

Date: May 26, 2009

Item No. 4 & 5  
File No. 09020

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Anonymous v MTA
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Completed by: Chris Rustom

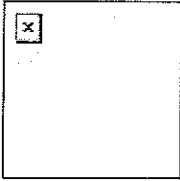
Date: May 15, 2009

**\*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.

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DENNIS J. HERRERA  
City Attorney

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**MEMORANDUM**

*May 18, 2009*

*ANONYMOUS PERSON v. MUNICIPAL TRANSPORTATION AGENCY (09020)*

**COMPLAINT**

**THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:**

Anonymous Person states that when he tried to obtain access to public documents pertaining to the business of the Municipal Transportation Agency ("MTA") Board of Director's meetings, he experienced difficulty because the MTA receptionist was reluctant to hand over the documents. Anonymous Person further states that during MTA meetings there are not public binders. Anonymous Person further states that he had difficulty in using the MTA Website- specifically in navigating through the various links and search options.

**COMPLAINANT FILES COMPLAINT:**

On April 7, 2009, Anonymous Person filed a complaint against the MTA citing the above stated difficulties in obtaining public records with the general claim that the MTA violated the Sunshine Ordinance.

**MTA'S RESPONSE**

On April 15, 2009, Commission Secretary Roberta Boomer wrote the Task Force and responded to the points raised in the complaint.

As to the lack of public binders at the meeting, Ms. Boomer stated that all materials provided to the MTA Board of Directors except for confidential matters are placed on-line for members of the public to review prior to the meeting. In addition these documents are available at the Reception Desk.

As to the allegation that the receptionist impeded his review of the documents, Ms Boomer explained that the receptionist who regularly provides materials was not at the desk and a substitute person was manning the desk. After receiving Anonymous Person's request to see the Budget Report. The Receptionist called other knowledgeable staff to determine which Budget Report to provide. At the same time, the Receptionist was answering telephone calls. The Receptionist and another co-worker stated that the Anonymous Person became upset and started

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screaming at the Receptionist. People in the office calmed the Anonymous Person and the materials were provided. .

Regarding the MTA website, Ms. Boomer stated that the website has been designed to be user friendly.

On May 12, 2009, Commission Secretary Boomer appeared before the Complaint Committee and reiterated what she stated in her letter and the other declarations of those present at the office when the Anonymous Person was making his requests.

**APPLICABLE STATUTORY SECTION;**

1. California Constitution, Article I, Section 3 that states the general principals of public records and public meetings.
2. Sunshine Ordinance Section 67.1 that addresses Findings and Purpose.
3. Sunshine Ordinance Section 67.9 that deals with the agenda of policy bodies and the materials that are reviewed and considered at the meetings.
4. Sunshine Ordinance Section 67.21 that deals with requests for documents.
5. Sunshine Ordinance Section 67.29-2 that deals with Department Internet access/world wide web minimum standards.

**APPLICABLE CASE LAW:**

none

**ISSUES TO BE DETERMINED****1. FACTUAL ISSUES****A. Uncontested Facts:**

- The MTA had public meetings on the date stated by the complainant.
- The MTA did not have public binders at the meetings.
- The MTA maintains a website and provides its materials for its meetings on the website.

**B. Contested facts/ Facts in dispute:**

The Task Force must determine what facts are true.

**i. Relevant facts in dispute:**

- Was the response given by the MTA receptionist in violation of the Ordinance?
- Is the MTA website user friendly?
- Did the Anonymous Person receive the requested information in a timely fashion?

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**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS;**

none

**LEGAL ISSUES/LEGAL DETERMINATIONS;**

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

**Memorandum****THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.**

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
  - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
  - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
  - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, I including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
  - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
  - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for t he confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

**Memorandum****ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE)****UNLESS OTHERWISE SPECIFIED**

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

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Section 67.9 deals with agendas and related materials as public records.

Section 67.9 provides:

a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. to the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

Section 67.29-2 provides:

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event with 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes.

Section 67.21 addresses general requests for public documents.

This section provides:

a.) Every person having custody of any public record or public information, as defined herein, ... 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** (emphasis added) 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



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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.

...

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 requirement provided in this ordinance.



04-07-09P03:12 RCVD

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 Transportation Agency

Name of individual contacted at Department or Commission Roberta Boomer

Alleged violation public records access  
 Alleged violation of public meeting. Date of meeting \_\_\_\_\_

Sunshine Ordinance Section \_\_\_\_\_  
(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.

Access to public documents (reports, memos, etc.) pertaining to the MTA Board of Directors meetings has been made difficult as a result of 7th floor receptionists reluctance to readily hand over these public records, lack of public binders at the meetings and a Web site that requires a certain level of expertise to maneuver through the various links and knowledge of how to use the search options.

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)<sup>1</sup>  
Name \_\_\_\_\_ Address \_\_\_\_\_ San Rafael

Telephone No. (415) \_\_\_\_\_ E-Mail Address \_\_\_\_\_ 94903-257

Date April 7, 2009 \_\_\_\_\_  
Signature

I request confidentiality of my personal information.  yes  no

<sup>1</sup> 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).

Gavin Newsom | Mayor  
Rev. Dr. James McCray Jr. | Chairman  
Tom Nolan | Vice-Chairman  
Cameron Beach | Director  
Shirley Breyer Black | Director  
Malcolm Hainicke | Director  
Jerry Lea | Director  
Bruce Oka | Director  
Nathaniel P. Ford, Sr. | Executive Director/CEO

April 15, 2009

Kristen Chu  
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. 09020

Dear Ms. Chu:

I am writing in response to complaint #09020. The allegation states that access to public documents is difficult due to reluctance of staff to hand over public records, lack of public binders and a web site that requires knowledge of how to search for the requested documents.

