

Date: April 26, 2011

Item No. 2 & 3

File No. 11009

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Jason Grant Garza v SF Community Clinic Consortium
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

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
 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 SF Community Clinic Consortium

Name of individual contacted at Department or Commission John Gressman

- 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.

Failure to provide requested documents.

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 Jason Grant Garza Address _____

Telephone No. _____ E-Mail Address _____

Date _____ 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).



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

April 21, 2011:

**JASON GRANT GARZA VS. SAN FRANCISCO COMMUNITY CLINIC
CONSORTIUM (11009)**

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Jason Grant Garza ("Complainant") alleges that the San Francisco Community Clinic Consortium ("SFCCC") has failed to adequately respond to his February 25, 2011 Immediate Disclosure Request ("IDR").

COMPLAINANT FILES COMPLAINT:

On March 2, 2011, Complainant filed this complaint against SFCCC and its staff person, John Gressman, alleging violations of public records laws.

JURISDICTION:

SFCCC is a charitable non-profit incorporated in California and consisting of private, member health clinics located in San Francisco. SFCCC's annual report, federal tax return and audited financial statement suggests that the majority of its funding is received from state and federal grants, with the remainder mostly from private foundations. However, those same documents suggest that SFCCC either receives funds from, or that funds are administered through, the San Francisco Department of Public Health ("DPH").

If more than \$250,000 in grant money provided to SFCCC is received from or administered by DPH, the Task Force *would* have jurisdiction over SFCCC to adjudicate an alleged violation of Administrative Code section 12L. If no grant money is received or administered by DPH or another branch of the City and County of San Francisco, then the Task Force would not have jurisdiction over an alleged 12L violation.

SFCCC is not a body covered by the Sunshine Ordinance; therefore, the Task Force does not have jurisdiction to adjudicate a complaint of a violation of that law.

APPLICABLE STATUTORY SECTION(S):

Section 12L of the San Francisco Administrative Code:

- Section 12L.1 addresses intent of this section.
- Section 12L.3(e) deals with definitions.
- Section 12L .5(a) deals with public access to records.

MEMORANDUM

TO: Sunshine Task Force
DATE: April 21, 2011
PAGE: 2
RE: Complaint 11009: Garza vs. SFCCC

Section 67 of the San Francisco Administrative Code:

- Section 67.3 and 67.20 define the entities subject to the Ordinance, and "public information."

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

- Section 6252 defines the governmental entities subject to the statute and "public records."

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED:**FACTUAL ISSUES:**

Uncontested/Contested Facts: Complainant alleges that on February 25, 2011, he made an IDR to SFCCC for the following:

"All documents, emails, correspondence, logs, notes of conversation, notes of phone calls regarding: (1) a copy of my SIGNED HIPPA release/authorization to ACCESS MY medical records from DPH; (2) the name, email address, phone number of SFCCC's ADA Coordinator ; (3) a copy of notification (suspected or actual breach) to DPH per MOU that regarding PHI, security, HIPPA, computerized records concerning my medical records, etc ; (4) the name and email address and phone number of said representative that per the attached MOU states: A representative of SFCCC shall be appointed to the DPH DATA GOVERNANCE COMMITTEE. This request includes all paperwork sent, received, emailed or any other form of transmittal to all involved. This request includes all paperwork sent, received, emailed or any other form of transmittal from all involved. This request also includes all internal documentation generated by this sunshine request matter also. (From inception to present date) ... for example any documentation, notes, logs, tapes, emails, etc from any individual to any other individual regarding any matter concerning this matter, its handling, deposition, etc.."

Mr. Garza further alleges that none of the requested documents were ever provided to him by SFCCC. The support documents provided by Mr. Garza show that on February 25, 2011, SFCCC informed Mr. Garza that he would need to request the documents he sought from Haight-Ashbury Free Clinic ("HAFC"), as that was the organization that had provided health care to him. Mr. Garza again requested the documents from SFCCC. Again on February 25, 2011, SFCCC directed Mr. Garza back to HAFC, stating that it did not have "any records relating to your care." On February 26, 2011, Mr. Garza again requested the documents from SFCCC. It does not appear that SFCCC further responded to the request.

