retained and preserved indefinitely.

- **Permanent Records:** Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed or placed on an optical imaging system and special measures are followed. Administrative Code Section 8.4. Once these measures are followed, the original paper records must be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of the Mayor's Office.
- **Essential Records:** Essential records are records necessary for the continuity of government and the protection of the rights and interests of individuals. Administrative Code Section 8.9.

Category 2: Current Records. Current records are records that for convenience, ready reference or other reasons are retained in the office space and equipment of the Department. Current records shall be retained as follows:

- Where retention period specified by law. Where federal, state or local law prescribes a definite period of time for retaining certain records, the Mayor's Office will retain the records for the period specified by law.
- Where no retention period specified by law. Where no specific retention period is specified by law, the retention period for records that the department is required to retain shall be specified in the attached Record Retention and Destruction Schedule. Records shall be retained for a minimum of two years, although such records may be treated as "storage records" and placed in storage at any time during the applicable retention period.

Category 3: Storage Records. Storage records are records that are retained offsite. Storage records are subject to the same retention requirements as current records.

Category 4: No Retention Required. Documents and other materials that are not defined as "records" pursuant to the Administrative Code Section 8.1 need not be retained unless retention is otherwise specified by local law or required by this policy. Documents and other materials (including originals and duplicates) that are not required for retention, are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed. Examples include documents and materials generated for the use and convenience of the person generating them, draft documents which have been superseded by subsequent versions and duplicate copies of records that are no longer needed. Specific examples include telephone message slips, notes from ongoing projects, preliminary drafts that have been superseded by subsequent versions, routine e-mails that do not contain information required to be retained under this policy, miscellaneous correspondence not requiring follow-up or departmental action, notepads and chronological files.

With limited exceptions, no specific retention requirements are assigned to documents in this category. Instead, it is up to the originator or recipient to determine when document's business utility has ended.

B. RECORDS NOT ADDRESSED IN THE RECORD RETENTION POLICY

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for periods prescribed for records for substantially similar records.

C. STORAGE OF RECORDS

Active records may be stored in the Mayor's Office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the Mayor's Office space or equipment include active chronological files, research and reference files, legislative drafting files, pending complaint files, administrative files and personnel files. Inactive records, for which use or reference has

diminished sufficiently to permit removal from the Mayor's Office space or equipment, may be sent to the City's off site storage facility or maintained in the Mayor's Office storage facility.

D. HISTORICAL RECORDS

Historical records are records which are no longer of use to the Mayor's Office but which because of their age or research value may be of historical interest or significance. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code section 8.7.

E. DESTRUCTION OF RECORDS

It shall be the policy of the Mayor's Office that once the requisite retention period for a record has passed, the record shall be destroyed unless there are particular circumstances that dictate that the record be retained.

F. RECORDS RELATING TO PENDING CLAIMS AND LITIGATIONS

The retention periods set forth in the attached record retention schedule shall not apply to materials that are otherwise eligible for destruction, but which may be relevant to a pending claim or litigation against the City. Once the Mayor's Office becomes aware of the existence of a claim against the office, the Mayor's Office should retain all documents and other materials related to the claim until such time as the claim or subsequent litigation has been resolved. Where the Mayor's Office has reason to believe that one or more other departments also have records relating to the claim or litigation, those departments should also be notified of the need to retain such records.

Administration	Contracts/Grants	Contracts & Grants	2	Term of Agreement plus 4 years	Term of Agreement plus 4 years	N/A	
Administration	Contracts	Draft Contracts	4	Until Approved	Until Approved	N/A	Administrative Code Sec. 67.24 (a)(2)
Administration	Correspondences	General Correspondences	4	N/A	N/A	N/A	
Administration	Financial	Check Payments	2	2 Fiscal Years	2 Fiscal Years	N/A	
Administration	Financial	Office Expenditure Documents	2	2 Fiscal Years	2 Fiscal Years	N/A	
Administration	Financial	Payables (Invoices/ Vendors)	2	2 Fiscal Years	2 Fiscal Years	N/A	
Administration	Financial	Purchase Orders (copy)	2	2 Fiscal Years	2 Fiscal Year	N/A	
Administration	Financial	Receipt/Deposits	2	2 Fiscal Years	2 Fiscal Years	N/A	
Administration	Financial	Work Orders	2	2 Fiscal Years	2 Fiscal Years	N/A	
Administration	Policies	Policies/Procedures	2	Later of 2 years or Until Superseded	Later of 2 years or Until Superseded	N/A	
Budget	Budget	Budget Files	2	2 Fiscal Years	2 Fiscal Years	N/A	
Community Development & Housing	Administrative	Accident-Injury Reports	2	7 years	2 years	5 years	29 CFR 1904.6
Community Development & Housing	Administrative	Audit Reports	2	5 Years after year of audit	2 Years after year of audit	3 Years after year of audit	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530 24 CFR 576.65
Community Development & Housing	Administrative	Conflict of Interest Form 700	2	7 Years	2 Years	5 Years	GC Sec. 81009 (e)

