

Date: May 25, 2010

Item No. 18 & 19
File No. 10021

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Anonymous against the Recreation and Park Department**
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Completed by: Chris Rustom

Date: May 21, 2010

***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

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

April 20, 2010

HARRY PARISER VS. RECREATION AND PARKS DEP'T. (RPD) (10021)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Harry Pariser alleges that the San Francisco Recreation and Parks Department ("RPD") failed to provide documents the Master Plan for the Botanical Gardens at Strybing Arboretum in response to his public records. Complainant failed to state when the records request to RPD was made.

COMPLAINANT FILES COMPLAINT:

On April 21, 2010, Mr. Pariser filed a complaint against RPD.

JURISDICTION

RPD is a charter department of the City; therefore this committee has jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

Section 67.21 deals with responses to a public records request and the format of requests and of responsive documents.

Section 67.26 deals with withholding of records.

Section 67.27 deals with written justification for withholding of records.

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

Section 6253 deals with time of response.

APPLICABLE CASE LAW:

none.

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ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that he requested the Master Plan for the Botanical Gardens at Strybing Arboretum from RPD on an unspecified date.

Contested Facts: Complaint states that RPD refused to provide him with the requested document. RPD responds that on May 4, 2010, it provided complainant with the requested document.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What was the date of the records request to RPD?
- What was RPD's initial response to the records request?
- Did RPD provide the requested document?
- If so, how long did it take RPD to provide the requested documents?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Was RPD's response timely and otherwise in compliance with the requirements of the ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE. ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED SUGGESTED ANALYSIS

Under Section 67.21 of the Ordinance:

- Determine whether the Department timely responded to the request.

Under Section 67.26 of the Ordinance:

- Determine whether the Department withheld records and if so, whether the withholding complies with the requirement to keep withholding to a minimum.

Under Section 67.27 of the Ordinance:

- Determine whether the Department's asserted justifications, if any, for any responsive documents violate this provision requiring a written justification for withholding.

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CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS;
ADMINISTRATIVE APPEALS.**

(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.

(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. 67.26. 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

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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.)**§ 6253.9.**

- (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:
 - (1) The agency shall make the information available in any electronic format in which it holds the information.
 - (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

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.

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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.



<complaints@sfgov.org>
04/21/2010 02:07 PM

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

History: This message has been forwarded.

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Recreation and Park
Department
CONTACTED:Olive Gong
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:Refusal to supply document
DESCRIPTION:Olive Gong has informed me that the RPD refuses to enable access to the
Master Plan for the Botanical Gardens at Strybing Arboretum.
HEARING:Yes
PRE-HEARING:Yes
DATE:Wed, Apr 21, 2010
NAME [REDACTED]
ADDRESS [REDACTED] Ninth Ave. #!
CITY:SF
ZIP:94122-2308
PHONE:(415) [REDACTED]
CONTACT_EMAIL [REDACTED]@savethemanatee.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:Yes



Mayor Gavin Newsom
Philip A. Ginsburg, General Manager

Honorable Members, Complaint Committee
Sunshine Ordinance Task Force
c/o Frank Darby, Administrator
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

May 20, 2010

Re: #10021_Harry Pariser vs Recreation and Parks Department

Dear Complaint Committee Members:

This letter is in response to Complaint #10021 filed by Mr. Harry Pariser on April 21, 2010 against the San Francisco Recreation and Park Department. The Department received a copy of the Complaint on April 29, 2010.

The Complaint concerns a request by Mr. Pariser for the Master Plan for the Botanical Gardens at Strybing Arboretum. The Department was able to locate the requested document and had sent it to Mr. Pariser through email May 4, 2010. Mr. Pariser confirmed receipt of the plan through email dated May 5, 2010. (See exhibit A).

As the requester has received the document he requested, the Department considers the matter settled. If we can be of further assistance to the Committee with respect to Mr. Pariser's complaint, please do not hesitate to contact us.

Very truly yours,

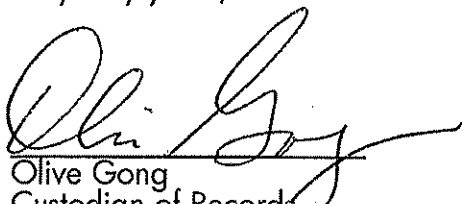

Olive Gong
Custodian of Records
SFRPD

EXHIBIT A:

From: "Harry S. Pariser" <[REDACTED]>
To: Olive Gong <Olive.Gong@sfgov.org>
Date: 05/05/2010 01:26 PM
Subject: Re: email request

>Dear Mr. Pariser,

>

> I will send you any emails from Sam Lauter as soon as they are received

>and reviewed. I have not received any yet.

>Olive

If possible, ask them to speed them up (anything is better than nothing).

↙ Thank you for sending me the Master Plan. It is already in circulation:

<http://sfcitizen.com/blog/2010/05/05/kalws-rose-aquilar-to-star-at-botanical-garden-meeting-plus-heres-strybings-master-plan/#more-17238>

Please print out the attached letter and give it to Mr. Philip A. Ginsburg. Thank you.

Harry

