

Date: April 26, 2011

Item No. 10  
File No. 10059

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Committee recommendation**
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Completed by: Chris Rustom

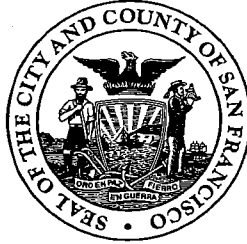
Date: April 22, 2011

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

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

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

**SUNSHINE ORDINANCE  
TASK FORCE**



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION**  
January 27, 2011

**DATE THE DECISION ISSUED**  
January 25, 2011

*DORIAN MAXWELL v SF MUNICIPAL TRANSPORTATION AGENCY (CASE NO. 10059)*

**FACTS OF THE CASE**

Complainant, Dorian Maxwell, alleges that the San Francisco Municipal Transportation Agency ("MTA") refused to provide documents responsive to his October 18, 2010, public records request for "any and all documentary evidence such as emails, inspectors reports, photos, etc for review. In respect to a matter backdated September 25, 2010." He also alleges that MTA's refusal occurred on October 27, 2010, but fails to say whether was delivered orally or in writing.

**COMPLAINT FILED**

On November 2, 2010, Mr. Maxwell filed a public records complaint against the MTA for violations of Section 6254 and Section 6256 of the California Public Records Act.

**HEARING ON THE COMPLAINT**

On January 20, 2011, Mr. Maxwell appeared before the Task Force and said the MTA had not responded to his request and had not produced the requested records. The MTA was not present at the meeting. There was no one in the audience who spoke for or presented facts on behalf of the MTA. The matter was rescheduled to the January 25 meeting and it was later known that an MTA representative was in the audience. On January 25, 2011, Mr. Maxwell again appeared before the Task Force and presented his case. Cyndia Chambers and Rumi Uno represented the MTA.

Mr. Maxwell told the Task Force that since the January 20 hearing, the MTA had provided him with all but two documents: an inspector's report and an alleged document that should have been attached to a photo he had been provided by MTA.

Ms. Uno, an Employee Labor Relations Manager for the MTA, said Mr. Maxwell was subject to a "Skelly" hearing, an administrative process that precedes a department's action to dismiss a public employee for cause. She said certain items that Mr. Maxwell was seeking are either premature or inappropriate to be placed in his personnel file because he has not exhausted the administrative appeal process. She said if Mr. Maxwell was seeking documents

**ORDER OF DETERMINATION**

related to a disciplinary hearing, they would not be in his personnel file until the conclusion of the hearing process. She said Mr. Maxwell made an appointment to review his personnel file and noticed certain documents missing. She said based on the MTA's procedure, the type of document would indicate where it would be filed. Eventually, she said, the documents would be placed in the personnel file at the conclusion of the administrative appeal process.

Ms. Chambers, Mr. Maxwell's superintendent, said he has the right to come to the office and review any of his personnel files there. She said he came with his shop steward last month and reviewed all the files and, in fact, she assisted him by providing him information related to another matter that occurred several years ago. As Mr. Maxwell's superintendent, she said, she has tried to help him with everything that he needs.

To Member Knoebber, Mr. Maxwell said since he was interviewed by an inspector, who also searched his bus related to the alleged employee misconduct, there should be a report reflecting that encounter. He also said he believed the photo must have been accompanied by an attached document because the picture was not time-stamped and a document usually accompanied photos used in disciplinary hearings to explain when and where a photo was taken .

Ms. Uno said she believes Mr. Maxwell is referring to the Skelly packet because her office has to provide public employees who have a pending disciplinary hearing a notice that says what disciplinary action MTA is proposing or recommending based on collected evidence. She said although Mr. Maxwell thinks the packet should contain the report, the proposal or recommendation made was not based on such a document and that its existence was unknown.

Regarding the photo, she said she did not know if it was attached to another document and, if it was, the MTA chose not to use it because it was not in the packet and was not used to support the proposal or recommendation.

Ms. Chambers told Member Snyder that she may or may not have received Mr. Maxwell's letter on or after October 18, but responded only on Monday because of the Skelly hearing. She said there is a procedure and a process in which every time there is a hearing, he is entitled to the hearing file. She said he also has a shop steward and a union representative who are supposed to supply him with what he wants. She said he came to her office on Monday and she gave him his Skelly paperwork and some memos and references related to an offense that he had allegedly committed. She reminded the Task Force that Mr. Maxwell's appeal process was ongoing and that a final decision has yet to be reached.

