

Date: Jan. 25, 2011

Item No. 8 & 9

File No. 10066

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Dorian Maxwell v SF Municipal Transportation Agency
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Completed by: Chris Rustom

Date: Jan. 21, 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.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

**MEMORANDUM
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: January 17, 2011
RE: *Dorian Maxwell v. Metropolitan Transportation Agency (10066)*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Dorian Maxwell ("Complainant") alleges that Metropolitan Transportation Agency ("MTA") has not adequately responded to her November 8, 2010 request for "all copies of side letters of agreement and addendum [sic] to the current memorandum of understanding between the SFMTA and the TWU local 250-A dated 2004-2011 for the 9163 Transit Operators" for the period January 1, 2004 to November 8, 2010.

COMPLAINANT FILES COMPLAINT:

On November 22, 2010, Complainant filed this complaint against MTA.

JURISDICTION:

MTA is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that on November 8, 2010, she requested from MTA "all copies of side letters of agreement and addendum [sic] to the current memorandum of understanding between the SFMTA and the TWU local 250-A dated 2004-2011 for the 9163 Transit Operators" for the period January 1, 2004 to November 8, 2010. She further alleges that she allowed the MTA 10 days to provide the information. She fails to allege what, if any, response she received to her request.

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Contested Facts: As of the date of this memorandum, I have not been provided with any response from MTA to the complaint, so it is unclear what, if any, allegations they contest.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Has MTA responded to the request in any way?
- If so, when did it respond?
- What was the nature of the response?
- Were responsive records withheld?
- If so, was a written justification for withholding provided in the response?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the MTA timely responded to the request?
- Did the MTA justify withholding in accordance with the requirements of the Ordinance?
- Are the MTA's justifications for withholding reasons allowed by the Ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

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TO: Sunshine Ordinance Task Force
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**CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE
ORDINANCE)**

**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS;
ADMINISTRATIVE APPEALS.**

(b) A custodian of a public record shall, as soon as possible and within ten days 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.

SEC. 67.25. IMMEDIACY OF RESPONSE.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

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SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

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 or 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 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.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)

SECTION 6253

(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 therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

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(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

SECTION 6254

(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 record 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 therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.



SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission SAN FRANCISCO Municipal Transportation Agency

Name of individual contacted at Department or Commission Rumi, Uno

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section 67.22, 67.23, 67.25(a)
(if known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

On November 8, 2010 I Requested all side letter and addendums to the 9163 Contract from ~~Jan~~ January 1, 2007 to Nov 8 2010. As an employee who is covered under effected MOV I should know what changes that had been made to the MOV. (See attached.)

- Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
- Do you also want a pre-hearing conference before the Complaint Committee? yes no

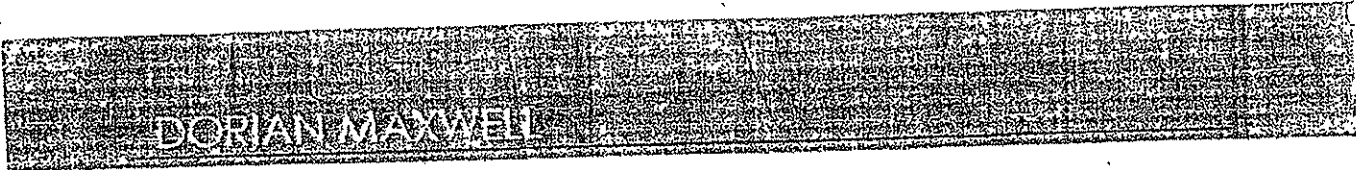
(Optional)
Name DORIAN MAXWELL Address [Redacted] Commer Court # [Redacted]

Telephone No. 415 [Redacted] - [Redacted] E-Mail Address [Redacted] @yahoo.com

Date 11/22/10 [Signature]
Signature

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).



Commer Court apt
San Francisco, Ca 94124
Phone #15
Email @yahoo.com

RECEIVED

SEP 17 2010

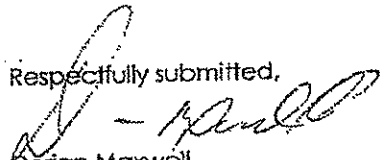
September 9, 2010
Labor Relation Department
San Francisco Municipal Transit Agency
1 South Van Ness Ave. 6th Floor
San Francisco, Ca 94103

SFMTA

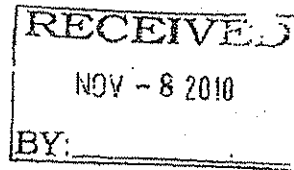
Dear Rumi uno,

I'm writing in request under the Freedom of Information Act. (aka Sunshine Ordinance) That the SFMTA furnish any and all copies side letters of agreement and addendum to the current memorandum of understanding dated 2004-2011. Please submit all side letters and addendums dated from January 1, 2004 to September 1, 2010. I'm requesting that the information requested be furnish within ten Business days upon receipt of this request. You can either send it by US Mail to the address listed above or send it electronically to the email address above.

Respectfully submitted,


Dorian Maxwell

November 8, 2010
San Francisco Municipal Transit Agency
Labor Relation Department
1 South Van Ness Avenue 7th Floor
San Francisco, Ca. 94103

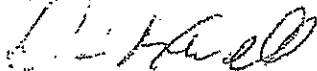


Dear Rumi Uno,

I'm writing a request under the Freedom of Information Act.(AKA The Sunshine Ordinance). That the SFMTA furnish any and all copies of side letters of agreement and addendum to the current memorandum of understanding between the SFMTA and the TWU local 250-A dated 2004-2011 for the 9163 Transit Operators. Please submit all side letters and addendums dated from January 1,2004 to November 8,2010.

I'm requesting that the information requested be furnish within ten days upon receipt of this request. You can either send them by U.S Mail to [redacted] Commer Court [redacted] San Francisco, Ca. 94124 or you send them by E-Mail to [redacted]@yahoo.com. You cooperation in addressing this matter would be greatly appreciated.

Respectfully Submitted


Dorian Maxwell