Community Development & Housing	Budget	Budget Files	2	5 Years after year of budget	2 Years after year of budget	3 Years after year of budget	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530
Community Development & Housing	Contracts/Grants	Contracts & Grants	2	5 years after year contract/grant terminates	2 years after year contract/grant terminates	3 years after year contract/grant terminates	24 CFR 576.65 24 CFR 570.506 24 CFR 92.508 24 CFR 574.530
Community Development & Housing	Contracts	Draft Contracts	4	Until Approved	Until Approved	N/A	24 CFR 576.65 Administrative Code Sec. 67.24 (a)(2)
Community Development & Housing	Correspondences	General Correspondences	4	N/A	N/A	N/A	
Community Development & Housing	Financial	Check Payments	2	5 Years after year of expenditure/payment	2 years after year of expenditure/payment	3 years after year of expenditure	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530
Community Development & Housing	Financial	Office Expenditure Documents	2	5 Years after year of expenditure	2 Years after year of expenditure	3 years after year of expenditure	24 CFR 576.65 24 CFR 570.506 24 CFR 92.508 24 CFR 574.530
Community Development & Housing	Financial	Payables (Invoices/ Vendors)	2	5 Years after year of expenditure/payment	2 Years after year of expenditure/payment	3 years after year of expenditure/payment	24 CFR 576.65 24 CFR 570.506 24 CFR 92.508 24 CFR 574.530
Community Development & Housing	Financial	Purchase Orders (copy)	2	5 Years after year of expenditure	2 Years after year of expenditure	3 years after year of expenditure	24 CFR 576.65 24 CFR 570.506 24 CFR 92.508 24 CFR 574.530
Community Development & Housing	Financial	Receipt/Deposits	2	5 Years after year of expenditure	2 Years after year of expenditure	3 years after year of expenditure	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530
Community Development & Housing	Financial	Revolving Fund Records	2	5 Years after year of expenditure	2 Years after year of expenditure	3 years after year of expenditure	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530 24 CFR 576.65

Community Development & Housing	Financial	Work Orders and Payments	2	5 Years after year of expenditure/payment	2 Years after year of expenditure/payment	3 years after year of expenditure/payment	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530 24 CFR 576.65
Community Development & Housing	Lease	Lease Files	2	5 years after year lease agreement/contract terminates	2 years after year lease agreement/contract terminates	3 years after year lease agreement/contract terminates	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530 24 CFR 576.65
Community Development & Housing	Loan/Financial	Loan Files	2	5 years after year loan terminates	2 years after year loan terminates	3 years after year loan terminates	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530 24 CFR 576.65
Community Development & Housing	Loan Agreement/Contract	Loan Agreements/Loan Contracts	2	5 years after year agreement/contract terminates	2 years after year agreement/contract terminates	3 years after year agreement/contract terminates	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530 24 CFR 576.65
Community Development & Housing	RFA, RFP, RFQ	RFA, RFP, RFQ(s) & Records	2	5 Years after year of RFA, RFP, RFQ	3 Years after year of RFA, RFP, RFQ	2 Years after year of RFA, RFP, RFQ	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530 24 CFR 576.65
Community Development & Housing	Reports	Action Plan	2	5 Years after year of Action Plan	2 Years after year of Action Plan	3 Years after year of Action Plan	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530 24 CFR 576.65
Community Development & Housing	Reports	Citizen's Committee on Community Development Agenda & Minutes	2	5 Years after year of meeting	2 Years after year of meeting	3 Years after year of meeting	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530 24 CFR 576.65
Community Development & Housing	Reports	Consolidated Plan		5 Years after year of Consolidated Plan	2 Years after year of Consolidated Plan	3 Years after year of Consolidated Plan	24 CFR 570.506 24 CFR 92.508 24 CFR 574.530 24 CFR 576.65
Criminal Justice Council	Contracts/Grants	Contracts & Grants	2	Term of Agreement plus 4 years	Term of Agreement plus 4 years	N/A	
Criminal Justice Council	Contracts	Draft Contracts	4	Until Approved	Until Approved	N/A	Administrative Code Sec. 67.24 (a)(2)

Criminal Justice Council	Correspondences	General Correspondences	4	N/A	N/A	N/A	
Criminal Justice Council	Financial	Check Payments	2	2 Fiscal Years	2 Fiscal Years	N/A	
Criminal Justice Council	Financial	Office Expenditure Documents	2	2 Fiscal Years	2 Fiscal Years	N/A	
Criminal Justice Council	Financial	Payables (Invoices/ Vendors)	2	2 Fiscal Years	2 Fiscal Years	N/A	
Criminal Justice Council	Financial	Purchase Orders (copy)	2	2 Fiscal Years	2 Fiscal Year	N/A	
Criminal Justice Council	Financial	Receipt/Deposits	2	2 Fiscal Years	2 Fiscal Years	N/A	
Criminal Justice Council	Financial	Work Orders	2	2 Fiscal Years	2 Fiscal Years	N/A	
Criminal Justice Council	RFA, RFP, RFQ	RFA, RFP, RFQ(s) & Records	2	Later of 2 years or of no current use	Later of 2 years or of no current use	N/A	
Press	Calendar	Prop G Calendar	2	2 Years	2 Years	N/A	
Public Policy	Contracts/Grants	Contracts & Grants	2	Term of Agreement plus 4 years	Term of Agreement plus 4 years	N/A	
Public Policy	Contracts	Draft Contracts	4	Until Approved	Until Approved	N/A	
Public Policy	Correspondences	General Correspondences	4	N/A	N/A	N/A	Administrative Code Sec. 67.24 (a)(2)
Public Policy	Legislative	Legislation (copies as approved to form)	4	Current Year	Current Year	N/A	
Public Policy	Legislative	Legislative Drafts	4	Current Year	Current Year	N/A	
Public Policy	Reports	Grand Jury Reports (copy)	1	Permanently	Permanently	N/A	
Public Policy	RFA,RFQ	RFA, RFQs & Responses	2	Later of 2 years or of No current use	Later of 2 years or of No current use	N/A	

Audrey
Pearson/CTYATT@CTYATT
09/10/2007 03:24 PM

To Ruby Harris/OCDHH/MAYOR/SFGOV@SFGOV
cc
bcc
Subject Re: Fw: SUNSHINE Response - Please Review

History: This message has been replied to.

Admin Code Section 67.24(a)(1) allows us to withhold "the recommendations of the author" of draft documents and memos.