In closing, Ms. Chambers said the MTA has rules and regulations as well as processes and procedures, all of which she follows, and that the MTA has some employees who feel that the employer is not doing what they expect it to do.

Mr. Maxwell said the inspector's report would have exonerated him of the alleged offense because the inspector searched the bus and the materials that the MTA claimed he had did not exist. He also said there was confusion in his complaint and wanted it clarified to reflect that the MTA had not responded to his request by October 27.

**ORDER OF DETERMINATION****FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Members found that Mr. Maxwell's request was for all documents held by MTA, and was not limited to the Skelly file or his personnel file. They also found the MTA needed to respond within the statutory time frame because Mr. Maxwell had invoked the Sunshine Ordinance. They added that regardless of whether the documents were public, they were required to respond to the request under the Ordinance, and at some point the MTA needed to seek guidance from the City Attorney's Office or its own public information office staff on how to respond to a Sunshine request. The Task Force applauded the MTA for its good-faith approach in following the Skelly hearing procedures, and for coming and explaining its case.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the agency violated Sunshine Ordinance Sections 67.25 for failure to respond, 67.26 for not keeping withholding to a minimum, and 67.27 for failing to provide justification for withholding, and California Public Records Act Section 6254(c) because the requestor was asking for his own file and therefore disclosure to him could not have invaded his personal privacy.

The MTA shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on February 8, 2011.

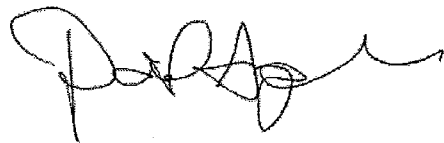
This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 25, 2011, by the following vote: (Johnson / Snyder)

Ayes: Snyder, Manneh, Washburn, Knoebber, Wolfe, Chan, Johnson, Knee

Excused: Cauthen



Richard A. Knee, Chair  
Sunshine Ordinance Task Force



David Snyder, Member, Seat #1\*  
Sunshine Ordinance Task Force

c: Dorian Maxwell, Complainant  
Cyndia Chambers and Rumi Uno, SFMTA, Respondents  
Jerry Threet, Deputy City Attorney

**ORDER OF DETERMINATION**

\*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

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

## MEMORANDUM

January 21, 2010:

*DORIAN MAXWELL VS. MUNICIPAL TRANSIT AGENCY (10059)*

### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant, Dorian Maxwell, alleges that the Municipal Transportation Agency (MTA) refused to provide documents responsive to his October 18, 2010 public records request for "any and all documentary evidence such as emails, inspectors reports, photos, etc for review. In respect to a matter backdated September 25, 2010." He also alleges that MTA's refusal occurred on October 27, 2010, but fails to allege whether the alleged refusal was delivered orally or in writing.

#### COMPLAINANT FILES COMPLAINT:

On November 2, 2010, Mr. Maxwell filed a public records complaint against the MTA for violations of "Section 6254, Section 7, and Section 6256."

#### JURISDICTION

The MTA was established by charter amendment in 1999 and is a department of the City and County of San Francisco. Therefore, the Task Force generally has jurisdiction to hear a complaint, as alleged. MTA did not contest jurisdiction.

#### APPLICABLE STATUTORY SECTION(S):

##### Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs responses to a public records request, and the format of requests and of responsive documents.
- Section 67.24(c) governs public information that must be disclosed regarding employee personnel records.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

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

- Section 6253 governs the release of public records and the timing of responses.
- Section 6254(c) governs limitations on the disclosure of employee personnel records.
- Section 6254(k) governs limitations on disclosure of records that are made confidential under other state and federal laws.

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Privileged & Confidential**

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**APPLICABLE CASE LAW:**

**ISSUES TO BE DETERMINED**

**Uncontested/Contested Facts:** Complainant alleges that the MTA refused to provide documents responsive to his October 18, 2010 public records request for "any and all documentary evidence such as emails, inspectors reports, photos, etc for review. In respect to a matter backdated September 25, 2010." He also alleges that MTA's refusal occurred on October 27, 2010, but fails to allege whether the alleged refusal was delivered orally or in writing. At the first hearing on this matter, complainant clarified that the records sought were in connection with a "Skelly" hearing, an administrative hearing that precedes a department's action to dismiss a public employee for cause.

