

Date: Jan. 26, 2010

Item No. 3
File No. 09075

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Bred Starr v City Attorney**
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Completed by: Chris Rustom

Date: Jan. 22, 2010

***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.

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DENNIS J. HERRERA
City Attorney

FRANK BRASS
Deputy City Attorney

DIRECT DIAL: (415) 554-3880
E-MAIL: frank.brass@sfgov.org

MEMORANDUM

December 31, 2009:

*BRED STARR VS. CITY ATTORNEY'S OFFICE & MUNICIPAL TRANSIT
AUTHORITY(09075)*

[Analysis supplemented by DCA Threat re privilege and waiver analysis]

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant, Bred Starr, alleges that her Sunshine request for documents from the City Attorney's Office (CAO) and the Municipal Transportation Authority (MTA) related to Mary Ellen O'Brien from Department of Parking and Traffic and Geraldine Rosen Parks in August 2009 was ignored. She also alleges that her telephone and in person requests were acknowledged then ignored, and was advised there will not be full disclosure.

COMPLAINANT FILES COMPLAINT:

On October 16, 2009, Bred Starr filed a Sunshine Ordinance Complaint against the CAO and the MTA for unspecified violations of the Sunshine Ordinance.

JURISDICTION

The CAO represents the City and County of San Francisco in all legal proceedings and acts as its general counsel. The CAO also investigates all claims against the City. The Sunshine Ordinance specifically addresses jurisdiction over the CAO in §67.21((i) and (j)), therefore the Task Force has jurisdiction.

The MTA, also known as the San Francisco Municipal Transportation Agency (SFMTA), was established by charter amendment in 1999 and is a department of the City and County of San Francisco. It oversees both the Municipal Railway (Muni) and the Department of Parking and Traffic. As such, the Task Force has jurisdiction.

APPLICABLE STATUTORY SECTION(S):

No specific statutory sections were cited by complainant.

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Privileged & Confidential**

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 RE: Bred Starr vs. City Attorney's Office & Municipal Transportation Authority

APPLICABLE CASE LAW:

See citations in analysis below.

ISSUES TO BE DETERMINED**Uncontested Facts:**

- On or about August, 2009, Bred Starr made requests for¹:
 - "...(T)he city attorney (s) who were responsible for investigations that were disclosed.
 - Was Geraldine Rosen Parks involved or not?
 - What are the name (sic) of the attorneys who did investigation and responsible for suggested actions concerning Mary Ellen O'Brien?
 - From what source did this information come from?
 - What is the name of the city attorney who took over Geraldine Rosen Parks when she changed positions?
 - What was the time frame that Parks was in the city attorney's office?
 - What are the names of the attorney (sic) who represented MTA presently. What is the name of the attorney who represented MTA/DPT at the time of the investigation?
 - What are the exact positions of Mary Ellen O'Brien from 1994 to present? (each year what was job title and what department did she work for?)
 - Include name of immediate supervisor in that order.
 - What role in job title did O'Brien have in reporting or advising to Mayor, Willie Brown, Gavin Newsom, Director (s) of Department of Parking and Traffic, director (sic) MTA, Chief of Police, captain of police station, community lesson officer?"
- On the back of her Sunshine Complaint, dated October 29, 2009 is a hand written note, excerpts from which follow:
 - "Received 3 sheets of paper from Jack Song on 10-28-09.
 - The City Attorney Office is withholding pertinent information some which is not in the three sheets of paper is already in the internet and the press.
 - Instead of providing more information the three sheets are 13 pages short.
 - By the illegal actions of Mary Ellen O'Brien she has continued to act in criminal manner causative damages will be determined.
 - ~~The City Attorney Office and MTA and Police Department and Mayor's Office~~
 - Please don't make a mockery by withholding documents that were made public to the press in the past.

¹ These are highlights taken from the 10/29/09 email from Ms. Starr. For full text, please see copy of email which should be in file.

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These documents pertain to employee who oversaw parking ticket division and found to dismiss tickets family & friends and had department follow cars and ticket them in spite.

- Attached to the complaint is: A copy of a newspaper article printed from www.sfgate.com entitled "Tempest hits S.F. parking department".

