

Date: Feb. 24, 2009

Item No. 8  
File No. 09004

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Anonymous v CAO, DCA Matt Dorsey**
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Completed by: Chris Rustom

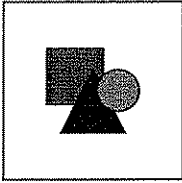
Date: Feb. 19, 2009

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.





DENNIS J. HERRERA  
City Attorney

ROSA M. SÁNCHEZ  
Deputy City Attorney

DIRECT DIAL: (415) 554-3928  
E-MAIL: rosa.sanchez@sfgov.org

**MEMORANDUM**

*February 18, 2009*

*ANONYMOUS v. SAN FRANCISCO CITY ATTORNEY'S OFFICE (CAO)  
(09004).*

**COMPLAINT**

**THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:**

Complainant filed an Immediate Disclosure Request on January 12, 2009 requesting attorney timesheets for DCA Ernest Llorente for the period of January through December, 2008.

**COMPLAINANT FILES COMPLAINT:**

Complainant filed a complaint on January 23, 2009 (incorrectly dated 1/23/07), alleging the CAO invoked an extension to the IDR without a specific justification, and documents, responsive to the request, were not produced by the date of the extension.

**JURISDICTION**

Based on the allegations of the complaint and the sections of the Ordinance stated below, the Task Force has jurisdiction to hear this matter. In addition, the parties in this case do not contest jurisdiction.

**THE RESPONDENT AGENCY STATES THE FOLLOWING:**

On January 13, 2009 the CAO acknowledged receipt of the IDR. The CAO informed Complainant that the request was not a "simple, routine or otherwise readily answerable request," but rather a "more extensive or demanding" one, appropriate for response within the maximum

**Memorandum**

deadlines under the Sunshine Ordinance. The CAO informed Complainant that it would respond within 10 days or invoke an extension if the request was voluminous, or documents were stored in a remote location, or consultation with another department was required.

On January 22, 2009 the CAO invoked an extension of not more than 14 days to respond to the Complainant's request citing to Government Code Section 6253(c) and San Francisco Administrative Code Section 67.25(b). The CAO stated it would respond as quickly as possible and anticipated responding no later than the close of business on February 5, 2009.

On January 22, 2009 Complainant responded to the 14 day extension request by asking the CAO to explain the justification for additional extension. Complainant stated that the CAO had already invoked a ten day extension without stating the justification for the extension and was now trying to invoke an additional 14 day extension, again without justification.

On January 27, 2009 the CAO contacted Complainant via e-mail explaining that although Complainant called the January 12, 2009 request an IDR, on January 13, 2009 the CAO informed Complainant that the CAO would not respond to it as an IDR because it was not the type of request that the immediate disclosure provision was intended to cover. The CAO also stated that the current e-mail was to clarify that the CAO was invoking the extension under Government Code Section 6253(c)(2): the need to search for, collect and appropriately examine a voluminous amount of separate and distinct records.

On February 5, 2009 the CAO produced records in response to the request.

Finally, the CAO objects to Complainant being allowed to file this complaint anonymously being that the effort to protect Complainant's anonymity in this manner is at odds with the principle of open government that the Sunshine Ordinance Task Force is entrusted to champion.

**APPLICABLE STATUTORY SECTIONS:**

1. Sunshine Ordinance § 67.21 addresses general requests for public documents.
2. Sunshine Ordinance § 67.25 addresses Immediate Disclosure Requests.

**Memorandum**

- 3. Sunshine Ordinance § 67.26 deals with redaction of records.
- 4. Sunshine Ordinance § 67.27 addresses legal justification for withholding of records.
- 5. State Government Code § 6253 addresses requests for public records.
- 6. State Government Code § 6255 addresses legal justification for withholding of records.

**APPLICABLE CASE LAW:**

none

**ISSUES TO BE DETERMINED**

**1. FACTUAL ISSUES**

**A. Uncontested Facts:**

- The Complainant made a public records request on January 12, 2009.
- The CAO acknowledged receipt of the IDR on January 13, 2009 and invoked an extension.