Audrey Williams Pearson
Deputy City Attorney
San Francisco City Attorney's Office
Direct: (415) 554-4621
Fax: (415) 554-4757
Ruby Harris/OCDHH/MAYOR/SFGOV@SFGOV



Ruby
Harris/OCDHH/MAYOR/SFG
OV@SFGOV
09/10/2007 12:01 PM

To Audrey Pearson/CTYATT@CTYATT
cc Myrna Melgar/OCDHH/MAYOR/SFGOV@SFGOV
Subject Fw: SUNSHINE Response - Please Review

Hi Audrey,

You may remember the letter that I drafted to a homeowner in one of my units, Dee Modglin, in July. She has launched an exhaustive series of sunshine requests for the City's Condo Conversion Program, an affordable homeownership program. I received a new email from her yesterday and have drafted our response (Dee's email and my draft response is below). Please review our response and let me know if any edits are needed.

Many thanks,
Ruby

Ruby Harris
Project Manager
Mayor's Office of Housing
1 So. Van Ness Ave., 5th Floor
San Francisco, CA 94103
Phone: (415) 701-5517
Fax: (415) 701-5501

----- Forwarded by Ruby Harris/OCDHH/MAYOR/SFGOV on 09/10/2007 11:56 AM -----



Ruby
Harris/OCDHH/MAYOR/SFG
OV
09/10/2007 10:16 AM

To Myrna Melgar/OCDHH/MAYOR/SFGOV
cc
Subject SUNSHINE Response - Please Review

This email is in response to your email dated 9/9/07.

REQUEST #1

All paper files have been provided to you. You are now in possession of or have reviewed all paper files that MOH has on the Condo Conversion Program. This includes all printed flyers, memos and other correspondence that MOH has. Please refer to the list of files given to you on August 28th, 2007. Item number 7 on the General and Personal File list is a "First Time Homebuyer Flyer". This is the only flyer we found besides the one you provided to us that refers the Condo Conversion Program. Please review the email I sent you on 6/11/2007 which explains the additional files reviewed to respond to your request. No printed materials are missing from the information you have received and no further action is necessary as it relates to this request.

You are now requesting electronic files (including emails) and other notes on the program. This qualifies as a new sunshine request and is being treated as such.

EMAILS

Emails regarding resales and general owner correspondence are routinely printed and placed in the appropriate paper file, so you are in receipt of those emails. You are not entitled to and we will not release any email correspondence between MOH and the City Attorney's office as allowed under the California State Government Code 6254(k) regarding attorney-client privilege. In light of this, please clarify which emails you are requesting. Once we receive your clarification, we will proceed with printing the emails and you will be charged 10 cents per copy given to you.

ELECTRONIC FILES

The majority of our electronic files are for processing resales of Condo Conversion units. This information is routinely printed and placed in the appropriate paper file, so you are in receipt of those files. Please clarify whether you would like to receive all electronic files, including the ones you have already received paper copies of OR if you would like to receive any electronic files not already included in the paper files. Once we receive your clarification, we will proceed with your request. You will need to provide at least one CD to transfer the information to you.

NOTES

You have received all of our personal files which include personal notes that were saved. Please clarify this request. Are you now looking for copies of our notebooks?

REQUEST #2

All paper files have been provided to you. You are now in possession of or have reviewed all paper files that MOH has on the Condo Conversion Program. This includes all information on in-lieu payments. As I have explained in previous emails, in-lieu fees were only allowed for the original subdivider and only for a period of 24 months after recording their condo map. This option has long since expired. Because they are so old, any information on in-lieu fees would have been in the paper files (not electronically), which you have already reviewed. Besides DPW, MOH and Planning, the only other city department that has worked on this program to my knowledge is the Department of Real Estate. No printed materials are missing from the information you have received and no further action is necessary as it relates to this request.

Ruby G. Harris
Project Manager
Single Family Housing Programs
SF Mayor's Office of Housing
1 South Van Ness, 5th Floor
San Francisco, CA 94103
Phone: (415)701-5517
Fax: (415)701-5501

SAVE THE DATE



Saturday, September 8th, 2007
John O'Connell High School
2355 Folsom St., San Francisco, CA
11:00 AM – 3:00 PM

Dee Modglin <dmodglin@earthlink.net>



Dee Modglin
<dmodglin@earthlink.net>
09/09/2007 04:20 PM

To Ruby Harris <ruby.harris@sfgov.org>
cc

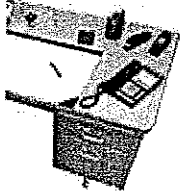
Subject SF Sunshine Request For Immediate Release

Hi Ruby

1. Please provide any and all written and electronic files/emails/communications to include memos and notes etc. pertaining to the Low & Moderate Income Housing Condo Conversion program. Please note that no printed flyer material that MOH disseminated as well as most internal emails within MOH were missing from our files thus far obtained from MOH through the Sunshine request.
2. Please provide any and all files/emails/communications to include memos and notes etc. pertaining to the In Lieu of Payments made by anyone in the Low & Moderate Income Housing Condo Conversion program. Please note that DPW is claiming that the LMI files were handed over to MOH when MOH took over the program and they do not have any of these files. If MOH also does not have these files, please advise what department we should direct our Sunshine request.

Thank you for handling my request in an expeditious manner.

Dee Modglin
Chair of the Goldmine Hill Homeowners Association
Moderate Income Housing Review Committee (MIHRC)
(415)826-3598



Jeanne
Lu/OCDHH/MAYOR/SFGOV
03/07/2006 03:57 PM

To Maggie Davis/OCDHH/MAYOR/SFGOV@SFGOV, Susan
Cleveland-Knowles/CTYATT@CTYATT
cc
bcc
Subject Fw: GMH - Doris Modglin

Maggie and Susan,

Dee Modglin, the homeowner from Goldmine Hill, she requested the following information. How do I obtain copies of the BOS minutes? She also request a copy of all the condo conversion units have the same restrictions as her unit, can she obtain a copy from us/City Planning/DPW?