Contested Facts:

The CAO alleges in its letter of November 24, 2009 that it has provided to Ms. Starr all responsive, non-privileged documents. It further alleges that the failure to timely provide the full response to the request was due to staff shortages and the need for a DCA familiar with the matter to conduct a search of documents in storage while working on other ongoing assignments. On November 13, 2009, the CAO notified Ms. Starr that there were 3 documents responsive to her request. Two related to employment of Geraldine Rose-Parks and portions were redacted due to protect her right to privacy. The third document was a list of attorneys who advise MTA.

The 11/13/09 letter from the CAO also addressed Ms. Starr's complaint that some documents earlier provided to the press had not been included in the CAO response to her earlier request: "As we explained, the responsive documents . . . are exempt from disclosure under the attorney work product doctrine, or the attorney-client privilege."

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What further records exist which are responsive to Mr. Starr's request?
- What, if any, records were made available to the press, and specifically to Phillip Matier and Andrew Ross of the San Francisco Chronicle during their investigation to prepare to write the January 12, 2004 article included in this complaint?
- Who made the records available to the press and under what circumstances were they made available? Did they have authority to disclose the records?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did Complainant sufficiently and clearly articulate what documents, notes or other writings she wanted produced?
- If the CAO and/or MTA made certain documents available to the press concerning this case, did this waive any further assertion of attorney work product doctrine or attorney-client privilege?
- Are the CAO and/or MTA legally required under the Ordinance to answer the multiple questions posed by Mr. Starr in her follow up email dated October 29, 2009?

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- What efforts were made to assist Mr. Starr, as required by §67.21(b) and (c), identify the existence, form and nature of any records or information maintained by, available to, or in the custody of the custodian by the CAO or the MTA?

SUGGESTED ANALYSIS

1. Ask that Complainant articulate to the extent possible which specific documents, records or information she is seeking and to narrow her request to the extent it can assist in facilitating speedy compliance with her Sunshine request.
2. Determine if any additional public records exist which are responsive to Mr. Starr's request.
3. Determine if there is any valid basis asserted on behalf of respondent to withhold such information and/or documents.
4. Question the CAO and MTA as to all efforts they made to assist Mr. Starr pursuant to §67.21(b) and (c).

Claim of Privilege

The 11/13/09 letter from the CAO states "the responsive documents . . . are exempt from disclosure under the attorney work product doctrine, or the attorney-client privilege." Ms. Starr appears to claim that the previous disclosure of some or all of these documents to the press waived any such privilege. § 6726.04 of the Public Records Act specifically provides that attorney-client communications and attorney worked product are exempt from disclosure as public records. § 67.27 of the Sunshine Ordinance allows for "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, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority."

It therefore appears that the basis for withholding cited by the CAO is allowed under the public records laws. The further question, however, is whether under the facts the two privileges remain valid and may be asserted. The answer is unclear under the facts presented.

Waiver

Both attorney client and attorney work product privileges may be waived by those who hold them. See Evidence Code § 912; *Rittenhouse v. Superior Court* (1991) 235 Cal.App.3d 1584, 1588; *Wells Fargo Bank, N.A. v. Sup. Ct. (Boltwood)* (2000) 22 Cal.4th 201, 214. The attorney client privilege protects communication from an attorney to her client. Evid. C. § 954. With regard to the attorney client privilege, only the client may waive or authorize another to waive the privilege. *Rittenhouse*, 235 Cal.App.3d at 1588. The attorney work product doctrine protects from disclosure the work product of an attorney, regardless of whether it has been communicated to a client. See C.C.P. §2018.030; Ev. C. § 950 et seq. The only exception allowing disclosure of an attorney's mental impressions, opinions and conclusions in such work

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product is waiver. See *McKesson HBOC, Inc. v. Sup. Ct. (State of Oregon)* (2002) 115 Cal.App.4th 1229, 1238-1239. Thus, it is clear that both the attorney-client privilege and protection for attorney work product may be waived by the holder.

With regard to attorney-client privilege, the client is the holder with authority to waive its protections by intentionally disclosing significant portions of the communication to someone not within a confidential relationship with the client. When the client is an entity such as a municipal corporation which acts through public officials and employees, it is the entity itself which hold the privilege. *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370-371. The further question is whether a City employee disclosing privileged communication has the authority to disclose it on behalf of the municipal corporation. The question is whether receipt of the confidential communication was within the scope of the employee's responsibilities. *D.I. Chadbourne, Inc. v. Sup. Ct. (Smith)* (1964) 60 Ca.2d 723, 736-738. If not, a disclosure by the employee will not constitute a waiver and the privileged communication will remain confidential and protected from further disclosure.

