

Date: March 24, 2009

Item No. 14

File No. 09010

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Ray Hartz against the Arts Commission**
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Completed by: Chris Rustom

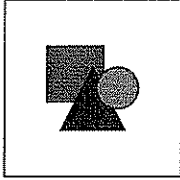
Date: March 19, 2009

***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.

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DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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

MEMORANDUM

March 13, 2009

RAY HARTZ v. ARTS COMMISSION (09010)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Ray Hartz made public records requests to inspect a copy of the "Equal Opportunity Plan" for the Arts Commission. The plan was listed on the Index of Records. To his requests, Ray Hartz alleges that he did not receive a response.

THE RESPONDENT AGENCY STATES THE FOLLOWING:

On March 5, 2009, Deputy Director Nancy Gonchar wrote Chris Rustom of SOTF and stated that Commission Secretary Sharon Page Ritchie spoke to Ray Hartz and learned of his request. Ms. Ritchie researched the plan and learned that the plan had not been in use for many years and had been replaced by the Equal Employment Opportunity Policy that was created and maintained by the Department of Human Resources. The old plan is now longer available. Ms. Gonchar states that Ray Hartz did not provide an e-mail address or mailing address and the Commission was not able to immediately provide a web link to the DHR document.

On March 12, 2009, Ms. Gonchar wrote Chris Rustom and responded to the amended complaint involving the alleged failure to maintain the Index of Records. To this part of the complaint, Ms. Gonchar stated that she is working with the City Administrator's Office to update the Arts Commission records listed in the Index of Records.

COMPLAINANT FILES COMPLAINT:

On February 20, 2009, Ray Hartz filed a complaint with the Task Force and alleged that the Arts Commission violated the public records process as delineated in section 67.21(a) of the Ordinance. Ray Hartz amended his complaint to allege a violation of section 67.29 of the Ordinance for failure to properly maintain the Index of Records.

Memorandum

APPLICABLE STATUTORY SECTIONS:

1. California Constitution, Article I, Section 3 that states the general principals of public records and public meetings.
2. Sunshine Ordinance Section 67.1 that addresses Findings and Purpose.
3. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents .
4. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
5. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals with justification for withholding.
6. Sunshine Ordinance, San Francisco Administrative Code Section 67.29 deals with the Index of Records.
7. California Public Records Act, Government Code Section 6253 deals with public records open to inspection, agency duties, and time limits.
8. California Public Records Act, Government Code Section 6255 deals with justification for withholding of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

The parties agree to the following facts:

- Ray Hartz made a request to the Arts for the "Equal Opportunity Plan" that was listed on the index of records.

Memorandum

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- **Whether the Arts Commission complied with the requirements of the Sunshine Ordinance and State Brown Act.**

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

none

2. LEGAL ISSUES/ LEGAL DETERMINATIONS:

- **Were any sections of the Sunshine Ordinance, and/or Public Records Act were violated?**
- **Did the Arts Commission violate Section 67.21 and/or 67.29?**

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

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

TRUE.

Memorandum**CALIFORNIA STATE CONSTITUTION, ARTICLE I, SECTION 1****§1 Inalienable rights**

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 ARTICLE I, SECTION 3**§3 Openness in Government**

- 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 protected 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

Memorandum

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.

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.

Memorandum

- (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.

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.
- 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

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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.

...

k.) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.

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 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.

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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.

Section 67.29 of Ordinance provides:

The City and County shall prepare a public records index that identifies the types of information and documents maintained by the City and County departments, agencies, boards, commissions, and elected officers.

The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's World Wide Website and made available at public libraries within the City and County of San Francisco.

Memorandum

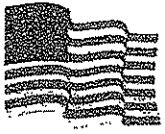
The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

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

Section 6255 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.



