

Date: April 26, 2011

Item No. 14 & 15

File No. 11016

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Andrew Sisneros v SF Municipal Transportation Agency**
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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.



<complaints@sfgov.org>
03/24/2011 01:54 PM

To <sotf@sfgov.org>
cc
bcc
Subject Sunshine Complaint

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:SFMTA
CONTACTED:Caroline Celaya
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:
DESCRIPTION:Failure to release information related to a driver cam on coach 8344.
HEARING:Yes
PRE-HEARING:No
DATE:March 9, 2011
NAME:Andrew Sisneros
ADDRESS:
CITY:
ZIP:
PHONE:939-2634
CONTACT_EMAIL:andrew.sisneros@sbcglobal.net
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2011 MAR -9 PM 2:13

BY: pa

February 9, 2011

Full Disclosure Request


To: SFMTA (MUNI) C.C.S.F.

I Andrew Sisneros, Kirkland Division, Transit Operator #2869 request any and all documents relating to the Drive Cam on Coach 8344 (including but not limited to reports, logs of maintenance records, and inspections) from the dates October 5, 2010 through November 30, 2010.

This request is being made per the **San Francisco Sunshine Ordinance**.

Your prompt response is greatly appreciated.

Thank You,


Andrew Sisneros
415-939-2634

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Cameron Beach | Director
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oka | Director
Nathaniel P. Ford Sr. | Executive Director/CEO

February 22, 2011

SENT VIA EMAIL

Andrew Sisneros
Andrew.Sisneros@sbcglobal.net

RE: Public Records Request dated February 9, 2011

Dear Mr. Sisneros:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated February 9, 2011

The Records Requested

You have requested "any and all documents related to the Drive Cam on Coach 8344 (including but not limited to reports, logs of maintenance records, and inspections) from the dates October 5, 2010 through November 30, 2010."

Exemptions and Privileges

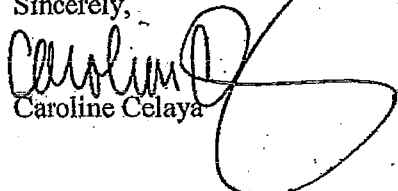
The SFMTA is also not required to disclose records where disclosure of such records would constitute an unwarranted invasion of personal privacy. (California Constitution, Article I, §1; Cal. Gov't Code § 6254(c); see also Cal. Gov't §6254(k); *Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal. 4th 1, 35 (identifying privacy interest in precluding dissemination of sensitive, confidential information); *Teamsters Local 856 v. Priceless, LLC*, (2003) 112 Cal. App. 4th 1500, 1512 (public employees have right of privacy in their personnel files); *Braun v. City of Taft*, (1984) 154 Cal.App.3d 332, 345-347; *City of San Jose v. Superior Court*, (1999) 74 Cal.App.4th 1008 (court denied media's request for names and contact information of complainants).) Because disclosure of some of the documents responsive to your request are personnel records containing information confidential under both the California Constitution and Section 6254(c) of the Public Records Act, we decline to produce those documents.

Document Production

Attached please find documents responsive to your request.

Please contact the Sunshine request line at (415) 701-4670 or at sfintasunshinerequests@sfmta.com if you have any further questions regarding this matter or if you would like additional information.

Sincerely,


Caroline Celaya

Monday, February 28, 2011 5:53 PM

Fw: SFMTA response

From: "Andrew Sisneros" <andrew.sisneros@sbcglobal.net>
To: "CarolineCelaya" <Caroline.Celaya@sfmta.com>
4 Files (1426KB)



Frame :5 ... Sisneros,... Order of ... Full Discl...

Ms Celaya,

First, I would like to give you many thanks for all the responses to my requests that I have submitted.

I have read your letter from your office dated February 22, 2011 Re: public records requested. I believe I am still entitled to the documents I seek. **Let me bring to your attention that on January 26, 2011, a very similar scenario was brought to the Sunshine Ordinance Task Force and the order for the determination was that SFMTA (MUNI) was to give Mr. Dorian Maxwell the documents that he requested.**

Attached is the order of determination. If there is any information that will invade anyone's privacy, I hope the agency can redact it. At this point I feel both parties (Sisneros /SFMTA) should not endure hearings on this matter, but If I do not hear from you by Friday March 4, 2011. I will proceed first with the Sunshine Ordinance Task Force and ending with the Ethics Commission.

The Records Requested

You have requested: any and all documents related to the Drive Cam on Coach 8344 (including but not limited to reports, logs of maintenance records, and inspections) from the dated October 5, 2010 through November 30, 2010."

Thank you,

Andrew Sisneros

415-939-2634

--- On Tue, 2/22/11, Celaya, Caroline <Caroline.Celaya@sfmta.com> wrote:

From: Celaya, Caroline <Caroline.Celaya@sfmta.com>
Subject: SFMTA response
To: "Andrew Sisneros" <andrew.sisneros@sbcglobal.net>
Date: Tuesday, February 22, 2011, 3:38 PM

The response from the SFMTA is attached.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

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

10059_Dorian Maxwell v SF Municipal Transportation Agency 1

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

CITY AND COUNTY OF SAN FRANCISCO SUNSHINE ORDINANCE TASK FORCE

ORDER OF DETERMINATION

10059_Dorian Maxwell v SF Municipal Transportation Agency 2
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.