With regard to attorney work product, the holder of the privilege is the attorney, or in this case the City Attorney's Office. *State Comp. Ins. Fund v. Sup. Ct. (People)* (2001) 91 Cal.App.4th 1080, 1091. Thus, only the City Attorney's Office could waive the confidential protection.

In order to more fully analyze this issue, further facts concerning the specific documents disclosed to the press, the public employees who disclosed such documents, and the ordinary responsibilities of those employees, would be necessary. It is possible that the provision of responsive documents to the press may have waived any privileges for these documents. However, it also is possible that such disclosures were not properly made by those with authority to disclose the documents and therefore the privileges still protect the documents from further disclosure.

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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ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

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

- (a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) 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 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.
- (c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.
- (d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.
- (e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as

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possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.



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 CITY ATTORNEY / MTA

Name of individual contacted at Department or Commission JACK SONG City Attorney
Off. U

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

Sunshine Ordinance Section _____
 (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.

ORIGINAL REQUEST 3/12/09 BY MARY MAGONIA REQUEST IN AUGUST
IGNORED. TELEPHONE AND IN PERSON REQUESTS ACKNOWLEDGED
AND IGNORED TIME FRAME VIOLATES SUNSHINE ORDINANCE
ADVISOR SUGGESTS THERE WILL NOT BE FULL DISCLOSURE

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)¹
 Name BRED STARR Address _____

Telephone No. 415- [REDACTED] E-Mail Address [REDACTED]

Date 10-16-09 B Starr @yahoo.com
 Signature

I request confidentiality of my personal information. yes no
B Starr

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).
 07/31/08

10-29-09

Received 3 sheets of paper from Jack Song

on 10-28-09.

The City attorney office is withholding pertinent information some which is not in the three sheets of paper is already in the internet and the press

Instead of providing more information

the three sheets are ¹³ pages short

By the illegal actions of Mary Ellen O'Brien she has continued to act

in criminal manner causitive damages

will be determined.

The City attorney office and MTA and Police department and mayor office

Please don't make a mockery by

withholding documents that were made public to the press in the past.

these documents pertain to employee who oversaw parking ticket division and found to dismiss tickets ~~Green Staff~~ family & friends and had department follow cars and ticket them in spite.

SFGate.com

Tempest hits S.F. parking dept. Top official accused of fixing tickets for herself and friends

Phillip Matier, Andrew Ross
Monday, January 12, 2004

The top ticket cop in San Francisco's Parking and Traffic Department has been put on leave from her \$102,000-a-year job after investigators found what appears to be a case of chronic ticket fixing.

An investigation by the city attorney's office found that Mary Ellen O'Brien, who oversees the city's parking ticket division, failed to list the reasons (as required) for more than 300 of the 1,189 tickets she dismissed in 2002.

The 300 in question included citations for at least three family members, as well as many of O'Brien's friends, the city attorney said in a confidential, 16-page investigative report.

Most damning of all was the report's finding that O'Brien dismissed a ticket on a city vehicle -- tagged outside her house -- that she apparently kept for her own use while she supposedly was out on a four-month medical leave.

"As to the dismissal, Ms. O'Brien stated that she had a city laptop at home with her during her leave of absence and could have dismissed the ticket from home," the report said. "She could not remember dismissing the citation or any reason for dismissing it."

O'Brien, after consulting with her attorney, acknowledged to investigators that she had dismissed citations for some family members and friends, but insisted that she hadn't done anything wrong and that she had been acting within her discretion, the report said.

However, the city attorney's office concluded that the lack of documentation and other factors created an "appearance that she had dismissed citations based on a personal relationship in violation of the Vehicle Code."

What's more, the report said she had "both solicited and accepted gifts" -- everything from Giants tickets to champagne -- from people whose tickets she had dismissed.

And what does O'Brien say now?

She insists she has been the victim of an orchestrated effort by disgruntled staffers to destroy her career.

"I've had a stellar, seven-year career in this city," she told us Friday, "and you're being fed this ... biased, inaccurate information." She declined to elaborate.



Bred Starr
<sanfranciscohome2@yahoo.com>

10/29/2009 03:44 PM

To jack.song@sfgov.org

cc

bcc SOTF/SOTF/SFGOV

Subject missing information

Dear Jack Song,

Please provide the city attorney (s) who were responsible for investigations that were disclosed.

