

Date: March 24, 2009

Item No. 8

File No. 09003

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Rita O'Flynn against the Department of Technology
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Completed by: Chris Rustom

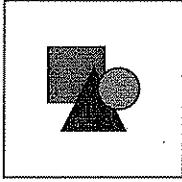
Date: March 19, 2009

***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

February 17, 2009

RITA O'FLYNN v. DEPARTMENT OF TECHNOLOGY (09003)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Complainant Rita O'Flynn has been investigating the federal Housing and Urban Development ("HUD") Lead Abatement Grant issued through the Mayor's Office of Housing. In 2008, Rita O'Flynn requested that she have the opportunity to review the entire HUD Lead Abatement files at the Mayor's Office of Housing. After she reviewed the files, she requested that the entire file be copied. Once she received the copies she realized that the provided records did not include the e-mails that she had reviewed. When she requested the e-mail records she was advised that the e-mails records had been deleted since the Mayor's Office only keeps electronic records for two years. Rita O'Flynn also tried to get the e-mail records of former supervisor Fiona Ma and the HUD office from the Board of Supervisors but learned that the electronic records had also been deleted after Supervisor Ma left the Board to join the State Assembly.

On November 14, 2008, Rita O'Flynn made an Immediate Disclosure Request ("IDR") with the Department of Technology for all e-mails during the past 5 years from or to:

1. Myrna Iton Melgar, Mayor's Office of Hosing and Susan Suval.
2. Michael Palmer, Mayor's Office of Housing and Susan Suval.
3. Fiona Ma, San Francisco Supervisor and Myrna Iton Melgar, Mayor's Office of Housing.

On November 14, 2008, Ron Vinson, the Director of Media responded to the IDR and requested an extension under section 67.25(b) of the Ordinance until November 25, 2008. On November 25, 2008, Ron Vinson e-mailed Rita O'Flynn to explain that there were difficulties in finding the records and would need more time.

On January 14, 2009, Ron Vinson e-mailed Rita O'Flynn and advised her that the e-mail records that she was seeking had been deleted during the course of materials management and consistent with the Mayor's Office records retention policy. Ron Vinson stated that if records are deleted during the Mayor's Office periodic clearing of records pursuant to a stated records retention schedule, neither the Sunshine Ordinance nor the State Public Records Act requires the City to search backup tapes to retrieve such messages.

Memorandum**COMPLAINANT FILES COMPLAINT:**

On January 19, 2009, Rita O'Flynn filed complaint against the DTIS for its alleged failure to disclose e-mails under Section 67.21 and/ or its willful failure to maintain and preserve correspondence and records under Section 67.29-7

THE RESPONDENT AGENCY STATES THE FOLLOWING:

Director of Media Ron Vinson for DTIS stated in his January 14, 2009 e-mail that it has provided the records that it had in its files and will not create a new record solely to accommodate the Public Records Request.

APPLICABLE STATUTORY SECTION:

1. Sunshine Ordinance § 67.21 addresses general requests for public documents.
2. Sunshine Ordinance § 67.25 addresses Immediate Disclosure Requests.
3. Sunshine Ordinance § 67.26 deals with redaction of records.
4. Sunshine Ordinance § 67.27 addresses legal justification for withholding of records.
5. Sunshine Ordinance § 67.29-7 requires a Department Head to maintain and preserve documents and correspondence.
6. Sunshine Ordinance § 67.34 deals with willful failure to comply with the requirements of the Sunshine Ordinance and the comparable state statutes to be Official Misconduct.
7. State Government Code § 6253 addresses requests for public records.
8. State Government Code § 6255 addresses legal justification for withholding of records.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED

Memorandum**1. FACTUAL ISSUES****A. Uncontested Facts:**

On November 14, 2008, Rita O'Flynn made an Immediate Disclosure Request ("IDR") with the Department of Technology for all e-mails during the past 5 years from or to:

1. Myrna Iton Melgar, Mayor's Office of Housing and Susan Suval.
2. Michael Palmer, Mayor's Office of Housing and Susan Suval.
3. Fiona Ma, San Francisco Supervisor and Myrna Iton Melgar, Mayor's Office of Housing.

