

Date: June 12, 2009

Item No. 3
File No. 09024

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Paul Weston vs Human Services
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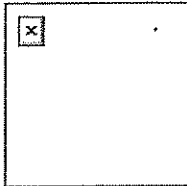
Completed by: Frank Darby

Date: June 17, 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.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

June 12, 2009

PAUL WESTON v. THE DEPARTMENT OF HUMAN SERVICES (09024)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

On May 10, 2009, Complainant Paul Weston made an Immediate Disclosure Request ("IDR") with the Department of Human Services ("DHS"). Paul Weston in his IDR requested the following: a. The most recent Statement of Service and Invoice for 150 Otis; b. The most recent Statement of service and Invoice for the 150 Otis Winter Shelter; c. The most recent Statement of Service and Invoice of the St. Anthony foundation for their Dining Hall; d. The application and/or resume of Alonso Bowlegs (St. Vincent de Paul Employee); e. The application and/or resume of Wayne Garnett (St. Vincent de Paul Employee) and f. The application and/or résumé of Lessy Benedith (St. Vincent de Paul Employee). Since May 10, 2009 was a Sunday the deadline for compliance was the end of the business day on Tuesday May 12, 2009.

THE RESPONDENT AGENCY STATES THE FOLLOWING:

On May 11, 2009, Pamela Tebo of the office of the Executive Director of DHS responded to the IDR and stated that she needed clarification on what the term "most recent Statement of Service " means. She also stated that she has requested the recent invoices for 150 Otis (Drop In) and 150 Otis (Shelter) and will forward once received. She stated that DHS does not fund St. Anthony's Dining Room and that DHS does not have access to their non-profit partners' personnel files.

On May 12, 2009, Pamela Tebo e-mailed Paul Weston that stated that the document is ready for pick up.

On May 13, 2009, Paul Weston went to DHS to pick up the documents and became upset when he determined that all of the documents were not available. Soon afterwards, the rest of the documents that were in the possession of DHS were made available to Paul Weston.

THE COMPLAINANT FILES THE COMPLAINT:

On May 14, 2009, Paul Weston filed a complaint against DHS alleging violations of the Sunshine Ordinance.

Memorandum

APPLICABLE STATUTORY SECTIONS:

1. Sunshine Ordinance § 67.21 addresses general requests for public documents.
2. Sunshine Ordinance § 67.25 addresses Immediate Disclosure Requests.
3. Sunshine Ordinance § 67.26 deals with redaction of records.
4. Sunshine Ordinance § 67.27 addresses legal justification for withholding of records.
5. State Government Code § 6253 addresses requests for public records.
6. State Government Code § 6255 addresses legal justification for withholding of records.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

The parties agree to the following facts:

- Paul Weston made a IDR.
- DHS responded to the request and provided documents

B. Contested facts/ Facts in dispute:

- Was there a delay in the production of documents following a IDR?

i. Relevant facts in dispute: Whether the information released by

DHS complied with the Sunshine Ordinance and the State Public Records Act.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What did DHS withhold, if anything?
- Was there a delay in the production of documents?
- If so, Was the delay reasonable?

Memorandum

2. LEGAL ISSUES/ LEGAL DETERMINATIONS:

- **Were sections of the Sunshine Ordinance, Brown Act, and/or Public Records Act violated?**
- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

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

Memorandum

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

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 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 67.25 provides:

- 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

Memorandum

extent of the nonexempt information and suggest alternative sources for the information requested, if available.

THE CALIFORNIA PUBLIC RECORDS ACT IS LOCATED IN THE STATE GOVERNMENT CODE SECTIONS 6250 ET SEQ. ALL STATUTORY REFERENCES, UNLESS STATED OTHERWISE, ARE TO THE GOVERNMENT CODE.

Section 6253 provides.

- 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 records 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 therefore....
- d.) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

Section 6255 provides:

- a.) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

Memorandum

b.) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.



SOTF/SOTF/SFGOV
06/16/2009 10:50 AM

To paulweston79@gmail.com, David Curto/DHS/CCSF@CCSF,
Pamela Tebo/DHS/CCSF@CCSF
cc
bcc Ernest.llorente@sfgov.org; Kristin@Chu.com
Subject Hearing Scheduled: Complaint #09024 & 09029_Paul
Weston vs DHS

Dear Mr. Weston and Mr. Curto,

Since both parties do not agree to a continuance, as per the SOTF procedures, the above titled complaint is being scheduled for the June 23, 2009, meeting of the SOTF.

Should the Department still wishes to continue the matter a request can be made before the full Task Force at the hearing. The Task Force will then decide whether to grant the continuance or to hear the matter.

