

Date: April 27, 2010

Item No. 9 &10
File No. 10011

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Juan DeAnda against the Department of Public Healt**
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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.



Juan De Anda
<axis-dsmiv@sbcglobal.net>
03/31/2010 07:42 AM

To donna.hall@sfgov.org
cc sotf@sfgov.org
bcc

Subject Fw: Public Records Request Denial

Dear SOTF,

On March 26, 2010 I went to San Francisco Department of Pubic Health (SFDPH) Public Information Officer, Ms. Eileen Sheilds office seeking help to file a request for records but instead encountered a hostile response from her telling me I needed to go to Swords To Plowshares (STP) where the requester is but she became irate and didn't help and I filed a complaint with your office March 26, 2010. In her email she seems to be contacting STP immediately rather than assist me with my public records which SFDPH is contracting with. When I went to STP office I dropped of a complaint I had filed with San Francisco Human Rights Commission (SF-HRC) and was time stamped and did not go for other purposes but she seems obsessed to call parties that are involved in request and abandoning her responsibilities and ignoring public.

Sincerely,

Juan De Anda
(415) 244-4815

: Juan De Anda <axis-dsmiv@sbcglobal.net>
Sent: Tue, March 30, 2010 1:08:50 PM
Subject: Re: Public Records Request

Dear Mr. DeAnda:

Regarding your public records request of March 26, 2010, the document you have requested--a copy of the CBHS Cultural Competency Plan-- is only available in hard copy. Total pages are 68 @ 10 cents/page for a total of \$6.80. Do you want us to make a copy of this for you? Please advise.

The other information you have requested relating to Swords to Plowshares, it is my understanding from talking to the staff at Swords to Plowshares that you made the request to them directly on Friday, March 26, after you left this office. The Department of Public Health is not in possession of that information and you need to continue to work with Swords to Plowshares to access the information you have requested.

On a final note, I wish to remind you that you do not need a form to make a public records request, thereby avoiding drop in's at offices. As a member of the public, you can simply put your request in writing in the body of an e-mail. I hope this reminder will be helpful to you in making future requests. It also creates a paper trail, thereby assuring appropriate and timely responses.

Please let me know if you want us to make a copy of the Cultural Competency Plan.

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Juan De Anda
<axis-dsmiv@sbcgl
obal.net>

To

Eileen Shields
03/29/2010 12:45 PM <Eileen.Shields@sfdph.org>
cc

Subject
Re: Public Records Request

This is my email address.

From: Eileen Shields <Eileen.Shields@sfdph.org>
To: axis-dsmiv@sbcglobal.net
Sent: Fri, January 8, 2010 9:55:07 AM
Subject: Public Records Request

Dear Mr. DeAnda:

Attached are the documents you requested regarding Swords to Plowshares.

(See attached file: Swrds_Plshrs_ExhibitA.pdf)(See attached file:
Sword_Plwshrs_DeAnda.pdf)(See attached file: Swords to Plowshares
Contract.pdf)



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Summary
of the
California Public Records Act 2004

California Attorney General's Office

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LOZANO SMITH

Partnering for Excellence in Education and Government

CLIENT NEWS BRIEF

No. 30

August 2008

LEGISLATURE AMENDS THE BROWN ACT AND PUBLIC RECORDS ACT

The Governor recently signed Senate Bill 1732 ("SB 1732"), which makes certain changes to the Ralph M. Brown Act ("Brown Act") and the California Public Records Act ("CPRA"). These changes will go into effect on January 1, 2009.

The Brown Act is California's open meeting law, and generally requires all meetings of legislative bodies to be open to the public, except for certain authorized closed sessions. Currently, the Brown Act prohibits "any use of direct communication, personal intermediaries, or technological devices by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body." (Gov. Code § 54952.2.) This provision of the Brown Act was addressed in Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533 ("Wolfe"). The Wolfe court held that a series of individual meetings by members of the legislative body, or communication through an intermediary, does not violate the Brown Act so long as such communication does not result in a collective concurrence as to action to be taken on an item by the legislative body.