COPY

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 ARTS COMMISSION

Name of individual contacted at Department or Commission SHARON PAGE RITCHIE

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

Sunshine Ordinance Section 67.21(a)
(If known, please cite specific provision(s) being violated)

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

REPEATED REQUESTS TO INSPECT A COPY OF THE "EQUAL OPPORTUNITY PLAN" FOR THE ARTS COMMISSION HAVE FAILED TO PRODUCE A REPLY. THIS DOCUMENT IS LISTED ON THE CCSF-INDEX OF RECORDS.

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

(Optional)¹
Complainant Name RAY W HARTZ JR Address 

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

Date 2/20/09 Signature Ray W Hartz Jr

CONFIDENTIALITY SPECIFICALLY REQUESTED

¹ 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 E-MAIL ADDRESS).



Nancy
Gonchar/ARTSCOM/SFGOV
03/03/2009 11:13 AM

To SOTF@sfgov.org
cc Sharon Page_Ritchie/ARTSCOM/SFGOV@SFGOV, Luis
Cancel/ARTSCOM/SFGOV@SFGOV, Adine
Varah/CTYATT@CTYATT, Diane
bcc

Subject Sunshine Ordinance Complaint by Ray W. Hartz

History

This message has been forwarded

Dear Mr. Hartz,

Regarding your request to Sharon Page_Ritchie, Commission Secretary, for the Arts Commission's "Equal Opportunity Plan," the CCSF Index of Records is out of date and the plan listed is no longer in use. The Arts Commission's abides by the Department of Human Resources Equal Employment Opportunity Policy for the City and County of San Francisco. You can view and download this policy at the following: http://www.sfgov.org/site/sfdhr_page.asp?id=47700.

Thank you.

Nancy Gonchar
Deputy Director
San Francisco Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, CA 94102
phone: 415-252-2584
fax: 415-252-2595
e-mail: nancy.gonchar@sfgov.org
website: www.sfartscommission.org



SAN FRANCISCO ARTS COMMISSION

GAVIN NEWSOM
MAYOR

LUIS R. CANCEL
DIRECTOR OF
CULTURAL AFFAIRS

March 5, 2009

Chris Rustom, Asst. Administrator
SOTF
1 Dr. Carlton B. Goodlett Place
City Hall, room 244
San Francisco, CA 94102

PROGRAMS

- CITY ART COLLECTION
 - CELEBRATION DESIGN REVIEW
 - COMMUNITY ARTS & EDUCATION
 - CULTURAL EQUITY GRANTS
 - PERFORMING ARTS
 - PUBLIC ART
 - STREET ARTISTS LICENSES
- ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.554.6080

WWW.SFARTSCOMMISSION.ORG

ARTSCOMMISSION@SFGOV.ORG

Dear Mr. Rustom:

I am writing in response to the "Sunshine Ordinance Complaint" by Ray W. Hartz. Mr. Hartz called the Arts Commission sometime during the week of February 9, and left a voicemail message. Arts Commission Secretary Sharon Page Ritchie returned his call and spoke with him the next day. He did not provide a mailing or email address. She researched his request for the document, "Arts Commission Equal Opportunity Plan," that was listed on the CCSF Index of Records. That particular document is not in use and hasn't been for many years and is no longer available. Ms. Ritchie phoned Mr. Hartz on February 20th and explained that the document that he wanted was no longer in use and that the Arts Commission currently adheres to the CCSF Equal Opportunity Policy listed on the Department of Human Resources website. Had Mr. Hartz supplied a mail or email address we could have provided the web link in a timely fashion. Upon hearing of Mr. Hartz's Sunshine Ordinance Complaint on March 3, 2009, I sent Mr. Hartz via Mr. Chris Rustom, SOTF Asst. Administrator, a link to the DHR document. If you have any further questions please don't hesitate to contact me.

Sincerely,

Nancy Gonchar
Deputy Director



CITY AND COUNTY OF
SAN FRANCISCO



Ray Hartz Jr
<[REDACTED]@sbcglobal.net>

03/05/2009 05:49 PM

Please respond to
<[REDACTED]@sbcglobal.net>

To: SOTF <sotf@sfgov.org>

cc

bcc

Subject: Re: #09010_Ray Hartz v. Arts Commission

History:

↳ This message has been forwarded.

