

Date: May 25, 2010

Item No. 6 & 7

File No. 10013

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Nick Pasquariello against Bay Area Video Coalition**
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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

NICK PASQUARIELLO VS. DEPARTMENT OF TECHNOLOGY (BAY AREA VIDEO COALITION) (10013)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Nick Pasquariello ("Complainant") alleges that he made an Immediate Disclosure Request ("IDR") to Mr. Ken Ikeda at the Bay Area Video Coalition (BAVC) for all contracts, grantee bids, responses to Requests for Proposals ("RFPs") and all other records of communication between City and persons or entities seeking contracts, and that to date, as of April 5, 2010, he had not received any response. He files this Sunshine Complaint pursuant to 12.2 of the Sunshine Ordinance, Article 12, Disclosure of Information and Documents.

COMPLAINANT FILES COMPLAINT:

On April 5, 2010, Complainant files this Sunshine Complaint against "the Department of Technology (Bay Area Video Coalition)".

JURISDICTION

The Bay Area Video Coalition, or BAVC (pronounced "bay-vac"), is a nonprofit media arts center under contract with the Department of Technology ("DT") to provide public access operations for the City. See http://sfgov.org/site/publicaccess_index.asp.

Neither BAVC nor DT contests jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Administrative Code 12L.2

Administrative Code 12L.5.

Administrative Code 67.24(e)

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APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED**Uncontested Facts:**

Complainant alleges that he made an Immediate Disclosure Request to Mr. Ken Ikeda of BAVC for all contracts, grantee bids, responses to Requests for Proposals ("RFPs") and all other records of communication between City and persons or entities seeking contracts, and that, as of April 5, 2010, he had not received any response. Complainant sought those documents pursuant to Section 12.2 of the BAVC contract with DT. That provision specifies that BAVC agrees that Section 67.24(e) of the Sunshine Ordinance applies to BAVC. That section requires most documents and communications between BAVC and the City related to the bidding process under which that contract was awarded to be disclosed to the public if requested.

Contested Facts:

Neither BAVC, nor the Department of Technology, have rebutted or refuted any facts set forth in Complainants' complaint. Instead DT responded to the complaint on May 18, 2010 with information concerning another public document request from complainant from December 16, 2010, which they claim to have responded to on December 17, 2010. That previous request sought all "records, tariffs, regulations, laws, and budget items, that describe funding" by the City of public access cable TV programming administered by BAVC.

DT further claims that most, if not all, documents requested from BAVC by complainant on March 25, 2010 were already provided in its December 17, 2010 response to the December 16, 2010 request.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does BAVC receive more than \$250,000 per year in City funds?
- Did BAVC respond to the March, 2010 request in any manner?
- Are there any documents responsive to the March, 2010 request that were not previously provided in the December 17, 2010 response?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Are the documents sought by complainant required to be provided under Section 12-L.5?
- Does contract clause 12.2 require BAVC to comply with Section 67.24(e) of the Ordinance?
- If so, does that give the Task Force jurisdiction to adjudicate a violation of that contract provision?
- Is a previous response by BAVC that provided all documents responsive to the current request sufficient to satisfy the requirements of the ordinance?

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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.**

ADMINISTRATIVE CODE**SEC. 12L.5. PUBLIC ACCESS TO RECORDS.**

(a) Disclosure of Financial Information. Subject to Section 12L.5(c), each nonprofit organization shall maintain and make available for public inspection and copying a packet of financial information concerning the nonprofit organization. The packet shall include, at a minimum, (1) the nonprofit organization's most recent budget as already provided to the City in connection with the nonprofit organization's application for, or in connection with the review and/or renewal of, the nonprofit organization's contract, (2) its most recently filed State and federal tax returns except to the extent those returns are privileged, and (3) any financial audits of such organization performed by or for the City and any performance evaluations of such organization performed by or for the City pursuant to a contract between the City and the nonprofit organization, to the extent that such financial audits and performance evaluations (i) are in the nonprofit organization's possession, (ii) may be publicly disclosed under the terms of the contract between the City and the nonprofit organization, and (iii) relate to the nonprofit corporation's performance under its contract with the City within the last two years. A member of the public may request additional financial information other than that described above, pursuant to Section 12L.5(b) herein; however, the provision of such additional financial information by a nonprofit organization shall be voluntary, not compulsory.