**B. Contested facts/ Facts in dispute:**

The Task Force must determine what facts are true.

**i. Relevant facts in dispute:**

- Whether the CAO properly invoked two extensions?
- Whether the CAO responded to the request by the appropriate deadline?

**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS;**

**LEGAL ISSUES/LEGAL DETERMINATIONS;**

- Were sections of the Sunshine Ordinance (Sections 67.21, 67.25, 67.27), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

**Memorandum****THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.**Article I Section 3 provides:

a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.

b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.

3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.

5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

**Memorandum****ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN  
FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE)  
UNLESS OTHERWISE SPECIFIED**Section 67.1 addresses Findings and Purpose:

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

**Memorandum**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 67.25 provides:

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 requestor 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

Section 67.26 provides:

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



**Memorandum**

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.

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 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:

- 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.

**Memorandum**

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....

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 6255 provides:

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.



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, CCSF

Name of individual contacted at Department or Commission MATT DORSEY, CCSF

Alleged violation public records access  
 Alleged violation of public meeting. Date of meeting \_\_\_\_\_

Sunshine Ordinance Section 67.25 (a) + (b)  
 (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.

IMMEDIATE DISCLOSURE REQUEST PLACED ON JAN 12, 2009  
a) AN EXTENSION WAS INVOKED WITHOUT A SPECIFIC JUSTIFICATION  
b) DOCUMENTS WERE NOT PRODUCED BY THE DATE OF THE EXTENSION

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

(Optional)<sup>1</sup>  
 Complainant Name RAY W HARTZ JR Address  San Francisco, CA 94109-6131

Telephone No. (415) [REDACTED] E-Mail Address [REDACTED]@SACGLOBAL.NET

Date 01/23/07  Signature

**CONFIDENTIALITY SPECIFICALLY REQUESTED**

<sup>1</sup> 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 POINT OF CONTACT WITH THE SOTF (PHONE NUMBER, FAX NUMBER, OR E-MAIL ADDRESS).

**COPY**



**Matt  
Dorsey/CTYATT@CTYATT**  
01/30/2009 04:09 PM

To SOTF/BOS/SFGOV@SFGOV  
cc Chris Rustom/BOS/SFGOV@SFGOV  
bcc  
Subject Re: Sunshine Complaint Received: #09004\_Anonymous vs  
City Attorney, Matt Dorsey

Chris Rustom, Asst. Administrator  
Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

RE: Complaint No. 09004 (Anonymous vs City Attorney)

Dear Mr. Rustom,

The City Attorney's Office does not contest jurisdiction in this matter and does not request a prehearing conference.

We believe that the complaint is without merit and will fully respond to the matter on the merits prior to the February 24, 2009 hearing.

Best,  
MATT DORSEY

-----  
OFFICE OF CITY ATTORNEY DENNIS HERRERA  
San Francisco City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682

(415) 554-4662 Direct  
(415) 554-4700 Reception  
(415) 554-4715 Facsimile  
(415) 554-6770 TTY

<http://www.sfgov.org/cityattorney/>



[REDACTED]  
[REDACTED]@sbcglobal.net  
02/11/2009 03:50 AM

To Chris Rustom <SOTF@sfgov.org>  
cc  
bcc  
Subject Supporting Documentation for Case #09004

Sunshine Ordinance Task Force

The following is my understanding of 67.25 - Immediacy of Response:

For a standard request the respective agency has ten days with an option for a 14 day extension.

For an Immediate Disclosure request the respective agency has until the close of the following business day with an option for a 14 day extension.

Either must be for good reason.

The attached document was provided in response to an Immediate Disclosure request after 24 days.

The document was produced in the City Attorney's Office from an on-line file (per CCSF - Index of Records).

The total number of pages was 145, of which:

- 24 pages had no redactions
- 8 pages had 46 single cell redactions
- 122 pages had three complete columns redacted.