Was Geraldine Rosen Parks involved or not?

What are the name of the attorneys who did investigation and responsible for suggested actions concerning Mary Ellen O'Brien?

From what source did this information come from?

What is the name of the city attorney who took over for Geraldine Rosen Parks when she changed positions? His last name was Sullivan.

What was the time frame that Parks was in the city attorney office?

What are the names of the attorney who dealt with these investigations?

What is the name of the attorney who represented MTA presently. What is the name of the attorney who represented MTA/DPT at the time of the investigation?

What were the exact positions of Mary Ellen O'Brien from 1994 to present? (each year what was job title and what department did she work for?)

Include name of immediate supervisor in that order.

This disclosure lacks information that should be public. We will be sending more question and information that will

1) assist in further investigation due to ethical actions 2) assist in further investigations due to criminal actions.

What role in job title did O'Brien have in reporting or advising to Mayor, Willie Brown, Gavin Newsom, Director (s) of Department of Parking and Traffic, director MTA, Chief of Police, captain of police station, community lesson officer?

These questions are for public disclosure.

We know that this is not true.

Thank you for your correspondance. You have confirmed that the city attorney office may also is involved in this.

The information that I have requested is not of personal nature and not protected..

The pages are much less than what was disclosed to the press a few years ago. We assure you that this alledged disclosure is hiding much much more. Your cooperation and assistance will be to the city attorney office benefit, we assure you.

Bred Starr

cordially,
Bred Starr

Dear Ms. Bred Starr:

The records are being reviewed by an attorney responsible MTA matters and the records will be provided as soon as she can finish gathering them.

JACK SONG
Public Information Officer



Bred Starr
[REDACTED]@yahoo.
com>

11/03/2009 10:16 PM

To SUNSHINE ORDINANCE <sotf@sfgov.org>
cc clerk board of supervisors <rick.caldeira@sfgov.org>,
ethics.commission@sfgov.org
bcc

Subject Fw: SUNSHINE ORDINANCE: missing information-continued
inquiry

TO WHO IT CONCERNS:

The city attorney, the Municipal Transportation Authority, the department of parking and traffic, the police department, the mayors office are withholding information/documentation that is NOT EXEMPT UNDER THE SUNSHINE ORDINANCE. It is felt that this situation is about ready to have far reaching consequences far above a "slap on the hand" of a paid civil servant.

Redact personal information as needed. But provide the documents (however inconclusive they may be) or be ready to explain exactly why.

Bred Starr

----- Forwarded Message -----

From: Bred Starr <[REDACTED]@yahoo.com>

To: jack.song@sfgov.org; tara.collins@sfgov.org; ethics.commission@sfgov.org; SUNSHINE ORDINANCE <sotf@sfgov.org>

Sent: Fri, October 30, 2009 9:42:13 AM

Subject: SUNSHINE ORDINANCE: missing information-continued inquiry

THE INFORMATION WEHAVE REQUESTED IS NOT EXEMPT UNDER THE SUNSHINE ORDINANCE!
YOU ARE IN VIOLATION AND WE INTEND TO PURSUE THIS EITHER PRIVATE OR PUBLIC. YOUR
CALL. SEE REQUEST BELOW. THIS HAS BEEN GOING ON FOR MUCH LONGER THAN NECESSARY
AND IF THERE IS NOTHING (WHICH MAY BE THE CASE) TO HIDE YOU MUST DISCLOSE ALL
INFORMATION> INFORMATION WHICH WAS RELEASED TO THE PRESS IN 2003-2004 MUST AGAIN
BE DISCLOSED.

Are some documents exempt from disclosure?

Under the California Public Records Act and the San Francisco Sunshine Ordinance, some records are exempt from disclosure. Examples of records that do not have to be disclosed are:

- Personnel records
- Medical records
- Home telephone numbers
- Social Security numbers
- Documents that are subject to the attorney client privilege
- Trade secrets
- Documents protected from disclosure by the State Constitutional Right to

Privacy

- Certain law enforcement records
- Records protected from disclosure by state and federal laws

----- Forwarded Message -----

From: Bred Starr [REDACTED]@yahoo.com>

To: sanfranciscohome2@yahoo.com

Sent: Thu, October 29, 2009 9:24:19 PM

Subject: missing information-continued inquiry

Dear Jack Song,

Please provide the city attorney (s) who were responsible for investigations that were disclosed.

