

Date: April 26, 2011

Item No. 12 & 13
File No. 11015

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Larry Little John against the Sheriff's Department**
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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.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 MAR -9 PM 5:00
BY AK

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 Sheriff's Dept

Name of individual contacted at Department or Commission JAMES HARRIGAN Sheriff's Atty
and various deputies

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.

Penal access to jail census see attached letter from
City Attorney Sept 6, 2005 No action taken on this
by Sheriff to this date.

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 LARRY LITTLEJOHN Address ██████████ Clementine St SF 94118

Telephone No. (415) ██████ - ██████ E-Mail Address Cell (415) ██████ - ██████

Date MARCH 9, 2011 Larry Littlejohn
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).

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

DORJI ROBERTS
Deputy City Attorney

DIRECT DIAL: (415) 554-6760
E-MAIL: dorji.roberts@sfgov.org

Via First Class Mail

Mr. Larry Littlejohn
775 Clementina Street
San Francisco CA 94103

Re: Petition to Supervisor of Records, Concerning Public Records Request For Jail Census

Dear Mr. Littlejohn:

This letter responds to your petition to the Supervisor of Records, dated August 24, 2005, concerning your public records request "to view a list of the names of all inmates then in any of the County Jails."

Introduction

As we understand the facts pertaining to your public records request, on August 23, 2005 you personally appeared at County Jail on August 9, 2005 and spoke with the deputy sheriff on duty at the reception desk. You orally requested to view a list of the names of all inmates then in any of the county jails (the "jail census"). The deputy denied your request. On August 24, 2005 you appeared at the reception desk of this office, and requested the assistance of the City Attorney in obtaining the jail census. At that time you prepared a handwritten letter to the City Attorney that detailed your request and asked this office to "advise the Sheriff's Department that the names of all inmates in any of the County Jails is public information."

Supervisor of Records Request

Under the San Francisco Sunshine Ordinance (the "Ordinance") the City Attorney is the Supervisor of Records for the City and County of San Francisco (the "City"). San Francisco Administrative Code § 67.20(c). We have treated your August 24 letter as a petition to the Supervisor of Records on whether the jail census is a public record not exempt from disclosure under the Ordinance or the California Public Records Act, Government Code §§6250 et seq. (the "CPRA"). We conclude that the jail census is a public record that must be disclosed under the CPRA, provided that the Sheriff may withhold the names of particular inmates where disclosure of such information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.

The Sheriff is Subject to the CPRA

Article XI, §§ 1(b) and 4(c) of the California Constitution designate sheriffs as county officers. Sheriffs are elected county officers. Government Code § 24000(b); Elections Code § 314. Charter counties are authorized to specify the duties of county officers. California Constitution, Article XI, § 4(e). The county sheriff is charged with the responsibility to keep and operate the county jail. Government Code § 26605; Penal Code § 4000. County jails are used for pre-trial detention and post-sentencing confinement for misdemeanor and felony offenses. Penal Code §§ 18, 19, 4000, 4015. However, Government Code § 23103 authorizes a county to transfer the administration and control of the county jail from the sheriff to a county department.

Government Code § 12560 grants the Attorney General power over the sheriffs' activities relevant to the "investigation or detection of crime," but Government Code § 25303 grants

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county boards of supervisors broad fiscal and administrative powers for the management of county jails so long as the boards do not "obstruct the investigative function of the sheriff of the county." Thus, whether a sheriff is a state or county official depends on the role at issue. Counties retain the power to transfer control of a county jail from the sheriff to a county-created department of corrections, suggesting that the operation of the jails is a county function rather than a state function. Government Code § 23013; *Beck v. County of Santa Clara* (1988) 204 Cal.App.3d 789, 797.

The Ninth Circuit has held that the sheriff acts for the county, not the state in administering the local county jails. *Cortez v. County of Los Angeles* (9th Cir. 2002) 294 F.3d 1186, 1189-92; *Streit v. County of Los Angeles* (9th Cir. 2001) 236 F.3d 552, 566. See also *Brewster v. Shasta County* (9th Cir. 2002) 275 F.3d 803, 812. And the California Supreme Court recently held that county sheriffs act as state officers only while performing state law enforcement duties such as investigating criminal activity. *Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 838-39. Performing the purely ministerial act of maintaining a list of those held in county jails is not a state law enforcement duty. Accordingly, for purposes of the issues raised by this request, the Sheriff is a county officer subject to the CPRA.

Subject to Certain Exceptions, the Jail Census is a Public Record

A public record under the CPRA is "any writing containing information relating to the conduct of the public's business." Government Code § 6252(e). The existing jail census therefore is a public record. The question is whether there is any basis for the Sheriff to withhold the census. Section 6254 of the CPRA exempts certain records relating to law enforcement from disclosure. That section provides in relevant part:

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:

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, . . . any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes,

Notwithstanding any other provision of this subdivision, *state and local law enforcement agencies shall make public the following information*, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, *the time and manner of release or the location where the individual is currently being held* (Emphasis added).

The CPRA defines a "local agency" to include a city and county and any agency thereof. Government Code § 6252(b). San Francisco is a city and county, and the Sheriff's Department is a law enforcement department of the City. Charter §§ 1.100, 6.100, 6.105. We conclude that the San Francisco Sheriff's Department is a local law enforcement agency within the meaning of Government Code § 6254(f)(1). That section has been interpreted to authorize disclosure of contemporaneous information relating to persons currently within the criminal justice system. *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588, 601.

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Conclusion

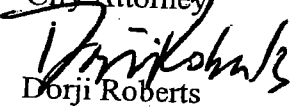
Because Government Code § 6254(f)(1) expressly requires state and local law enforcement agencies to make public the location of individuals currently being held in custody, we conclude that the jail census is a public record under the CPRA. While the jail census is subject to public disclosure, the Sheriff may withhold the identity or location of a particular inmate where the Sheriff determines that disclosure would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation. Government Code § 6254(f). The Sheriff may wish to consult with the Police Department, the District Attorney's Office and any other applicable law enforcement agencies before making any such determination.

We believe this resolves your petition to the Supervisor of Records.

Very truly yours,

DENNIS J. HERRERA

City Attorney


Dorji Roberts

Deputy City Attorney

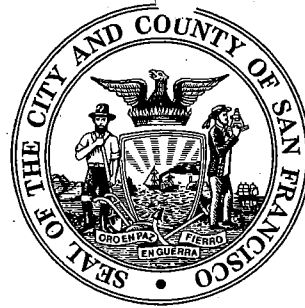
c: James F. Harrigan, Esq.

City and County of San Francisco

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OFFICE OF THE SHERIFF

2011 MAR 32 AM 9:42



Michael Hennessey
SHERIFF

(415) 554-7225

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2011 APR 1 AM 9:45
RBC

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

March 31, 2011

Reference: AL 2011-076

Re: Complaint number # 11015

Dear Mr. Rustom,

I am responding to the above referenced complaint. The Sheriff's Department objects to jurisdiction in this matter because the matter is stale. The matter dates back over five years to August, 2005. The Department does not believe the complainant took steps necessary to perfect a records request at that time. Because this matter dates back to 2005 the matter should be dismissed. The Sheriff's Department does not have a list of all the people who were in custody on August 9, 2005.

Very Truly Yours,

Freya A. Horne
Assistant Legal Counsel