Please advise.....

Jeanne

----- Forwarded by Jeanne Lu/OCDHH/MAYOR/SFGOV on 03/07/2006 12:08 PM -----



Dee Modglin
<dmodglin@earthlink.net>
03/07/2006 11:53 AM

To jeanne.Lu@sfgov.org
cc
Subject GMH - Doris Modglin

Hi Jeanne:

Thank you for calling me back today. I would like to have a copy of the complete file you have on myself at 45 Ora Way A108, SF, CA 94131 with the Mayor's Office of Housing as well as any other documents that you have obtained from other departments that impact my unit upgrade and resale. Please provide any and all letters that the SF Mayor's office of Housing has sent out to GMH and myself specifically that address improvement restrictions and any other subject matter that pertains to resale and improvements.

I would also like a copy of the minutes of the Board of Supervisors on the three ordinances which I have thus far identified (**Notice of Special Restrictions #1341 & #1385 of the Municipal Subdivision Code & the conditions set forth in Resolution No. 9081 of the City Planning Commission**). that pertain to GMH. In 2005, I faxed you the copies of these ordinances. I am interested in the discussions by the Board of Supervisors and Planning Commissions leading up to the final approval by the Board of Supervisors. Please let me know if you don't have a copy of them where I might obtain these minutes.

Lastly, I understand in talking with you as well as Supv. Dufty's office that other complexes have also raised similar concerns about the lifting of the restrictions and are apparently governed by the same restrictions as GMH. I would respectfully request that you provide me with the addresses of other complexes.

You had mentioned that in the 80's the Department of Public Works and City Planning were submitting the motions for our GMH condos and perhaps they may also have more information.

Please let me know if there is a specific person designated that I should contact.

Thank you and please let me know if there are any copy fees. I look forward to meeting you in the near future.

Regards,

Dee Modglin
Private Inquiries
CA PI Lic. #12199
PO Box 31628
SF, CA 94131
(415)826-3598

Audrey
Pearson/CTYATT@CTYATT
09/17/2007 04:23 PM

To Ruby Harris/OCDHH/MAYOR/SFGOV@SFGOV
cc Myrna Melgar/OCDHH/MAYOR/SFGOV@SFGOV
bcc
Subject Re: Another Response to Dee - Please Review

My comments are in red. I like to take out references to conferring with the City Attorney, because there is language in Sunshine that our advise on Sunshine is not privileged, which is a can of worms I do not want to open.

Audrey Williams Pearson
Deputy City Attorney
San Francisco City Attorney's Office
Direct: (415) 554-4621
Fax: (415) 554-4757
Ruby Harris/OCDHH/MAYOR/SFGOV@SFGOV



Ruby
Harris/OCDHH/MAYOR/SFG
OV@SFGOV
09/17/2007 04:10 PM

To Myrna Melgar/OCDHH/MAYOR/SFGOV@SFGOV, Audrey
Pearson/CTYATT@CTYATT
cc
Subject Another Response to Dee - Please Review

Myrna and Audrey:

Please review this draft of my most recent response to Dee Modglin. I need to send it asap.

Thanks!
Ruby

Dee:

To confirm, you are now looking for all electronic communication to, from and between staff at MOH regarding [???]. Since you have already received all resale documents (closing documents, qualification sheets, resale letters, approval letters, etc.) in the paper files, we will not be re-copying all of those documents.

Because of the voluminous nature of your request, the City will be producing records on an incremental basis starting on 9/25/07. We have made arrangements to fulfill your request as follows:

Electronic Records

A copy of all electronic records on our server is being produced. They will be redacted and a copy will be sent to you via email. I may need to send them in several emails, depending on the size of the folders. We expect this to be complete and delivered to you by 9/25/07.

Emails

A request has been sent to all MOH staff requesting all email correspondence regarding the Condo Conversion Program. They will send me these emails by Friday, September 21st. I will redact them, as necessary. Once redacted, I will print a copy of each email and provide them to you at the cost of 10 cents per page. I expect this to take longer than completion of the above electronic record. Therefore, I will email you with a timeline once I get a sense of how many emails I need to review.

Archived emails of past City employees are only available offsite and must be requested by our IT department. We cannot review all emails ever sent to or by **current and former staff** at MOH; please narrow down your request by employee name and we will attempt to retrieve their email archive. Which former MOH staff would you like to review? Please note that some records may no longer be available depending on the City's archive policy.

Finally, I have reviewed Sunshine Ordinance regarding justification of withholding (S.F. Administrative Code Sec 67.27) and have verified that [delete:verified with the City Attorney] that we are doing the Attorney-Client Privilege redaction correctly. We replaced each item that was removed from the files with a paper stating the reason for redaction (in this case, Attorney-Client Privilege) and the applicable code. We do not need to give you a description of the type of correspondence.

-Ruby

Ruby Harris
Mayor's Office of Housing
1 South Van Ness Ave., 5th Floor
San Francisco, CA 94103
Phone: (415) 701-5517
Fax: (415) 701-5501

----- Forwarded by Ruby Harris/OCDHH/MAYOR/SFGOV on 09/17/2007 03:39 PM -----



Dee Modglin
<dmodglin@earthlink.net>
09/11/2007 09:36 AM

To: Ruby Harris <ruby.harris@sfgov.org>
cc: Myrna Melgar <myrna.melgar@sfgov.org>
Subject: Re: SF Sunshine Request For Immediate Release - MOH
Electronic Communication

Dee Modglin

Hi Rubby & Myrna:

Usually, any and all communication, notes and documentation includes electronic files via email. Apparently, this was not clear, therefore, treat my request as a new Sunshine Request for IMMEDIATELY RELEASE to obtain any and all electronic communications internally within MOH employees and to others outside your office regarding the LMI Condo Conversion program. This includes archived electronic communication from former MOH employees.

