

Date: May 25, 2010

Item No. 4 & 5  
File No. 10011

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Juan DeAnda against Department of Public Health**
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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

May 18, 2010

*JUAN DE ANDA VS. DEPARTMENT OF PUBLIC HEALTH (DPH) (10011)*

### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Juan De Anda alleges that, on March 26, 2010, he requested and the Department of Public Health ("DPH") failed to disclose information concerning services provided to ethnic minorities, gay, lesbian, bisexual, transgender communities, by DPH contactor Swords to Plowshares for the past five years.

#### COMPLAINANT FILES COMPLAINT:

On March 26, 2010, the same day he made his public record request, Mr. De Anda filed a complaint against DPH.

#### JURISDICTION

Based on the Complainant's allegations, it appears the Task Force does have subject matter jurisdiction over the alleged failure to provide such data. DPH is a charter department and responses to IDRs are a core focus of the Ordinance.

However, any complaint as to the failure of Swords to Plowshares to provide the requested data should be the subject of a separate complaint, analyzed under Administrative Code Chapter 12-L.

#### 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 67.25 deals with the immediacy of a response to a public records request.

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

Section 6254 deals with inspection of public records.

#### APPLICABLE CASE LAW:

None.

**Memorandum**

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**ISSUES TO BE DETERMINED**

**Uncontested Facts:** Complainant Juan De Anda made a request for information on data concerning services provided to ethnic minorities, gay, lesbian, bisexual, and/or transgender communities contracts by Swords to Plowshares, a non-profit that contracts with DPH.

**Contested Facts:** DPH responded that it informed complainant that it did not have any documents responsive to the request. DPH further states that it contacted Swords to Plowshares on behalf of complainant to seek any responsive documents from them, but that they also stated that they had no such responsive documents. DPH further stated that it does not require the keeping of such information by Swords to Plowshares under its contract.

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Were sections of the Sunshine Ordinance violated?

**SUGGESTED ANALYSIS**

The Complaint appears relatively straightforward. The Task Force must determine whether there are any records responsive to the request that have not been provided by DPH.

**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

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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. 67.25. 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

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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 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

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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.





Juan De Anda  
<axis-dsmiv@sbcglobal.net>  
03/31/2010 07:42 AM

To donna.hall@sfgov.org  
cc sotf@sfgov.org  
bcc

Subject Fw: Public Records Request Denial

Dear SOTF,

On March 26, 2010 I went to San Francisco Department of Public Health (SFDPH) Public Information Officer, Ms. Eileen Shields office seeking help to file a request for records but instead encountered a hostile response from her telling me I needed to go to Swords To Plowshares (STP) where the requester is but she became irate and didn't help and I filed a complaint with your office March 26, 2010. In her email she seems to be contacting STP immediately rather than assist me with my public records which SFDPH is contracting with. When I went to STP office I dropped of a complaint I had filed with San Francisco Human Rights Commission (SF-HRC) and was time stamped and did not go for other purposes but she seems obsessed to call parties that are involved in request and abandoning her responsibilities and ignoring public.

Sincerely,

Juan De Anda  
(415) 244-4815

: Juan De Anda <axis-dsmiv@sbcglobal.net>  
**Sent:** Tue, March 30, 2010 1:08:50 PM  
**Subject:** Re: Public Records Request

Dear Mr. DeAnda:

Regarding your public records request of March 26, 2010, the document you have requested--a copy of the CBHS Cultural Competency Plan-- is only available in hard copy. Total pages are 68 @ 10 cents/page for a total of \$6.80. Do you want us to make a copy of this for you? Please advise.

The other information you have requested relating to Swords to Plowshares, it is my understanding from talking to the staff at Swords to Plowshares that you made the request to them directly on Friday, March 26, after you left this office. The Department of Public Health is not in possession of that information and you need to continue to work with Swords to Plowshares to access the information you have requested.

On a final note, I wish to remind you that you do not need a form to make a public records request, thereby avoiding drop in's at offices. As a member of the public, you can simply put your request in writing in the body of an e-mail. I hope this reminder will be helpful to you in making future requests. It also creates a paper trail, thereby assuring appropriate and timely responses.

Please let me know if you want us to make a copy of the Cultural Competency Plan.

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Juan De Anda  
<axis-dsmiv@sbcgl  
obal.net>

To

03/29/2010 12:45 PM  
Eileen Shields  
<Eileen.Shields@sfdph.org>  
cc

Subject  
Re: Public Records Request

This is my email address.