On January 14, 2009, Ron Vinson reported that the e-mail records had been deleted in compliance with the 2 year records retention policy of the Mayor's Office. Ron Vinson stated that the City would not pull back up tapes to reconstruct the deleted records.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

- Whether the DTIS provided all its e-mails relevant to the public records request?
- Whether the DTIS is required to pull back up tapes of deleted e-mail communications and reconstruct e-mail communications in order to comply with a public records request?

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

When did complainant review the hard copy of the Mayor's Office of Housing HUD Lead Abatement files?

When did complainant received a copy from the Mayor's Office?

When did complainant realize that the e-mail records were missing?

When did complainant make her request for the e-mail records?

Did 2 years pass from the time the e-mails were created to the time that they were deleted?

Were the deletions in the normal course of managing e-mails?

LEGAL ISSUES/LEGAL DETERMINATIONS;

- Were sections of the Sunshine Ordinance (Section 67.21), 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:

Memorandum

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 67.29-7 provides:

The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

Section 67.34 addresses willful failure as official misconduct.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

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

Memorandum

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....

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 MAYOR'S OFFICE OF TECHNOLOGY

Name of individual contacted at Department or Commission RON VINSON

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

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

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

SEE ATTACHED

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

(Optional)¹
 Name RITA O'FLYNN Address _____

Telephone No. 415-_____ E-Mail Address _____@msn.com

Date 19 JAN 09 _____
 Signature

I request confidentiality of my personal information. yes no

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

07/31/08

PUBLIC RECORDS REQUEST FORM

"Immediate Disclosure Request"

To: Custodian of Records

Date: November 12, 2008

Department of Technology

1 South Van Ness Avenue
2nd Floor
San Francisco CA 94103
Phone: (415) 581-4000

Name of Requester: Rita O'Flynn

Requester Address: [REDACTED]

City/State/Zip: San Francisco, CA, 94121

Telephone: 415- [REDACTED]
[REDACTED]

Number to be called when documents are available or to clarify request: SAME

(Indicate times when you can be contacted) ANY

Subject or Item Requested: (Please be as specific as possible)

For all emails during the past 5 years from or to:
Myrna Iton Melgar, Mayor's Office of Housing (myrna.iton@sfgov.org) and
Susan Suval (ssuval@sbcglobal.net)
Michael Palmer, Mayor's Office of Housing (michael.palmer@sfgov.org)
and Susan Suval (ssuval@sbcglobal.net)
Fiona Ma, San Francisco Supervisor and Susan Suval
(ssuval@sbcglobal.net)
Fiona Ma, San Francisco Supervisor and Myrna Iton Melgar, Mayor's Office
of Housing (myrna.iton@sfgov.org)

- I want to see the records. Please call me at the above phone number when the records are ready for viewing. Do not make copies on my behalf. I will review the documents first and then indicate those documents I wish copied.
- I want copies of the pages in the records that I have marked.
- I want the entire records copied.
- I want the information mailed to the address above.
- If payment is required before releasing copies, please let me know

***Immediate Disclosure Requests:** (Requests 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.

&&&&&

RE: Sunshine Ordinance Request for Immediate Disclosure

From Rita August O'Flynn ([REDACTED]@msn.com)

Sent: Thu 1/15/09 10:35 AM

To: ron.vinson@sfgov.org

Cc: barry.fraser@sfgov.org; thomas.long@sfgov.org; william.sanders@sfgov.org;
soft@sfgov.org

Bcc: [REDACTED]@msn.com

.ExternalClass .EC_hmessage P {padding:0px;} .ExternalClass body.EC_hmessage {font-size:10pt;font-family:Verdana;} Dear Mr. Vinson:

