

Date: May 24, 2011

Item No. 15 & 16

File No. 11034

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Frank McDowell against Metropolitan Transportation Agency**
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Completed by: Chris Rustom

Date: May 20, 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

JANA CLARK
Deputy City Attorney

Direct Dial: (415) 554-3968
Email: jana.clark@sfgov.org

**MEMORANDUM
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine task Force
FROM: Jana Clark
Deputy City Attorney
DATE: May 19, 2011
RE: *Complaint No. 11034, McDowell v. San Francisco Municipal Transportation Agency*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Frank McDowell ("Complainant") alleges that the Metropolitan Transportation Agency ("MTA") has not adequately responded to his March 16, 2011 public records request for "matrix on all discipline as a result from Drive-cam."

COMPLAINANT FILES COMPLAINT:

On April 19, 2011, Complainant filed this complaint against MTA.

JURISDICTION:

MTA is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that on March 16, 2011, he requested from MTA public records, in particular, "any and all documents related to the Drive Cam."

On May 10, 2011, MTA responded to the Sunshine Complaint. In that response, copied to Complainant, MTA noted that staff reviewing Complainant's March 16, 2011 correspondence had overlooked his public records request. MTA noted that Complainant had resubmitted his public records request on April 27, 2011, and that MTA had responded to that request on May 6, 2011, within ten days of this second request. In that May 6, 2011 response to Complainant,

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MTA informed Complainant that it was providing one document, described as limited to the time period from February 2010-July 2010 and comparing grievance data for DriveCam related discipline to non-DriveCam related discipline. Respondent also informed Complainant that the document did not capture discipline information if no grievance was filed.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Are the records provided to Complainant fully responsive to his request?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has MTA timely responded to the request?
- Has MTA fully and completely responded to the request?
- Did staff oversight justify the initial delay in providing the records?
- Are the MTA's justifications for any delay allowed by the Ordinance and the PRA?
- Did respondent violate Section 67.21 of the Ordinance?
- Were sections of the Sunshine Ordinance, Brown Act, and/or California Constitution Article I, Section three violated?

SUGGESTED ANALYSIS

Section 67.21 of the Ordinance provides that 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 a public records request. The questions before the Task Force are: (1) May the failure to provide public records within ten days of an initial request be excused on the grounds that the request was overlooked due to staff error; and (2) Is the failure to respond to a records request within ten days cured by a timely response to a second renewed request?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

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**CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE
ORDINANCE)**

**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS;
ADMINISTRATIVE APPEALS.**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

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-

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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 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.

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.

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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 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.

SECTION 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:

[. . .]

- (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

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

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: May 5, 2011
RE: ***Complaint 11034: Frank McDowell v. MTA***

Background

Complainant Frank McDowell ("Complainant") alleges that the San Francisco Municipal Transit Agency (MTA) has violated section 6254(c) of the Public Records Act.

Complaint

On April 19, 2011, Complainant filed this complaint against MTA, alleging a violation of public records laws in failing to adequately respond to his public records request for "a matrix on all discipline as a result from Drive-cam."

Discussion and Analysis of Jurisdiction

MTA is a charter agency of CCSF and therefore the Task Force generally has jurisdiction to hear an alleged violation of either public records or public meetings laws. At the time that this memorandum was completed, it did not appear that MTA had contested the jurisdiction of the Task Force to hear this complaint. Nevertheless, Complainant requested a pre-hearing.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2011 APR 19 PM 3:10

BY [Signature]

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 Municipal Railway S.F. Co

Name of individual contacted at Department or Commission _____

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section 6254C
(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.

SEE ATTACHED PAPERS

- 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 FRANK McDOWELL Address [Redacted] DAWNVIEW DR 94513 Brentwood Ca

Telephone No. 925 [Redacted] E-Mail Address _____

Date 4-15-11 [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).

March 16, 2011

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2011 APR 19 PM 3:10

BY _____

Mrs. Cheryl Turner
Woods Division Acting Superintendent
1001 22nd Street
San Francisco, Ca. 94107

Dear Ms. Turner:

I Operator Frank Mc Dowell writing a response to the Skelly Letters dated March 8th and 14th 2011, for not stopping at stop signs. It is evident the your intent to violate my rights under Article 23 of our MOU. First and foremost, I did not have in-formal hearing to discuss the basis of the charges. It was your descion to impose a 3 to 5 day suspension on the March 8 charge and dismissal on march 14 charge. This is harassment, extortion and retaliation at its finest. This form of discipline is punitive rather than corrective. If the operators were to conduct a survey it will show that the SFMTA practice discipline versus retraining.

