

Date: June 22, 2010

Item No. 15 & 16  
File No. 10019

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Alvin Xex against the Children and Families Commission**
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Completed by: Chris Rustom

Date: June 17, 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.



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## MEMORANDUM

June 15, 2010:

*ALVIN XEX V. CHILDREN & FAMILIES COMMISSION (10019)*

### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Alvin Xex alleges that, on an unspecified date, he requested public records from First5SF, otherwise known as the Children & Families Commission ("First5"), concerning several categories of information, but First5 failed to provide the requested documents.

#### COMPLAINANT FILES COMPLAINT:

On 5/19/10, Mr. Xex filed a Complaint against First5 for its alleged violations of "Sections 67.31, 35, 27, et al." of the Sunshine Ordinance.

#### JURISDICTION

First5 is a City department and thus the Task Force has jurisdiction over this issue.

#### 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 67.24(c) deals with public information that must be disclosed regarding public employment.
- 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 provision of public records and time of response.
- Section 6253.1 deals with requirements for agencies to assist a member of the public in making a focused and effective request for reasonably identifiable records.
- Section 6254 deals with records exempt from disclosure, including personnel records

**MEMORANDUM****APPLICABLE CASE LAW:**

None.

**ISSUES TO BE DETERMINED****1. FACTUAL ISSUES**

**A. Uncontested Facts:** Mr. Xex requested information from First5 concerning five categories of information: 1) professional job positions held by Black males for period 2007 to present; 2) source of all tax monies and services expended for same time period; 3) programs and services for male fathers; 4) criteria for determining programs to fund using taxpayer money and services; and 5) numbers of programs and efforts for or aimed at the San Francisco Black community.

**B. Contested facts/ Facts in dispute:** While Mr. Xex does not specifically allege that he received no response to the above requests, he does allege violations of the Sunshine Ordinance related to his public records request. At this time, First5 has yet to respond to the allegations.

**QUESTIONS THAT MAY ASSIST IN DETERMINING FACTS:**

- Did First5 respond to Mr. Xex's request?
- If so, when was the response made?
- Were public records provided by First5 to Mr. Xex?
- If not, does First5 have custody of records responsive to the request?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Were sections of the Sunshine Ordinance, Brown Act, and/or California Constitution Article I, Section three violated?

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

- Did First5 respond to Mr. Xex's request without unreasonable delay?
- Did First5 respond to Mr. Xex's request within 10 days?
- Did First5 assist Mr. Xex in locating and identifying the records he sought?

**Under Section 67.24(c) of the Ordinance:**

- Was the information sought by complainant from First5 required to be released under this provision?

**Under Section 67.26 of the Ordinance:**

- Was withholding by First5, if any, kept to a minimum?

**MEMORANDUM****Under Section 67.27 of the Ordinance:**

- Did First5 justify any withholding in writing, as required by this provision?

**Under Section 6253 of the Public Records Act:**

- Did Mr. Xex's request "reasonably describe an identifiable record or records"?
- If so, did First5 "make the records promptly available [ . . . ] upon payment of fees covering direct costs of duplication"?
- Did First5 "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 [ . . . ] promptly notify [Mr. Xex] of the determination and the reasons therefor"?
- If not, did First5 notify Mr. Xex in writing that there were unusual circumstances that justified a longer time to respond to his request and inform him when the response would be completed?
- If so, did the "unusual circumstances" cited come within the allowable categories of this section?

**Under Section 6253.1 of the Public Records Act:**

- Did First5 "assist [Mr. Xex to] make a focused and effective request that reasonably describes an identifiable record or records, [ . . . ] to the extent reasonable under the circumstances, by assisting him "to identify records and information that are responsive to the request or to the purpose of the request, if stated"?
- Did First5 "assist [Mr. Xex to] make a focused and effective request that reasonably describes an identifiable record or records, [ . . . ] to the extent reasonable under the circumstances, by assisting him to "[d]escribe the information technology and physical location in which the records exist"?
- Did First5 "assist [Mr. Xex to] make a focused and effective request that reasonably describes an identifiable record or records, [ . . . ] to the extent reasonable under the circumstances, by "[p]rovid[ing] suggestions for overcoming any practical basis for denying access to the records or information sought"?
- Was First5 "unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from [Mr. Xex that would] help identify the record or records"?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

**MEMORANDUM****ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED**

Section 67.21 (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 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."