This untimely response is in conflict with earlier e-mail (see below). As the Mayor's Office of Housing is aware, the materials requested were originally available for viewing at the Mayor's Office of Housing and then not available when copies were provided within the week of the onsite review. I was informed by Douglas Shoemaker that, despite my requests for copies, the materials requested were no longer available in the file and electronic versions were destroyed. It is obvious that the hard file was sanitized prior to copying and that e-mail were deleted from their system outside the confines of their policy. I am therefore informing you of my intent to file a complaint with the Sunshine Ordinance Task Force. Should you or any of the other city representatives wish to speak with me, I will arrange to do so at your earliest convenience.

With Kind Regards,

Rita O'Flynn

415-[REDACTED] Cell: 415-[REDACTED]

Subject: RE: Sunshine Ordinance Request for Immediate Disclosure

From: Ron.Vinson@sfgov.org

To: [REDACTED]@msn.com

CC: Barry.Fraser@SFGOV.ORG; Thomas.Long@sfgov.org; William.Sanders@sfgov.org

Date: Wed, 14 Jan 2009 17:36:24 -0800

January 14, 2009

Dear Rita O'Flynn

We are responding to your request under the Sunshine Ordinance for copies of 5 years of email messages sent or received by certain present and/or former employees of the City and County of San Francisco. We understand that you may have already received some responsive documents from the Mayor's Office of Housing related to this request.

We decline to provide any additional documents in response to your request that would require us to search data retained only on backup tape.

Where a City official, consistent with his or her department's records retention schedule, has deleted or placed in the Trash folder an email communication, neither the Sunshine Ordinance nor the state Public Records Act requires the City to search backup tapes to retrieve such messages.

Ron Vinson
Director of Media
(415) 581-4003 - office
(415) 581-3970 - Fax

1 South Van Ness Avenue
2nd Floor
San Francisco, CA 94103

-----Rita August O'Flynn <[REDACTED]@msn.com> wrote: -----

To: <ron.vinson@sfgov.org>
From: Rita August O'Flynn <[REDACTED]@msn.com>
Date: 01/14/2009 03:41PM
Subject: RE: Sunshine Ordinance Request for Immediate Disclosure

I am sorry Ron that you seem to be caught in the middle of all of this. I have been very patient and, if I do not receive a response by COB today, I will be filing a complaint with the Sunshine Ordinance Taskforce this evening.

Rita O'Flynn 415-[REDACTED] Cell: 415-[REDACTED]

Subject: RE: Sunshine Ordinance Request for Immediate Disclosure
From: Ron.Vinson@sfgov.org
To: [REDACTED]@msn.com
Date: Wed, 14 Jan 2009 11:47:59 -0800

Hello Rita,

I'm working with the City Attorney's office in response to your requests. Our department responded to a Subpoena that came from your attorney. We plan on responding to you directly.

Ron Vinson
Director of Media
(415) 581-4003 - office
(415) 581-3970 - Fax

1 South Van Ness Avenue
2nd Floor
San Francisco, CA 94103

-----Rita August O'Flynn <[REDACTED]@msn.com> wrote: -----

To: <ron.vinson@sfgov.org>
From: Rita August O'Flynn <[REDACTED]@msn.com>
Date: 01/14/2009 08:43AM
cc: <catherine.argumedo@sfgov.org>, <cityattorney@sfgov.org>, <[REDACTED]@msn.com>
Subject: RE: Sunshine Ordinance Request for Immediate Disclosure

Third request for follow up! Response requested

Rita O'Flynn 415-[REDACTED] Cell: 415-[REDACTED]

From: [REDACTED]@msn.com
To: ron.vinson@sfgov.org
CC: catherine.argumedo@sfgov.org; cityattorney@sfgov.org; [REDACTED]@msn.com
Subject: RE: Sunshine Ordinance Request for Immediate Disclosure
Date: Tue, 13 Jan 2009 09:50:45 -0800

See below. Response requested.