In my 20 years of service I was trained under the "Smith System" now out of the blue management install drive cam on coaches and uses it to harass operators.

I have shown Assistant superintendent Wallace Johnson many defects on the 8100-8400 series coaches. The first defect was the Retarder system. The retarder will cause the drive cam to activate. Second the speedometer will show 10 miles per hour and still descending after the coach is at a full stop. The drivers mirror on all 8400 series coaches has blind spots and the fare box blocks your vision. The SFMTA has taken no corrective action but yet continue to harass and discipline operators.

Since June 2010 extortion has been the commonplace practice of the SFMTA in retaliation against operators under the direction of former Mayor Gavin Newsom. He stated in June 2010 news paper that there will be consequences if the operators do reconsider the vote. You have unilaterally impose aggressive discipline and fail to conduct full and detail investigations. Termination and suspensions at the Woods Division are on the rise.

Municipal Railway General bulletin No. 10-07. Drive cam Event Recorders captures only video and audio of any event that triggered by excessive forces such as : Hard Braking, rough operation, swerving or a collision or operators manually depress the button. This directive was signed 12/08/10 by John J. Haley Director of Transit.

Myself and others operators are constantly feel threaten , intimidate under this brazen attacks. Operators are being viciously discipline for adjusting mirrors, calling Central Control for 702 (Personal Necessity Break.) Third- party reports not support by factual information such as a first party report will "dismissed" and not be counted against any employee . A third party that support a first party report will be used as "Witness only" report and will not be counted as a separate occurrence against an employee , equitable toll and discipline must be equitable.

I am asking under the Sunshine Ordinance Task Force section 6254c that you provide a matrix on all discipline as a result from Drive -cam . You have ten business to furnish the requested documents. Or this matter will be submitted to the Sunshine Ordinance for

enforcement.

In closing we ask that all harassment that you impose cease and desist immediately.
Your cooperation would be greatly appreciated .

Tel: 925 [REDACTED]

Sincerely,

Frank Mc Dowell



This Letter will be furnish to the following Parties:

The State Department of Justice

Office Of Labor Management Standards

Federal Transit Administrator Ray La hood

Congressman John Mica House transportation Committee

Bonnie Lowenthal chair assembly Committee on Transportation

Transport Workers Local 250-a

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Hainicke | Director
Bruce Oka | Director
Nathaniel P. Ford Sr. | Executive Director/CEO

May 6, 2011

SENT VIA U.S. MAIL

Frank McDowell
1575 Dawnview Drive
Brentwood, CA 94513

RE: Public Records Request dated March 16, 2011

Dear Mr. McDowell:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated March 16, 2011. We apologize for the delay in responding to your request.

Records Requested

You have requested "a matrix on all discipline as a result from Drive cam."

Documents Produced

Enclosed please find one document responsive to your request. Note that the document is limited to the time period from February 2010-July 2010, and compares grievance data for DriveCam related discipline to non-DriveCam related discipline. The document does not capture discipline information if no grievance was filed.

If you have any questions or comments regarding this matter, please do not hesitate to contact the Sunshine Hotline at (415) 701-4670.

Sincerely,


Caroline Celaya

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oka | Director
Nathaniel P. Ford Sr. | Executive Director/CEO

May 10, 2011

Mr. Rick Knee
Chairman, Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Complaint against the Municipal Transportation Agency
Complaint No. 11034

Dear Mr. Knee:

I am writing in response to complaint #11034 filed by Mr. Frank McDowell. Mr. McDowell made a public records request on March 16, 2011 seeking "a matrix on all discipline as a result from Drive cam."

On May 6, 2011, the San Francisco Municipal Transportation Agency ("SFMTA") responded to his request by providing records responsive to his request. The agency's response is attached as Exhibit A to this letter.

Mr. Sisneros complains that the SFMTA violated his access to public records. Unfortunately, staff receiving the letter from Mr. McDowell didn't carefully read the correspondence and missed the request for public records. On April 27, 2011, Mr. McDowell again submitted his request and the SFMTA sent a reply with in the required 10 days, on May 6, 2011.

Please let me know if you need any further information. Thank you for your consideration.

