

Date: May 18, 2011

Item No. 324
File No. 11015

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Larry Little John v Sheriff's Department**
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Completed by: Chris Rustom

Date: May 12, 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.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

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MEMORANDUM

April 25, 2011:

LARRY LITTLEJOHN VS. SHERIFF, ET AL. (11015)

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Larry Littlejohn alleges that the San Francisco Sheriff's Department (the "Department") and several of its staff members failed to provide public records and information responsive to his August 9, 2005 public records request.

COMPLAINANT FILED COMPLAINT:

On March 9, 2011, Mr. Littlejohn filed a complaint against the Department.

JURISDICTION:

The San Francisco Sheriff is a charter department of the City; therefore this Task Force generally has jurisdiction to hear a complaint against it for violations public records violations.

APPLICABLE STATUTORY SECTIONS(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs responses to a public records request and the format of requests and of responsive documents.
- Section 67.24 governs information that must be provided.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.
- Section 67.29-7 governs what correspondence and records shall be maintained.

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

- Section 6253 governs the timing of a response.
- Section 6254 governs exemptions to disclosure requirements.

APPLICABLE CASE LAW:

See cases cited in analysis.

ISSUES TO BE DETERMINED:

Contested/Uncontested Facts: Mr. Littlejohn's complaint involves a public records request to the Sheriff's Department from August, 2005, almost 6 years ago. It is supported by a letter from the Supervisor of Records from September 6, 2005 that issued a determination under Sunshine Ordinance §67.20(c) that the records sought by complainant were public records that should be disclosed except to the extent that such disclosure could endanger the safety of a person involved in an investigation or would endanger the successful completion of an investigation. That letter of determination sets out the relevant facts and is provided by

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complainant as an attachment to this complaint. Those facts are not repeated here. Mr. Littlejohn's complaint specifically names James Harrigan, as well as the department itself.

The Sheriff responded to the complaint on March 31, 2011 by noting the lengthy delay in filing a complaint with the Task Force and requesting that the complaint be dismissed due to that delay. The Sheriff also stated that the complainant did not take the steps necessary to "perfect a records request" at the time it was made, and the documents sought by the original public records request no longer existed.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What steps does the Sheriff believe are necessary to perfect a public records request, which were not completed by complainant at the time of his request?
- Does the Sheriff contend that it ever provided the record requested to complainant?
- What is the Sheriff's record retention policy with regard to the records in question?
- Do the records requested still exist?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- If the Department responded to the records request, did it do so "as soon as possible and within ten days following receipt of a request for inspection" as required by Section 67.21(b) of the Sunshine Ordinance?
- If the Department withheld records, did it keep such withholding to a minimum, as required by Section 67.26?
- If the Department withheld records, or redacted portions of records, was a written justification provided for such withholding or redaction that complied with the requirements of Section 67.27?
- Is there a time limit on when a complaint may be brought before the Task Force for violations of the PRA or the Sunshine Ordinance?
- Were sections of the Sunshine Ordinance, Public Records Act, and/or California Constitution Article I, Section three violated?

SUGGESTED ANALYSIS

This suggested analysis is limited to the issue of whether there is a limitation period for bringing a complaint before the Task Force for a violation of public records laws. No such limitations period is specifically prescribed by provisions of the Sunshine Ordinance, although it does provide time limitations for departments responding to public records requests, as well as for the Task Force in making a determination on a complaint.

Administrative Code section 67.35 provides that any person may bring a court action for a writ of mandate, declaratory relief, or injunctive relief to enforce their right to receive a copy of a public record. Although neither the PRA nor the Sunshine Ordinance specify a limitation period for court action to enforce the rights provided under those acts, court typically apply one of the "catch-all" limitations periods under state law in such circumstances. A declaratory judgment action or mandate petition to enforce a right created by statute must be brought within three years after accrual of that cause of action under Code of Civil Procedure § 338. See *Howard Jarvis Taxpayers Association v. City of La Habra* (2001) 25 Cal.App.4th 809, 821. The date that a party's claim accrues is the date when the legal wrong or the last element essential to

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the cause of action occurs. See *County of San Diego v. Myers*, 147 Cal.App.3d 417, 421 (1983). Thus, it would appear that a person bringing an action to enforce their right to receive a public record must file a court complaint within three years of being denied the public record.