Rita O'Flynn 415-[REDACTED] Cell: 415-[REDACTED]

From: [REDACTED]@msn.com
To: ron.vinson@sfgov.org
CC: catherine.argumedo@sfgov.org; cityattorney@sfgov.org; [REDACTED]@msn.com
Subject: RE: Sunshine Ordinance Request for Immediate Disclosure
Date: Fri, 9 Jan 2009 12:40:32 -0800

Can you update me as to the status of my request?

Rita O'Flynn 415- [REDACTED] Cell: 415- [REDACTED]

To: [REDACTED]@msn.com
CC: catherine.argumedo@sfgov.org; cityattorney@sfgov.org;
[REDACTED]@msn.com
Subject: RE: Sunshine Ordinance Request for Immediate Disclosure
From: Ron.Vinson@sfgov.org
Date: Wed, 3 Dec 2008 14:33:00 -0800

We are working with the City Attorney's office to respond to your request. There is a tremendous amount of volume involved here that includes tens of thousands of emails over a 5 year period. The City Attorney's office just received this request and I don't expect we will be able to get you a response today.

Ron Vinson
Director of Media
(415) 581-4003 - office
(415) 581-3970 - Fax

1 South Van Ness Avenue
2nd Floor
San Francisco, CA 94103

To <ron.vinson@sfgov.org>

cc <markofflynn@msn.com>, <cityattorney@sfgov.org>,
<catherine.argumedo@sfgov.org>

Rita August O'Flynn

<[REDACTED]@msn.com> 12/03/2008 SubjRE: Sunshine Ordinance Request for Immediate
11:12 AM ectDisclosure

Dear Ron:

I hope this e-mail finds you well. I understand we ran into some unexpected and last minute difficulties in having the information requested via the Sunshine Ordinance. Apparently there is problem formatting older email records which are stored off-site into readable copy and that you have submitted the data to the City Attorney for conversion. It is also my understanding that you can produce the more recent emails which are stored by your department on-site. Given the formatting problems with the older emails and while we are waiting for the City Attorney to process your request for conversion of these older emails, this e-mail will serve as my documentation for a Sunshine Ordinance Request for Immediate Disclosure to provide the documentation for which you have access on-site. I trust this will be available before the close of business today.

I think it is important to clarify a few issues surrounding my requests for information and to ensure you that this is not a duplicative request of other city agencies. This request is being made with regard to a HUD Lead Abatement Grant issued through the Mayor's Office of Housing. I requested an opportunity review the entire HUD Lead Abatement files at the Mayor's Office of Housing. After my review I requested that the entire file be copied for me. The copies provided did not include the e-mails I had reviewed on site. I was informed that if such e-mails had existed, it had been deleted as the Mayor's Office of Housing only keeps electronic records for two years. The Mayor's Office of Housing has indicated that the HUD Lead Abatement Grant is subject to a 5 year commitment on the part of property owners and your office is my last source for this information. I had also submitted a request to the Board of Supervisors regarding emails from and to Fiona Ma regarding this matter, but was informed that they had no documents responsive to my request as Supervisor Ma had left her office to serve as a member of the State Assembly. Here too, your office is my last source for this information.

My original request to your office was faxed on 14 November 2008, and I would like a response immediately per the Sunshine Ordinance.

With Kind Regards

Rita O'Flynn 415-██████████ Cell: 415-██████████

To: ██████████@msn.com
CC: ██████████@msn.com
Subject: RE:
From: Ron.Vinson@sfgov.org
Date: Mon, 1 Dec 2008 15:24:04 -0800

Hello All,

Come by at 4pm. That should give us enough time to sift through all the info to see if any redactions are necessary.