Using even the most rudimentary database, the total time for all these redactions could not have exceeded one hour. That is based on the following:

sorting the database by either "file" or "title" - about one minute - by selecting the respective column and clicking the "sort" button;

selecting the cells in three respective columns - "file" "title" and "description" and hitting the "delete button" for the 122 pages where all three were completely deleted;

selecting the cell with the first individual cell redaction, type the word "REDACTED", hit "control-c" to copy the word redacted, then select each of the subsequent 45 individual cells and hit "control-v". This would remove all data in the selected cell, while also entering the word "REDACTED."

When the production of the document could be completed so easily, I submit the refusal by Matt

Dorsey, Public Information Officer for the City Attorney had no valid reason for refusing to reply to the request within the appropriate time frame. The request was not voluminous, stored in a remote location, or of need to consult with another department.

Sincerely,

Anonymous



llornte3REDACTED FINAL.pdf

# SUNSHINE ORDINANCE TASK FORCE

## Support Documents Replacement Form

The documents this form replaces exceeds 75 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.

**File #09004**      – Anonymous vs. CAO, DCA Matt Dorsey

---

**FROM:**

- Staff time details for DCA Llorente (147 pages)**
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

This list reflects the explanatory documents provided.

**Completed by:** Frank Darby

**Date:** Feb. 19, 2009



[Redacted]  
 [Redacted]@sbcglobal.net  
 02/11/2009 03:56 AM  
 Please respond to  
 [Redacted]@sbcglobal.net

To: Frank Darby Jr <SOTF@sfgov.org>  
 cc  
 bcc  
 Subject: Supporting Documentation for Case #09004

The following email exchange is support documentation for Case #09004:

--- On Tue, 1/27/09, Matt Dorsey <Matt.Dorsey@sfgov.org> wrote:

From: Matt Dorsey <Matt.Dorsey@sfgov.org>  
 Subject: Re: Immediate Disclosure Request  
 To: [Redacted]@sbcglobal.net  
 Cc: "Chris Rustom" <SOTF@sfgov.org>  
 Date: Tuesday, January 27, 2009, 1:05 PM

Dear Mr. Hartz,

On January 12, 2009, you made an email request for the timesheets for Deputy City Attorney Llorente for 2008. Although you called it an "immediate disclosure request," on January 13, 2009, I informed you by email that this office would not respond to it as an immediate disclosure request because it is not the type of request that the "immediate disclosure" provision was intended to cover. I also informed you that this office would seek an extension of time to respond later than the 10 days if an extension was authorized under Government Code Section 6253(c).

On January 22, 2009, I sent you a further email message, informing you that this office was invoking an extension of time to respond under Government Code Section 6253(c), to February 5, 2009.

This message is to clarify that the office is invoking the extension under Subsection (c)(2) of Section 6253(c): the need to search for, collect and appropriately examine a voluminous amount of separate and






distinct records.

Best,  
MATT DORSEY

-----  
OFFICE OF CITY ATTORNEY DENNIS HERRERA  
San Francisco City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682

(415) 554-4662 Direct  
(415) 554-4700 Reception  
(415) 554-4715 Facsimile  
(415) 554-6770 TTY

<http://www.sfgov.org/cityattorney/>

To  b  bcbglo  
<Matt.Dorsey@sfgov.org> Matt Dorsey  
01/22/2009 03:00  
cc PM Chris Rustom  
<SOTF@sfgov.org>  
Subject Re: Immediate Disclosure  
Request  spond to  
@sbcglob  
et

Sorry, the last email cut off a section.

If you read the Good Government Guide, I believe you will find that an Immediate Disclosure Request (which this was and is) subject to the 14 calendar day extension, while a regular request has a 10 day response window, with a 14 additional calendar-day extension.

I don't believe that you can have both.

In addition, you have not stated, in either case, the basis for the extension, which is clearly required. Simply stating "all of the above" is not, in the spirit of "fair play" you always invoke, is not a reason.

Why, specifically, are you invoking the extension(s) in this case?

Is it:

the voluminous nature of the information requested;

its location in a remote storage facility; or

the need to consult with another interested party.

