

Date: January 22, 2008

Item No. 10

File No. 07097

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Steve Lawrence v. PUC**
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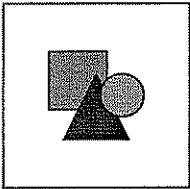
Completed by: Chris Rustom

Date: January 16, 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.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

January 14, 2008

*STEVEN LAWRENCE V. THE SAN FRANCISCO PUBLIC UTILITIES
COMMISSION (07097)*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On November 1, 2007, Steve Lawrence made public records requests by e-mail. Of the records requested, two of them have not been provided. They are: (1) the report on effects of water supply reduction authored by Millicent Borgert and (2) Parson's contracting matrix. On November 21, 2007, Steve Lawrence notified Diane Parker, custodian of records and Mr. Winnecker, head of PUC Communications of the non-response to the two items. As of November 30, 2007, Steve Lawrence states that he has not received a response.

In addition, Steve Lawrence stated that the current PUC procedure requires that he only go through Diane Parker, custodian of records for PUC and that the records for review are only available when a conference room is also available. Steve Lawrence believes that the current procedure delays access to the records and that his requests are not complied with within 10 days of the request date.

COMPLAINANT FILES COMPLAINT

On November 30, 2007, Steve Lawrence filed a complaint against the PUC alleging violations of Section 67.21 and its subdivisions of the Sunshine Ordinance

PUC RESPONDS

On December 21, 2007, Diane Parker of the PUC e-mailed the Task Force Office and conceded jurisdiction in the case to the Task Force. She stated that the PUC will present its case should the case proceed to full hearing.

APPLICABLE STATUTORY SECTIONS:

Statutory Sections from chapter 67 of the San Francisco Administrative Code:

1. Section 67.21 addresses general requests for public documents.
2. Section 67.24 governs the public information that must be disclosed. .

Memorandum

3. Section 67.27 deals with justification for withholding.

The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

5. Section 6253 provides for the process of public records inspection.
6. Section 6255(a) provides for the process for justifying the non-disclosure of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

The parties agree to the following facts:

- Lawrence submitted public records requests to the PUC

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

Whether the response from PUC was reasonable.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

1. None

LEGAL ISSUES/ LEGAL DETERMINATIONS:

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, and/or Public Records Act were violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

Memorandum

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

THE TASK FORCE FINDS THAT THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

Memorandum**ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED**

Section 67.21 addresses general requests for public documents.

This section provides:

- (a) Every person having custody of any public record or public information, as defined herein, ... shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- (b) A custodian of a public record shall as soon as possible and within **ten days** (emphasis added) following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

Section 67.27 provides:

Any withholding of information shall be justified in writing, as follows:

- a.) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- b.) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act of elsewhere.
- c.) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- d.) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act

Memorandum

and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

Section 6253 provides for the process of public records inspection:

a.) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.

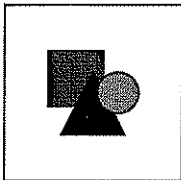
b.) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

c.) Each agency, upon a request for a copy of records, shall within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefore....

Section 6255(a) provides for the process for justifying the non-disclosure of records:

a.) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

b.) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

December 28, 2007

Sue Cauthen, Chair
Members of the Complaint Committee

Re: Steve Lawrence v. San Francisco Public Utilities Commission (07097)

Dear Chair Cauthen and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Steve Lawrence against the San Francisco Public Utilities Commission ("PUC").

BACKGROUND

On November 1, 2007, Steve Lawrence made public records requests by e-mail. Of the records requested, two of them have not been provided. They are: (1) the report on effects of water supply reduction authored by Millicent Borgert and (2) Parson's contracting matrix. On November 21, 2007, Steve Lawrence notified Diane Parker, custodian of records and Mr. Winnecker, head of PUC Communications of the non-response to the two items. As of November 30, 2007, Steve Lawrence states that he has not received a response. In addition, Steve Lawrence stated that the current PUC procedure requires that he only go through Diane Parker, custodian of records for PUC and that the records for review are only available when a conference room is also available. Steve Lawrence believes that the current procedure delays access to the records.

COMPLAINT

On November 30, 2007, Steve Lawrence filed a complaint against the PUC alleging violations of the Sunshine Ordinance and the Public Records Act.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. The allegations are covered under (67.21 and 67.25) of the Ordinance.

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by

Letter to the Complaint Committee
Page 2
December 28, 2007

Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents and Section 67.25 covers Immediate Disclosure Requests. CPRA Section 6253 generally covers Public Records Requests.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. Steve Lawrence filed a public records request for public records. The PUC responded to the request but and allegedly failed to respond on two items. On the face of the complaint, the Task Force has jurisdiction over the complaint. The Task Force will have to determine whether or not the PUC violated the Sunshine Ordinance and/or the Public Records Act.