Ron Vinson
Director of Media
(415) 581-4003 - office
(415) 581-3970 - Fax

1 South Van Ness Avenue
2nd Floor
San Francisco, CA 94103

To: <ron.vinson@sfgov.org>

cc: <[REDACTED]@msn.com>

Subject: RE: t

Rita August O'Flynn <[REDACTED]@msn.com> 12/01/2008 10:20 AM

Hi Ron:

Thank you so much for your response. Mark will try to come by tomorrow to pick it up; what is the latest he can stop by and what is the charge for the CD?

Rita O'Flynn 415-[REDACTED] Cell: 415-[REDACTED]

To: [REDACTED]@msn.com
Subject: RE:
From: Ron.Vinson@sfgov.org
Date: Mon, 1 Dec 2008 10:10:37 -0800

Hello Rita,

Yes, I'm sorry I didn't get back to you on Tuesday as planned. The person who was working on this request from the email team has been out of town. We should have it ready for you tomorrow at the latest. We will put the info in a CD format.

Ron Vinson
Director of Media
(415) 581-4003 - office
(415) 581-3970 - Fax

1 South Van Ness Avenue
2nd Floor
San Francisco, CA 94103

To <ron.vinson@sfgov.org>

<barry.fraser@sfgov.org>, <doris.legaspi@sfgov.org>,
cc <[REDACTED]@msn.com>, <stephanie.oguinn@sfgov.org>,
<catherine.argumedo@sfgov.org>

SubRE:
ject

Rita August O'Flynn
<[REDACTED]@msn.com>
12/01/2008 10:07 AM

Hi Ron:

I hope you had a nice Thanksgiving. Do you know when I can have the material I requested? I had to postpone a meeting with the Ethics Commission as I need to have this material when I meet with them.

With Kind Regards,

Rita O'Flynn 415-[REDACTED] Cell: 415-[REDACTED]

To: [REDACTED]@msn.com
CC: barry.fraser@sfgov.org; doris.legaspi@sfgov.org; [REDACTED]@msn.com;
stephanie.oguinn@sfgov.org
Subject: RE:
From: Ron.Vinson@sfgov.org
Date: Tue, 25 Nov 2008 13:12:51 -0800

Hi Rita,

I just met with your colleague. Unfortunately, I have been in jury duty since last Monday. I was selected and the trial was over with a verdict issued late this morning. Needless to say, I have not been in the office. I'm checking on the status of your request. It should have been retrieved while I was gone. Sorry for the delay.

Ron Vinson
Director of Media
(415) 581-4003 - office
(415) 581-3970 - Fax

1 South Van Ness Avenue
2nd Floor
San Francisco, CA 94103

To <ron.vinson@sfgov.org>

<barry.fraser@sfgov.org>,
cc <stephanie.oguinn@sfgov.org>,
<doris.legaspi@sfgov.org>, <[REDACTED]@msn.com>

SURE:
bje
ct

Rita August O'Flynn
<[REDACTED]@msn.com>
11/25/2008 08:07 AM

We would like to come by today and review and copy as needed the materials

you have been able to find. What time will materials be ready for us?

Rita O'Flynn 415-██████████ Cell: 415-██████████

To: ██████████@msn.com
CC: Barry.Fraser@SFGOV.ORG; Stephanie.OGuinn@sfgov.org;
doris.legaspi@sfgov.org
Subject:
From: Ron.Vinson@sfgov.org
Date: Fri, 14 Nov 2008 15:43:01 -0800

Dear Ms. O'Flynn:

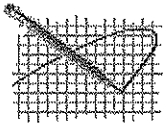
In order to properly respond to your Request, DTIS requires additional time in order to consult with another interested department or departments. In accordance with San Francisco Administrative Code Section 67.25(b) and California Government Code Section 6253(c), DTIS will respond on or before November 25, 2008.

Thank you so much for your patience!