Section 67.21 (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.**"

Section 67.21 (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.**"

**SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED**

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

- (i) Sex, age and ethnic group;
- (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
- (iii) Years of employment in the private and/or public sector;
- (iv) Whether currently employed in the same position for another public agency.
- (v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

**MEMORANDUM**

- (2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee *shall be* redacted.
- (3) The job description of every employment classification.
- (4) The exact gross salary and City-paid benefits available to every employee.
- (5) Any memorandum of understanding between the City or department and a recognized employee organization.
- (6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.
- (7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

**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.

**MEMORANDUM****SECTIONS 6253 ET SEQ. OF THE CAL. GOVERNMENT CODE**

Section 6253 provides, in pertinent part:

(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.

Section 6253.1 provides, in pertinent part:

**MEMORANDUM**

(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

- (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
- (2) Describe the information technology and physical location in which the records exist.
- (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

**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, 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.



**MEMORANDUM**

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 the 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.



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June 7, 2010

Nick Goldman, Chair  
Members of the Complaint Committee

Re: Alvin Xex v. Children & Families Commission (10019)

Dear Chair Goldman and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Alvin Xex against the San Francisco Children & Families Commission (the "Commission").

### BACKGROUND

Complainant Alvin Xex alleges that the Commission failed to adequately respond to his Public Records Request.

### COMPLAINT

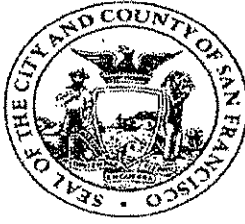
On May 19, 2010, Mr. Xex filed a complaint with the Task Force alleging a violation.

### SHORT ANSWER

Based on Complainant's allegation, it would appear that the Sunshine Ordinance Task Force *does* have subject matter jurisdiction over the allegations, which if true, could constitute a violation of state or local public meetings laws.

### DISCUSSION AND ANALYSIS

The Commission is a department under the Sunshine Ordinance. The Task Force therefore appears to have jurisdiction to hear a public records complaint.



SUNSHINE ORDINANCE TASK FORCE  
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 Tel. (415) 554-7724; Fax (415) 554-7854  
 http://www.sfgov.org/sunshine

**SUNSHINE ORDINANCE COMPLAINT**

Complaint against which Department or Commission FIRSTS (San Francisco)

Name of individual contacted at Department or Commission Blonak

Alleged violation public records access  
 Alleged violation of public meeting. Date of meeting 6.31, 35, 27, E.T.A.

Sunshine Ordinance Section 67.31, 35, 27 E.T.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.

I requested information - 4 questions:  
Professional job positions held by Black males  
for period 2007 to present. (2) source of all  
Tax monies and services expended for same time  
period. (3) Programs and services for male fathers

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

(4) on back  
 (Optional)<sup>1</sup>  
 Name M. Alvin Address \_\_\_\_\_

Telephone No. 415 230 1421 E-Mail Address BVD3840@aol.com

Date 5/19/10 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).

CC:

(OVER)

(4) CRITERIA FOR DETERMINING  
PROGRAMS TO FUND USING TAXPAYER  
MONEY AND SERVICES; NUMBER OF  
SOME (PROGRAMS AND EFFORTS) FOR OR  
Aimed AT SAN FRANCISCO'S BLACK  
AMERICAN COMMUNITY

N.D. I demand the SUNSHINE TASK  
FORCE ENFORCE EXISTING LAWS  
PER public information ACCESS!