Mr. Garza also argues that SFCCC is subject to the jurisdiction of the Task Force because it received City funding from the Department of Public Health. As evidence of this funding, Mr. Garza points to the 2010 Annual Registration Renewal Fee Report ("Fee report") filed by SFCCC with the California Registry of Charitable Trusts, in which SFCCC reported that it received government funding from the San Francisco Department of Public Health.

MEMORANDUM

TO: Sunshine Task Force
 DATE: April 21, 2011
 PAGE: 3
 RE: Complaint 11009: Garza vs. SFCCC

SFCCC responds to the Sunshine complaint by arguing that it is not subject to jurisdiction of the Task Force because it is not a body covered under either the Sunshine Ordinance or Administrative Code 12L. SFCCC also seeks to rebut the evidence that it received funding from DPH by offering an undated, sworn declaration by its CEO, John Gressman. In that declaration, Mr. Gressman states that SFCCC receives no funding from any City entity and that the 2010 Fee Report incorrectly stated that it received funding from DPH. Mr. Gressman further declares that SFCCC receives funding from federal and private sources, as well as from the SF Health Authority and the SF Redevelopment Agency. He further declares that SFCCC has no contracts that provide funding from the City to SFCCC.

SFCCC further argues that neither the Health Authority nor the Redevelopment Agency are City entities, and therefore it receives no funding from the City. From this, SFCCC concludes that it is not subject to either the Sunshine Ordinance or Administrative Code Section 12L. In addition, SFCCC argues that the records sought are not "public information" under the Sunshine Ordinance. Finally, SFCCC concludes that it does not have records responsive to Mr. Garza's request.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does SFCCC receive at least \$250,000 per year in City-provided or City-administered funds?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Is SFCCC subject to the requirements of the Sunshine Ordinance or the Public Records Act (PRA)?
- Are the documents sought by complainant "public records" subject to disclosure under those statutes?
- If SFCCC is not subject to the Ordinance or the PRA, is it subject to Admin. Code 12L?
- If so, are the documents sought by complainant required to be disclosed under 12L?

SUGGESTED ANALYSIS*Sunshine Ordinance and PRA*

SFCCC is a non-profit corporation created by a coalition of nonprofit community health clinics, and thus is not a body subject to the Sunshine Ordinance. See Administrative Code sections 67.3 and 67.20. In addition, SFCCC is not a "local agency" under Cal. Government Code section 6252(a), and is therefore not subject to the PRA. Therefore, any records maintained and in the custody of SFCCC are neither "public records" as defined by PRA section 6252(c), nor "public information" as defined by Admin. Code § 67.20(b).

Administrative Code Chapter 12L

The requirements of Administrative Code Chapter 12L apply to nonprofits that receive "a cumulative total per year of at least \$250,000 in City-provided or City-administered funds." See Admin. Code § 12L.3(e). If the information provided by SFCCC related to its funding is accurate, then it is not a nonprofit subject to Chapter 12L. If, however, it receives at least \$250,000 in City-provided or City-administered funds, then the requirements of Chapter 12L do apply.

MEMORANDUM

TO: Sunshine Task Force
 DATE: April 21, 2011
 PAGE: 4
 RE: Complaint 11009: Garza vs. SFCCC

SFCCC has provided a declaration stating that it received no funding from DPH or any other City agency, but does receive funding from the SF Redevelopment Agency and the SF Health Authority. The Redevelopment Agency and the Health Authority are local agencies created under state laws, and thus are not entities of the City and County of San Francisco. Therefore, receipt of funding from these two agencies would not make SFCCC subject to Chapter 12L.