I wish to change the complaint from violation of 67.21(a) to violation of Section 67.29 for failure to properly maintain the CCSF - Index of Records.

--- On Thu, 3/5/09, SOTF <sotf@sfgov.org> wrote:

From: SOTF <sotf@sfgov.org>

Subject: #09010_Ray Hartz v. Arts Commission

To: [REDACTED]@sbcglobal.net

Date: Thursday, March 5, 2009, 4:45 PM

Mr. Ray Hartz,

Attached is the department's response regarding the above mentioned complaint.

(See attached file: 09010_Dept response.pdf)

Chris Rustom, Asst. Administrator

Sunshine Ordinance Task Force

1 Dr. Carlton B. Goodlett Place

City Hall, Room 244

San Francisco, CA 94102-4689

SOTF@SFGov.org

OFC: (415) 554-7724

FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.

http://www.sfgov.org/site/sunshine_form.asp?id=34307



SAN FRANCISCO ARTS COMMISSION

GAVIN NEWSOM
MAYOR

LUIS R. CANCEL
DIRECTOR OF
CULTURAL AFFAIRS

March 12, 2009

Chris Rustom, Asst. Administrator
SOTF
1 Dr. Carlton B. Goodlett Place
City Hall, room 244
San Francisco, CA 94102

PROGRAMS

- CIVIC ART COLLECTION
 - CIVIC DESIGN REVIEW
 - COMMUNITY ARTS
& EDUCATION
 - CULTURAL EQUITY GRANTS
 - PERFORMING ARTS
 - PUBLIC ART
 - STREET ARTISTS LICENSES
- ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.554.6080

WWW.SFARTSCOMMISSION.ORG

ARTSCOMMISSION@SF.GOV.ORG

Dear Mr. Rustom:

I am writing in response to the "Sunshine Ordinance Complaint" by Ray W. Hartz. that he recently amended siteing a violation of "Section 67.29 for failure to properly maintain CCSF – Index of Records." As I explained in my letter dated March 5th the document (Arts Commission Equal Opportunity Plan) that Mr. Hartz requested is no longer in use and has been replaced by the Equal Employment Opportuniy policy created and maintained by the Department of Human Resources. I have contacted the City Administrator's Office and I am working with them to update the Arts Commission records listed in the Index of Records.

If you have any further questions please don't hesitate to contact me.

Sincerely,

Nancy Gonchar
Deputy Director

cc. Luis Cancel, Adine Varah, Sharon Page Ritchie

attachments: March 5th letter



CITY AND COUNTY OF
SAN FRANCISCO



SAN FRANCISCO ARTS COMMISSION

GAVIN NEWSOM
MAYOR

LUIS R. CANCEL
DIRECTOR OF
CULTURAL AFFAIRS

March 5, 2009

Chris Rustom, Asst. Administrator
SOTF
1 Dr. Carlton B. Goodlett Place
City Hall, room 244
San Francisco, CA 94102

PROGRAMS

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Sincerely,

Nancy Gonchar
Deputy Director



CITY AND COUNTY OF
SAN FRANCISCO



OFFICE OF THE CITY ADMINISTRATOR

Gavin Newsom, Mayor
Edwin M. Lee, City Administrator

March 17, 2009

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 49102-4689

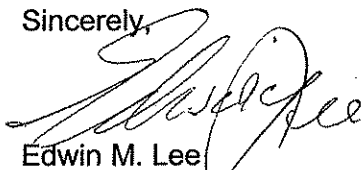
Subject: SOFT Complaint Number 09010 Ray Hartz vs Arts Commission

Dear Task Force Members:

We have been asked by the Sunshine Ordinance Task Force Administrator to provide information to the Task Force on subject complaint.

The Office of the City Administrator is working with the San Francisco Arts Commission to update their Index of Records. We expect that this information will be updated by the end of March, or earlier if possible.

Sincerely,



Edwin M. Lee
City Administrator