CITY AND COUNTY OF SAN FRANCISCO SUNSHINE ORDINANCE TASK FORCE

ORDER OF DETERMINATION

10059_Dorian Maxwell v SF Municipal Transportation Agency 3
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


CITY AND COUNTY OF SAN FRANCISCO SUNSHINE ORDINANCE TASK FORCE

ORDER OF DETERMINATION

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

SUBMITTED 4/18/2011



From: Antonio, Ayn
Sent: Thursday, October 07, 2010 1:52 PM
To: Kretz, Emily; Williamson, Paul
Subject: RE: Drivecam Event Recorder Abuse Coach 8344 Kirkland

Emily: 8344 is on the 47 line right now but am in the process of trying to get that coach brought in so video could be pulled -

Paul: FYI so you can secure coach - please also check coach to see if camera was tampered with and extent of tampering - I need a report on that

Thanks,
ayn

Celaya, Caroline

From: Celaya, Caroline
Sent: Tuesday, February 22, 2011 3:39 PM
To: 'Andrew Sisneros'
Subject: SFMTA response

Attachments: Frame .5 of DC Event #174368.doc; Sisneros, Andrew 2.22.11.pdf



Frame .5 of Sisneros,
Event #174368 2.22.11.pdf

The response from the SFMTA is attached.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency One South Van Ness Avenue, 7th Floor San
Francisco, CA 94103

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Cameron Beach | Director
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oke | Director
Nathaniel P. Ford Sr. | Executive Director/CEO

February 22, 2011

SENT VIA EMAIL

Andrew Sisneros
Andrew.Sisneros@sbcglobal.net

RE: Public Records Request dated February 9, 2011

Dear Mr. Sisneros:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated February 9, 2011.

The Records Requested

You have requested "any and all documents related to the Drive Cam on Coach 8344 (including but not limited to reports, logs of maintenance records, and inspections) from the dates October 5, 2010 through November 30, 2010."

Exemptions and Privileges

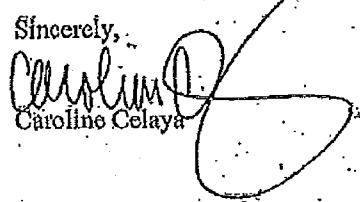
The SFMTA is also not required to disclose records where disclosure of such records would constitute an unwarranted invasion of personal privacy. (California Constitution, Article I, §1; Cal. Gov't Code § 6254(e); see also Cal. Gov't §6254(k); *Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal. 4th 1, 35 (identifying privacy interest in precluding dissemination of sensitive, confidential information); *Teamsters Local 856 v. Pricelless, LLC*, (2003) 112 Cal. App. 4th 1500, 1512 (public employees have right of privacy in their personnel files); *Braun v. City of Taft*, (1984) 154 Cal.App.3d 332, 345-347; *City of San Jose v. Superior Court*, (1999) 74 Cal.App.4th 1008 (court denied media's request for names and contact information of complainants).) Because disclosure of some of the documents responsive to your request are personnel records containing information confidential under both the California Constitution and Section 6254(e) of the Public Records Act, we decline to produce those documents.

Document Production

Attached please find documents responsive to your request.

San Francisco Municipal Transportation Agency
One South Van Ness Avenue, Seventh Fl. San Francisco, CA 94103 | Tel: 415.701.4500 | Fax: 415.701.4430 | www.sfmta.com

Please contact the Sunshine request line at (415) 701-4670 or at sfintasunshinerequests@sfmta.com if you have any further questions regarding this matter or if you would like additional information.

Sincerely,

Caroline Celaya

DRIVE



FWD 0.00

LAT 0.00

TIME +0.50

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Cameron Beach | Director
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oka | Director
Nathaniel P. Ford Sr. | Executive Director/CEO

April 19, 2011

Mr. Rick Knee
Chairman, Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Complaint against the Municipal Transportation Agency
Complaint No. 11016

Dear Mr. Knee:

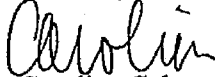
I am writing in response to complaint #11006 filed by Mr. Andrew Sisneros. Mr. Sisneros made a public records request on February 9, 2011, seeking "any and all documents related to the Drive Cam on Coach 8344 (including but not limited to reports, logs of maintenance records, and inspections) from the dates October 5, 2010 through November 30, 2010."

On February 22, 2011, the San Francisco Municipal Transportation Agency ("SFMTA") responded to his request by providing one record but declined to produce other records which are confidential personnel records. The agency's response is attached as Exhibit A to this letter.

Mr. Sisneros complains that the SFMTA failed to release records responsive to his request. But, the Public Records Act exempts from disclosure "[p]ersonnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Cal. Govt. Code §6254(c). While the Sunshine Ordinance creates an expanded right to access for records relating to employees, as set forth in S.F. Administrative Code Section 67.24(c)(1)-(7), none of the records requested by Mr. Sisneros fall under these provisions. By specifying which employee records must be disclosed, the Sunshine Ordinance implicitly recognizes that City departments may, consistent with the Public Records Act and the constitutional right of privacy, withhold other employee records. As a result, the SFMTA declined to produce these records.

Please let me know if you need any further information. Thank you for your consideration.

Sincerely,


Caroline Celaya

Encl.

cc: Andrew Sisneros