Frank Darby
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307
— Forwarded by SOTF/SOTF/SFGOV on 06/16/2009 10:39 AM —



Paul Weston
<paulweston79@gmail.com>
06/16/2009 10:34 AM

To SOTF <sotf@sfgov.org>
cc
Subject Re: Continuance Requested: #09024 & 09029_Paul Weston
vs DHS

I do NOT agree to a continuance. I believe that this is a deliberate attempt by HSA to evade the SOTF.

On Tue, Jun 16, 2009 at 9:16 AM, SOTF <sotf@sfgov.org> wrote:

Dear Mr. Weston

The Department of Human Services has requested a continuance of the above titled complaints to the July 28, 2009, meeting of the full Task Force.

Do you agree to a continuance?

Frank Darby
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place

City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.

http://www.sfgov.org/site/sunshine_form.asp?id=34307

----- Forwarded by SOTF/SOTF/SFGOV on 06/16/2009 08:54 AM -----

David
Curto/DHS/CCSF@CC
SF
To
Frank Darby/BOS/SFGOV@SFGOV
06/16/2009 08:33 AM
cc
pamela.tebo@sfgov.org
Subject
Sunshine Task force meeting June
23rd

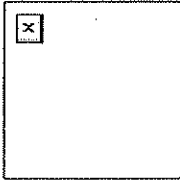
Hi Frank,

I am requesting a continuance of items # 09024 Paul Westin
09026 Hanna Leung
Continuing Charles Pitts

I am out of the state on that week and I am the most appropriate person to appear on these items from the Human Services Agency. We could send someone to the meeting but without first hand knowledge of the complaints and remedies implemented to date. A continuance is the most effective way to resolve these complaints. when I can appear personally.

Thank-you

Dave Curto
Director of Contracts
Human Services Agency
415-557-5581



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

June 2, 2009

Nick Goldman, Chair
Members of the Complaint Committee

Re: Paul Weston (09024) v. the Department of Human Services

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 Paul Weston against the San Francisco Department of Human Services ("DHS").

BACKGROUND

On May 10, 2009, Complainant Paul Weston made an Immediate Disclosure Request ("IDR") with the Department of Human Services ("DHS"). Paul Weston in his IDR requested the following: a. The most recent Statement of Service and Invoice for 150 Otis; b. The most recent Statement of service and Invoice for the 150 Otis Winter Shelter; c. The most recent Statement of Service and Invoice of the St. Anthony foundation for their Dining Hall; d. The application and/or resume of Alonso Bowlegs 9St. Vincent de Paul Employee); e. The application and/or resume of Wayne Garnett (St. Vincent de Paul Employee) and f. The application and/or résumé of Lessy Benedith (St. Vincent de Paul Employee). Since May 10, 2009 was a Sunday the deadline for compliance was the end of the business day on Tuesday May 12, 2009. On May 11, 2009, Pamela Tebo of the office of the Executive Director of DHS responded to the IDR and stated that she is seeking the information and will need a day or two to obtain them since they are in another building. On May 13, 2009, Paul Weston went to DHS to pick up the documents and became upset when he determined that all of the documents were not available. Soon afterwards, the rest of the documents were made available to Paul Weston.

COMPLAINT

On May 14, 2009, Paul Weston filed a complaint against DHS alleging violations of the Sunshine Ordinance.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. The allegations are covered under (67.21 and 67.25) of the Ordinance.

Letter to the Complaint Committee

Page 2

June 2, 2009

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents and Section 67.25 covers Immediate Disclosure Requests. CPRA Section 6253 generally covers Public Records Requests.

In this case, Paul Weston made an IDR and DHS responded the next day. Paul Weston alleges that DHS did not respond in timely fashion. Based on the allegations, the Task Force has jurisdiction to hear this complaint and will determine whether DHS violated the Ordinance and/or the Public Records Act.