(b) Dispute Resolution. A member of the public who requests additional financial information other than that described in Section 12L.5(a), above, or who has a complaint concerning a nonprofit organization's compliance or noncompliance with this Chapter, may submit that request or complaint to the City agency or department which is a party to and/or which administers the nonprofit organization's contract. That City agency or department shall consider the request or complaint and shall recommend a resolution thereof in accordance with procedures established by that City agency or department. Following such consideration and recommendation, the member of the public or the nonprofit organization may seek an advisory opinion concerning the request or complaint from the Sunshine Ordinance Task Force, which that Task Force shall be authorized to provide; provided, however, that failure to seek such an

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advisory opinion from the Sunshine Ordinance Task Force shall not prejudice the right of the member of the public and/or the nonprofit organization to obtain a review of the City agency or department's recommendation by the Board of Supervisors as provided herein. The member of the public or the nonprofit organization may request that the Board of Supervisors review the recommendation of the City agency or department, which review shall be conducted in accordance with procedures established by the Board of Supervisors, provided that such request is made in writing to the Clerk of the Board of Supervisors within ten days of the issuance of the City agency or department's recommendation or the Sunshine Ordinance Task Force's advisory opinion, whichever is later. Subject to Section 12L.7. herein, the recommendation of the City agency or department, or the determination of the Board of Supervisors, with respect to any request or complaint by a member of the public shall be nonbinding upon the nonprofit organization.

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**(e) Contracts, Bids and Proposals**

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.



<complaints@sfgov.org>

04/14/2010 03:18 PM

To <soft@sfgov.org>

cc

bcc

Subject: Sunshine Complaint

To: soft@sfgov.org Email: complaints@sfgov.org DEPARTMENT: Dept. of Technology (Bay Area Video Coalition)

CONTACTED:

PUBLIC_RECORDS_VIOLATION: Yes

PUBLIC_MEETING_VIOLATION: No

MEETING_DATE:

SECTIONS_VIOLATED:

DESCRIPTION: No response

HEARING: Yes

PRE-HEARING: No

DATE: 4/5/2010

NAME: Nick Pasquariello

ADDRESS: POB 42791

CITY: San Francisco

ZIP: Ca 94142

PHONE:

CONTACT_EMAIL:

ANONYMOUS:

Rustom - page 1 of 3

confidential
fax

To: Mr. Chris Rustom, Clerk SOTF
Fax Number: 554 7854

From:
Fax Number:
Business Phone:
Home Phone:

Pages: 3
Date/Time: 4/5/2010 5:11:16 PM
Subject: SOTF complaint

Dear Chris Rustom,
On March 25, 2010 I FAXED the attached Immediate Disclosure Request to Mr. Ken Ikeda at the Bay Area Video Coalition (BAVC). To date I have not received any response. I therefore am filing a complaint with the Sunshine Ordinance Task Force and requesting a hearing on this matter at your earliest convenience. Please let me know when the hearing has been scheduled.
I appreciate your help.

Yours truly,
Nick Pasquariello
POB 42791
San Francisco, CA 94142

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confidential
fax

To: Mr. Ken Ikeda
Fax Number: 861 4316

From:
Fax Number:
Business Phone:
Home Phone:

Pages: 2
Date/Time: 3/25/2010 3:22:59 PM
Subject: IMMEDIATE DISCLOSURE REQUEST

Rustom, p 3 of 3

IMMEDIATE DISCLOSURE REQUEST

Post Office Box 42791
San Francisco, California 94142

March 25, 2010

Mr. Ken Ikeda
Executive Director
Bay Area Video Coalition (aka BAVC)
2727 Mariposa Street
San Francisco, California 94110
(415) 861-3282
(415) 861-4316 FAX

Dear Mr. Ikeda,

In accordance with the GRANT AGREEMENT between CITY AND COUNTY OF SAN FRANCISCO and BAY AREA VIDEO COALITION dated August 20, 2009, ARTICLE 12 DISCLOSURE OF INFORMATION AND DOCUMENTS, 12.2 Sunshine Ordinance please send me a copy of all contracts, grantee bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking contracts.

Your prompt response to this request is much appreciated.

Yours truly,

Nick Pasquariello

SOTF/SOTF/SFGOV
04/15/2010 01:57 PM

To krisana@hodgeslaw.net
cc
bcc
Subject Fw: Sunshine Complaint Received: #10013_Nick
Pasquariello vs Dept. of Technology

The Sunshine Ordinance Task Force has received the attached complaint from Nick Pasquariello alleging violation(s) of the San Francisco Administrative Code.

