

Date: July 12, 2011

Item No. 4

File No. 11023

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

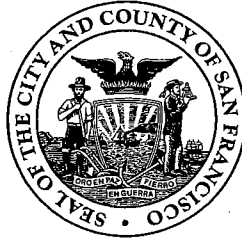
Date: July 8, 2011

***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
June 18, 2011

DATE THE DECISION ISSUED
May 18, 2011

WILLIAM CLARK V ARTS COMMISSION (CASE NO. 11023)

FACTS OF THE CASE

Complainant William Clark alleges that the San Francisco Arts Commission ("Commission" or "Respondent") failed to provide public records and public information responsive to his February 21, 2011, request.

COMPLAINT FILED

On March 16, 2011, Mr. Clark filed a complaint against the Arts Commission.

HEARING ON THE COMPLAINT

On May 18, 2011, Mr. Clark presented his case to the Task Force. The Respondent was not present and no one in the audience presented facts or evidence in support of the Respondent. Howard Lazar, Street Artists Program Director for the Commission, had informed the Task Force that he would not be able to attend the meeting.

Mr. Clark told the Task Force that he sent Luis Cancel, the Commission's Director of Cultural Affairs, and Mr. Lazar an email requesting public documents and oral information as to when and why Commission employee Evelyn Russell had her job code changed from 1426 Senior Clerk/Typist to 3541 Curator 1. He said he went to the Department of Human Resources and learned that the transfer involved a substantial pay increase for Ms. Russell. He said he has copies of emails that suggest Ms. Russell's qualifications were manipulated to qualify her as a curator but her work at the Commission is that of a Clerk/Typist. He said he received an email from Mr. Lazar on March 14, 2011, stating that several documents were available for pickup and the copying charge was \$3.40. He said Mr. Lazar stated in one of the documents that he was withholding some of the records under California Public Records Act Sections 6254(c) to protect personnel, medical or similar files and 6254(k) to protect records exempted or prohibited from disclosure, and Sunshine Ordinance Section 67.1(g) because of the right to privacy. None of the documents, he said, explained why Ms. Russell's job code was changed and he has not received a verbal explanation. He said Sunshine Ordinance Section 67.24(c)(6) requires the Arts Commission to provide him with the information he requested and by not following the law, Mr. Lazar had violated Section 67.21(b) of the Sunshine Ordinance. He added that street artists are entitled to the information because their fees are helping pay the Commission staff's salaries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judging from the evidence presented, the Task Force finds that it does not have any evidence to contradict the fact that Ms Russell received a promotion and its associated compensatory package, and the basis of that fact is subject to disclosure.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Sunshine Ordinance Sections 67.24(c)(6) by not disclosing the reason for any performance-based increase in compensation for a staff member, and 67.21(e) by not sending a knowledgeable representative to the meeting. The Mayor, the Board of Supervisors, members of the Arts Commission oversight committee on the Arts Commission are to be notified of the Arts Commission's continued disregard of the requirements of Section 67.21(e), which is to send a knowledgeable representative to Task Force hearings.

The Commission shall release the records requested within 5 business days of the issuance of this Order and shall appear before the Compliance and Amendments Committee on July 12, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on May 18, 2011, by the following vote: (Snyder/Wolfe)

Ayes: Snyder, Manneh, Washburn, Costa, Wolfe, Johnson, Knee

Absent: Cauthen

Excused: Knoebber, Chan, West



Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: William Clark, Complainant
Luis Cancel, Respondent
Howard Lazar, Respondent
Jerry Threet, Deputy City Attorney