<complaints@sfgov.org>
05/13/2009 05:02 PM

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

Submitted on: 5/13/2009 5:02:08 PM

Department: Human Services Agency

Contacted: Pamela Tebo

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: Sec. 67.25

Description: On 5/10/2009 I made a sunshine request via email to Pamela Tebo. The subject line read "IMMEDIATE DISCLOSURE REQUEST" pursuant to Sec. 67.25. In the body of the email, I asked for the following: "the most recent Statement of Service and Invoice for 150 Otis." 150 Otis is the name of a homeless drop in center and shelter. However, when I went to pick up the document today (5/13) at 12 pm, her secretary only gave me the first page of this document (page A). Page B which contained the most important information was missing. I came back to Human Services Agency later that day around 2 pm and asked for the rest of the document that I requested. Her secretary told me that she would not be able to get the rest of the document today. I explained to her that if I did not receive it by the close of business this day, then it would be in violation of the Sunshine Ordinance. Her secretary then very childishly accused me of threatening her. However, I merely requested that she do her job and obey the law. Eventually, Pamela Tebo talked to me on the phone and told me that she would provide with the rest of the document but that she would be unable to do so by today. I explained to her that it was in violation of the Sunshine Ordinance and that I would report it. There was no ambiguity in my initial request at all. In fact, Pamela Tebo had previously given me these kinds of documents for MSC South. Previous Statement of Service and Invoice documents that I had received from Pamela Tebo all contained two pages (Page A and Page B) that were stapled together as one document. I am certain that Pamela Tebo knew exactly what I was asking for when I made my request. The only explanation for the omission of Page B by Pamela Tebo is that she deliberately attempted to withhold this information from the public.

Hearing: Yes

Pre-Hearing: Yes

Date: 5/14/2009

Name: Paul Weston

Address: General Delivery

City: San Francisco

Zip: 94142

Phone:

Email: paulweston79@gmail.com

Anonymous:

Confidentiality_Requested: No



Pamela Tebo
<Pamela.Tebo@sfgov.org>
05/14/2009 11:58 AM

To paulweston79@gmail.com
cc sof@sfgov.org
bcc
Subject Re: IMMEDIATE DISCLOSURE REQUEST

Since you filed a complaint with the Task Force I am copying them on this email. I do not believe you are rescinding your request for additional documents and I do not believe you are anticipating I will not respond, so it is unclear why you would file a complaint.

In any event, please be advised, I can only pass on documents that are given to me by our staff. I do not have control of the contract files. And, the office where the contracts and contract staff are located are at a different building than my office. When I received your request for 150 Otis Shelter & Drop In Center's recent invoice, I tried to contact the staff who monitors the St. Vincent de Paul's contract. She was out of the office for a few days, and since you submitted an Immediate Disclosure Request, I asked her co-worker to pull the recent Invoice and fax it to me. She did just that. And I passed that document on to you.

No one is playing childish games with you and no one is holding back documents. We are far too busy. Also, keep in mind, I receive numerous public records requests and I do not remember what documents I gave you in response to a previous request. I simply do not have time to go through my files to see what I gave you before.

Please note, we have no way to leave anything with our first floor guards for pick up. I will not allow my secretary to hand deliver documents to you any longer. She was very upset about your phone call. However, nothing got out of control since our security guard warned you to calm down or he would escort you out of our building.

I have to find a way to get these remaining document to you. Do you have a fax number of a mailing address I can use?

Thank you,

Pamela Tebo
Office of the Executive Director
SF Human Services Agency
P.O. Box 7988
San Francisco, CA 94120

Paul Weston <paulweston79@gmail.com>

05/13/2009 05:31 PM

To Pamela Tebo <Pamela.Tebo@sfgov.org>
cc
Subject Re: IMMEDIATE DISCLOSURE REQUEST

I have filed a complaint with the Sunshine Ordinance Task Force and have requested a hearing. There was no ambiguity whatsoever in my initial request. You had given this kind of document to me before which always contained multiple pages stapled together. You knew exactly what I was referring to in my initial request and you deliberately omitted Page B.

Furthermore, your secretary accused me of threatening her when I merely requested that she obey the law and do her job. This behavior by your secretary was childish and slanderous and was also reported to the Sunshine Ordinance Task Force.

I hereby request that you cease and desist from using these childish tactics to withhold information from the public. In the future, you may find that it is a more efficient use of your time to simply obey the law and do your job.

Please inform me when the remaining portions of the requested document will be ready. However, since your secretary has demonstrated the propensity to fabricate slanderous allegations, I no longer feel safe accepting documents from her. From now on, please have someone other than your secretary delivery documents to me.

On Wed, May 13, 2009 at 3:55 PM, Pamela Tebo <Pamela.Tebo@sfgov.org> wrote:

As you requested, I provided the recent invoice submitted to HSA from St. Vincent de Paul for 150 Otis drop in services and shelter. This email will confirm that you requested additional information to the public records request (below). Along with the recent invoice from St. Vincent de Paul for 150 Otis drop in and shelter that I already provided to you, you would like a list of employees at 150 Otis and their pay. Please be advised, I have requested additional documents from our contracts division which is located at a different building. I will contact you tomorrow to let you know if these documents exists and if they are releasable.

Pamela Tebo
Office of the Executive Director
SF Human Services Agency
P.O. Box 7988
San Francisco, CA 94120
(415) 557-6540 - Phone
(415) 431-9270 - Fax

Paul Weston <paulweston79@gmail.com>

05/13/2009 10:28 AM

To Pamela Tebo <Pamela.Tebo@sfgov.org>

cc

Subject Re: IMMEDIATE DISCLOSURE REQUEST

I missed that part of your response. Thanks for the clarification. I will pick up the document today.

