

Date: Nov. 10, 2009

Item No. 3  
File No. 09039

## SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*

- O'Flynn v Mayor's Office on Housing
- 
- 
- 
- 
- 
- 
- 
- 
- 
- 

Completed by: Chris Rustom

Date: Nov. 5, 2009

**\*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**  
October 6, 2009

**DATE THE DECISION ISSUED**  
September 22, 2009

*RITA O'FLYNN v. MAYOR'S OFFICE OF HOUSING (09039)*

**FACTS OF THE CASE**

Complainant Rita O'Flynn has been communicating with and submitting record requests to the Mayor's Office of Housing (MOH) regarding, among other issues, a federal Housing and Urban Development (HUD) Department Lead Abatement Grant for lead abatement at a property owned by Ms. O'Flynn and administered by MOH. In March 2008, Ms. O'Flynn requested the opportunity to review the entire HUD Lead Abatement files with respect to her property at the MOH. After she reviewed the files, she requested that they be copied in their entirety. Upon receiving the copies, she realized that the provided records did not include emails regarding 1672/1674 Great Highway that she had reviewed in person, including an email from a tenant at Ms. O'Flynn's property to the MOH. Ms. O'Flynn then submitted a specific request for all email records regarding the lead abatement grant and her property, and she was told that the email records had been deleted since MOH keeps electronic records for only two years. Ms. O'Flynn also alleged that on September 11, 2009, MOH produced a February 2007 email between two employees of the MOH (Mr. Michael Palmer and Ms. Myrna Melgar-Iton) regarding 1672/1674 Great Highway that Ms. O'Flynn claimed was not produced in response to her original request, and should have been produced from Ms. Melgar-Iton's emails at MOH had those emails not been deleted. Mr. Oliver Hack of the MOH indicated that the Palmer/Melgar-Iton email was found as a result of a subsequent search of Mr. Palmer's email and he produced it because he wasn't sure if Ms. O'Flynn had already received it.

**COMPLAINT FILED**

On July 20, 2009, Complainant Rita O'Flynn filed a complaint against MOH for its deletion of the email records while the records were the subject of a Sunshine Ordinance Request for Records.

**HEARING ON THE COMPLAINT**

On August 25, 2009, complainant Rita O'Flynn appeared before the Sunshine Ordinance Task Force and Oliver Hack of the Mayor's Office of Housing appeared for the agency. Ms. O'Flynn presented her case that the MOH had failed to produce copies of responsive emails that she had reviewed and requested copies, and then had impermissibly deleted the original emails. Mr. Hack responded that there was no evidence that any responsive emails had in fact been deleted and not produced to Ms. O'Flynn. The Task Force found that, on the record before it, there was insufficient evidence indicating that the MOH had, in fact,

**ORDER OF DETERMINATION**

failed to produce copies of the emails and then deleted the originals. In light of the lack of evidence, the Task Force continued the matter for a month to allow Ms. O'Flynn to provide evidence to the Task Force substantiating her position.

On September 22, 2009, Ms. O'Flynn and Mr. Hack appeared before the Task Force again. Ms. O'Flynn's amended submission to the Task Force included specific allegations identifying emails within the MOH that were responsive to her request and should have been produced originally, but were not, including the email between Ms. Melgar-Iton and Ms. O'Flynn's tenant and the email between Mr. Palmer and Ms. Melgar-Iton about Ms. O'Flynn's property. Mr. Hack from the MOH did not respond or address Ms. O'Flynn's specific evidence, but reasserted that the MOH had produced all responsive emails from Ms. Melgar-Iton and other members of the MOH staff and that any deleted emails were properly deleted after two years in accordance with the MOH records retention schedule. Mr. Hack also noted that he produced the February 2007 email between Ms. Melgar-Iton and Mr. Palmer from Mr. Palmer's email as a result from a subsequent search for responsive emails regarding her property.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Task Force found that Ms. O'Flynn had sufficient evidence to support the claim that responsive emails had not been produced and/or were improperly deleted by the MOH and that the MOH did not adequately rebut Ms. O'Flynn's evidence, including explaining why the February 2007 email was found in Mr. Palmer's active email but not Ms. Melgar-Iton's active email. The Task Force also noted that according to the Mayor's Office's record retention policy all correspondence regarding grants and contracts administered by the Mayor's Office should be kept for four years at a minimum. While the lead abatement work at 1672/74 Great Highway may have been completed in 2005, the O'Flynn's were still obligated to comply with various grant requirements, as shown by the February 2007 draft letter from the MOH, records regarding that property and the grant, should not have been deleted in 2009 under the applicable records retention policy. ...

