

Date: September 13, 2011

Item No. 4

File No. 11042

## SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*

- Cynthia Carter v SFMTA
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Completed by: Chris Rustom

Date: Sept. 9, 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  
September 2, 2011**

**DATE THE DECISION ISSUED**  
August 23, 2011

*CYNTHIA CARTER v SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (CASE NO. 11042)*

**FACTS OF THE CASE**

Cynthia Carter alleges that the San Francisco Municipal Transportation Agency ("SFMTA") violated public records laws by failing to adequately respond to her May 12, 2011 request for public documents and her own employment records.

**COMPLAINT FILED**

On May 31, 2011, Ms. Carter filed a complaint with the Task Force against the SFMTA, alleging violation of Section 6254(c) of the California Public Records Act.

**HEARING ON THE COMPLAINT**

On August 23, 2011, Ms. Carter presented her case to the Task Force. Kathy Fowlis responded for the SFMTA.

Ms. Carter testified that she requested her entire file from SFMTA. She opened a sealed envelope before the Task Force, announcing she received it two weeks ago from the SFMTA but was now opening it for the first time. After going through its contents, she said some of the documents that she asked for were not provided. She said the missing documents included write-ups from supervisors, Central Control reports, and mechanical reports on defective buses. The write-ups from supervisors related to a sexual harassment claim filed by Ms. Carter against her supervisor, who then, she said, began to write up reports against her for use in discharging her from the SFMTA in retaliation for her filing the claim. She said she requested the documents from Caroline Celaya, who was not present at the Task Force hearing, and not from Ms. Fowlis. She said she would not have lost her civil service hearing if she had been provided with all the documents she requested to prove her case. She also said no one told her that she needed to go to different offices for certain documents. When she called Central Control or Street Operations, she was never directed to an appropriate contact person and was told only a lawyer could have access to some documents she was requesting:

Ms. Fowlis testified she is the custodian of records for the SFMTA's Human Resources division only, and that her division keeps the official personnel files for employees.- She said Ms. Carter had been provided with a copy of all the documents that were in her official personnel file. She said she does not know if other documents exist but if Ms. Carter had made a sexual harassment claim, that paperwork would be filed with the Equal Employment Opportunity office and not with Human Resources. She said paperwork on defective buses would be maintained by Central Control and those documents would not be in the personnel files. Ms. Fowlis several times indicated in response to Task Force questions that she did not have the necessary information and that Ms. Celaya would be the appropriate person to answer. She further indicated that Ms. Celaya had directed her to represent the SFMTA, probably because the description of the Task Force agenda item for this complaint referred to the failure of the SFMTA to provide Ms. Carter with her personnel file.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that although the SFMTA properly invoked several time extensions, they were nevertheless late in providing the documents to Ms. Carter, who should have received the documents on June 14th but did not receive them until June 23rd. The Task Force also found that although SFMTA officials knew where to direct Ms. Carter to find certain documents, they did not provide assistance to the requester, as required under the Sunshine Ordinance, to help her understand where the documents she sought were located.

### DECISION AND ORDER OF DETERMINATION


The Task Force finds Caroline Celaya in violation of Sections 67.21(b) for not providing the documents in a timely manner, 67.21(c) for failure to direct the complainant to the appropriate contacts for locating specific categories of documents, and 67.21(e) for failing to send a knowledgeable person to the Task Force hearing on the complaint.

The SFMTA is ordered to provide Ms. Carter with copies of the write ups she received from her supervisors, mechanical reports on defective busses, and the complete Central Control reports relative to her case within 5 business days of the issuance of this Order of Determination and is instructed to appear at a hearing on compliance with this Order before the Compliance and Amendments Committee on Tuesday, September 13, 2011 at 4 p.m. in Room 406 at City Hall.

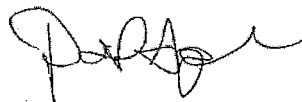
This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011, by the following vote: (Johnson/Knee)

Ayes: Snyder, Knee, Washburn, Costa, West, Johnson

Excused: Cauthen, Manneh, Knoebber, Wolfe, Chan



Hope Johnson, Chair  
Sunshine Ordinance Task Force



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

c: Cynthia Carter, Complainant  
Caroline Celaya, Respondent  
Kathy Fowles, Respondent  
Jerry Threet, Deputy City Attorney

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