

Date: April 27, 2010

Item No. 7 & 8  
File No. 10008

## SUNSHINE ORDINANCE TASK FORCE

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### AGENDA PACKET CONTENTS LIST\*

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- Sandra Brotherton v Department of Emergency Management**
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Completed by: Chris Rustom

Date: April 22

**\*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.



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

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

## MEMORANDUM

*April 16, 2010:*

### *BROTHERTON V. EMERGENCY MANAGEMENT (10008)*

#### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Sandra Brotherton alleges that Leanne Bybee of the Department of Emergency Management (the "Department") failed to provide her with unredacted copies of Computer Assisted Dispatch ("CAD") reports documenting police response to calls for service at her residence.

#### COMPLAINANT FILES COMPLAINT:

On February 27, 2010, Ms. Brotherton filed a complaint with the Task Force alleging a violation.

#### JURISDICTION

The Department clearly is a department under the Sunshine Ordinance and a public agency under the California Public Records Act. The Task Force therefore has jurisdiction to hear the public records complaint.

#### APPLICABLE STATUTORY SECTION(S):

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

Section 67.21 deals with responses to a public records request and the format of requests and of responsive documents.

Section 67.26 deals with withholding of records.

Section 67.27 deals with written justification for withholding of records.

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

Section 6254 deals with responding to a public records request.

#### APPLICABLE CASE LAW:

- *None*

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**ISSUES TO BE DETERMINED**

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**I. FACTUAL ISSUES**

**A. Uncontested Facts:** Brotherton requested from the Department copies of three separate CADs: 1) 092933534 was requested on 10/21/09; 2) 093041873 was requested on 10/31/09; and 071323063 was requested on 11/5/09. The Department responded to each of these requests by producing the CADs, but redacted certain information from them. In an October 29, 2009 memo accompanying the Department's responses to the 10/21/09 document request, the Department provided the following written justification for those redactions: "Personal information (names, address and telephone numbers) and privileged law enforcement database records have been deleted per California Government Code 6254(c) and San Francisco Administrative Code 67.24d.2." No copies of the actual CADs provided by the Department to Ms. Brotherton have been supplied by either party.

On December 19, 2009, Ms. Brotherton requested that the Department explain how the code sections cited above to justify redacting information applied to her and prevented her from getting the full information contained in the CADs. On December 22, 2009, the Department again refused to provide the allegedly privileged information, citing the same justification as its previous response.

On January 3, 2010, Ms. Brotherton requested that the Department provide her with the "sources of all information provided to your agency related to CAD # S092933534." It is unclear how or if the Department responded to this request.

**B. Contested Facts:** Although the Department was given notice of the complaint on March 3, 2010, they still had not substantively responded to the Complaint by the date of this memo. On April 12, 2010, the Department did request a continuance of the April 13, 2010 hearing on jurisdiction before the Complaint Committee, claiming that they had not received notice of it until April 9, 2010.

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

- What type of information was redacted from the CADs?
- What was the precise nature of the privilege asserted for each redacted piece of information?
- Was each redaction footnoted or otherwise specifically justified by citation to a provision of the Sunshine Ordinance or Public Records Act?
- Were any full documents withheld from production?
- If so, was any justification offered for the withholding of documents?

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**2. LEGAL ISSUES/LEGAL DETERMINATIONS:**

Were sections of the Sunshine Ordinance, Public Records Act, and/or California Constitution Article I, Section three violated?

- Does the written justification for redactions of the CADs produced by the department in its memos of 10/29/09 and 12/22/09 satisfy the requirements of the Sunshine Ordinance when information is withheld?

**SUGGESTED ANALYSIS**

The Department points to Government Code § 6254(c) and San Francisco Administrative Code § 67.24.d.2 to justify its redaction of identifying information of complainants from the CADs produced to Ms. Brotherton.

Administrative Code §67.24.d.2 allows, but does not require, redaction of "[p]ersonal or otherwise private information if disclosure would constitute an unwarranted invasion of privacy" where that information is a part of "[r]ecords pertaining to any investigation, arrest or other law enforcement activity." That section further allows this information to be "withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure." While it is possible that another provision of the Administrative Code may apply to justify the redactions at issue, the Department has not invoked any other provision in writing to the complainant, as required by §67.27(b), or otherwise argued that they apply at this point.

Government Code §6254(c) allows withholding of "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy[.]" and thus is similar to the above provision of the Administrative Code. Thus the Task Force must determine whether the redacted information is personal or otherwise private information, the disclosure of which would constitute an "unwarranted invasion of privacy." Relevant to this inquiry is whether a complainant reporting allegedly criminal activity to the police department would expect their identifying information to be released to the person about whom they have reported possible criminal activity.