In addition, courts also apply the equitable doctrine of *laches* under circumstance such as these. Laches may be applied where the complaining party has unreasonably delayed in the enforcement of a right, and where the adverse party has suffered prejudice thereby that makes the granting of relief unfair or inequitable. *Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351, 359; *Wells Fargo Bank v. Bank of America* (1995) 32 Cal.App.4th 424, 439.

Given the above discussion, the question arises whether a limitation period should be implied in the context of a hearing by the Task Force on a complaint that a person has been denied their right to receive a copy of a public record. If none were implied, then a complainant would still be able to secure a determination from the Task Force that a department had violated the Ordinance, even though it could no longer bring a court action for such a violation. Nevertheless, given the different purposes served by the Task Force and the court system, and the absence of a statute of limitations within the language of the Ordinance itself, no such limitation would appear to be provided for bringing a complaint before the Task Force. Nevertheless, the Task Force may wish to consider this delay in exercising its discretion and in reaching a determination on this complaint.

CONCLUSION:

THE TASK FORCE FIND THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FIND THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE**

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ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

Section 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.

(c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in

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writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the *superior court* shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

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(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

[. . .]

(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);
- (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.

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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. 67.25. - IMMEDIACY OF RESPONSE.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

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

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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.

SEC. 67.29-7. - CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.

- (a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

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

SECTION 6253:

- (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 record 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 therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state

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the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

§ 6254. EXEMPTION OF PARTICULAR RECORDS

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:

(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.

[]

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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[]
(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. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 MAR -9 PM 5:00
BY Ak

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 Sheriff's Dept

Name of individual contacted at Department or Commission JAMES HARRIGAN Sheriff, Atty
and various deputies

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.

Denial access to jail census see attached letter from
City Attorney Sept 6, 2005 No action taken on this
by Sheriff to this date.

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 LARRY LITTLEJOHN Address [redacted] Clementine St SF 94118

Telephone No. (415) [redacted] - [redacted] E-Mail Address CELL (415) [redacted] - [redacted]

Date MARCH 9, 2011 [Signature]
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).

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

DORJI ROBERTS
Deputy City Attorney

DIRECT DIAL: (415) 554-6760
E-MAIL: dorji.roberts@sfgov.org

Via First Class Mail

Mr. Larry Littlejohn
775 Clementina Street
San Francisco CA 94103

Re: Petition to Supervisor of Records, Concerning Public Records Request For Jail Census

Dear Mr. Littlejohn:

This letter responds to your petition to the Supervisor of Records, dated August 24, 2005, concerning your public records request "to view a list of the names of all inmates then in any of the County Jails."

Introduction

As we understand the facts pertaining to your public records request, on August 23, 2005 you personally appeared at County Jail on August 9, 2005 and spoke with the deputy sheriff on duty at the reception desk. You orally requested to view a list of the names of all inmates then in any of the county jails (the "jail census"). The deputy denied your request. On August 24, 2005 you appeared at the reception desk of this office, and requested the assistance of the City Attorney in obtaining the jail census. At that time you prepared a handwritten letter to the City Attorney that detailed your request and asked this office to "advise the Sheriff's Department that the names of all inmates in any of the County Jails is public information."

Supervisor of Records Request

Under the San Francisco Sunshine Ordinance (the "Ordinance") the City Attorney is the Supervisor of Records for the City and County of San Francisco (the "City"). San Francisco Administrative Code § 67.20(c). We have treated your August 24 letter as a petition to the Supervisor of Records on whether the jail census is a public record not exempt from disclosure under the Ordinance or the California Public Records Act, Government Code §§6250 et seq. (the "CPRA"). We conclude that the jail census is a public record that must be disclosed under the CPRA, provided that the Sheriff may withhold the names of particular inmates where disclosure of such 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.

The Sheriff is Subject to the CPRA

Article XI, §§ 1(b) and 4(c) of the California Constitution designate sheriffs as county officers. Sheriffs are elected county officers. Government Code § 24000(b); Elections Code § 314. Charter counties are authorized to specify the duties of county officers. California Constitution, Article XI, § 4(e). The county sheriff is charged with the responsibility to keep and operate the county jail. Government Code § 26605; Penal Code § 4000. County jails are used for pre-trial detention and post-sentencing confinement for misdemeanor and felony offenses. Penal Code §§ 18, 19, 4000, 4015. However, Government Code § 23103 authorizes a county to transfer the administration and control of the county jail from the sheriff to a county department.