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the Mayor's Office of Housing violated Sunshine Ordinance Sections 67.21 for failure to produce requested records and 67.29-7(a) for failure to maintain records as required by the Administrative Code and Mayor's Office's retention policy. The MOH is directed to ask the Department of Technology to restore Ms. Melgar-Iton's emails that fall within the time frames Ms. O'Flynn requested during her original request. This Order is limited to Ms. Melgar-Iton's emails, as the evidence provided indicated that Ms. Melgar-Iton's emails were not produced and subsequently deleted (as opposed to other members of the MOH as to whom no showing had been made that emails have been improperly deleted). The cost to restore and review Ms. Melgar-Iton's records for responsive emails is to be borne by the MOH. The agency shall appear before the Compliance and Amendments Committee on October 13, 2009, to discuss compliance.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on September 22, 2009, by the following vote: (Craven-Green / Goldman)

**ORDER OF DETERMINATION**

Ayes: Craven-Green, Cauthen, Knoebber, Chu, Chan, Goldman, Williams, Knee  
Excused: Washburn, Johnson



Richard A. Knee, Chair  
Sunshine Ordinance Task Force

- c: Jerry Threet, Deputy City Attorney
- Rita O'Flynn, complainant,
- Oliver Hack, respondent



Rita August O'Flynn  
<rita\_august@msn.com>  
11/04/2009 08:37 AM

To <rak0408@earthlink.net>, <scau1321@aol.com>, <doylegenie@gmail.com>, <kristin@chu.com>, <soft@sfgov.org>, <rbhauptman@aol.com>, cc Mark O'Flynn <markoflynn@msn.com>, <kimocrossman@gmail.com>

bcc

Subject FYI: O'Flynn vs MOH FW: Sunshine Ordinance Request for Disclosure-Documentation of Record Restoration

The e-mail below with the accompanying attachment is all that has been provided to me to date from the Mayor's Office of Housing in response to a request for records to document their efforts to comply with SOFT's most recent Order of Determination.

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

> Subject: RE: Sunshine Ordinance Request for Disclosure-Documentation of Record Restoration  
> To: rita\_august@msn.com  
> From: Oliver.Hack@sfgov.org  
> Date: Tue, 3 Nov 2009 14:57:15 -0800  
>  
>  
> Ms. O'Flynn:  
>  
> My apologies for the delay.  
>  
> All writings, records, and/or documentation from September 22, 2009 to the present of any request to the Department of Information Technology (DIT) requesting DIT restore e-mails from Myrna Melgar-Iton's email account.  
> We have no records responsive to this request.  
>  
> Any writings, records, and/or documentation which show the date or dates that Myrna Melgar-Iton's e-mails were restored by DIT.  
> We have no records responsive to this request.  
>  
> Any writings, records, or documentation which show the date or dates of the backups from which Myrna Melgar-Iton's e-mails were restored from.  
> See Attached.  
>  
>  
> (See attached file: mmelgar emails.pdf)  
>  
> Oliver Hack  
> Chief Operating Officer  
> Mayor's Office of Housing  
> 1 South Van Ness Avenue, 5th Floor  
> San Francisco, CA 94103  
> (415) 701-5512  
> oliver.hack@sfgov.org



Rita August O'Flynn  
<rita\_august@msn.com>  
11/03/2009 08:38 AM

To <rak0408@earthlink.net>, <scau1321@aol.com>, <doylegenie@gmail.com>, <kristin@chu.com>, <sotf@sfgov.org>, <rbhauptman@aol.com>, <markoflynn@msn.com>

cc

Subject FYI: O'Flynn/MOH's Potential Non-Compliance w/ an Order of Determination FW: Request for Immediate Disclosure

At the most recent Amendments and Compliance Committee Meeting, Mr. Shoemaker of the Mayor's Office of Housing (MOH) stated that MOH was making efforts towards providing the missing e-mail to me per SOFT's most recent Order of Determination, however, based on the e-mail below, DIT does not have any information to support that claim.