Task force members may also want to bear in mind that, to the extent complainant is alleging that the persons who complained against her have injured her through libel, she may have a civil cause of action against them, with attendant discovery procedures available to obtain information about the persons who made the complaints to the police department. Such discovery procedures require a careful balancing by the court of the privacy rights of the persons complaining to the police against the need of the plaintiff for the information identifying the person who made the complaint.

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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.**

(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.**

**SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.****(d) Law Enforcement Information.**

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);

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(2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;  
 (3) The identity of a confidential source;  
 (4) Secret investigative techniques or procedures;  
 (5) Information whose disclosure would endanger law enforcement personnel; or  
 (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.  
 This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

## SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. **Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article.** This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

## 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.

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**CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**

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**Section 6254**

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.**

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and 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. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

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 individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

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(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential.





<complaints@sfgov.org>  
03/18/2010 10:03 AM

To <soff@sfgov.org>  
cc  
bcc

Subject Sunshine Complaint

To:soff@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Dept. of Emergency  
Management

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CONTACTED:  
PUBLIC\_RECORDS\_VIOLATION:Yes  
PUBLIC\_MEETING\_VIOLATION:No  
MEETING\_DATE:  
SECTIONS\_VIOLATED:  
DESCRIPTION:See attached  
HEARING:Yes  
PRE-HEARING:Yes  
DATE:March 10, 2010  
NAME:Sandra Brotherton  
ADDRESS:452 Flood Ave  
CITY:San Francisco  
ZIP:CA 94112-1335  
PHONE:  
CONTACT\_EMAIL:  
ANONYMOUS:  
CONFIDENTIALITY\_REQUESTED:No

Feb. 27, 2010

Complaint against Leane Bybee custodian of Records  
Dept. of Emergency Management 1011 Turk St.  
San Francisco, Ca. 94102

From: Sandra Brotherton  
452 Flood Ave.  
San Francisco Ca. 94112 -1335

To Whom It May Concern,

I am filing A complaint against the Custodian of Records at the address listed above. Leanne Bybees failure to accurately entitle me to certain information regarding CAD 911 reports that I have numerously requested is A violation of my Civil Rights And unjustifiable. I wrote her many times and asked her to explain to me why I was not allowed to review Party information and her reply was vague and had no merit to me.(enclosed for your review.)Whoever Called 911 along with supporting people involved based their allegations on lies and heresay.(the police seemed to feel the same way since every report was closed.)Since I felt I was being harrassed for no reason ,I felt it would be her Civic duty to give me party information.She always gave me the same reply ;if any. These People should be charged with misusing 911 for the sole purpose of harassing me. These reports imply that I am Mentally Ill, have Restraining Orders , violent Etc.which is A deframation of my charater.It appears Ms. Bybee is working with people to have me removed from my residence and building some sort of database rap sheet on me based on lies.

I am enclosing for your review our unusal correspondence in which she would spell my name incorrecly at times and stopped signing her name or addressing what she was talking about. Please help me to retrieve supporting party names before I am thrown in jail for watching t.v. after 600 p.m.at my own residence.

Sincerely,  
Sandra Brotherton A U.S. citizen

Sandra Brotherton

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2010 MAR -3 AM 9:11

BY SR

To whom it may concern

OCT 21 2009

Oct 21, 09

My name is Sandra Brotherton and I am a party to this CAD# 092933534. This happened at my residence around 8:00pm last night (Oct 20, 2009). The address is 452 Flood Ave.

San Francisco, Ca. 94112-1335

Please send me a follow-up form to the CAD # listed above.

Thank-you very much,

Sincerely,

Sandra Brotherton



Gavin Newsom  
Mayor

Emergency Communications Department  
1011 Turk Street, San Francisco, CA 94102  
(415) 558-3826 Fax (415) 558-3869



Vicki L. Hennessy  
Executive Director


To: Sandra Bratherton  
From: Leane Bybee  
Custodian of Records  
Date: October 29, 2009  
Re: Request for CAD printout

Please find the following Computer Assisted Dispatch (CAD) printout for the incident you requested.

Personal information (names, address and telephone numbers) and privileged law enforcement database records have been deleted, per California Government Code 6254© and San Francisco Administrative code 67.24.d.2

If you have any other questions or we can be of any further help, please call us here at (415) 558-3826.