Was Geraldine Rosen Parks involved or not?

What are the name of the attorneys who did investigation and responsible for suggested actions concerning Mary Ellen O'Brien?

From what source did this information come from?

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What was the time frame that Parks was in the city attorney office?

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Include name of immediate supervisor in that order.

This disclosure lacks information that should be public. We will be sending more question and information that will

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These questions are for public disclosure.

We know that this is not true.

You confirmed that the city attorney office may also is involved in this, due to withholding of information

The information that we have requested is not of personal nature and not protected.

The pages are much less than what was disclosed to the press a few years ago. We assure

you that this alledged disclosure is hiding much much more. Your cooperation and assistance will be to the city attorney office benefit, we assure you. Renewed interest is important as this investigation is obviously not complete. Civil servants are responsible for actions. We intend to pursue and inspect evidence
Bred Starr

cordially,
Bred Starr

Dear Ms. Bred Starr:

The records are being reviewed by an attorney responsible MTA matters and the records will be provided as soon as she can finish gathering them.

JACK SONG
Public Information Officer

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA
City Attorney

VIRGINIA DARIO ELIZONDO
Deputy City Attorney

DIRECT DIAL: (415) 554-4654
E-MAIL: virginia.dario.elizondo@sfgov.org

November 24, 2009

Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Complaint # 09075

Dear Members of Sunshine Ordinance Task Force:

Based on the Complaint form, the complainant seems to raise two issues with regard to alleged violation of public records access: 1) the time of our response; and 2) "...advisor suggests there will not be full disclosure...." Although complainant alleges a violation of public meeting, however, she does not identify a meeting date. The following is the record and substance of our response.

We received her request on September 04, 2009 at 2:10 PM via email:

IMMEDIATE DISCLOSURE REQUEST

"Urgent request for disclosure information. Per our discussion regarding investigation concerning removal of tickets by Mary Ellen O'brien..there were other people involved in this. The investigation took place in '03 by Geraldine Parks Rosen (I believe). This information was shared in the Chronicle so it is public information already (I believe I sent one article yesterday) but there are others. Please respond as soon as possible under the Sunshine ordinance. This department is responsible for investigating the justice system of san francisco, is that not correct."

We could not immediately identify what she was looking for, so we invoked an extension on September 9, 2009. On September 24, 2009, we advised her that "Any documents responsive to your request are stored in an off-site location and those files have not yet arrived in our office for review...We will contact you as soon as we have the requested documents."

This type of document search requires a deputy city attorney familiar with the matter to review a copious amount of material. Given our the budget situation and staffing cut backs, this work must be done in conjunction with deputies' other duties and ongoing legal assignments. We all work on requests for public records as expeditiously as possible.

Finally, on October 20, 2009, we notified Ms. Starr: "We have finished reviewing the documents we retrieved from storage in response to your request for "any memorandum, correspondence, request, note, email, draft or any document as defined in California Public Records Act §6752 concerning or reflecting or touching on the issues surrounding Mary Ellen O'Brien and tickets that were dismissed from 1995-2005, investigated by [the City Attorney's Office]" and determined that most of the documents are exempt from disclosure under the attorney work product privilege, Cal. Government Code Sec. 6254(k), and Cal. Code of Civil Procedure Sec. 2018.030(a). There are documents related to personnel matters that are subject to the right of privacy under Article 1 of the California Constitution. We have notified the employee involved that we intend to release these personnel documents as public records on

CITY HALL, ROOM 234 - 1 DR. CARLTON B. GOODLETT PLACE - SAN FRANCISCO, CALIFORNIA 94102-4682
RECEPTION: (415) 554-4700 - FACSIMILE: (415) 554-4699

Letter to Sunshine Ordinance Task Force

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November 24, 2009

October 28, 2009, and that the employee may review these documents prior to their release. Again, we apologize for the delay and will contact you as soon as your request is ready."

On October 29, 2009, we notified Ms. Starr: "On October 28th 2009, you picked up the two documents responsive to your request for "any memorandum, correspondence, request, note, email, draft or any document as defined in California Public Records Act §6752 concerning or reflecting or touching on the issues surrounding Mary Ellen O'Brien and tickets that were dismissed from 1995-2005, investigated by [the City Attorney's Office]" As we advised you today, the remainder of the documents covered by your request are exempt from disclosure under the attorney work product privilege, Cal. Government Code Sec. 6254(k), and Cal. Code of Civil Procedure Sec. 2018.030(a). This now concludes our response to your is [sic] request."