At the time of this memorandum, I had not been provided any response by MTA that contested the allegations or otherwise responded to the Complaint.

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

- Did MTA respond in any way to Mr. Maxwell's request?
- If a written response was made, when was it made?
- Did any written response provide any responsive documents?
- Did any written response provide a written justification for withholding any responsive documents?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Did Complainant sufficiently and clearly articulate to MTA what documents, notes or other writings he wanted produced?
- If MTA responded to the request, was the response timely?
- If MTA responded to the request, did its response otherwise comply with the requirements of the Ordinance?
- If MTA withheld records from Complainant's personnel file, did those records fall within any of the categories enumerated in Section 67.24(c) that must be disclosed under the Ordinance?
- If MTA withheld records from Complainant's personnel file, but they did not fall under the categories enumerated in Section 67.24(c), would disclosure of those records constituted an "unwarranted invasion of personal privacy" so as to justify refusal to disclose them under PRA Section 6254(c)?

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**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

**ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED****SEC. 67.21. - PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS;  
ADMINISTRATIVE APPEALS.**

- (a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- (b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.
- (c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.
- (d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any



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part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

**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:

- ...
- (c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:
- (1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:
    - (i) Sex, age and ethnic group;
    - (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
    - (iii) Years of employment in the private and/or public sector;
    - (iv) Whether currently employed in the same position for another public agency.
    - (v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached

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to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

**CAL. GOV'T. CODE SECTIONS 6250 ET SEQ. (PUBLIC RECORDS ACT)**

**§ 6254. EXEMPTION OF PARTICULAR RECORDS**

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

...

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.



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 SAN FRANCISCO MUNICIPAL TRANSIT AGENCY

Name of individual contacted at Department or Commission CYNTHIA CHAMBERS / Rumi Uno

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

Sunshine Ordinance Section SECTION 62.54 SECTION 7 and 62.56
(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.

ON 10/18/2010 I requested to THE SFMTA To furnish information that is in my personal file. On 10/27/2010 THEY REFUSE TO furnish requested information see letter of request attached.

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

(Optional)1

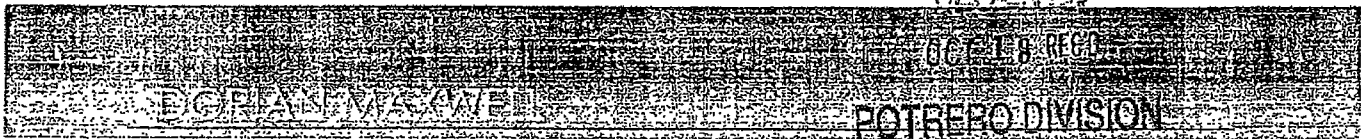
Name DORIAN MAXWELL Address [redacted] Cimmar Court # [redacted] SFCA 44124

Telephone No. 415 [redacted] E-Mail Address [redacted] @yahoo.com

Date 10/27/10 Signature [Signature]

I request confidentiality of my personal information. [X] 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).



[Redacted] Colosseum Way  
 Antioch, California  
 USA  
 94531  
 415 [Redacted]

October 18, 2010

Cyndia Chambers  
 Superintendent Potrero Division  
 2500 Mariposa Street  
 San Francisco, California 94107

Dear Ms. Chambers

I'm writing in request under Freedom of Information Act (AKA The Sunshine Ordinance) Government code 6254 section 7 states that you furnish any and all documentary evidence such as emails, inspectors reports, photos, etc for review. In respect to a matter backdated September 25,2010. Please hand deliver in person at the division or you can mail it to the address listed above.

Government Code 6256 states that you have 10 calendar days from the date of this letter of request to furnish requested documents and a written response. Your cooperation is greatly appreciated.

Respectfully Submitted

  
 Dorian Maxwell

CC: Sunshine Task force  
 CC: SFMTA Labor relation Department  
 CC: TWU Local 250-A