If the Task Force finds that Chapter 12L applies to SFCCC, then it must determine whether the records sought by Mr. Garza are the types required to be provided by Admin. Code §12L.5(a). That provision requires disclosure of certain financial documents of the nonprofit, which do not appear to be the type of documents sought by Mr. Garza.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

CHAPTER 12L OF THE SAN FRANCISCO ADMINISTRATIVE CODE**SECTION 12L.1: INTENT**

a.) The intent of this Chapter is to establish a policy wherein the City ensures that non-profit organizations with which the City chooses to do business operate with the greatest possible openness and maintain the closest possible ties to communities they intend to serve. Section 12L.3(e) of the Administrative Code provides:

SECTION 12L.3: DEFINITIONS

e.) "Non-profit Organization" shall mean any corporation formed pursuant to California Corporations Code sections 500 et seq. for any public or charitable purpose, and/or any organization described with 26 USC section 501(c), which receives a cumulative total per year of at least \$250,000 in City-provided or City-administered funds.

SECTION 12L.5: PUBLIC ACCESS TO RECORDS

a) *Disclosure of Financial Information.* Subject to Section 12L.5(c) each nonprofit organization shall maintain and make available for public inspection and copying a packet of financial information concerning the nonprofit organization. The packet shall include, at a minimum, (1) the nonprofit organization's most recent budget as already provided to the City in connection

MEMORANDUM

TO: Sunshine Task Force
 DATE: April 21, 2011
 PAGE: 5
 RE: Complaint 11009: Garza vs. SFCCC

with the nonprofit organization's application for , in or in connection with the review and/or renewal of, the nonprofit organization's contract, 2.) it most recently filed state and federal tax returns except to the extent those returns are privileged and 3.) any financial audits of such organization performed by or for the City and any performance evaluations of such organization by or for the City pursuant to a contract between the City and the nonprofit organization to the extent that such financial audits and performance evaluation i.) are in the nonprofit organization's possession, ii.) may be publicly disclosed under the terms of the contract between the City and the nonprofit organization, and iii.) relate the nonprofit corporation's performance under its contract with the City within the last two years.

CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE**SEC. 67.3. DEFINITIONS.**

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

[. . .]

(c) "Passive meeting body" shall mean:

- (1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;
- (2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;
- (3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.
- (4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

(5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating city policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "Policy Body" shall mean:

- (1) The Board of Supervisors;
- (2) Any other board or commission enumerated in the charter;
- (3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;
- (4) Any advisory board, commission, committee or body, created by the initiative of a policy body;
- (5) Any standing committee of a policy body irrespective of its composition.
- (6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by charter or by ordinance or resolution of the Board of Supervisors.
- (7) Any advisory board, commission, committee, or council created by a federal, state, or local grant whose members are appointed by city officials, employees or agents.

MEMORANDUM

TO: Sunshine Task Force
 DATE: April 21, 2011
 PAGE: 6
 RE: Complaint 11009: Garza vs. SFCCC

SEC. 67.20. DEFINITIONS.

Whenever in this article the following words or phrases are used, they shall mean:

- (a) "Department" shall mean a department of the City and County of San Francisco.
 (b) "**Public Information**" shall mean the content of "**public records**" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).

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.

CAL GOV CODE § 6252. DEFINITIONS

As used in this chapter:

- (a) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or **any board, commission or agency thereof**; other local public agency; or **entities that are legislative bodies of a local agency** pursuant to subdivisions (c) and (d) of Section 54952.
 (b) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.
 (c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.
 (d) "Public agency" means any state or local agency.
 (e) "**Public records**" includes **any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics**. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

SUNSHINE ORDINANCE TASK FORCE

Support Documents Replacement Form

The documents this form replaces exceeds 75 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.

File #11009 – Jason Grant Garza vs. SF Community Clinic Consortium

FROM: Both parties

-
-
-
-

This list reflects the explanatory documents provided.

Completed by: CHRIS RUSOM

Date: April 22, 2011