On October 29, 2009, Ms. Starr made another request, attached.

On November 13, 2009, Jack Song responded: "I am writing on behalf of the City Attorney's Office in response to your public records request dated October 29, 2009, which is attached to this e-mail. We have completed our search for responsive records, and have located three responsive documents, which are attached to this e-mail message. Two of the responsive documents pertain to Geraldine Rosen-Park's tenure in this office and contain personal information that we have redacted to protect the privacy of the individual to whom the documents pertain. California Government Code Section 6254(c) allows a public entity to decline to disclose information if disclosure of the information would "constitute an unwarranted invasion of personal privacy." (See also California Constitution, Article I, §1; California Government Code §6254 (k) [protecting records, the disclosure of which is "exempted or prohibited pursuant to provisions of federal or state law"]; and Hill v. National Collegiate Athletic Assn. (1994) 7 Cal. 4th 1, 35 [identifying privacy interest in precluding dissemination of sensitive, confidential information].) The third document is a list of the attorneys who advise the Municipal Transportation Agency ("MTA"). In addition to seeking new categories of records from the Office of the City Attorney, your request of October 29, 2009, also states that the documents that we provided to you on October 28, in response to your earlier request for public records, did not include information that was "disclosed to the press a few years ago." As we explained in our email messages of October 20, and October 29, 2009, we did not provide you with all documents responsive to your request. As we explained, the responsive documents, other than the two documents that we provided to you, are exempt from disclosure under the attorney work product doctrine, or the attorney-client privilege. In part, your October 29, request seeks documents containing information about Ms. Mary Ellen O'Brien's employment history with the City and County of San Francisco. The Office of the City Attorney does not maintain such records. However, the MTA may have documents responsive to this portion of your request. If you would like to request records from the MTA, you may do so by sending an email message to the following address: sfntasunshinerequests@sfnta.com. If you have any questions concerning this email message, please feel free to contact me."

In conclusion, despite the vague nature of Ms. Starr's request, we ordered files stored at an off-site location, reviewed those files and provided Ms. Starr with non-exempt responsive documents as expeditiously as our work load permitted.

Letter to Sunshine Ordinance Task Force
Page 3
November 24, 2009

Very truly yours,

DENNIS J. HERRERA
City Attorney


VIRGINIA DARIO ELIZONDO
Deputy City Attorney

Enclosure

10/29/2009 03:44 PM

Dear Jack Song,

Please provide the city attorney (s) who were responsible for investigations that were disclosed. Was Geraldine Rosen Parks involved or not?

What are the name of the attorneys who did investigation and responsible for suggested actions concerning Mary Ellen O'Brien?

From what source did this information come from?

What is the name of the city attorney who took over for Geraldine Rosen Parks when she changed positions? His last name was Sullivan.

What was the time frame that Parks was in the city attorney office?

What are the names of the attorney who dealt with these investigations?

What is the name of the attorney who represented MTA presently. What is the name of the attorney who represented MTA/DPT at the time of the investigation?

What were the exact positions of Mary Ellen O'Brien from 1994 to present? (each year what was job title and what department did she work for?)

Include name of immediate supervisor in that order.

This disclosure lacks information that should be public. We will be sending more question and information that will

1) assist in further investigation due to ethical actions 2) assist in further investigations due to criminal actions.

What role in job title did O'Brien have in reporting or advising to Mayor, Willie Brown, Gavin Newsom, Director (s) of Department of Parking and Traffic, director MTA, Chief of Police, captain of police station, community lesson officer?

These questions are for public disclosure.

We know that this is not true.

Thank you for your correspondance. You have confirmed that the city attorney office may also is involved in this.

The information that I have requested is not of personal nature and not protected..

The pages are much less than what was disclosed to the press a few years ago. We assure you that this alledged disclosure is hiding much much more. Your cooperation and assistance will be to the city attorney office benefit, we assure you.

Bred Starr

cordially,
Bred Starr

Dear Ms. Bred Starr:

The records are being reviewed by an attorney responsible MTA matters and the records will be provided as soon as she can finish gathering them.

JACK SONG
Public Information Officer