Chapter 12L provides for a three stage dispute resolution process for resolving a complaint filed by a member of the public. [SF Adm Code Sec 12L.5 (b)] The first stage is review and consideration of the complaint by the department administering the grant. The department then recommends a resolution of the complaint. Second, the complainant may seek an advisory opinion from the Sunshine Ordinance Task Force. Third, the complainant may request that the Board of Supervisors review the department's recommendation.

This complaint is sent to the Department of Technology because it administers a grant to the Bay Area Video Coalition.

Please refer to complaint number #10013 when submitting any new information and/or supporting documents pertaining to this complaint.

The full Sunshine Ordinance Task Force will hear the merits of the complaint and issue a determination on:

Date: Tuesday, May 25, 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, attendance by the custodian of records or a representative of your department, who can speak to the matter, is required at the hearing.

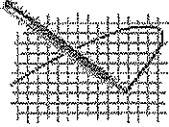
Any support documents to be considered by committee members, prior to the meeting, must be submitted by 4:00 P.M. Tuesday, May 18, 2010.

Also, attached is the Sunshine Ordinance Task Force's complaint procedures.



10013_Complaint.pdf 10013_Support.pdf 1_Complaint Procedures_4-28-09_Final.pdf

Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
OFC: (415) 554-7724




Barry Fraser/DTIS/SFGOV

05/18/2010 03:54 PM

To SOTF/SOTF/SFGOV@SFGOV

cc Ron Vinson/DTIS/SFGOV@SFGOV

bcc

Subject Re: Sunshine Complaint Received: #10013_Nick Pasquariello vs Dept. of Technology 

Dear Mr. Rustom,

The Department of Technology (DT) submits this email and attachment for the Task Force's review in hearing #10013_Nick Pasquariello vs Dept. of Technology. DT received a Sunshine Request from the Complainant, Nick Pasquariello, on December 16, 2009, and responded in full on December 17, 2009 (see attachment). The documents provided to Mr. Pasquariello include most, if not all, documents requested from Bay Area Video Coalition (BAVC) by Mr. Pasquariello in his letter to BAVC dated March 25, 2010. These documents are also available to the public at <http://sfgov.org/publicaccessstv>.

Thank you,

Barry Fraser
Telecommunications Policy Analyst
City and County of San Francisco
Department of Technology
One South Van Ness, 2nd Floor
San Francisco, CA 94103
Phone: 415-581-3976
Fax: 415-581-3970
barry.fraser@sfgov.org



City & County of San Francisco
**Department of
Technology**
Powered by Innovation

One South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103-0948
Office: 415-581-4001 • Fax: 415-581-4002

December 17, 2009

Mr. Nick Pasquariello
Post Office Box 42791
San Francisco, CA 94142

Public Records Request dated December 16, 2009

Dear Mr. Pasquariello,

Enclosed you will find records that respond to your Faxed Public Records Request, dated December 16, 2009. Additional documents related to the Request for Proposals for the Public Access Channels may be found online at:

<http://www.sfgov.org/publicaccessstv>

Please do not hesitate to contact me if you have additional questions.

Sincerely,

Ron Vinson
Media Director

Enclosures



Printed on recycled paper

confidential
fax

To: Mr. Chris Vein, Executive Director
Fax Number: 581-4002

From:
Fax Number:
Business Phone:
Home Phone:

Pages: 2
Date/Time: 12/16/2009 5:48:56 PM
Subject: IMMEDIATE DISCLOSURE REQUEST

May 20, 2010

Via US Mail & e-Mail

Nick Pasquariello
PO Box 42791
San Francisco, CA 94142

Re: *Sunshine Ordinance Task Force, Complaint No. 10013*

Dear Mr. Pasquariello,

I represent the Bay Area Video Coalition ("BAVC"). It has come to our attention that you have filed a new complaint against BAVC with the San Francisco Sunshine Ordinance Task Force (the "Task Force"). The purpose of this letter is to respond to the issues raised in this complaint and to provide you with important information about how to communicate with BAVC so that we can be more responsive to any future inquiries you may have.

Use of Unregistered Facsimile

It appears that you have been attempting to communicate with BAVC by facsimile, but you have been utilizing an illegal, anonymous delivery device to do so. Please note that such devices are prohibited by Federal law, 47 C.F.R. § 68.318(d). When you use an illegal fax machine to contact us, your correspondence may be treated as "spam" or otherwise blocked by our fax services. Also, using an anonymous delivery device makes it difficult for BAVC to verify the authenticity of your correspondence. Finally, your fax correspondence did not include a number so that we could respond in kind. All of these factors make it very difficult for us to respond to your questions.