The same information from DIT (see original e-mail below) was requested independently from MOH, however 14 days have passed since my original request and MOH has not responded.

With Kind Regards,

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

---

Subject: Re: Request for Immediate Disclosure  
From: Ron.Vinson@sfgov.org  
To: rita\_august@msn.com  
CC: barry.fraser@sfgov.org; markoflynn@msn.com  
Date: Tue, 27 Oct 2009 11:39:09 -0700

Mrs. O'Flynn,

The Department of Technology has the following responses to your request below:

All writings, records and/or documentation of any request from the Mayor's Office of Housing (MOH) from September 22, 2009 to the present requesting that the Department of Information Technology (DIT) restore e-mails from Myrna Iton-Melgar's email account. The Department of Technology has no records responsive to this request.

Any writings, records, and/or documentation which show the date or dates that Myrna Melgar-Iton's e-mails were restored by DIT. The Department of Technology has no records responsive to this request.

Any writings, records, and/or documentation which show the date or dates of the backups from which Myrna Melgar-Iton's e-mail were restored from. The Department of Technology has no records responsive to this request.

Any and all records showing the dates which the e-mail accounts of the MOH which included Myrna Iton-Melgar's emails were backed up for the time period between December 1, 2004 to

present. The Department of Technology has attached one record responsive to this request.

Ron Vinson  
Director of Media  
Department of Technology  
(415) 581-4003

-----Rita August O'Flynn <rita\_august@msn.com> wrote: -----

To: <barry.fraser@sfgov.org>, <ron.vinson@sfgov.org>  
From: Rita August O'Flynn <rita\_august@msn.com>  
Date: 10/19/2009 11:10AM  
Cc: <markoflynn@msn.com>  
Subject: Request for Immediate Disclosure

All writings, records and/or documentation of any request from the Mayor's Office of Housing (MOH) from September 22, 2009 to the present requesting that the Department of Information Technology (DIT) restore e-mails from Myrna Iton-Melgar's email account.

Any writings, records, and/or documentation which show the date or dates that Myrna Melgar-Iton's e-mails were restored by DIT.

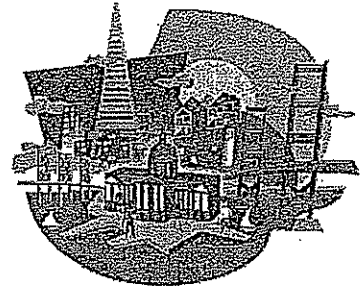
Any writings, records, and/or documentation which show the date or dates of the backups from which Myrna Melgar-Iton's e-mail were restored from.

Any and all records showing the dates which the e-mail accounts of the MOH which included Myrna Iton-Melgar's emails were backed up for the time period between December 1, 2004 to present.

Rita O'Flynn 415-386-8224 Cell: 415-260-7608



Email.Backup.SLA.pdf



***San Francisco***

***Department of Telecommunications &  
Information Services***

***Service Level Agreement  
For Enterprise Messaging Services***

*Version 4.0*

*June 13, 2005*



## Contacting DTIS Help Desk

Method	Procedure
Telephone	DTIS Help Desk (415) 554-5700
E-Mail	If a Customer would like to e-mail a request or question, send to <a href="mailto:dtis.helpdesk@sfgov.org">dtis.helpdesk@sfgov.org</a>
Fax	Address faxes to the DTIS Help Desk, and fax to (415) 554-4730.

## Backup and Recovery

The following procedures are for Enterprise Servers residing in DTIS locations, and will be performed by DTIS staff. Backup, offsite tape rotation, and restore procedures for servers that reside at One Market Plaza, Department of Public Health, Department of Human Services, and City Hall, that will be performed primarily by DTIS Department staff, will be mutually agreed upon by the Department and DTIS, in an addendum to the SLA. IBM's Backup Recovery Media Services (BRMS) software is used to perform backups.