From: Eileen Shields <Eileen.Shields@sfdph.org>  
To: axis-dsmiv@sbcglobal.net  
Sent: Fri, January 8, 2010 9:55:07 AM  
Subject: Public Records Request

Dear Mr. DeAnda:

Attached are the documents you requested regarding Swords to Plowshares.

(See attached file: Swrds\_Plshrs\_ExhibitA.pdf)(See attached file:  
Sword\_Plwshrs\_DeAnda.pdf)(See attached file: Swords to Plowshares  
Contract.pdf)



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(Embedded image moved to file: pic15654.jpg)

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obal.net>  
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<[Eileen.Shields@sfdph.org](mailto:Eileen.Shields@sfdph.org)>  
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To

Subject

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(Embedded image moved to file: pic27973.jpg) summary\_public\_records\_act.pdf



Summary  
of the  
California Public Records Act 2004

*California Attorney General's Office*



timely responses.

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(Embedded image moved to file: pic15654.jpg)

Juan De Anda  
<[axis-dsmiv@sbcgl  
obal.net](mailto:axis-dsmiv@sbcgl<br/>obal.net)> To  
Eileen Shields  
03/29/2010 12:45 PM <[Eileen.Shields@sfdph.org](mailto:Eileen.Shields@sfdph.org)>  
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# LOZANO SMITH

*Partnering for Excellence in Education and Government*

## CLIENT NEWS BRIEF

No. 30

August 2008

### LEGISLATURE AMENDS THE BROWN ACT AND PUBLIC RECORDS ACT

The Governor recently signed Senate Bill 1732 ("SB 1732"), which makes certain changes to the Ralph M. Brown Act ("Brown Act") and the California Public Records Act ("CPRA"). These changes will go into effect on January 1, 2009.

The Brown Act is California's open meeting law, and generally requires all meetings of legislative bodies to be open to the public, except for certain authorized closed sessions. Currently, the Brown Act prohibits "any use of direct communication, personal intermediaries, or technological devices by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body." (Gov. Code § 54952.2.) This provision of the Brown Act was addressed in Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533 ("Wolfe"). The Wolfe court held that a series of individual meetings by members of the legislative body, or communication through an intermediary, does not violate the Brown Act so long as such communication does not result in a collective concurrence as to action to be taken on an item by the legislative body.

SB 1732 is intended to supersede the holding in Wolfe. In enacting SB 1732, the legislature expressed its disapproval of the Wolfe court's decision that only serial meetings resulting in a collective concurrence are prohibited, and expressed its intent to also prohibit the process of developing a collective concurrence. As a result, amended Government Code section 54952.2, subdivision (b)(1), prohibits a majority of the members of a legislative body, outside a public meeting, from using a series of communications of any kind, directly or through intermediaries, "to discuss, deliberate, or take action" on any item of business within its jurisdiction. However, the Legislature also added subdivision (b)(2) to the amended Government Code section 54952.2, which provides that this change in the law shall not prohibit public agency employees or officials from engaging in separate conversations or communications with members of a legislative body outside of a meeting to answer questions or provide information regarding a matter, as long as that employee or official does not communicate a member's comments or position on a matter to any other member.

SB 1732 also adds Government Code section 6252.7 to the CPRA. This new section provides that when members of a legislative body are authorized to access a writing of the body or the local agency, the local agency "shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available."

Therefore, a local agency cannot discriminate between or among members of its legislative body with regard to providing access to a writing of the legislative body or the agency. If one member of a legislative body is provided access to a document, all other members of the legislative body must be provided equal access.

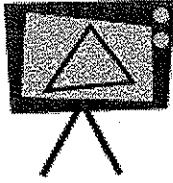
SB 1732 emphasizes the Legislature's concern that all discussion between the majority of the members of a public agency's legislative body regarding agency business takes place only in meetings open to the public, and that public records be equally available to members of the legislative body. If you have any questions regarding these changes, or the Brown Act or CPRA in general, please contact any of our six statewide offices.

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*



*Written by Maria DeLeon (mdeleon@lozanosmith.com), an associate in our San Ramon office,  
and Scott Cross (scross@lozanosmith.com), a shareholder,  
in our Fresno office.*





Eileen Shields/DPH/SFGOV  
04/19/2010 01:40 PM

To SOTF/SOTF/SFGOV@SFGOV  
cc  
bcc  
Subject Sunshine Complaint Received: #10011\_Juan De Anda v  
Public Health

To SOTF:

Below is my e-mail response to Mr. DeAnda regarding his latest public records request for documents from Swords to Plowshares.