Please let me know how many CDs you would like me to provide to your office. Alternatively, you can bill me for the CD's. Please let me know the cost.

At the end of our Sunshine Request review I want to be able to have ALL that MOH is in possession of the LMII Condo Conversion program and then continue to seek the missing records from other departments that may have them.

It is also my understanding under the SF Sunshine Ordinance you can't just list a blanket Attorney Client Privilege paper and remove the file from public view but rather you should explain what it is that you are not allowing the person to view, i.e. correspondence from counsel representing LMI owner, legal

notice of litigation; a more specific explanation of exactly what it is that you removed/redacted and how many pages were removed from the file. There are no such explanations on any of the many Attorney Client Privilege sheets you placed in the various LMI files.

Dee Modglin
Chair of the Goldmine Hill Homeowners Association
Moderate Income Housing Review Committee (MIHRC)
(415)826-3598

On Sep 11, 2007, at 9:05 AM, Ruby Harris wrote:

This email is in response to your email dated 9/9/07.

REQUEST #1

All paper files have been provided to you. You are now in possession of or have reviewed all paper files that MOH has on the Condo Conversion Program. This includes all property files, printed flyers, memos, personal files, historical files and other correspondence that MOH has. Please refer to the list of files given to you on August 28th, 2007. Item number 7 on the General and Personal File list is a "First Time Homebuyer Flyer". This is the only flyer we found besides the one you provided to us that refers the Condo Conversion Program. Please also review the email I sent you on 6/11/07, which explains the additional files reviewed to respond to your request. No printed materials are missing from the information you have received and no further action is necessary as it relates to this request.

You are now requesting electronic files (including emails) and other notes on the program. This qualifies as a new sunshine request and is being treated as such.

EMAILS

Emails regarding resales and general owner correspondence are printed and placed in the corresponding paper file, therefore you are in receipt of those emails. We will not release any attorney-client email correspondence as allowed under the California State Government Code 6254(k). In light of the fact that you have already received a paper copy of owner correspondence and are not entitled to attorney-client correspondence, please clarify which emails you are requesting. Once we receive your clarification, we will proceed with printing the applicable emails and you will be charged 10 cents per copy given to you.

ELECTRONIC FILES

Electronic records for processing Condo Conversion resales and general owner correspondence are printed and placed in the corresponding paper file, therefore you are in receipt of those records. We will not release any attorney-client electronic records as allowed under the California

State Government Code 6254(k). In light of the fact that you have received a paper copy of owner correspondence and are not entitled to attorney-client correspondence, please clarify which electronic records you would like to receive. Once we receive your clarification, we will proceed with copying applicable records. You will need to provide at least one CD to transfer the information to you.

NOTES

You have received all of our paper files, which include personal notes, post-it notes and drafts. Please clarify this request.

REQUEST #2

All paper files have been provided to you. You are now in possession of or have reviewed all paper files that MOH has on the Condo Conversion Program. This includes all information on in-lieu payments. As previously noted in prior correspondence, in-lieu fees were only allowed for the original subdivider and only for a period of 24 months after recording their condo map. This option expired two years after these units became condos and is no longer applicable. Because of the age of the in-lieu payments, any information on in-lieu fees would have been in the paper files (not electronically), which you have already reviewed. Besides the Department of Public Works, the Mayor's Office of Housing and the Planning Department, the only other City department that has worked on this program is the Department of Real Estate. No printed materials are missing from the information you have received and no further action is necessary as it relates to this request.

CC: Myrna Melgar, Director of Homeownership Programs
Audrey Pearson, Deputy City Attorney

Ruby Harris
Project Manager
Mayor's Office of Housing
1 So. Van Ness Ave., 5th Floor
San Francisco, CA 94103
Phone: (415) 701-5517
Fax: (415) 701-5501

Dee Modglin
<dmodglin@earthli
nk.net>

To

Ruby Harris <ruby.harris@sfgov.org>

09/09/2007 04:20

cc

PM

Subject

SF Sunshine Request For Immediate
Release

Hi Ruby

1. Please provide any and all written and electronic files/emails/communications to include memos and notes etc. pertaining to the Low & Moderate Income Housing Condo Conversion program. Please note that no printed flyer material that MOH disseminated as well as most internal emails within MOH were missing from our files thus far obtained from MOH through the Sunshine request.
2. Please provide any and all files/emails/communications to include memos and notes etc. pertaining to the In Lieu of Payments made by anyone in the Low & Moderate Income Housing Condo Conversion program. Please note that DPW is claiming that the LMI files were handed over to MOH when MOH took over the program and they do not have any of these files. If MOH also does not have these files, please advise what department we should direct our Sunshine request.

Thank you for handling my request in an expeditious manner.

Dee Modglin
Chair of the Goldmine Hill Homeowners Association
Moderate Income Housing Review Committee (MIHRC)
(415)826-3598

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON
Deputy City Attorney

DIRECT DIAL: (415) 554-6762
E-MAIL: paula.jesson@sfgov.org

January 7, 2008

Laura Carroll
256 Presidio Avenue, #6
San Francisco, CA 94115

Re: Petition to the Supervisor of Records

Dear Ms. Carroll:

You have asked this office, in its role as Supervisor of Records, to determine whether the Mayor's Office of Housing ("MOH") properly withheld records based on the attorney-client privilege.