## User Data Backups

Data is backed-up to tapes, which are rotated to a secure offsite location. The IBM Domino system is still available during scheduled user data backups.

Frequency	Data Type	Day	Start Time	Retention
Daily (incremental, which is changed data only)	Mail databases (*.nsf), mail templates (*.ntf) and mailboxes (*.box)	Monday - Friday	11:00 PM	14 days
Weekly (full, which is all user data)	Mail databases (*.nsf), mail templates (*.ntf) and mailboxes (*.box)	Sunday	11:00 PM	63 days (13 weeks)

**System Backups**

System back-up tapes are rotated offsite. Routine system backups will not happen simultaneously at all sites to reduce downtime. System Backup restores are performed under the direction of the DTIS Messaging Operation staff.

NOTE: The IBM Domino system will not be available during system backup described below.

System	Frequency	Data	Day Performed	Start Time	Retention
Domino	Monthly	All Domino configuration objects and <u>user data</u>	Last Sunday of every month, except December.  Also done before and after: Installing new software or releases. Maintenance updates are applied, including quarterly maintenance release (QMR)	6:00 AM	90 days 12 months
IBM Operating System & Notes/Domino Software	Quarterly	All License Program Procedures and Operating system	Last Saturday of every quarter.  Also done after installation Also done after PTF (program temporary fix) has been applied	To Be Scheduled by Operations	365 days
Domino	Annually	All Domino configuration objects and <u>user data</u>	Last Sunday of the calendar year. Runs in place of the December Monthly	6:00 AM	5 years

The Full annual backup represents a snapshot of the IBM Domino user and system data as of the last day of that calendar year.

## E-Mail System Recovery

User data backups occur once a day. Therefore, due to the timing of each backup, DTIS cannot restore e-mail messages that were deleted before the backups occur. DTIS will make every effort to restore user data and/or system data that has successfully been backed up to recoverable media.

## Infrastructure Maintenance

While DTIS would like to provide 24 x 7 x 365 access to E-Mail, DTIS occasionally will need to take the E-Mail System off-line in order to:

1. Apply fixes to software problems on the Operating System or on Domino.
2. Upgrade the Operating System or upgrade Domino.
3. Replace hardware that has failed.
4. Install additional hardware (i.e., additional memory, processors, etc.)

DTIS will maintain system status on the City Intranet site at <http://intranet/messaging>. DTIS will use the following guidelines when scheduling maintenance and/or repairs that cause the E-Mail System to be unavailable:

1. Customers will receive 2 weeks notice on any planned outages. In the event of an emergency outage, DTIS will notify departmental administrators and post information on the Intranet site.
2. Hardware and software upgrade implementations (Operating System and Domino) will be scheduled over a weekend. DTIS will make every effort to keep the window as small as possible.
3. If at all possible, fixes, including hardware repairs, will be installed either on weekends or if necessary during the evening after 7 PM.
4. Fixes to Operating System software and Domino system software (called "Hotfixes") that resolve problem(s) impacting Enterprise E-Mail will be installed as soon as possible. Depending upon the severity of the problem, the software fix may be applied during the prime time (M-F 8 AM - 5 PM). Operating system upgrades and Domino Server upgrades generally will not be installed until the upgrade has been available for a minimum of 4 months. This is to insure that any bugs in the new upgrade are resolved before the City attempts its upgrade. All upgrades will be applied in accordance with DTIS' internal Change Control procedures.
5. Major Domino Server updates will be planned in advance and will be discussed with customers. DTIS will never install a "o" release on a production server.
6. Not all operating system upgrades may be installed. DTIS will evaluate the necessity of each upgrade, taking into consideration the following:
  - To enable Lotus Notes/Domino to function properly
  - To maintain continuous ongoing IBM technical support
  - To maintain capability with Lotus Notes/Domino
7. Not all Domino Server Upgrades may be installed. DTIS will work with departments to evaluate whether and when to implement upgrades, based upon various criteria including (but not limited to):
  - ✓ To resolve an outstanding issue/shortcoming or provide a feature/function deemed necessary by the City and County of San Francisco
  - ✓ To maintain continuous ongoing IBM/Lotus support
  - ✓ To provide new features deemed desirable by most departments