Government Code § 12560 grants the Attorney General power over the sheriffs' activities relevant to the "investigation or detection of crime," but Government Code § 25303 grants

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county boards of supervisors broad fiscal and administrative powers for the management of county jails so long as the boards do not "obstruct the investigative function of the sheriff of the county." Thus, whether a sheriff is a state or county official depends on the role at issue. Counties retain the power to transfer control of a county jail from the sheriff to a county-created department of corrections, suggesting that the operation of the jails is a county function rather than a state function. Government Code § 23013; *Beck v. County of Santa Clara* (1988) 204 Cal.App.3d 789, 797.

The Ninth Circuit has held that the sheriff acts for the county, not the state in administering the local county jails. *Cortez v. County of Los Angeles* (9th Cir. 2002) 294 F.3d 1186, 1189-92; *Streit v. County of Los Angeles* (9th Cir. 2001) 236 F.3d 552, 566. See also *Brewster v. Shasta County* (9th Cir. 2002) 275 F.3d 803, 812. And the California Supreme Court recently held that county sheriffs act as state officers only while performing state law enforcement duties such as investigating criminal activity. *Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 838-39. Performing the purely ministerial act of maintaining a list of those held in county jails is not a state law enforcement duty. Accordingly, for purposes of the issues raised by this request, the Sheriff is a county officer subject to the CPRA.

Subject to Certain Exceptions, the Jail Census is a Public Record

A public record under the CPRA is "any writing containing information relating to the conduct of the public's business." Government Code § 6252(e). The existing jail census therefore is a public record. The question is whether there is any basis for the Sheriff to withhold the census. Section 6254 of the CPRA exempts certain records relating to law enforcement from disclosure. That section provides in relevant part:

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:

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, . . . 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,

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 time and manner of release or the location where the individual is currently being held* (Emphasis added).

The CPRA defines a "local agency" to include a city and county and any agency thereof. Government Code § 6252(b). San Francisco is a city and county, and the Sheriff's Department is a law enforcement department of the City. Charter §§ 1.100, 6.100, 6.105. We conclude that the San Francisco Sheriff's Department is a local law enforcement agency within the meaning of Government Code § 6254(f)(1). That section has been interpreted to authorize disclosure of contemporaneous information relating to persons currently within the criminal justice system. *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588, 601.

Letter to Larry Littlejohn

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Conclusion

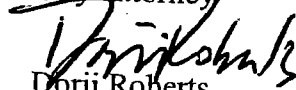
Because Government Code § 6254(f)(1) expressly requires state and local law enforcement agencies to make public the location of individuals currently being held in custody, we conclude that the jail census is a public record under the CPRA. While the jail census is subject to public disclosure, the Sheriff may withhold the identity or location of a particular inmates where the Sheriff determines that disclosure would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation. Government Code § 6254(f). The Sheriff may wish to consult with the Police Department, the District Attorney's Office and any other applicable law enforcement agencies before making any such determination.

We believe this resolves your petition to the Supervisor of Records.

Very truly yours,

DENNIS J. HERRERA

City Attorney



Dorji Roberts

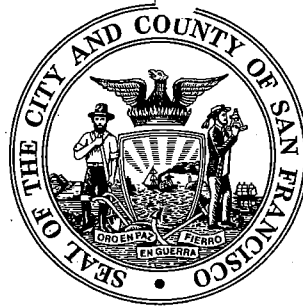
Deputy City Attorney

cc: James F. Harrigan, Esq.

City and County of San Francisco

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Michael Hennessey
SHERIFF

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Mr. Rustom
Sunshine Ordinance Task Force
Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

March 31, 2011
Reference: AL 2011-076

Re: Complaint number # 11015

Dear Mr. Rustom,

I am responding to the above referenced complaint. The Sheriff's Department objects to jurisdiction in this matter because the matter is stale. The matter dates back over five years to August, 2005. The Department does not believe the complainant took steps necessary to perfect a records request at that time. Because this matter dates back to 2005 the matter should be dismissed. The Sheriff's Department does not have a list of all the people who were in custody on August 9, 2005.

Very Truly Yours,

A handwritten signature in cursive script that reads "Freya A. Horne".

Freya A. Horne
Assistant Legal Counsel