Ron Vinson
Director of Media
(415) 581-4003 - office
(415) 581-3970 - Fax

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Barry Fraser/DTIS/SFGOV

02/17/2009 04:48 PM

To SOTF/SOTF/SFGOV@SFGOV

cc Ron Vinson/DTIS/SFGOV@SFGOV, Frank
Darby/BOS/SFGOV@SFGOV

bcc

Subject Re: Fw: Sunshine Complaint Received: #09003_Rita O'Flynn
vs Dept of Technology

History

This message has been forwarded

The Department of Technology submits the following statement to support its position in the above complaint.

Each City department is responsible for maintaining copies of public records consistent with its records retention policy. Where a City official, consistent with his or her department's records retention schedule, has deleted or placed in the Trash folder an email communication, neither the Sunshine Ordinance nor the state Public Records Act requires the City to search backup tapes to retrieve such messages. Therefore, DT has declined to provide email backup files in response to the Complainant's request.

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**SUNSHINE ORDINANCE TASK FORCE
MEMORANDUM
SUBMITTED BY RITA O'FLYNN**

March 17, 2009

RITA O'FLYNN v. DEPARTMENT OF TECHNOLOGY
HEARING DATE: MARCH 24, 2009

BACKGROUND

Complainant, Rita O'Flynn and her husband own real property located at 1672 – 1674 Great Highway in San Francisco.

In January, 2005 Susan Suval, a tenant residing at 1672 Great Highway applied for lead abatement grant funds through the Mayor's Office of Housing ("MOH"). These grants are funded by the federal Housing and Urban Development ("HUD") and administered by MOH for lead abatement work to be performed. A grant was approved by MOH in July of 2005 in the amount of \$27,215.00 for work to be performed at 1672 Great Highway..

In April, 2008 complainant Rita O'Flynn requested to review the files related to the Lead Demo Grant program at the MOH, including the file relating to her property at 1672 Great Highway. After reviewing the files she requested copies of the 1672 Great Highway file. Upon receipt of the copied file, she noticed that certain emails she had previously reviewed in the file had not been copied. When she requested the missing emails, she was informed by MOH that the correspondence that is not in the hard file had been deleted from the e-mail system as is consistent with the MOH document retention policy. Rita O'Flynn requested a copy of the MOH document retention policy on May 20, 2008 from Douglas Shoemaker, Director of the MOH, but has not received a copy of their document retention policy.

On November 14, 2008, Rita O'Flynn submitted an immediate disclosure request to the Department of Technology for all emails during the past five years from or to:

1. Myrna Iton Melgar, Mayor's Office of Housing and Susan Suval.
2. Michael Palmer, Mayor's Office of Housing and Susan Suval.
3. Fiona Ma, San Francisco Supervisor and Myrna Iton Melgar, Mayor's Office of Housing.

On November 14, 2008 Ron Vinson, Director of Media, from the Department of Technology ("DTIS") responded that DTIS will respond on or before November 25, 2008 in accordance with San Francisco Administrative Code Section 67.25(b) and California Government Code Section 6253(c). On November 25, 2008, Rita O'Flynn sent a representative to the DTIS offices to pick up the requested documents who was informed that the request had been delayed due to Ron Vinson's required jury duty. On December 1, 2008, Ron Vinson wrote Rita O'Flynn that she could come by the following day to

pick up the requested documents. Rita O'Flynn sent her representative to pick up the requested documents the following day and they were not made available. Rita O'Flynn then requested a status update from Ron Vinson via emails on January 9, 2009; January 13, 2009; and January 14, 2009. On January 14, 2009, Ron Vinson responded to Rita O'Flynn declining to provide any documents in response to her request stating that where a City official, consistent with his or her department's record retention schedule, has deleted or placed in the trash folder an email communication, neither the Sunshine Ordinance nor the state Public Records Act requires the City to search backup tapes to retrieve such messages.