By way of background, we note that you made several public records requests to the MOH in 2007, which we understand are the subject of your petition. Copies of correspondence provided to this office from MOH include several requests in 2007 and correspondence between you and MOH regarding the status of and clarifications regarding these requests. While we do not repeat the requests in full, we note that they generally relate to below market restrictions in local law adopted as part of the City's condominium conversion program, including documents relating to property that you own.

In the course of responding to your requests, MOH provided you with access to and copies of numerous records, but withheld others based on the attorney-client privilege.

You filed a complaint regarding your requests with the Sunshine Ordinance Task Force, which issued an Order of Determination on November 27, 2007. In that Order, the Task Force found MOH in violation of the Sunshine Ordinance "for failure to respond in a timely manner," ordered MOH to "produce to the Task Force and the complainant the correspondence from the City Attorney's Office specifying which documents MOH was advised to withhold from release on the basis of the attorney-client privilege," and instructed MOH "to double check to ensure that the withholding was as narrow as possible and whether redacted documents can be provided in certain circumstances."

In your petition to the Supervisor of Records, sent by email on December 18, 2007, you ask that the Supervisor of Records examine the legitimacy of MOH's withholding of records based on the attorney-client privilege. Referring to that portion of the Sunshine Ordinance Task Force Order relating to the correspondence from the City Attorney's Office specifying which documents MOH was advised to withhold, you ask that we assist you in obtaining the letter.

In further email correspondence with you on January 2, 2008, you provided this office with a copy of a letter dated December 21, 2007 to you from the Deputy Director of MOH, Douglas Shoemaker, in which he addresses some missing information in MOH's files relating to your property. Because the City Attorney's office also has a file relating to your property, MOH had asked this office to provide a duplicate set of its file to MOH. As a result, MOH was providing you with additional correspondence. Deputy Director Shoemaker also stated, however, that MOH was not providing documents that are confidential attorney-client communications.

CITY HALL • 1 DR. CARLTON B • SAN FRANCISCO, CALIFORNIA 94102
RECEPTION: (415) 554-4700 FACSIMILE: (415) 554-4747

n:\govern\pjesson\supervisorofrecords\carroll.doc

Letter to Laura Carroll
Page 2
January 7, 2008

You raise three issues regarding Deputy Director Shoemaker's December 21, 2007 letter. First, you did not receive the documents that the letter said were being provided. I understand that you have now received those documents. Second, you ask that we examine the documents that the Deputy Director withheld to determine the legitimacy of the asserted attorney-client privilege. You note, in particular, that you are not involved in litigation of any kind. We have reviewed these withheld documents and this response includes our determination with respect to them. Third, you state that it would be helpful to know why MOH did not provide these documents to you until now.

We note one final issue regarding the records that we have reviewed. Ms. Ruby Harris has informed us that on November 28, 2007, you came to MOH's office to review records that you had requested. Ms. Harris noted that among those records there were five boxes of files relating to "released" units. "Released" units are units released from the below market restrictions of the condominium conversion program. MOH had previously provided you with samples of records relating to released units. When you came to MOH's office on November 28, you informed Ms. Harris that you did not then have time to review the five boxes of files with information on released units. We understand that you have not yet returned for that review. This response does not address records relating to released units from those boxes that MOH would have withheld from your review based on the attorney-client privilege. If you wish to review these additional records on released units in the future, please contact Deputy Director Shoemaker to make arrangements to do so.

We now address the issues raised in your petition.

Withholding of Documents Based on the Attorney-Client Privilege

In order to make a determination on the issues raised in this matter, we asked MOH to provide us with copies of the withheld records, including those that Deputy Director Shoemaker refers to in his December 21, 2007 letter. Based on our review of these records, we have determined that MOH properly withheld the vast majority of documents based on the attorney-client privilege. We did determine, however, that the following documents contain both confidential and non-confidential communications and that the confidential portions are reasonably segregable from the non-confidential portions. Therefore, redacted versions of these documents should be disclosed.

Email (5 pages) Regarding Goldmine Hill Condo Moderate Income Restriction Issue

This document contains several communications. Some are confidential attorney-client communications and some are not. MOH will redact the portions that are confidential attorney-client communications and disclose the remainder.

Email (5 pages) Regarding Condo Conversion Denial Letter

This documents contains several communications. Most are confidential attorney-client communications, but not all. MOH will disclose the portions that are not confidential attorney-client communications and disclose the remainder.

Memorandum (4 pages) from Jeanne Lu to Mathew O. Franklin dated December 22, 2005.

Most of the communications in this document are confidential attorney-client communications. MOH will disclose the portions that are not confidential attorney-client communications and redact the remainder.

Letter to Laura Carroll
Page 3
January 7, 2008

As noted above, MOH properly withheld the vast majority of records in response to your public records requests under the attorney-client privilege. Neither the Public Records Act nor the Sunshine Ordinance requires an agency to provide records protected by the attorney-client privilege. See California Government Code Sections 6254(k) (public agency may withhold "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") and 6276.04 (among the records which may be withheld under Section 6254(k) are confidential attorney-client communications); California Evidence Code Section 954 (protecting from disclosure confidential communications between attorneys and their clients); and S.F. Admin. Code §67.21(k) (release of public records shall be governed by the California Public Records Act in particulars not addressed by the Sunshine Ordinance and in accordance with the enhanced disclosure requirements provided by the Sunshine Ordinance).

You note that you are not involved in litigation regarding the matters for which you request records from MOH. The attorney-client privilege applies to confidential communications between attorneys and their clients whether or not the communication involves a litigated matter.

