

Date: May 24, 2011

Item No. 7 & 8
File No. 11030

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Charles Pitts against Supervisor Mark Farrell**
- _____
- _____
- _____
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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. 11030, Pitts v. Supervisor Mark Farrell*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Charles Pitts ("Complainant") alleges that Supervisor Mark Farrell (the "Supervisor") failed to timely and honestly respond to an immediate disclosure request for public records of communications between his office and any individual concerning the Shelter Monitoring Committee applicants for 2011.

COMPLAINANT FILES COMPLAINT:

On April 5, 2011, Complainant filed a Complaint against the Supervisor for his alleged violations of Sections 67.25(a) of the Sunshine Ordinance.

JURISDICTION

The Supervisor is a member of a City department under the San Francisco City Charter and thus the Task Force has jurisdiction over this issue.

APPLICABLE STATUTORY SECTION(S):

Section 67.21 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 67.25

Section 67.25 governs immediate disclosure requests.

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

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- Section 6253 governs public records requests and time of response.

ISSUES TO BE DETERMINED:

Contested/Uncontested Facts: Complainant alleges that he made an immediate disclosure request on March 21, 2011 and that the Supervisor did not provide all information responsive to the request and did not give an "honest" effort to respond to his request. He attaches a copy of an email addressed to Mr. Pitts from Margaux Kelly, a legislative aide to the Supervisor. The email states that Ms. Kelly is attaching the documents responsive to his request, and following that email are three emails that appear to be responsive to the public records request.

LEGAL ISSUES/LEGAL DETERMINATIONS:

- If the facts alleged by complainant are true, was there a violation of the state and/or local public records law?

SUGGESTED ANALYSIS:**Under Section 67.21 and 67.25 of the Ordinance:**

- Determine whether the Department timely and fully responded to the 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.**

**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

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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 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

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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.

(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.

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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.

Cal. Public Records Act (Govt. Code §§ 6250, et seq.)

SECTION 6253

(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:

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- (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.
- (d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

SECTION 6254

- (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 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.



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BOARD OF SUPERVISORS
SAN FRANCISCO

2011 APR -5 PM 12:03

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

MARK FARRELL / SF Rules Committee

Name of individual contacted at Department or Commission

MARK FARRELL

Alleged violation public records access

Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section

67.25(A)

(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.

Did not provide all information regarding request
did not give honest effort to respond to
request

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

CHRIS PITS

Address

Telephone No.

E-Mail Address

(A) yalton@com

Date

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).

SAN FRANCISCO ADMINISTRATIVE CODE
67.25.A

**IMMEDIATE INFORMATION DISCLOSURE REQUEST
AND
CALIFORNIA PUBLIC RECORDS ACT**

Mark Farrell

Pursuant to the Sunshine Ordinance and the Public Records Act, please consider this an Immediate Disclosure Request for any and all, communications, emails, letters, phone calls and calendars, between your office and anyone else concerning the Shelter Monitoring Committee applicants for 2011.

Included in your response should be any and all communications with the applicants as well.

Thank you in advance for your cooperation.

Charles Pitts

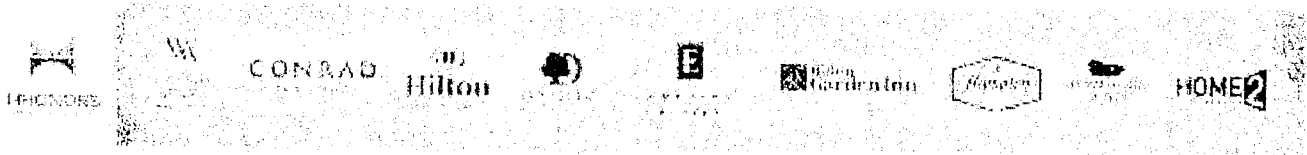
Charles Pitts
1 415 368 2354

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Sunshine Ordinance and the Public Records Act Request -- Shelter Monitoring Committee

Thursday, March 24, 2011 12:36 PM

From: "Margaux.Kelly@sfgov.org" <Margaux.Kelly@sfgov.org>

To: pakasaw@yahoo.com
1 File (116KB)



2011032410

Chat & Mobile Text

I am Offline

Dear Mr. Pitts,

I have attached the documents we have in response to your request.