Going forward, BAVC welcomes your correspondence via fax, provided that the fax delivery device you use complies with the law and that you include a return fax number so that BAVC can respond to your request in kind. You may send BAVC mail at SF Commons,

2727 Mariposa St., 2nd Floor, San Francisco, California 94110. If you prefer, you are also welcome to send questions via email or to call SF Commons at 415.558.2123.

BAVC is Not the Proper Party for This Request

Your complaint to the Task Force is based on this request of BAVC:

In accordance with the GRANT AGREEMENT between CITY AND COUNTY OF SAN FRANCISCO and BAY AREA VIDEO COALITION dated August 20, 2009, ARTICLE 12 DISCLOSURE OF INFORMATION AND DOCUMENTS, 12.2 Sunshine Ordinance please send me a copy of all contracts, grantee bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking contracts.

Your letter makes specific reference to Section 12.2 of the Grant Agreement between BAVC and the City and County of San Francisco (the "City"). To be clear, Section 12.2 of the Grant Agreement reads in relevant part:

[BAVC] acknowledges and agrees that this Agreement and the application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communication between the City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded.

As you can see, the contract provision you referenced concerns BAVC's acknowledgement and consent that the City will make certain information related to its work with BAVC open to the public and/or available for public inspection. Also, your request for "all other records and communications between the City and persons or entities seeking[] contracts" asks for documents well outside the scope of information BAVC could access. BAVC is not in a position to know what records of communications may exist between the City and all persons or entities seeking contracts with the City generally, or even in connection with public access in particular. If you have not already done so, I encourage you to submit your request for information to the San Francisco Department of Technology. In addition, I understand that the Department has made many of its documents related to public access readily available online at <http://sfgov3.org/index.aspx?page=1511>.

BAVC supports the City in its commitment to transparency and in making public documents accessible. However, as a private non-profit with limited resources and experience in matters of public governance, BAVC is not the proper party to facilitate broad and general requests for information from members of the public. If you would like to review

the records the City makes available to the public related to its contract with BAVC, we encourage you to contact the Department of Technology directly.

The Task Force has no Jurisdiction Over the Complaint

Regardless of the basis for your initial request for information, we are disappointed that you chose to bring this matter to the Task Force rather than submit your request for information to the City. As you know, the Task Force rejected your last complaint against BAVC as being outside of its jurisdiction, in part because you did not follow the procedures set by the Sunshine Ordinance, but also because your request at that time did not relate to BAVC's contract with the City. The Sunshine Ordinance requires that persons seeking information related to a City contract with a third party first mediate their request through the City agency administering the contract. At that hearing, Members of the Task Force gave you important directions on how such inquiries should be handled. The draft minutes recount, "Member Craven-Green said the complaint, per 12L, has to be sent to the agency that contracts with the Bay Area Video Coalition to have it mediated before it comes before the Task Force." These directions are also reflected in the text of the Ordinance.

Filing a complaint before the Task Force requires BAVC to expend staff time and financial resources to respond to your complaint and appear before the Task Force. In this case, you chose this forum despite the Task Force's specific directions to you that you should first direct questions and requests for information regarding BAVC's contract with the City to the Department of Technology. Moreover, the language of the contract provision you referenced to support your complaint is clear that the City, not the BAVC, is the party that makes certain information available to the public. Nonetheless, it does not appear you made any effort to contact the Department before filing this complaint.

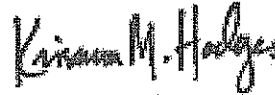
Please Withdraw the Complaint

Given the above concerns regarding the jurisdiction for and substance of your Complaint, along with the fact that much of the information you request is already available online through the Department of Technology, BAVC respectfully requests that you withdraw your Complaint and have your Complaint taken off calendar for the next Task Force meetings, scheduled for May 25, 2010.

In the event you choose not to withdraw your Complaint, this letter will also serve as BAVC's response to the Complaint before the Task Force. For this reason, a copy of this letter is being sent to the Task Force.

If you -- or the Task Force -- have questions about this matter, please contact me directly at the numbers above. Please note, if you choose to communicate via fax, please use a registered machine and include a return fax number or email address for my response.

Sincerely,



Krisana M. Hodges

cc: Chris Rustom
San Francisco Sunshine Ordinance Task Force
via email: SOTF@sfgov.org

Barry Fraser
San Francisco Department of Technology
via email: barry.fraser@sfgov.org