On Wed, May 13, 2009 at 9:47 AM, Pamela Tebo <Pamela.Tebo@sfgov.org> wrote:

What invoice for St. Anthony's Foundation? As I stated in my response to you on May 11, the Human Services Agency does not fund St. Anthony's dining hall, so what invoice are you referring to?

Pamela Tebo
Office of the Executive Director
SF Human Services Agency
P.O. Box 7988
San Francisco, CA 94120
(415) 557-6540 - Phone
(415) 431-9270 - Fax

Paul Weston <paulweston79@gmail.com>

05/13/2009 09:41 AM

To Pamela Tebo <Pamela.Tebo@sfgov.org>
cc
Subject Re: IMMEDIATE DISCLOSURE REQUEST

Thank you, but I also asked for the invoice for the St. Anthony's Foundation dining hall. Please have that document ready as well.

On Tue, May 12, 2009 at 3:39 PM, Pamela Tebo <Pamela.Tebo@sfgov.org> wrote:

The document is ready for pick up from 170 Otis Street. Due to the insignificant fee we would charge for this document, we will waive the fee for this particular request.

Please note, St. Vincent de Paul submits one invoice for 150 Otis shelter and 150 Otis drop in services.

Thank you.

Pamela Tebo
Office of the Executive Director
SF Human Services Agency

P.O. Box 7988
San Francisco, CA 94120
(415) 557-6540 - Phone
(415) 431-9270 - Fax

Paul Weston <paulweston79@gmail.com>

05/11/2009 12:44 PM

To Pamela Tebo <Pamela.Tebo@sfgov.org>
cc
Subject Re: IMMEDIATE DISCLOSURE REQUEST

"Statement of Service and Invoice" was the title on several documents that I previously received from you about MSC South detailing expenditures for a given month at that shelter. I am hereby requesting the same for 150 Otis and 150 Otis Winter Shelter.

On Mon, May 11, 2009 at 11:10 AM, Pamela Tebo <Pamela.Tebo@sfgov.org> wrote:

This email is in response to your public records request.

Please clarify what you mean by: "most recent Statement of Service".

Regarding the recent invoices for 150 Otis (Drop In, I assume) and 150 Otis shelter, I have requested those invoices and I will forward to you as soon as I get them.

The Human Services Agency does not fund St. Anthony's dining room.

The Human Services Agency does not have access to our non-profit partners' personnel files. Also, I am certain that anything in the personnel files of St. Vincent de Paul employees is most likely confidential, but you may want to check with them directly.

Thank you,

Pamela Tebo
Office of the Executive Director
SF Human Services Agency
P.O. Box 7988

San Francisco, CA 94120
(415) 557-6540 - Phone
(415) 431-9270 - Fax

Paul Weston <paulweston79@gmail.com>

05/10/2009 06:11 PM

To Pamela Tebo <Pamela.Tebo@sfgov.org>
cc
Subject IMMEDIATE DISCLOSURE REQUEST

Pursuant to Administration Code SEC. 67.25, I hereby make an immediate disclosure request for the following:

- the most recent Statement of Service and Invoice for 150 Otis
- the most recent Statement of Service and Invoice for the 150 Otis Winter Shelter
- the most recent Statement of Service and Invoice of the St. Anthony Foundation for their Dining Hall
- the application and/or resume of Alonso Bowlegs (St. Vincent de Paul Employee)
- the application and/or resume of Wayne Garnett (St. Vincent de Paul Employee)
- the application and/or resume of Lessy Benedith (St. Vincent de Paul Employee)

I expect these documents no later than May 12, 2009. Please give me a time that I may pick them up at HSA and the total price. I will pay cash.

Thank you for doing your job.



Paul Weston
<paulweston79@gmail.com>
06/06/2009 10:17 AM

To SOTF <sotf@sfgov.org>
cc
bcc
Subject Re: DCA Jurisdictional Letter: #09024_Paul Weston v
Human Services

I would like it noted that I feel that this letter is inaccurate on many specifics and extremely biased against me in general.

On Fri, Jun 5, 2009 at 4:45 PM, SOTF <sotf@sfgov.org> wrote:

Attached is a copy of the Deputy City Attorney's Jurisdictional Letter to the Complaint Committee.

As a reminder this complaint will be heard by the Sunshine Ordinance Task Force on

When: Tuesday, June 9, 2009
Where: City Hall, Room 406
Time: 3:30 PM

(See attached file: 09024_Jurisdictional.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
FAX: (415) 554-7854
SOTF@sfgov.org

