Date: April 28, 2009

Item No. 12 & 13
File No. 09013

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

☒	Steve Lawrence v SFPUC
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Completed by: Chris Rustom **Date:** April 24, 2009

***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.

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CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

MARCH 13, 2008

STEVEN LAWRENCE V. THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION (09013)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On February 2, 2009, Steven Lawrence sent to SFPUC ("PUC") records section a Sunshine request to review nine documents or categories. Later that day, Steven Lawrence received back from Public Records acknowledging of his request. However, 15 days passed and Steven Lawrence did not receive the records. Steven Lawrence then contacted Mr. Winnicker, Head of Communications and Mr. Winnicker stated that he would look into the matter. Another 3 days passed and Steven Lawrence did not receive the documents. On February 27, 2009, made a complaint to the Sunshine Ordinance Task Force and then received a response from the PUC.

COMPLAINANT FILES COMPLAINT

On February 27, 2009, Steve Lawrence filed a complaint against the PUC alleging violations of Section 67.21 of the Sunshine Ordinance for the PUC's failure to timely respond to a Public Records request.

PUC RESPONDS

On March 4, 2009, Suzanne Gautier, Manager of the Communication and Public Outreach section of the PUC, issued a memo to the Task Force and conceded jurisdiction of the Task Force to hear the complaint and admitted its violation of the Sunshine Ordinance for its failure to timely respond to the public records request of Steven Lawrence.

Ms. Gautier stated that while not a defense to the complaint, the reasons for the delay was the fact that the requested documents contained 9 separate and distinct items, each item needing some time to research and locate. In addition, there were changes in personnel and new staff needed to be trained on Sunshine/ Public Records laws. In this case, PUC provided a partial response on February 25, 2009 and completed the response on February 27, 2009.

Memorandum

APPLICABLE STATUTORY SECTIONS:

Statutory Sections from chapter 67 of the San Francisco Administrative Code:

1. Section 67.21 addresses general requests for public documents.
2. Section 67.24 governs the public information that must be disclosed. .
3. Section 67.27 deals with justification for withholding.

The California Public Records Act is located in the state Government Code Sections 6250 et seq.

All statutory references, unless stated otherwise, are to the Government Code.

5. Section 6253 provides for the process of public records inspection.
6. Section 6255(a) provides for the process for justifying the non-disclosure of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

The parties agree to the following facts:

- Steven Lawrence submitted public records requests to the PUC
- The PUC was late in providing the documents for review.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

none

Whether the response from PUC was reasonable.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

1. None

Memorandum

LEGAL ISSUES/ LEGAL DETERMINATIONS:

- **Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, and/or Public Records Act were violated?**
- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

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

Memorandum

ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED

Section 67.21 addresses general requests for public documents.

This section provides:

> (a) Every person having custody of any public record or public information, as defined herein, ... 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** (emphasis added) 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.

Section 67.27 provides:

> 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 of 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.

The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

Section 6253 provides for the process of public records inspection:

a.) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.

b.) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

c.) Each agency, upon a request for a copy of records, shall within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefore....

Section 6255(a) provides for the process for justifying the non-disclosure of records:

a.) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

b.) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

<complaints@sfgov.org>
02/27/2009 11:36 AM

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

Submitted on: 2/27/2009 11:36:46 AM

Department: PUC

Contacted: Tony Winnicker

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.21 (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.

Description: On February 2, 2009 I sent to SFPUC Public Records a Sunshine request to review nine documents or categories. Later that day I received back from Public Records acknowlegement of my request. Since then I have received and heard nothing, except, when fifteen days of silence had passed, I copied the request to Mr. Winnicker, head of Communications and boss of whoever is "Public Records", and he replied that he would look into it. Three more work days having passed, I have heard nothing from either Mr. Winnicker nor Public Records. So eighteen days have passed without substantive response to my request. This follows last month's requests, which also did not receive any response for more than ten days, whereupon I had to complain to SOTF, and then got a response. The contents of my request of February 2 I set forth below as Attachment A.

Attachment A (the request of Feb. 2, 2009, subject: Sunshine of February 2, nine requests):

May I please see under Sunshine (items 3 and higher regarding WSIP):

1. the MOU with Recreation & Park regarding recycled water and groundwater.

2. the work product of the consultant hired pursuant to requirement (every five years) that such a consultant be hired concerning water rates. A portion of its work was due 31 December 2008, and this is what I wish to see.

3. for San Antonio Backup Pipeline, the design criteria report.

4. for BDPL#4, engineering reports since August 15, 2008 bearing on whether leakage from #4 is likely to undermine #3. The URS report of August 15 suggested or said that geotech remained to be done, that assumptions about limited leakage affecting #3 "do not appear to be valid", and "pipeline damage due to liquifaction, lateral spreading and...streambans could be significant." Also, in the CER for Seismic Upgrade of 3&4, same date, Aug. 15, 2008, "As long as new No.3A is not impaired by leakage resulting from a break in No.4, it would meet the project goals." These comments suggest that more engineering may have been indicated, and done. If a written report or reports have issued, then I wish to see them.