The complaint alleges three violations:

1. Access to public documents by the OSVN 7<sup>th</sup> Floor receptionists.
2. Lack of public binders at the meeting
3. The SFMTA website requires a level of expertise and knowledge about search options.


Members of the public can read every item provided to the SFMTA Board of Directors except confidential materials on-line. The SFMTA is proud to have been one of the first city departments to post the board packet on-line and we have been doing so since 1999. In addition, these documents are available at One South Van Ness Ave. at the 7<sup>th</sup> floor Reception desk. Because documents are available at our offices and on-line, the board packet is not brought to the meeting.

The SFMTA website is designed to be customer-friendly. On the home page, there are three ways to get to the Board agenda. People can use the "A-Z Topic List" and click on "Agendas, SFMTA Board". People can also click on "About Us" (and then click on "meetings" and "SFMTA Board") or use the search function. Regular visitors to the Board's webpage can always choose to "bookmark" that page.

With regard to the first item, attached please find a statement by Ms. Robertta Anoaï-Morales regarding the interaction that she had with the complainant. I am also providing a statement by Jamie Poblitz, scheduling coordinator for Executive Director Ford who overheard the interaction and who tried to provide assistance.

Please know that the office of the SFMTA Board of Directors is very mindful of the importance of excellent customer service and we always try to serve each customers as quickly as possible and to the best of our ability.

Sincerely,

A handwritten signature in cursive script that reads "R. Boomer".

Roberta Boomer  
Secretary, SFMTA Board of Directors

cc: SFMTA Board of Directors  
Nathaniel Ford  
Debra Johnson  
Barry Taranto

April 15, 2009

Subject: Incident w/ Barry Taranto

I received a phone call from our receptionist Robertta Anoa'i Morales at my desk on March 18<sup>th</sup>, 2009. She was inquiring about providing a constituent with a SFMTA Budget Report and that she was unable to locate Caroline Celaya to verify what to provide to the customer. While I was on the phone with her, I could hear a man's voice screaming in the background, interrupting our phone conversation. The man was yelling that she wasn't trying to give him the report and Roberta replied "sir if you just give me a second, I need to verify that I'm giving you the correct information, it will be one moment". He continued to raise his voice at her and at that moment I felt that Robertta needed me to help her. I told her I would be out to assist her right away and I would try to find Caroline.

After locating Caroline a couple minutes later we both walked through the reception doors to hear Barry Taranto still screaming at Robertta. I approached Mr. Taranto in a non-threatening manner and said that he needed to calm down and that we will be getting him the information he needed shortly. I explained that our receptionist was only trying to help and his behavior was inappropriate. He didn't want to listen to me and still wanted to argue. Our Executive Director Nathaniel Ford came walking through the reception area and heard all the commotion. He pulled me out and inquired if we needed help and I told him that we were taking care of Mr. Taranto's request but he was not listening to anything that was being explained to him. Our Chief of Staff/Director of Administration decided to step in speak with Barry so I went back to my desk.



Jaime Poblitz  
Scheduling Coordinator

Gavin Newsom | Mayor

Rev. Dr. James McCray Jr. | Chairman

Michael Kasolas | Vice Chairman

Shirley Breyer Black | Director

Wil Din | Director

Peter Mezey | Director

Tom Nolan | Director

Leah Shahum | Director

Nathaniel P. Ford, Sr. | Executive Director/CEO

Robertta Anoa'i-Morales  
1426 – Senior Clerk Typist / Receptionist  
San Francisco Municipal Transportation Agency

On March 18, 2009, at approximately 4:15pm, Mr. Barry Taranto came to the 7<sup>th</sup> floor requesting to see Debra A. Johnson, Chief of Staff / Director of Administration. He stated that he was aware that he had no appointment but asked if I could see if she had a few minutes. I called Debra Johnson's assistant, to see if she was available and was informed that she was walking into a meeting. I relayed this information to Mr. Taranto, he then asked for the "Budget Report". At that time, he did not say that this report was part of the Board Packet.

I informed Mr. Taranto that my co-worker who usually handles such requests was not here and that I wanted to make sure that I did not give him the wrong report. I asked Mr. Taranto if he could give me a moment so I could check with my supervisor, Caroline Celaya. I called Caroline who wasn't in her office at the moment and then I called Mr. Ford's assistant, Jaime Poblitz. At that point I asked Mr. Taranto to please be patient with me as I wanted to provide him with the correct information. While on the phone with Ms. Poblitz, Mr. Taranto told me that it was the law that he had the right to anything from the public file. In addition, he asked for information about Transit Fare Inspectors and if he could see Sonali Bose, Chief Financial Officer. As soon as I got off the phone with Ms. Poblitz, she and Ms. Celaya came to the reception desk and provided him with the Budget Report.

The phone lines were ringing all at once and in the time it took me to make the two phone calls to Ms. Celaya and to Ms. Poblitz, Mr. Taranto became increasingly demanding and impatient. He asked for so many things in a short time but didn't pause to give me time to provide him with the documents he requested first. It is my job to answer the SFMTA main phone line and assist other walk-in customers. I tried to help Mr. Taranto to the best of my ability. Ms. Celaya, Ms. Poblitz and Debra Johnson, Chief of Staff / Director of Administration tried to assist him as well.

I am fully aware of the law with regard to providing the public with board materials, but Mr. Taranto was unclear in his original request. I asked him courteously several times to give me a moment and his reply was that he did not have a moment and that I should give him this information immediately.