Sincerely,

  
Leane Bybee

Oct. 31, 2009

To Whom it may concern,

My name is Sandra Brotherton and I  
am a party to this CAD# 093041873

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This happened on 10/31/09 at approx.  
2:00pm. The address is 452 Flood Ave.

San Francisco, Ca. 94112-1335.

Please send me a follow-up form  
to the CAD # listed above.

Thank-you very much,

Sincerely,

Sandra Brotherton

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To Whom it may concern, 11/5/09

My name is Sandra Bratherton and  
I wanted a CAD report for report

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# 071323063AM which I was a  
party to. The date was 5/29/07  
at 11:20AM. Address: 452 Flood Ave.  
San Francisco, Ca. 94112-1335

Thank-you for your time

Sincerely,

Sandy Bratherton

DEC 15 2009 <sup>mjc</sup>

Sandra Brotherton  
452 Flood Ave.  
San Francisco, Ca.  
94112-1335

Dec. 14, 2009

Dear Ms. ByBee,

I have requested CAD information from you in the past so I am asking you to please provide me with any record your agency holds pertaining to my history.

Please reply back to me at my address listed above.

Thank-you for your time

Sincerely,

Sandra Brotherton

DEC 15 2009



Gavin Newsom  
Mayor

**Department of Emergency Management**  
1011 Turk Street, San Francisco, CA 94102

Division of Emergency Communications  
Phone: (415) 558-3800 Fax: (415) 558-3843

Division of Emergency Services  
Phone: (415) 558-2700 Fax: (415) 503-2098



Vicki L. Hennessy  
Executive Director

To: Sandra Brotherton  
From: Custodian of Records  
Date: December 15, 2009  
Re: Request for CAD Information

We are unable to provide the CAD information requested by you.

Searches are made using a specific date, time, and location.

We are unable to process your request as it is overly broad and encompasses records other than your own.

If you have any questions, please feel free to call us at (415) 558-3826.



Dec. 19, 2009

To: Leane Bybee  
Custodian of Records

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From ; Sandra Brotherton  
452 Flood Ave.  
San Francisco Ca.  
94112-9335


Please explain why you relied on Government Code 6254 ©.  
I have noted that you relied on CA. Government Code 6254© as to  
reason for deleting information on CAD printout #s092933534.

Please explain how this code pertains to me and affects my ability  
to obtain full disclosure of CAD printout in which I am the subject  
of investigation.

Please reply to me at my address listed above as promptly as  
possible.

Thank you,  
Sincerely,

Sandra Brotherton

  
\_\_\_\_\_



Gavin Newsom  
Mayor

Emergency Communications Department  
1011 Turk Street, San Francisco, CA 94102  
(415) 558-3826 Fax (415) 558-3869



Vicki L. Hennessy  
Executive Director

To: Sandra Brotherton  
From: Leane Bybee  
Custodian of Records  
Date: December 22, 2009  
Re: Request for CAD printout(s)

Please find the following Computer Assisted Dispatch (CAD) printout(s) for the incident(s) you requested.

Personal information (names, address and telephone numbers) and privileged law enforcement database records have been deleted, per California Government Code 6254© and San Francisco Administrative code 67.24.d.2

As for your other request regarding records, we do not have access to affidavits in this office. Searches are made using a specific date, time, and location. We are unable to process your request as it is overly broad and encompasses records other than your own.

If you have any other questions or we can be of any further help, please call us here at (415) 558-3826.

JAN 11 2010

TO: Leanne Bybee- Custodian Of Records  
1011 Turk St. Sf. Ca. 94102  
RE: CAD # So92933534  
Date: Oct. 20, 2009

JAN. 3, 2010

CAD #

092933534 A

FROM: Sandra Brotherton  
452 Flood Ave. Sf. Ca. 94112-1335

Dear Leanne Bybee,

I have enclosed a copy of a complaint letter by the OCC regarding matters pertaining to CAD# SO92933534 dated on 10 -20-2009 at 8:42 P.M. Please disclose sources Of ALL information provided to your Agency related to CAD # SO92933534. It is clear That there has been misrepresentation provided to your Agency by sources claiming non-disclosure privilege. As A result of their misrepresentation, reporting party are Exempt from claiming nondisclosure privilege.

I need the names of the individuals responsible for this false report to enable me to File A formal complaint.

Please reply to my address listed above. A.S.A.P.  
Thank-You for your help.

Sincerely,  
Sandra Brotherton

P.S.; I am enclosing letter I sent to the OCC for your review.

Sandra Brotherton

Sandra Brotherton

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