Best,

Margaux

Margaux Kelly
Legislative Aide
Office of Supervisor Mark Farrell
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7752
Fax: (415) 554-7843

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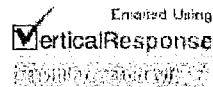
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Fw: File 110067 - Shelter Monitoring Committee

Linda Wong to: Jane Kim, Sunny Angulo, Sean Elsbernd, Mark Farrell, Olivia Scanlon, Margaux Kelly

02/01/2011 08:40 AM

----- Forwarded by Linda Wong/BOS/SFGOV on 02/01/2011 08:41 AM -----

From: Scott Linnenbringer <s.linnenbringer@gmail.com>
To: Linda.Wong@sfgov.org
Date: 01/31/2011 08:59 PM
Subject: Re: File 110067 - Shelter Monitoring Committee

Hey Linda,

I'm going to have to withdraw my application again as my work schedule changed.

I noticed that my previous application from last February was put online..... can that be taken down? Just for privacy reasons.

Thanks,

On Fri, Jan 28, 2011 at 4:02 PM, <Linda.Wong@sfgov.org> wrote:

Please be advised that the next Rules Committee meeting is scheduled for Thursday, February 3, 2011 at 1:30 p.m. in City Hall, Room 263.

The Committee Members will meet to consider your appointment to the Shelter Monitoring Committee.

There are no set instructions on what you are expected to tell the Rules Committee. However, a brief description of your qualifications, reasons for interest in the subject, or a short discussion of why you feel you would make a good candidate is appropriate.

Please respond before Tuesday, February 1, 2011, whether or not you will be able to attend the meeting.

Linda Wong
Board of Supervisors / SF LAFCo
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Phone: 415.554.7719
Fax: 415.554.7714

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
<http://www.sfbos.org/index.aspx?page=104>

Fax: 415.554.7714

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
<http://www.sfbos.org/index.aspx?page=104>



Fw: File 110067 - Shelter Monitoring Committee

Linda Wong to: Jane Kim, Sunny Angulo, Sean Elsbernd, Olivia Scanlon, Mark Farrell, Margaux Kelly

02/01/2011 08:44 AM

FYI.

----- Forwarded by Linda Wong/BOS/SFGOV on 02/01/2011 08:45 AM -----

From: Elizabeth Ancker <eanicker@compass-sf.org>
To: "Linda.Wong@sfgov.org" <Linda.Wong@sfgov.org>
Date: 01/28/2011 04:16 PM
Subject: RE: File 110067 - Shelter Monitoring Committee

Hi Linda,

I was appointed a seat via the LHCb, so I will not be attending the meeting.

Thanks!

Elizabeth Ancker

Assistant Program Director

Compass Connecting Point

☒ 995 Market Street, 6th floor, San Francisco, CA 94103 | ☎ 415-442-5130 | ☎ 415-442-5138 | compass-sf.org

From: Linda.Wong@sfgov.org [mailto:Linda.Wong@sfgov.org]

Sent: Friday, January 28, 2011 4:03 PM

To: willdaley@cs.com; amandaheier76@gmail.com; sabanursulay@yahoo.com.uk; musedeborah@yahoo.com; jamielunes@gmail.com; megan@welcomeministry.org; s.linnenbringer@gmail.com; Elizabeth Ancker; reginald.upshaw@yahoo.com; ktreggiari@ecs-sf.org

Cc: Bernice.Casey@sfdph.org

Subject: File 110067 - Shelter Monitoring Committee

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Linda Wong
Board of Supervisors / SF LAFCo
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Phone: 415.554.7719

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scott linnenbringer, s.linnenbringer@gmail.com