

Date: Jan. 26, 2010

Item No. 4
File No. 09079

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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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.



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

January 19, 2010

Melinda Kanios
San Francisco Human Rights Commission
25 Van Ness Avenue, Suite 800
San Francisco, California 94102

In re: Sunshine Ordinance Task Force File No. 09079, Kenneth Kinnard vs. Human Rights Commission

Dear Ms. Kanios:

As you might be aware, the above-named individual alleges that the Human Rights Commission (HRC) has violated the Sunshine Ordinance by not responding to his Immediate Disclosure Request (IDR) for all documents relating to a report in the HRC's draft minutes of January 13, 2005, which stated that P&K Trucking "was not longer operating as a trucker, but rather providing brokering services for large contracts."

After Mr. Kinnard aired his complaint at the Sunshine Ordinance Task Force's January 5, 2010, meeting, an HRC representative said the HRC had fully responded to Mr. Kinnard's request. The Task Force voted to continue the matter to its next meeting, January 26, 2010, in order to receive additional information toward a fully informed conclusion and decision in the matter.

The Task Force wishes to see a copy of the full response that the HRC provided to Mr. Kinnard; to know when the HRC provided the requested documents; and, if applicable, to know why the HRC did not respond in timely fashion, considering that this was an IDR.

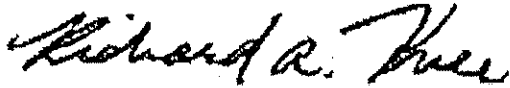
As soon as possible, please send to the Task Force a copy of the HRC's full response to Mr. Kinnard; route the copy via Task Force Clerk Chris Rustom in City Hall Room 244 or by email to SOTF@sfgov.org.

Also, please be reminded that Sunshine Ordinance Section 67.21(e) requires respondents in complaint cases to send a knowledgeable representative to all proceedings of the Task Force and its committees involving said cases.

Please do not hesitate to contact us with any concerns or questions; you can communicate them through Mr. Rustom, (415) 554-7724, SOTF@sfgov.org.

Thank you for your kind attention.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Knee". The signature is written in a cursive style with a large, prominent "K" and "N".

Richard A. Knee
Sunshine Ordinance Task Force Chair

Cc: Kenneth Kinnard; Jerry Threet, Deputy City Attorney; Erica Craven-Green, Sunshine Ordinance Task Force Vice-Chair



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

January 1, 2009:

KENNETH KINNARD VS. HUMAN RIGHTS COMMISSION (09079)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Kenneth Kinnard alleges that on October 26, 2009, he sent an Immediate Disclosure Request ("IDR") to the Human rights Commission ("HRC") requesting all documents related to a report in the January 13, 2005 draft minutes of the HRC, which stated that P&K trucking "was no longer operating as a trucker, but rather providing brokering services for large contracts." Kinnard further alleges that HRC has not responded to his request.

COMPLAINANT FILES COMPLAINT:

On November 5, 2009, Kinnard filed a complaint with the Task Force alleging a violation of Sunshine Ordinance § 67.25.

JURISDICTION

HRC clearly is a charter department under the Sunshine Ordinance and a public agency under the California Public Records Act. The Task Force therefore has jurisdiction to hear the IDR complaint.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

Section 67.21 deals with responses to a public records request and the format of requests and of responsive documents.

Section 67.25 deals with the immediacy of a response to a public records request.

Section 67.26 deals with withholding of records.

Section 67.27 deals with written justification for withholding of records.

Section 6250 et seq. of Cal. Gov't Code

Section 6254 deals with responding to a public records request.

APPLICABLE CASE LAW:

None.

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ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts: HRC apparently has not contested any of the facts alleged by complainant.

2. LEGAL ISSUES/LEGAL DETERMINATIONS:

Were sections of the Sunshine Ordinance, Public Records Act, and/or California Constitution Article I, Section three violated?

SUGGESTED ANALYSIS

Although Mr. Kinnard's IDR perhaps could have been more clearly articulated, it nevertheless does specify the documents he is requesting with sufficient particularity so that HRC could respond. While it is less than crystal clear whether documents have been in the possession and control of the HRC that related to the determination of the hearing officer mentioned in the draft minutes, it is likely that HRC staff presented documentary evidence to the hearing officer to lead her to the conclusions reported in the draft minutes. Therefore, HRC should at least explain the absence of such documents, the nature of the hearing reported on.

Even if such documents do not exist, however, HRC still is obliged to respond to the IDR with that information, which they apparently have not done. Therefore, it would appear that HRC is in violation of §§ 67.21 and 67.25, at a minimum. If the documents do exist, then it also appears HRC is in violation of §§ 67.26 and 67.27.

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.**

(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.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

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

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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.

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.

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

§ 6253.9.

(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

- (1) The agency shall make the information available in any electronic format in which it holds the information.
- (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

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.