COMPLAINT

On January 19, 2009, Rita O'Flynn filed a complaint against the DTIS for its:

1. Failure to disclose e-mails under Sunshine Ordinance Sections 67.21(b) and 67.24, and California Government Code Sections 6253(a) and (b);
2. Failure to notify and disclose within 10 days of its receipt of the request for immediate disclosure the reason for withholding and or non-disclosure of the requested documents under Sunshine Ordinance Section 67.25, and California Government Code Sections 6253(c) and (d); and
3. Failure to provide any legal justification for withholding public records under Sunshine Ordinance Section 67.27 and California Government Code Section 6255.

RESPONSE

DTIS responds that where a City official, consistent with his or her department's record retention schedule, has deleted or placed in the trash folder an email communication, neither the Sunshine Ordinance nor the state Public Records Act requires the City to search backup tapes to retrieve such messages.

APPLICABLE STATUTORY SECTIONS

1. San Francisco Administrative Code § 8.3 deals with retention and destruction of records generally.
2. San Francisco Administrative Code § 8.4 deals with records classification.
3. San Francisco Administrative Code § 8.5 addresses the establishment, use, etc., of records center.
4. Sunshine Ordinance § 67.21 addresses process for obtaining public records.
5. Sunshine Ordinance § 67.24 addresses public information that must be disclosed.

6. Sunshine Ordinance § 67.25 addresses immediacy of response.
7. Sunshine Ordinance § 67.27 addresses justification of withholding public records.
8. Sunshine Ordinance § 67.29 Index of Records to periods of retention of records.
9. Sunshine Ordinance § 67.29-7 requires a Department Head to maintain and preserve documents and correspondence.
10. Sunshine Ordinance § 67.34 states willful failure to comply shall be official misconduct.
11. California Government Code § 6253 addresses requests for public records.
12. California Government Code § 6255 addresses legal justification for withholding of public records.
13. California Government Code § 34090 addresses when the head of a city department may destroy records.
14. California Government Code § 34090.5 addresses when a city officer may destroy documents without approval.

ARGUMENT

San Francisco Administrative Law section 8.3 states that current records and storage records may be destroyed five years after they were created if they have served their purpose and are no longer required for any public business or other public purpose.

San Francisco Administrative Law section 8.5 has placed the responsibility of providing the establishment, maintenance and operation of a records center for the orderly storage, care, management and safeguarding of storage records on the Director of Administrative Services. The Department of Technology is under the purview of the Director of Administrative Services and has as one of its responsibilities maintaining a record of deleted emails from city departments.

Complainant has properly requested an immediate disclosure from the Department of Technology of public records consisting of emails between various city employees under the Sunshine Ordinance. The Department of Technology did not comply with the request for immediate disclosure and did not timely offer any valid objection to providing the requested documents within the ten day time period as set forth in section 67.27 of the Sunshine Ordinance or Government Code sections 6253 (c) and (d).

Government Code sections 34090 and 34090.5 describe when a city department head may destroy records unless otherwise provided by law. The head of a city department may destroy any city record under his charge without making a copy of it with the

approval of the legislative body by resolution and the written consent of the City Attorney. The Mayor's Office of Housing has not received the approval of the Board of Supervisors or the written consent of the City Attorney to destroy correspondence records prior to the required 5 year retention period as otherwise required by San Francisco Administrative Law section 8.3. This is evidenced by the San Francisco Index of Records for the Mayor's Office of Housing which has no time retention period listed for correspondence.

The policy of the Mayor's Office of Housing to delete emails after two years is intended to limit the amount of record storage in their office. This does not relieve the Mayor's Office of Housing from the requirement that storage records be retained for a period of five years. Since deleted emails are stored by the Department of Technology, they should be required to provide the requested documents.

ATTACHED SECTIONS FROM THE SAN FRANCISCO ADMINISTRATIVE CODE

SEC. 8.3. RETENTION AND DESTRUCTION OF RECORDS GENERALLY.