Additional Correspondence from the City Attorney's Office

As noted above, you and the Sunshine Ordinance Task Force have expressed concern that there is a letter from the City Attorney's Office to MOH regarding redactions, presumably those made under the attorney-client privilege. In your petition, you state that you understand that such a letter is required when records are redacted. Such a letter is not required. In fact, this office typically does not send such letters, although it is not unusual for deputies to confer directly with City departments in the course of their responding to public records requests in order to help them determine whether the attorney-client privilege or other privileges or exceptions apply. In this case, there is no letter or other document from the City Attorney's office relating to MOH's withholding of records in response to your request based on the attorney-client privilege.

Why MOH Documents Were Not Made Available Earlier

As described above, Deputy Director Shoemaker sent you a letter dated December 21, 2007, informing you that he was providing you with additional correspondence relating to your property. You stated in your message regarding these records that it would be helpful to know why they were not made available until now. We do not address this issue because of the limited role of the Supervisor of Records. When acting as Supervisor of Records, this office's role is to determine whether "the record requested, or any part of the record requested, is public." S.F. Admin. Code §67.21(d). Accordingly, we do not consider or decide this issue.

Final Remarks

We have informed Deputy Director Shoemaker of our determination. In light of that advice, he has agreed to provide you with a copy of the documents described above that we have determined contain both confidential and non-confidential communications. His agency will redact the protected communications from the copies that he provides to you. Please call Deputy Director Shoemaker at 701-5509 to make the arrangements to obtain these documents.

If you have any questions regarding this matter, please feel free to call.

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

Letter to Laura Carroll
Page 4
January 7, 2008

Very truly yours,

DENNIS J. HERRERA
City Attorney

Paula Jesson
Deputy City Attorney

cc: Douglas Shoemaker
Deputy Director, MOH



"Laura Carroll"
 <lcarroll88@msn.com>
 01/15/2008 10:23 AM

To "SOTF" <sotf@sfgov.org>
 cc
 bcc
 Subject Fw: support doc for #07075

Please add this doc to the support docs for the taks froce to review for the next CAC hearing on Feb 13.

I called today and got the date for the hearing from another person in your office. Please let me know the deadline for doc submission for this hearing. Thanks~Laura

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

From: Laura Carroll
To: Douglas Shoemaker
Sent: Tuesday, January 15, 2008 10:16 AM
Subject: documents outstanding

□

Hi Doug,

Here is the list of outstanding records, paper or electronic that you have to date--

1. In accordance with Sunshine Ordinance Task Force's Order of Determination (to produce to SOTF and me a doc specifying which documents MOH was advised to withhold from release on the basis of attorney-client privilege), and section 67.21c of the Sunshine Ordinance (from the Ordinance: "whether or not the contents of <those> records are exempt from disclosure 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"), please provide a statement, list or log with this information regarding all current MOH records being held from disclosure. As part of this, please include this type of information on current privileged records in these areas:

- released units
- documents pertaining to recommendations to the City Attorney for changes to MOH's Condo Conversion program policies and procedures

2. Any document that lists or tracks properties by first purchase sale, or speaks to this in any way.

3. BMR Procedures manual. Through document review, a communication from Myrna to Ruby has been identified that speaks to the BMR procedures manual. A copy of the email is attached. The email also speaks to the the manual's capital improvements policy and legislative changes that are in the manual; want to be sure I receive documents to this effect as well. Please provide a full copy of this manual, (not excerpts public dissemination purposes)-electronic if possible.

4. Any document pertaining to BMR funding requirements, and tracking, including but not limited to quarterly status reports and/or logs to the BOS in accordance with code section 1343 (8)

5. Most up to date master list of all released, active and inactive units

6. Any any other document(s) in addition to what we have been calling the master list that tracks or monitors BMR units, including but not limited to:

- 1) June of 2006 email Ruby speaks of getting "rough activity numbers" from Sonia Delgado and Jeanne Lu for 10 categories/programs. Please provide the documents Ruby is referring to,
- 2) Restricted family unit database--and/or docs pertaining to tracking of single family units,

- 3) Condo conversion tracking sheets,
- 4) Documents that pertain to the four properties that were released by "Maggie" in 1999 (as reported by Mark Won),
- 5) The separate log of units sold/released since 1992; if there is a log of any kind for unit sale/release from before this time, I would like this as well.

7. The SF Monitoring Log

I would like to receive documents electronically as much as possible - much appreciated.

At our meeting on the 22nd, I would also like to briefly discuss:

- The process required to go through with the BOS for proposed changes in code, and p/p's
- Term limit docs and contacts. I will come prepared to show you what we have found re documents that speak to deed restriction term limits, share with you what I have learned from some digging I have been doing with planning dept., including old timers who are still there, and folks that have since retired and who have recollection of deed restriction term limits at the time of our purchase.
- Lastly, I hope we can discuss any possibility for a win-win solution to our issue.

Please email or call me if you have questions about these docs outstanding.

Thanks, and I look forward to our meeting next week.

Laura



MOH_Leg_Changes&ProcManualRef.pdf



Ruby
Harris/OCDHH/MAYOR/SFG
OV
07/26/2007 11:18 AM

To: Myrna Melgar/OCDHH/MAYOR/SFGOV@SFGOV
cc
bcc
Subject: Capital Improvements Policy (for now)

Hi Myrna,

I am getting a lot of calls about where we have (in writing) our capital improvements policy. I would like to post this on the website under the CCP heading. I have revised it to be our current policy (without the legislative changes) so it does not have all of the detail that is in the BMR procedures manual. Let me know what you think.

Thanks!
Ruby



MOH Capital Improvements Policy CCP - Rev 7.26.07.doc
Ruby G. Harris
Project Manager
Single Family Housing Programs
SF Mayor's Office of Housing
1 South Van Ness, 5th Floor
San Francisco, CA 94103
Phone: (415)701-5517
Fax: (415)701-5501



"Laura Carroll"
<lcarroll88@msn.com>

01/15/2008 05:26 PM

To "SOTF" <sotf@sfgov.org>

cc

bcc

Subject Fw: #07075 laura Carroll / MOH

Frank,

Here is another support doc to add to the batch for the Feb 13 CAC hearing.