Again, simply stating "all of the above" does not show a good-faith effort to respond to the request.

To be perfectly clear:

This was an Immediate Disclosure Request

you invoked, without a specific reason, an extension to that request

you are now invoking an additional extension, again without a specific reason, an additional extension (which I don't believe is allowed)

I will state, for the record, that our history of interaction(s) has given me absolutely no confidence in your willingness to comply with the Sunshine Ordinance (or any other public records act) with any degree of good-faith.

For someone in your position, receiving your level of compensation, you act as if you are totally unaware of the public records requirements. It becomes a necessity, in each and every case, for me to continually prod you to act in accordance with the appropriate requirements. Then it becomes a "back and forth" with you giving no direct answer, just "nit-picking" your responses. Again, from my perspective, a total lack of "good-faith."

[REDACTED]

--- On Thu, 1/22/09, Matt Dorsey <Matt.Dorsey@sfgov.org> wrote:

From: Matt Dorsey <Matt.Dorsey@sfgov.org>

Subject: Re: Immediate Disclosure Request

To: [REDACTED]@sbcglobal.net

Cc: "Chris Rustom" <SOTF@sfgov.org>

Date: Thursday, January 22, 2009, 1:27 PM

Mr. [REDACTED],

Please be advised that this office is hereby invoking an extension of not

more than 14 days to respond to your request under Government Code Section

6253(c) and San Francisco Administrative Code Section 67.25(b). We will

endeavor to process your request as quickly as possible and anticipate

responding no later than the close of business on February 5, 2009.

Best,

MATT DORSEY

---

OFFICE OF CITY ATTORNEY DENNIS HERRERA

San Francisco City Hall, Room 234

1 Dr. Carlton B. Goodlett Place

San Francisco, California 94102-4682

(415) 554-4662 Direct

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(415) 554-6770 TTY

<http://www.sfgov.org/cityattorney/>

[REDACTED]  
<[REDACTED]@sbcglo  
bal.net>

To

Matt Dorsey

<matt.dorsey@sfgov.org>

01/12/2009 10:12

cc

AM

Chris Rustom

<SOTF@sfgov.org>

Subject

Immediate Disclosure

Request

Please respond to

[REDACTED]@sbcglob  
al.net

Mr. Dorsey

This is an IMMEDIATE DISCLOSURE REQUEST for attorney  
timesheets for DCA  
Ernest  
Llorente for the period January through  
December, 2008.



[Redacted]@sbcglobal.net  
02/11/2009 04:15 AM  
Please respond to  
[Redacted]@sbcglobal.net

To Chris Rustom <SOTF@sfgov.org>  
cc  
bcc  
Subject Supporting Documentation for Case #09004

Sunshine Ordinance Task Force

The following is my understanding of 67.25 - Immediacy of Response:

For a standard request the respective agency has ten days with an option for a 14 day extension.

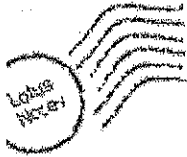
For an Immediate Disclosure request the respective agency has until the close of the following business day with an option for a 14 day extension.

Either must be for good reason.

**Please note the date on the copy of the file provided on February 5th, 2009 was actually completed, with redactions, on January 13th, 2009, @ 1:52 pm, and could have been provided as an Immediate Request!**

Sincerely,

Anonymous



**Matt  
Dorsey/CTYATT@CTYATT**  
02/17/2009 02:52 PM

To: SOTF/SOTF/SFGOV@SFGOV  
cc  
bcc

Subject: City Attorney Responses: Complaints 09001 and 09004

History: This message has been forwarded

Attached, please find the written responses from the Office of the City Attorney in Sunshine Ordinance Task Force Complaints Nos. 09001 and 09004, which are both entitled "Anonymous [Ray Hartz, Jr.] v. City Attorney's Office."