Sincerely,



David Hill

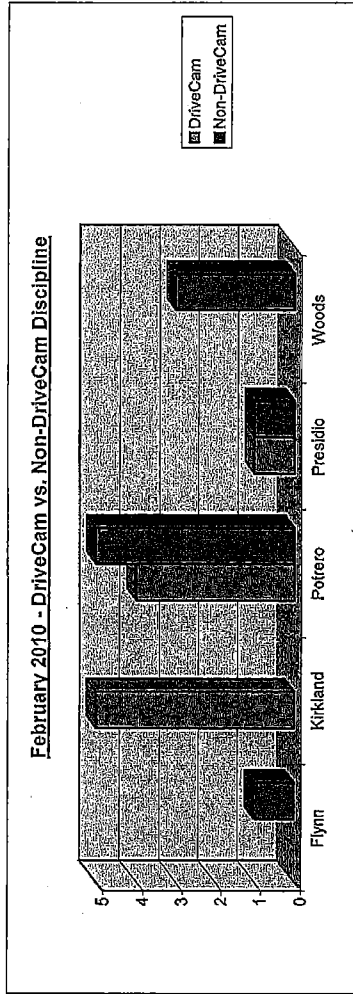
Encl.

cc: Frank McDowell

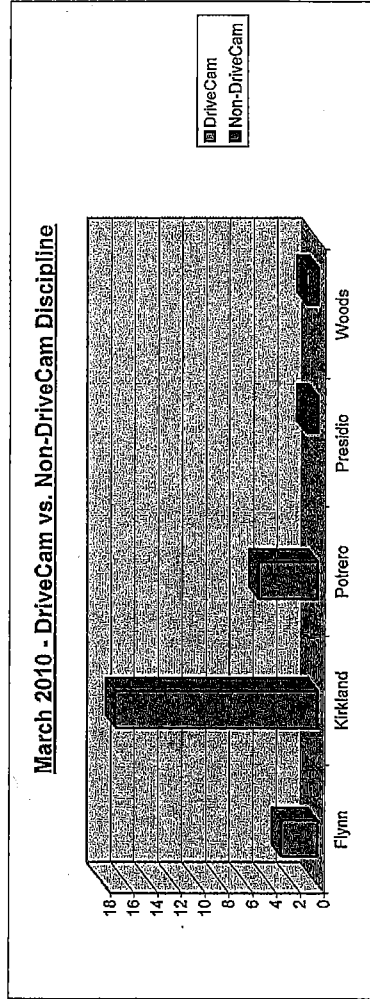
Employee and Labor Relations

Grievance Data: DriveCam vs. Non-DriveCam Discipline (February 2010 - July 2010)

FEBRUARY		
	DriveCam	Non-DriveCam
Flynn		1
Kirkland	6	
Potrero	4	5
Presidio	1	1
Woods		3
	10	10



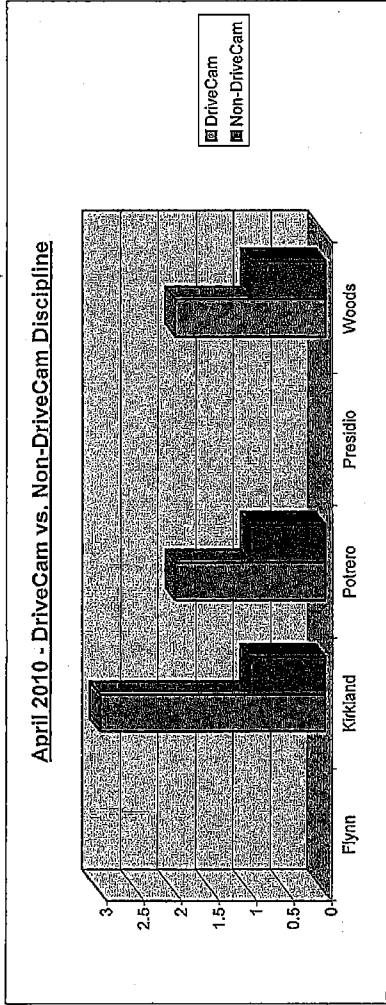
MARCH		
	DriveCam	Non-DriveCam
Flynn	3	
Kirkland	17	
Potrero	5	
Presidio		1
Woods		1
	25	2