5. Regional Construction Management Plan. At this time I wish to see one. Your pick.

6. Recently SJPL Rehab has been removed from WSIP. I wish to see any email, memo or other writing recommending, justifying or explaining the decision to remôve this project.

7. Amendment No. 2 to Parsons's contract CS-765.

8. The Program Construction Management contract with AECOM.

9. the "pre-determined list of critical regional WSIP projects" for which Parsons is, under its contract, to act as "Engineering Technical Expert" and oversee pre-construction.

If any are not yet issued, please say when the document is expected so that I can request it timely.

Hearing: Yes

Pre-Hearing: No

Date:

Name: Steve Lawrence

Address:

City:

Zip:

Phone:

Email:

Anonymous:

Confidentiality_Requested: Yes

"Gautier, Suzanne" <SGautier@sfwater.org>
03/04/2009 03:01 PM

To "SOTF" <sotf@sfgov.org>
cc "Winnicker, Tony" <TWinnicker@sfwater.org>, "Public Records" <PublicRecords@sfwater.org>
bcc
Subject Response to SOTF Complaint 09013_Steve Lawrence v PUC.doc

<<RE Updates promised for today Friday 227; Sunshine requests of 22.txt>> <<SOTF Complaint 09013_Steve Lawrence v PUC.doc>>

RE Updates promised for today Friday 227; Sunshine requests of 22.txt

SOTF Complaint 09013_Steve Lawrence v PUC.doc

RE Updates promised for today Friday 227; Sunshine requests of 22.txt
From: Gautier, Suzanne on behalf of Public Records
Sent: Friday, February 27, 2009 4:38 PM
To: Steve Lawrence; Winnicker, Tony
Cc: Public Records
Subject: RE: Updates promised for today Friday 2/27; Sunshine requests of 2/2

Attachments: Independent Utility Memo_SFPUC_032008.doc

Good afternoon Mr. Lawrence, the following information is being provided to update you on several items related to your Feb. 2, 2009 Sunshine Request for documents:

Item 3. Presention of overview at the Rate Fairness Board today, full report to be provided to you upon completion.

Item 4. The document is undergoing security review and should be available for your review early next week.

Item 5. Maureen Barry provided a response yesterday.

Item 6. The SJPL Rehab Project was determined to have Independent Utility and no longer a project included in the Programmatic Environmental Impact Report for the Water System Improvement Program. It continues to be a project of the WSIP, see memo attached.

Items 7 & 8. Parsons Contract Amendment and Contract with AECOM have not been fully executed, we expect that process to be completed in about 4 weeks.

Item 9. Will follow some time after the completion of items 7 & 8

--
From: Steve Lawrence [mailto:splawrence@sbcglobal.net]
Sent: Friday, February 27, 2009 8:44 AM
To: Winnicker, Tony
Cc: Public Records
Subject: Updates promised for today Friday 2/27; Sunshine requests of 2/2

Please do not forget what has been promised to me today. Also, I would appreciate more on items 4, 5 and 6: 4 and 6 have no substantive answer in 25 days; item 5 was given an answer that was really a dodge by linking me to something I had seen, and which in fact gave rise to the document I seek (see yesterday's email about item 5).

Steve Lawrence

----- Original Message -----
From: Public Records
To: Steve Lawrence
Cc: Winnicker, Tony
Sent: Tuesday, February 24, 2009 9:51 AM

Dear Mr. Lawrence,

We apologize for the delay in getting you a thorough response to your February 2nd Sunshine request. At this time I am providing an update on your request as follows:

RE Updates promised for today Friday 227; Sunshine requests of 22.txt
Item 1) MOU with Rec and Park scanned and attached.

Item 2) Per the Acting PUC Finance Director, there is a consultant presentation before the RFB on 2/27/09. In addition, the December "work product" was late in coming and only recently received as a draft. A final report is expected shortly and will be made public at the time, according to the Finance Director.

Item 3) Status update on availability by Friday 2/27/09.

Item 4) Currently researching responsive document.

Item 5) Here is a web link to the information:
http://sfwater.org/detail.cfm/MC_ID/15/MSC_ID/374/C_ID/3813

Item 6) Currently researching responsive document.

Item 7) Status update on availability by Friday 2/27/09.

Item 8) Status update on availability by Friday 2/27/09.

Item 9) The pre-determined list of critical regional WSIP projects for Parsons has not been determined yet, pending the approval of Amendment #2 for Contract CS-765 (your Item 7).

Sincerely,

Public Records

March 4, 2009

To: Sunshine Ordinance Task Force
From: Suzanne Gautier, Manager, Communications and Public Outreach
SFPUC

Re: Complaint # 09013_Steve Lawrence v PUC

The SFPUC does not dispute the SOTF jurisdiction over the above referenced matter; furthermore, the SFPUC acknowledges that our response to the request of Mr. Lawrence, outlined in the complaint as filed, was provided well after the 10-day response period had elapsed.

The request made by Mr. Lawrence for documents contained 9 separate and distinct items, each item needing some time to research and locate.