It shall be the duty of each department head to classify the department's records, using the classifications set forth in Section 8.4 of this Code, and to prepare a schedule for the systematic retention and destruction of such records, which schedule shall comply with the provisions of this Section and of Sections 8.4 and 8.9 of this Code and will be effective only upon approval by the officers and boards specified below.

Current records and storage records, as defined in Section 8.4 of this Code, may be destroyed five years after they were created if they have served their purpose and are no longer required for any public business or other public purpose, except that records pertaining to financial matters shall be destroyed only after approval by the Controller; those having legal significance only after approval by the City Attorney; and payroll checks, time cards and related documents only after approval by the Retirement Board.

SEC. 8.4. RECORDS CLASSIFICATIONS.

"Records," as defined in Section 8.1 of this Code, shall for the purposes of this Chapter be divided into three classifications: current records, storage records and permanent records.

"Current records" are records which for convenience, ready reference or other reason are retained in office space and equipment of the department involved.

"Storage records" are records which need not be retained in office space and equipment of the department involved, but which must be, or should be, prudently preserved for a time or permanently in the facilities of a records center, as specified in the following section.

SEC. 8.5. ESTABLISHMENT, USE, ETC., OF RECORDS CENTER.

The Director of Administrative Services shall provide for the establishment, maintenance and operation of a records center for the orderly storage, care, management and safeguarding of storage records of the departments and offices of the City and County and of the San Francisco Unified School District and for the destruction of storage records pursuant to retention and destruction schedules prepared and approved as provided in Section 8.3 of this Code. The Director of Administrative

Services may establish, maintain and operate such a records center as a function of one of the departments under the Director of Administrative Services' jurisdiction or, in lieu thereof may contract with a reputable and experienced archival firm to establish, maintain and operate such a records center and to provide retrieval and accession services.

ATTACHED SECTIONS FROM THE SUNSHINE ORDINANCE

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

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petitioner, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, Subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under Subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

SEC. 67.25. IMMEDIACY OF RESPONSE.

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

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

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

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as

soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

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.

SEC. 67.29. INDEX TO RECORDS.

The City and County shall prepare a public records index that identifies the types of information and documents maintained by 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.

SEC. 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.

(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

**ATTACHED SECTIONS FROM THE
CALIFORNIA GOVERNMENT CODE**

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

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

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

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

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

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

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

(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.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

6255. (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.

34090. Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the city attorney the head of a city department may destroy any city record, document, instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required. This section does not authorize the destruction of:

(a) Records affecting the title to real property or liens thereon.

(b) Court records.

(c) Records required to be kept by statute.

(d) Records less than two years old.

(e) The minutes, ordinances, or resolutions of the legislative body or of a city board or commission.

This section shall not be construed as limiting or qualifying in any manner the authority provided in Section 34090.5 for the destruction of records, documents, instruments, books and papers in accordance with the procedure therein prescribed.

34090.5. Notwithstanding the provisions of Section 34090, the city officer having custody of public records, documents, instruments, books, and papers, may, without the approval of the legislative body or the written consent of the city attorney, cause to be destroyed any or all of the records, documents, instruments, books, and papers, if all of the following conditions are complied with:

(a) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document, or reproduced on film, optical disk, or any other medium in compliance with Section 12168.7 for recording of permanent records or nonpermanent records.

(b) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one which accurately and legibly reproduces the original thereof in all details and that does not permit additions, deletions, or changes to the original document images.

(c) The photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are made as accessible for public reference as the original records were.

(d) A true copy of archival quality of the film, optical disk, or any other medium reproductions shall be kept in a safe and separate place for security purposes. However, no page of any record, paper, or document shall be destroyed if any page cannot be reproduced on film with full legibility. Every unreproducible page shall be permanently preserved in a manner that will afford easy reference. For the purposes of this section, every reproduction shall be deemed to be an original record and a transcript, exemplification, or certified copy of any reproduction shall be deemed to be a transcript, exemplification, or certified copy, as the case may be, of the original.

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