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(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 HUMAN RIGHTS COMMISSION

Name of individual contacted at Department or
Commission MELINDA KANIOS PHONE 252-2500

Alleged Violation Public records access SEC 67.25

Public meeting _____ Date of meeting _____

Sunshine Ordinance
Section 67.25 FAILURE TO RESPOND TO IDR

(If known, please cite specific provision being violated)

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

Do you wish a public hearing before the Sunshine Ordinance Task
Force? yes no.

(Optional)

Your name KEN KINNARD Address 3040 SACRAMENTO ST

Date 1/5/09

Telephone (415) 567-9034 If anonymous, please let us know how to contact
you.

Thank you. 

Notice: Personal Information that you provide is subject to disclosure under the California Public Records Act and the Sunshine Ordinance, except when confidentiality is specifically requested. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone Number, Fax Number, or Email address).

P & K TRUCKING
3049 Sacramento Street
San Francisco, CA 94115
Phone (415) 567-9034
Fax (415) 563-4191
kraykinnard@yahoo.com

October 26, 2009

VIA FAX TO (415) 431-5764

Ms. Melinda Kanlos
S.F. Human Rights Commission
25 Van Ness, Suite 800
San Francisco, CA 94102

See attached January 13, 2005 (draft)
Minutes of HRC public meeting

Re: **SUNSHINE ORDINANCE REQUEST**
For IMMEDIATE RESPONSE

Published MINUTES from January 13, 2005 (Draft) SF HRC
“When P&K Trucking applied for re-certification in 2002, the HRC found that the firm was no longer operating as a trucker, but rather providing brokering services for large contracts. Please verify contents of this published statement.

SET ONE
REQUEST 1 THRU 3

1. All documents, writings, notes, records related to P&K no longer operating as a trucker. **“no longer operating as a trucker”**
2. All documents, writings, notes, records related to P&K providing brokering services for large contracts. **“but rather providing brokering services for large contracts”**.
3. All documents, writings, notes, records related to the large contracts P&K was brokering. **“services for large contracts”**

QUOTES of the minutes that I am requesting Sunshine Ordinance response to are partial quotes from the January 13, 2005 (draft) minutes are underlined. In the minutes from the

January 13, 2005 (draft) HRC says the arbitrator chose to uphold this decision.

Thank you;

Kenneth R. Kinnard

**CC: President Barack Obama
Honorable Attorney General Eric Holder
Chair of the EEOC
Mr. Richard Knee, Chair Sunshine Ordinance
The Council for Legal & Equitable Rights
Committee for Justice for African American Truckers
And Contractors.**



City and County of San Francisco
Human Rights Commission

January 13, 2005 (Draft)

1. Call to Order and Roll Call

Chair Heinicke called the meeting to order at 4:37 p.m.

Commissioners Present

Malcolm A. Heinicke, Chair
Khaldoun Baghdadi
Carlota Del Portillo
Yoel Kahn
Faye Woo Lee
Larry Lee
Pat Norman
Ellouise Patton
Sandra Sohcot

Commissioners Excused

Cecilia C. Chung

HRC Staff Present

Virginia Harmon, Executive Director; Toni A. Delgado, Commission Secretary; Larry Brinkin; Linda Chin; Maria Cordero; Emil DeGuzman; Bayard Fong; Cynthia Goldstein; Zula Jones; Melinda Kanios; Bryan Thomas (WIP); Domenic Viterbo; and Virma Walton (WIP).

12. Report on hearing officer results of appeal of P&K Trucking denial of certification

Maria Cordero (HRC Staff) presented the Commissioners with a copy of the hearing officers' decision. The HRC's DBE ordinance, previously the M/W/LBE ordinance provides the opportunity for appeal for firms that are denied certification or re-certification. The process begins with informal meetings with HRC staff, an appeal meeting with the Director and ultimately if the issue is not resolved, the Commission appoints a hearing officer, and the hearing officer's decision is final. P&K Trucking had been certified since 1996 when the firm had two trucks. When P&K Trucking applied for re-certification in 2002, the HRC found that the firm was no longer operating as a trucker, but rather providing brokering services for large contracts. P&K Trucking no longer provided a commercially useful function, nor did they possess the appropriate equipment or personnel. In December 2004 hearing officer Harry Epstein rendered his decision to uphold the HRCs denial.

P & K TRUCKING
3049 Sacramento Street
San Francisco, CA 94115
Phone (415) 567-9034
Fax (415) 563-4191
kraykinnard@yahoo.com

SINCE 1948

VIA FAX (415) 431-5764

November 6, 2009

Ms. Melinda Kanios
S.F. Human Rights Commission
25 Van Ness Avenue, Suite 800
San Francisco, CA 94102

**re: SUNSHINE REQUEST
FOR IMMEDIATE DISCLOSURE**

Dear Ms. Kanios:

**(see attached request regarding the
January 13 2005 HRC published
Minutes of Arbitrators Henry
Epstein's alleged findings.**

**Please be advised that the immediate disclosure or immediate
response request made to you on October 26, 2009, under the Sunshine
Ordinance mandates a response before the end of the next day of business.
To date I have not had any response.**

Thank you;


Ken Kinnard

CC: Mr. Richard Knee, Chair of the Sunshine Ordinance Task Force