The SFPUC has experienced a recent change in personnel and is currently training new staff assigned to make sure the SFPUC maintains compliance with the Sunshine Ordinance. The combination of the nature of the request by Mr. Lawrence with the complications in training new staff resulted in an unfortunate delay in our response to his request.

Mr. Lawrence received an e-mail constituting a partial response to his request on Feb. 25, 2009 and an additional e-mail with responsive information to the balance of the items in his request on Feb. 27, 2009.

The SFPUC continues to make every effort to respond to requests for information in a timely fashion, and will work to improve our performance in this regard.

SOTF/SOTF/SFGOV
04/15/2009 09:40 AM

To "Steve Lawrence" <splawrence@sbcglobal.net>
cc
bcc
Subject Re: SOTF Hearing Reminder: #09013_Steve Lawrence v PUC

Mr. Steve Lawrence,

Your case was continued to April 28, 2009, based on your email to the Task Force. The Task Force wants to know what is in dispute at the present. If nothing is, it will treat it as withdrawn.

Chris Rustom, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307
"Steve Lawrence" <splawrence@sbcglobal.net>

"Steve Lawrence" <splawrence@sbcglobal.net>
03/25/2009 10:33 AM

To "SOTF" <sotf@sfgov.org>
cc
Subject Re: SOTF Hearing Reminder: #09013_Steve Lawrence v PUC

No. Why do you "withdraw"? That implies the matter never happened. In fact the department did not provide any substantive answer within ten days, violating Sunshine. A record of this should be kept. At year's end the department should not be able to crow that it had 100% compliance with Sunshine.

Both in January and February SFPUC failed to respond within ten days, except to acknowledge receipt of my Sunshine request. That is the fact, and the record should reflect that and not be doctored by a "withdrawl" of my complaint.

Of course you as administrator may dismiss my matter to clear it off as I failed to show up for a hearing as required. (I judged that my time was better spent elsewhere, and this betrays some confidence that SFPUC may have its act together. They seem to have new Sunshine people, and in March have been very responsive, giving me hope.)

Or, perhaps the SOTF will rule that the department did in fact fail to provide timely response. That would be my preference. I have asked for no further order or action of SOTF, such as an order to make available a document or category of document within a time certain.

Steve Lawrence

----- Original Message -----
From: "SOTF" <sotf@sfgov.org>
To: "Steve Lawrence" <splawrence@sbcglobal.net>
Cc: <publicrecords@sfwater.org>; <twinnicker@sfwater.org>
Sent: Wednesday, March 25, 2009 9:53 AM
Subject: Re: SOTF Hearing Reminder: #09013_Steve Lawrence v PUC

> Mr. Steve Lawrence.
>
> Do you wish to withdraw your case since you state that you have received
> answers and documents from the department. You can file a complaint if the
> promised documents are not provided when the time arrives.
>
> Chris Rustom, Administrator
> Sunshine Ordinance Task Force
> 1 Dr. Carlton B. Goodlett Place
> City Hall, Room 244
> San Francisco, CA 94102-4689
> SOTF@SFGov.org
> OFC: (415) 554-7724
> FAX: (415) 554-7854
>
> Complete a SOTF Customer Satisfaction Survey by clicking the link below.
> http://www.sfgov.org/site/sunshine_form.asp?id=34307
>
>
>
> "Steve Lawrence"
> <splawrence@sbcgl
> obal.net> To
> "SOTF" <sotf@sfgov.org>
> 03/24/2009 03:00 cc
> PM <twinnicker@sfwater.org>,
> <publicrecords@sfwater.org>
> Subject
> Re: SOTF Hearing Reminder:
> #09013_Steve Lawrence v PUC
>
>
>
>
>
>
>
>
>
>
>
> I do not intend to attend. There is nothing I can add beyond the
> complaint.
>
> Since filing it, I have received answers and some documents. Where the
> answer is a promise for the future, or a statement that the document is
> not
>
> yet in existence, I hope I can count on SFPUC making the document timely
> available.
>
> Steve Lawrence

>
> ----- Original Message -----
> From: "SOTF" <sotf@sfgov.org>
> To: <TWinnicker@sfwater.org>; <publicrecords@sfwater.org>;
> <SGautier@sfwater.org>
> Sent: Friday, March 20, 2009 3:32 PM
> Subject: SOTF Hearing Reminder: #09013_Steve Lawrence v PUC
>
>
>>
>> This is a reminder that a hearing is scheduled with the Sunshine
> Ordinance
>> Task Force, regarding the above titled complaint.
>>
>>
>> Date: March 24, 2008
>> Location: City Hall, Room 408
>> Time: 4:00 p.m.
>>
>> Complainants: Your attendance is required at this hearing.
>>
>> Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance,
>> the custodian of records or a representative of your department, who can
>> speak to the matter, is required at the hearing.
>>
>> Attached is the DCA's Instructional Letter to the Task Force.
>>
>> (See attached file: 09013_Instructional.pdf)
>>
>> To access the agenda please click on the link below. Then click on the
>> associated item number to access the packet material related to your
> item.
>>
>> http://www.sfgov.org/site/sunshine_page.asp?id=101141
>>
>> Chris Rustom, Administrator
>> Sunshine Ordinance Task Force
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>
>
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