Thanks, Laura

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

From: Laura Carroll

To: Paula Jesson

Sent: Tuesday, January 15, 2008 5:25 PM

Subject: Re: Follow up on the response to petition to Sup of Records

Dear Ms. Jesson,

Please find attached a follow up letter from the response to my petition that was sent to me on January 7th. Hard copy to follow.

Sincerely,



Laura Carroll | City Atty | let follow up.doc

Michael Marx and Laura Carroll
256 Presidio Avenue #6, San Francisco CA 94115
503 332 5213 cell, lc Carroll88@msn.com email

January 15, 2008

Ms. Paula Jesson, Deputy City Attorney
Office of the City Attorney
City Hall, 1 Dr. Carlton B., Room 234
San Francisco, CA 94102

RE: Follow up on January 7th response to Petition to Supervisor of Records:
Request for City Attorney Review of Mayor's Office of Housing Privileged Documents/Files

Dear Ms. Jesson,

Thank you for your response to my petition to review whether the Mayor's Office of Housing (MOH) has properly withheld records based on attorney-client privilege. After reviewing this letter, we have a few outstanding questions and requests.

First, however, not all background information in the letter is accurate. The second paragraph of the letter states that the public records requests we made to MOH in 2007 is "the subject of your petition" with your office. While the public records we requested in January and re-requested in October 2007 is the subject of our petition, the January 7th response speaks only to one area of our records request, namely those related to our property. Our records requests do not "generally relate to local law" adopted as part of the City's Condo Conversion Program; our requests involve more than what is formally in the law related to this program.

Specifically, we asked your office to review all privileged documents in the areas of our records requests, which include:

- Current and historical policy and procedure documents from program inception related to Below Market Rate (BMR) units.
- Documents pertaining to any BMR that has been granted buyouts, in lieu payments or any other agreement that released them from the moderate income housing stock, released resale restrictions, or allowed owners to sell without below market rate restrictions.
- Documents pertaining to any BMRs that have been sold in violation of resale restrictions.
- Documents pertaining to current proposed changes to codes, and MOH's Condo Conversion program policies and procedures.
- Documents pertaining to changes in capital improvement policies from program inception to date, and documents pertaining to MOH's authority to make such changes.
- Documents pertaining to changes in resale policies including first right of refusal from program inception to date, and MOH's authority to make such changes.
- Documents pertaining to changes in deed restriction policies from program inception to date.
- Documents pertaining to any and all deed restriction term limits on BMRs since program inception to date.

Continued...

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The first paragraph on page three of the letter states that MOH properly withheld the vast majority of records in response to our public records requests. It is clear records relating to our property were reviewed from proper withholding. However, it is unclear whether all of the areas of records requests above have been reviewed. If all of the areas of records requests have been reviewed, please specify this clearly in writing. If all privileged records in all areas of request have not been reviewed, we request that this review be conducted.

My apologies if our request for your office to review all privileged documents in the areas of our requests was not completely clear in my first letter to your office. If it was not, I hope it is now. If you have any questions, please contact me.

The second paragraph on page two of your letter states that you were told that Ruby Harris of MOH claims that I indicated I did not have time to review five boxes of released unit files when I went to their office on November 28th 2007. This claim is absolutely not true. That day Ms. Harris gave me several documents related to my property to review – that is all; she made no mention of these boxes or files.

Even if she had made mention of these boxes or files, I would have reminded her that I had already looked at these files earlier that year. In May 2007, I looked at hundreds of released unit files in their office. I found numerous files with nothing in it except one page stating Attorney-Client Privilege and in part this led to my Sunshine Ordinance complaint to question the withholding of files in their entirety.

Thus, I make this request again, ask that this part of my original request be honored, and that all records related to all released units that are attorney client privileged be reviewed for proper withholding.

In page three in the third paragraph of the letter, regarding City Attorney correspondence regarding redactions, the letter indicates such letter is not required. I request that the Sunshine Ordinance Task Force (SOTF) be made aware of this, so they do not make requests of parties involved in complaints that they are not required to produce.

I also request that while such type of correspondence may not be required of your office, my understanding is that MOH is required to produce information on withheld documents in accordance with Sunshine Ordinance section 67.21c: “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.” I have asked MOH twice for this response in relation to withheld released unit records and proposed changes to policy and procedure documents, and have not received a response to date. If it is within the scope of the duty of Supervisor of Records, I ask for your assistance in getting MOH to comply with this section of the Sunshine Ordinance.

The letter indicates it is not unusual for deputies to confer directly with City Departments in the course of responding to records requests in order to help them determine whether attorney client privilege or other privileges or exceptions apply. I understand that the Sunshine Ordinance stipulates that conferring with the City Attorney regarding advise for response to the Sunshine is not privileged. I request that all records, paper or electronic, that involve your office communicating with anyone at MOH regarding whether attorney client privilege or other privileges apply to our Sunshine requests and involve advise on the Sunshine Ordinance be reviewed for proper withholding.

Continued...

Lastly, I requested a neutral party in your office review all MOH privileged documents to ensure withholding of public records has been as narrow as possible, and that the neutral party assigned to this not be the attorney or any staff that MOH has worked with regarding proposed MOH policy and procedure changes. Please confirm that this neutral assignment did indeed occur. For my records, if you can provide me with the name of the reviewer, I would like this information as well.

Thank you very much for your assistance with these matters.

Sincerely,

Laura Carroll

Cc: Frank Darby (re: Complaint #07075, electronic copy), Douglas Shoemaker (electronic copy)