SB 1732 is intended to supersede the holding in Wolfe. In enacting SB 1732, the legislature expressed its disapproval of the Wolfe court's decision that only serial meetings resulting in a collective concurrence are prohibited, and expressed its intent to also prohibit the process of developing a collective concurrence. As a result, amended Government Code section 54952.2, subdivision (b)(1), prohibits a majority of the members of a legislative body, outside a public meeting, from using a series of communications of any kind, directly or through intermediaries, "to discuss, deliberate, or take action" on any item of business within its jurisdiction. However, the Legislature also added subdivision (b)(2) to the amended Government Code section 54952.2, which provides that this change in the law shall not prohibit public agency employees or officials from engaging in separate conversations or communications with members of a legislative body outside of a meeting to answer questions or provide information regarding a matter, as long as that employee or official does not communicate a member's comments or position on a matter to any other member.

SB 1732 also adds Government Code section 6252.7 to the CPRA. This new section provides that when members of a legislative body are authorized to access a writing of the body or the local agency, the local agency "shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available."

Therefore, a local agency cannot discriminate between or among members of its legislative body with regard to providing access to a writing of the legislative body or the agency. If one member of a legislative body is provided access to a document, all other members of the legislative body must be provided equal access.

SB 1732 emphasizes the Legislature's concern that all discussion between the majority of the members of a public agency's legislative body regarding agency business takes place only in meetings open to the public, and that public records be equally available to members of the legislative body. If you have any questions regarding these changes, or the Brown Act or CPRA in general, please contact any of our six statewide offices.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.



*Written by Maria DeLeon (mdeleon@lozanosmith.com), an associate in our San Ramon office,
and Scott Cross (scross@lozanosmith.com), a shareholder,
in our Fresno office.*



Eileen Shields/DPH/SFGOV
04/19/2010 01:40 PM

To SOTF/SOTF/SFGOV@SFGOV
cc
bcc
Subject Sunshine Complaint Received: #10011_Juan De Anda v
Public Health

To SOTF:

Below is my e-mail response to Mr. DeAnda regarding his latest public records request for documents from Swords to Plowshares.

The SOTF will note that I sent this e-mail to Mr. DeAnda on March 30. However, his complaint that I was denying him information was submitted to the SOTF three days earlier on March 26, the very same day he appeared in my office and submitted this records request. I believe it is customary to wait until the 10-day response time has lapsed before filing complaints.

Not only did I follow up with Swords to Plowshares on behalf of Mr. DeAnda as evidenced by my knowledge that he had submitted a duplicate public records request directly with Swords to Plowshares on the same afternoon as he visited my office, but Swords to Plowshares informed me that the records he requested from them do not exist. He was told this by the staff and yet he is claiming that my office is withholding this information from him.

I also, on his behalf, checked with the staff at DPH who informed me that the records Mr. DeAnda requested are not records that DPH requires Swords to Plowshares to collect, analyze or report to us. Therefore, the records do not exist.

What, then, exactly is it that I am supposed to turn over to him? And what would a satisfactory resolution to his request for records from a contractor--records that are neither required nor maintained by this Department nor Swords to Plowshares-- look like?

The actions of this Department relating to Mr. DeAnda's public records requests are notable in their adherence to the letter and spirit of the Sunshine Ordinance. The records he is asking for are records that DPH does not have or maintain. He was redirected to the proper source where the records would have originated--an agency with which he is familiar. That they do not exist seems to be beside the point.

Finally, let's be clear that the one record he asked for that DPH does have--a copy of the Cultural Competency Plan--is still awaiting his response.

This complaint is specious and ill-founded. With due respect to the SOTF and prior to any action on this matter, I would ask Mr. DeAnda to produce documentation to support his complaint.



----- Forwarded by Eileen Shields/DPH/SFGOV on 04/19/2010 01:24 PM -----



Eileen Shields/DPH/SFGOV
03/30/2010 01:08 PM

To Juan De Anda <axis-dsmiv@sbcglobal.net>
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