Best,  
MATT DORSEY  
Public Information Officer

-----  
OFFICE OF CITY ATTORNEY DENNIS HERRERA  
San Francisco City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
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SOTF-2009-02-17-01.PDF SOTF-2009-02-17-02.PDF SOTF-2009-02-17-03.PDF



CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA  
City Attorney

MATT DORSEY  
Public Information Officer

DIRECT DIAL: (415) 554-4662  
E-MAIL: matt.dorsey@sfgov.org

February 17, 2009

Honorable Members  
Sunshine Ordinance Task Force  
ATTENTION: Frank Darby, Jr., Administrator  
Office of the Clerk, Board of Supervisors  
Room 244, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

RE: Complaint No. 09001 (Anonymous [Ray Hartz, Jr.] v. City Attorney's Office)  
Complaint No. 09004 (Anonymous [Ray Hartz, Jr.] v. City Attorney's Office)

Dear Task Force Members:

This letter addresses an issue that is common to the above complaints. We ask that this letter be placed in the file for each of the complaints and considered by the Task Force in its hearing of each complaint at its February 24, 2009 meeting.

Up to this point, the Task Force has entitled the two complaints as "Anonymous v. City Attorney's Office" at Mr. Hartz's request. This effort to assert Mr. Hartz's anonymity is at odds with the principle of open government that the Task Force is entrusted to protect. We use Mr. Hartz's name in this letter and other letters addressing the two complaints so as to disassociate this Office from an effort to deprive the public of information it should have.

Why is it appropriate to disclose a complainant's name in a hearing before the Task Force? Because the Task Force is part of City government, and the public has a right to monitor its operations – which includes both its use of City resources, and the effect of its operations on the expenditure of resources by other City departments. The Task Force heavily devotes its resources to the processing of complaints. It thus becomes relevant to the public to know who files complaints with the Task Force. Complainants are directly responsible for the expenditure of City resources that is triggered by the filing of a complaint. In assessing the Task Force's performance and the operation of our open government laws, the public should have access to the information necessary to make a judgment whether City resources are being used wisely and whether our open government laws are working as intended.

The issue of disclosing a complainant's identity for these purposes has both a quantitative and qualitative dimension.

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From a quantitative standpoint, the public should be permitted to monitor whether the Task Force is serving a large segment of the public or is concentrating resources on only a few complainants. For example, our review of Task Force agendas covering the last two calendar years, 2007 and 2008, indicates that there were a total of 141 complaints agendized for Task Force meetings, and that a lone individual lodged 47 of those complaints – a full third of the complaints, and approximately two per meeting on average. The top five most frequent complainants lodged a total of 74 complaints – more than half of all complaints during this period. While different observers may draw different conclusions from these statistics, it is difficult to dispute that the statistics are relevant to the public's monitoring the Task Force's operations and the workings of our open government laws. If complainants are allowed to be anonymous, the public's ability to perform this monitoring function will be impaired, because it will become more difficult to accurately assess who is filing complaints. Indeed, the above statistics regarding frequent complainants may be slightly understated, because six of the 141 complaints had "unnamed person" as the designated complainant, and the public cannot tell from this designation whether one or more of the unnamed persons was in fact a frequent complainant.

The public's monitoring of the use of Task Force and City resources to respond to complaints involves more than ascertaining the number and frequency of complainants. It also includes a qualitative assessment of who is filing complaints with the Task Force. Are complaints being filed by respected news organizations? By civic-minded watchdogs? By individuals representing important community interests? By individuals with an important stake in a City decision? By economic or political interests using Sunshine laws for tactical purposes to promote their parochial interests? By individuals using Sunshine laws vindictively, against a particular department or particular officials or employees? By individuals with time on their hands who are indifferent to the expenditure of City resources that are involved in responding to complaints? These and like questions are legitimate points of public discussion. Again, different observers may draw different conclusions about the virtues or vices of particular requesters. But it is difficult to dispute that that assessment is central to the public's assessment of how the Task Force is functioning and how our open government laws are working.

These general considerations militate against the Task Force's according anonymous status to any complainant in a hearing before the Task Force. In Mr. Hartz's case, anonymous treatment is particularly inappropriate, for three reasons.