The SOTF will note that I sent this e-mail to Mr. DeAnda on March 30. However, his complaint that I was denying him information was submitted to the SOTF three days earlier on March 26, the very same day he appeared in my office and submitted this records request. I believe it is customary to wait until the 10-day response time has lapsed before filing complaints.

Not only did I follow up with Swords to Plowshares on behalf of Mr. DeAnda as evidenced by my knowledge that he had submitted a duplicate public records request directly with Swords to Plowshares on the same afternoon as he visited my office, but Swords to Plowshares informed me that the records he requested from them do not exist. He was told this by the staff and yet he is claiming that my office is withholding this information from him.

I also, on his behalf, checked with the staff at DPH who informed me that the records Mr. DeAnda requested are not records that DPH requires Swords to Plowshares to collect, analyze or report to us. Therefore, the records do not exist.

What, then, exactly is it that I am supposed to turn over to him? And what would a satisfactory resolution to his request for records from a contractor---records that are neither required nor maintained by this Department nor Swords to Plowshares-- look like?

The actions of this Department relating to Mr. DeAnda's public records requests are notable in their adherence to the letter and spirit of the Sunshine Ordinance. The records he is asking for are records that DPH does not have or maintain. He was redirected to the proper source where the records would have originated--an agency with which he is familiar. That they do not exist seems to be beside the point.

Finally, let's be clear that the one record he asked for that DPH does have--a copy of the Cultural Competency Plan--is still awaiting his response.

This complaint is specious and ill-founded. With due respect to the SOTF and prior to any action on this matter, I would ask Mr. DeAnda to produce documentation to support his complaint.



----- Forwarded by Eileen Shields/DPH/SFGOV on 04/19/2010 01:24 PM -----



Eileen Shields/DPH/SFGOV  
03/30/2010 01:08 PM

To Juan De Anda <axis-dsmiv@sbcglobal.net>  
cc

Subject Re: Public Records Request



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<axis-dsmiv@sbcglobal.net>  
03/29/2010 12:45 PM

To Eileen Shields <Eileen.Shields@sfdph.org>  
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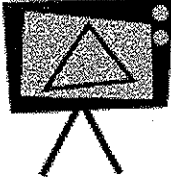
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(Embedded image moved to file: pic27973.jpg)



Eileen Shields/DPH/SFGOV

04/26/2010 11:07 AM

To SOTF/SOTF/SFGOV@SFGOV

cc

bcc

Subject Re: SOTF hearing reminder: #10011\_Juan De Anda v Public Health

Dear SOTF:

In the absence of any additional forthcoming documentation regarding this complaint--other than Mr. DeAnda's accusation--this Department submits its previous statement regarding our response to this item.

It is notable that from a Department that responds to hundreds of requests for public records each year, Mr. DeAnda continues to have difficulty not only with this office, but with the concept of "no records exist that are responsive to this request." Mr. DeAnda's fondness for the complaint process aside, I can do no more than what I have done, which already eclipses the reasonable efforts that other requests entail.

Here, for the record, is my previous statement in response to Mr. DeAnda's accusation, sent on 4/19

Below is my e-mail response to Mr. DeAnda regarding his latest public records request for documents from Swords to Plowshares.

The SOTF will note that I sent this e-mail to Mr. DeAnda on March 30. However, his complaint that I was denying him information was submitted to the SOTF three days earlier on March 26, the very same day he appeared in my office and submitted this records request. I believe it is customary to wait until the 10-day response time has lapsed before filing complaints.

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Finally, let's be clear that the one record he asked for that DPH does have--a copy of the Cultural Competency Plan--is still awaiting his response.

This complaint is specious and ill-founded. With due respect to the SOTF and prior to any action on this matter, I would ask Mr. DeAnda to produce documentation to support his complaint.



SOTF/SOTF/SFGOV

SOTF/SOTF/SFGOV

04/23/2010 04:37 PM

To axis-dsmiv@sbcglobal.net, Eileen Shields/DPH/SFGOV@SFGOV

cc

Subject SOTF hearing reminder: #10011\_Juan De Anda v Public Health

This is a reminder that a hearing is scheduled with the Sunshine Ordinance Task Force, regarding the above titled complaint, to hear the merits of the complaint and to issue a determination.

Date: Tuesday, April 27, 2010  
Location: City Hall, Room 408  
Time: 4:00 p.m.

Complainants: Your attendance is required at this hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the hearing.

Attached is the DCA's Instructional Letter to the Task Force.



1011\_Instructional.pdf

To access the agenda please click on the link below. Then click on the associated item number to access the packet material related to your item.

<http://www.sfbos.org/index.aspx?page=10449>