DISCUSSION AND ANALYSIS

The California Public Records Act is located in the State Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code. Section 6253 provides for the process of obtaining public records and also has the ten-day rule. Section 6255 requires written justification for any withholding of public records.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code.

Section 67.21 addresses general requests for public documents and provides for a ten-day rule for responding to regular public records requests. Section 67.27 provides that any withholding of public records must be justified in writing.

In this case, Lawrence made a public records request on November 1, 2007 and received a response later in November. However, Lawrence alleges that he did not receive a response to two of the requested items and that more than ten days have elapsed from the date of his request. The Task Force has jurisdiction to hear this complaint and will have to determine if the PUC violated the Ordinance and/or the Public Records Act.



<complaints@sfgov.org>
11/30/2007 09:52 AM

To <soft@sfgov.org>
cc
bcc

Subject Sunshine Complaint

History: This message has been forwarded.

Submitted on: 11/30/2007 9:52:32 AM

Department: SFPUC

Contacted: Diane Parker

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.21(a), 67.21(d)

Description: Firstly, SFPUC requires that I request documents through Diane Parker, regardless of who is their custodian. Ms. Parker requires that an appointment be made to see the documents, when a certain conference room is available, and within ten days of her offering them. Most often they are offered only after "security review", a process that is usually lengthy, taking more than ten days. If Ms. Parker answers a request, it is often on the tenth day (and then security review commences). So the day of offer is usually a month after the request, and then one has ten days to make an appointment, conference room permitting, to come in for review. None of this is consistent with the Sunshine Ordinance.

Secondly, requests were made by email 11/1/07. Two requests received no response whatever: items 4 and 6, which are: 4. Report on effects of water supply reduction (said to be due early Fall--Millicent Bogert to CAC 4/06); and 6. Parson's contracting matrix. On Nov. 21 I notified Ms. Parker that I had received no response, asking for one, and, pursuant to agreement, I also notified Mr. Winnicker, who had promised help if needed in such circumstances in settlement of a previous Sunshine appeal; Mr. Winnicker is head of SFPUC Communications. I have received no response from either Ms. Parker or Mr. Winnicker. SFPUC has failed to respond to a request within ten days.

By this complaint I ask: 1. for a ruling that SFPUC comply with the Sunshine Ordinance and make its documents pertinent to its \$4.3 billion Water System Improvement Program available to the public including me expeditiously and without the need for going through Ms. Parker and her appointment routine; 2. in no less than ten days, that SFPUC reply to requests, including items 4 and 6 of the request of 11/1/07; 3. that SFPUC be declared not in compliance with the Sunshine Ordinance in these two instances, and that all proper steps be taken for the official record to reflect the same; and 4. for such other and further relief as the Task Force deems just.

Hearing: Yes

Date: 11-30-07

Name: Steve Lawrence

Address: 55 Montalvo Ave

City: San Francisco

Zip: 94116

Phone: 415 665-9450

Email: splawrence@sbcglobal.net

Anonymous:

User Data

Client IP (REMOTE_ADDR) : 71.146.24.19
Client IP via Proxy (HTTP_X_FORWARDED_FOR) :



"Parker, Diane"
<DParker@sfgov.org>

12/21/2007 03:31 PM

To "SOTF" <sotf@sfgov.org>

cc "Gautier, Suzanne" <SGautier@sfgov.org>, "Winnicker,
Tony" <TWinnicker@sfgov.org>

bcc

Subject RE: Special SOTF Hearing Reminder: January 8, 2008

History:  This message has been forwarded.

Frank,
The SFPUC does not dispute that the SOTF has jurisdiction over Complaint
#07097_Steve Lawrence v. PUC. Should a hearing be called, we will discuss the
merits of his complaint.

Diane Parker
Sunshine Request Coordinator
publicrecords@sfgov.org



SOTF/SOTF/SFGOV
01/02/2008 10:03 AM

To "Steve Lawrence" <splawrence@sbcglobal.net>
cc
bcc
Subject Re: PUC Response: #07097_Steve Lawrence v. Public Utilities Commission

Mr. Lawrence,

The answer to your question is yes. Task Force procedures requires attendance by both parties.

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307
"Steve Lawrence" <splawrence@sbcglobal.net>



"Steve Lawrence"
<splawrence@sbcglobal.net
>
12/21/2007 03:46 PM

To "SOTF" <sotf@sfgov.org>
cc
Subject Re: PUC Response: #07097_Steve Lawrence v. Public Utilities Commission

Given that jurisdiction is undisputed, is there need for me (claimant, or appellant) to attend the Jan. 8 hearing?

Steve Lawrence

----- Original Message -----
From: "SOTF" <sotf@sfgov.org>