First, this Office knows that Mr. Hartz made the public records requests that are the subject of the above two complaints. Therefore it is the public, not the City, that is kept in the dark by treating Mr. Hartz's complaints as anonymous complaints.

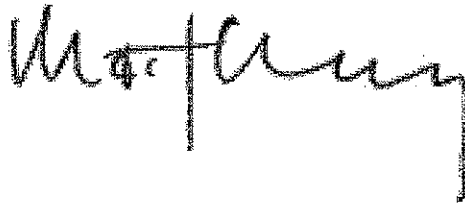
Second, at the Complaint Committee hearing of February 10, 2009 on Complaint No. 09001, Mr. Hartz's name was used frequently, and the Committee made no effort to curb such references. This was a public hearing and we presume there is a tape of the hearing. The Task Force itself, or at least a committee thereof, in a public forum, has, in effect, already chosen not to treat Mr. Hartz's complaints as anonymous complaints.

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Finally, we understand that in the recent past Mr. Hartz has sought appointment to the Task Force. At least in the limited realm of Sunshine issues, he has sought a prominent role for himself in the public arena, which makes his request for anonymity now seem particularly ironic.

For all of these reasons, we consider it inappropriate to treat Mr. Hartz as an anonymous complainant and thus do not conceal his name in our communications with the Task Force regarding the above two complaints.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matt Dorsey". The signature is written in a cursive style with a vertical line extending downwards from the end of the name.

MATT DORSEY  
Public Information Officer



DENNIS J. HERRERA  
City Attorney

MATT DORSEY  
Public Information Officer

DIRECT DIAL: (415) 554-4662  
E-MAIL: matt.dorsey@sfgov.org

February 17, 2009

Honorable Members  
Sunshine Ordinance Task Force  
ATTENTION: Frank Darby, Jr., Administrator  
Office of the Clerk, Board of Supervisors  
Room 244, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

RE: Complaint No. 09004 (Anonymous [Ray Hartz, Jr.] v. City Attorney's Office)

Dear Task Force Members:

We submit this letter in further response to the above complaint, to be heard by the Task Force at its February 24, 2009 meeting.

## I. JURISDICTION

We concede (and have never contested) that the Task Force has jurisdiction over the complaint.

## II. THE MERITS

In this matter, the complainant alleges that the City Attorney's Office did not make a timely response to his request for "attorney timesheets for DCA Llorente for the period January through December, 2008."

### **Factual Background (all communications by e-mail)**

January 12, 2009 Complainant files an immediate disclosure request for the records

January 13, 2009 City Attorney's Office acknowledges receipt of the request and informs requester that it is not a "simple, routine or otherwise readily answerable request," but rather is a "more extensive or demanding" one, appropriate for response within the maximum deadlines under the Sunshine Ordinance, and informs the requester that the office will respond within 10 days or invoke an extension (if the request is voluminous, or documents are stored in a remote location, or consultation with another department is required)

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- January 22, 2009 City Attorney's Office invokes an extension of not more than 14 days to respond under Government Code Section 6253(c) and informs the requester that it will respond as quickly as possible and anticipates responding no later than close of business on February 5, 2009
- January 22, 2009 Complainant responds, stating that the Office's response was not timely and no "extension" is permitted because his request was for "immediate disclosure," no specific reason was given for the "extension" of 10 days, and no reason given for the additional extension of 14 days
- January 27, 2009 City Attorney's Office sends message to the requester, recounting the history of the communications regarding the request, clarifying that the office is invoking the extension under Government Code Section 6253(c) based on "the need to search for, collect and appropriately examine a voluminous amount of separate and distinct records."
- February 5, 2009 City Attorney's Office produces records in response to the request

The complaint raises three issues, which are addressed below. In addition, this Office objects to the complainant's request that he be permitted to make an anonymous complaint, for the reasons set forth in a separate letter filed with the Task Force.