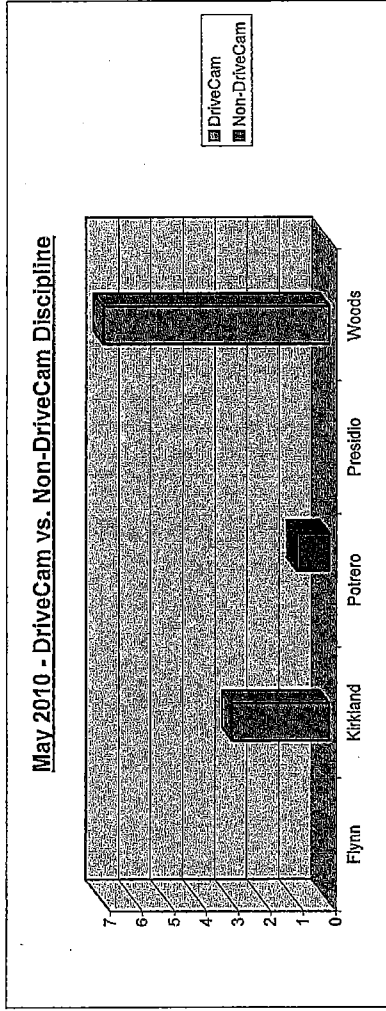
5/2/2011

Employee and Labor Relations

APRIL		
	DriveCam	Non-DriveCam
Flynn		
Kirkland	3	1
Potrero	2	1
Presidio	2	1
Woods	7	3

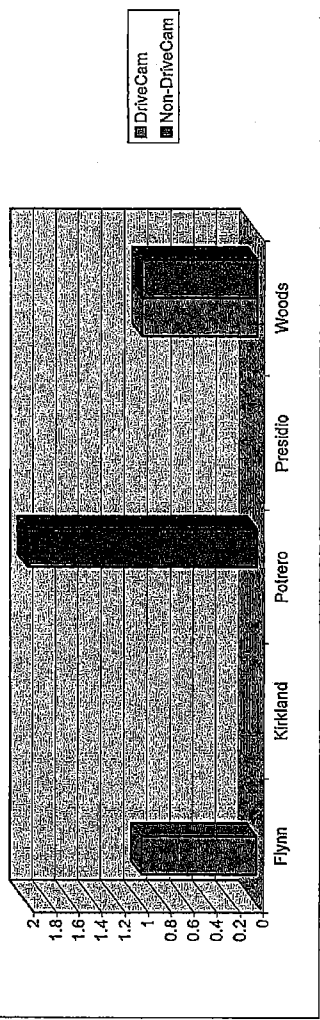


MAY		
	DriveCam	Non-DriveCam
Flynn		
Kirkland	3	1
Potrero		
Presidio	7	1
Woods	10	1



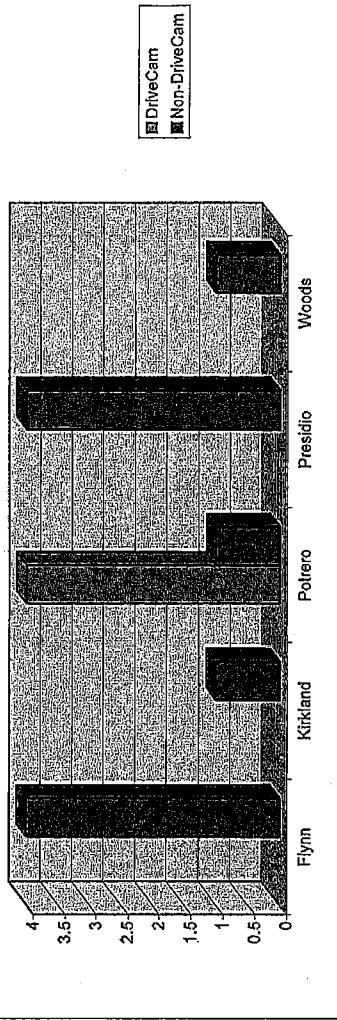
Employee and Labor Relations

June 2010 - DriveCam vs. Non-DriveCam Discipline



JUNE		
	DriveCam	Non-DriveCam
Flynn	1	0
Kirkland	0	0
Potrero	0	0
Presidio	0	0
Woods	0	0

July 2010 - DriveCam vs. Non-DriveCam Discipline



JULY		
	DriveCam	Non-DriveCam
Flynn	4	0
Kirkland	0	0
Potrero	0	0
Presidio	0	0
Woods	0	0

5/2/2011

Employee and Labor Relations

Trend of DriveCam vs. Non-DriveCam Discipline		
	DriveCam	Non-DriveCam
February	10	10
March	25	2
April	7	3
May	10	1
June	2	3
July	4	11
Total	58	30
Percentage	66%	34%

Trend of DriveCam vs. Non-DriveCam Discipline