#### **1. The Request Was An Ordinary Public Records Request, Not An "Immediate Disclosure" Request**

There are two requirements for a public records request to be an immediate disclosure request ("IDR"). First, the Sunshine Ordinance requires that an IDR have "the words 'Immediate Disclosure Request' ... across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted." (S.F. Admin. Code sec. 67.25(a).) Second, the Sunshine Ordinance requires that an IDR be a "a simple, routine or otherwise readily answerable request." (Id.) "Maximum deadlines provided in this article are appropriate for more extensive or demanding requests ..." (Id.)

In this case, the request was not "simple, routine, or readily answerable." Rather, it was a "more extensive or demanding request," requiring review and appropriate redaction of approximately 145 pages of an attorney's time billing entries. Given the period of time covered by the request (a year), the need to review and redact the records to protect the confidentiality of attorney-client communications, attorney work product, and personal privacy, and the physical tasks associated with redaction, this request was not an IDR. It met the first requirement for an IDR -- the designation requirement -- but it did not meet the second requirement, that the request be "simple, routine, or readily answerable."

The request, therefore, was an ordinary public records request, not an IDR.

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**2. This Office Had 10 Days To Respond And Was Then Authorized To Invoke An Extension Of Time; This Office Produced The Records Within The Period Of The Extension Invoked**

As noted above, the request was an ordinary public records request. Therefore, the City must respond within 10 calendar days and may, within that time, invoke an extension of up to 14 calendar days. Cal. Gov't Code §6253(c).

In this case, the Office responded within 10 calendar days of the request (January 22 response to January 12 request) and, in that response, invoked an extension of time of up to 14 calendar days.

In its January 13, 2009 response to the request, this Office alerted the requester to the possibility that it would need to invoke an extension of time under Government Code Section 6253(c), listing the three permissible reasons provided under that Section for an extension.

In its January 22, 2009 message invoking the extension, this Office did not identify with specificity the basis for the extension, but repeated the reference to Section 6253(c). This oversight did not cause any delay in providing records to the complainant. After the Office learned of this oversight, it provided the more specific basis for the extension in a further communication on January 27, 2009, the need to search for, collect and appropriately examine a voluminous amount of separate and distinct records.

This Office produced the records on February 5, 2009, within the 14-day period of the extension.

A review of the timeline for this matter makes clear that this Office did not invoke an extension of time that exceeded 14 calendar days, as the complainant appears to assert.

**3. This Office Had A Proper Basis For The Extension**

Based on his review of the 145 pages produced in response to his request (including pages with redactions), the complainant argues that this Office had no grounds for invoking an extension of time. In a February 11, 2009 message to the Task Force Administrator, the complainant argues that "the total time for all these redactions could not have exceeded one hour."

This argument is without merit. This Office is aware of its obligation to produce all records responsive to the request except for information that is exempt. Moreover, we have a legal right to withhold attorney work product and a legal obligation to withhold confidential client information and information protected by the right to privacy. Reviewing 145 pages of time entries therefore takes considerable time to make sure that all public information is disclosed, but exempt information properly redacted.

**Concluding Remarks**

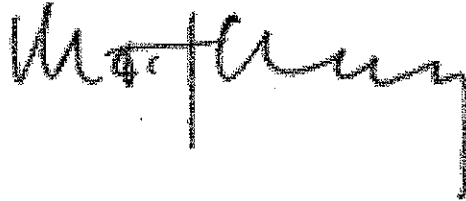
The Task Force should deny the complaint. The City Attorney's Office correctly treated the public records request as a regular, not an immediate disclosure, request; it correctly invoked an extension of time to respond; and it properly responded within the period of the extension.

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**III. ANONYMITY OF THE COMPLAINANT**

Up to this point, at Mr. Hartz's request, the Task Force has entitled the complaint as "Anonymous v. City Attorney's Office." This effort to protect Mr. Hartz's anonymity in this manner is at odds with the principle of open government that the Task Force is entrusted to champion. The public has a right to know the complainant's identity. We address this issue more comprehensively in a separate letter to the Task Force, also dated February 17, 2008, which we incorporate herein by reference.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matt Dorsey", with a vertical line extending downwards from the end of the signature.

MATT DORSEY  
Public Information Officer