

Date: June 12, 2009

Item No. 9  
File No. 09027

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Complaint by: Alvin Xex vs Ofc. of Economic & Workforce Dev.
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Completed by: Frank Darby

Date: June 17, 2009

**\*This list reflects the explanatory documents provided**

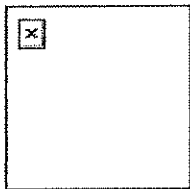
~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* 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.

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**MEMORANDUM**

*June 15, 2009*

*ALVIN XEX v THE MAYOR'S OFFICE OF ECONOMIC AND WORKFORCE  
DEVELOPMENT (09027)*

**COMPLAINT**

**THE COMPLAINANT ALLEGES THE FOLLOWING:**

On May 2009, Complainant Alvin Xex made an Public Records Request with the Mayor's Office of Economic and Workforce Development. He requested the names programs/efforts and number of employees within this government department. He also requested the number of and the names or efforts and programs for Women and Black males.

To his request, Alvin Xex claims that he did not get a response.

**COMPLAINANT FILES COMPLAINT:**

On May 14, 2009, Alvin Xex filed a complaint against MOEWD alleging violations of the Sunshine Ordinance.

**APPLICABLE STATUTORY SECTION;**

1. Sunshine Ordinance, San Francisco Administrative Code Section 67.1 addresses Findings and Purpose.
2. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents.
3. Sunshine Ordinance, San Francisco Administrative Code Section 67.24 public information that must be disclosed.
4. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
5. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals

**Memorandum**

with justification for withholding.

- 6. California Constitution, Article I, Section 3 addresses Assembly, petition, open meetings.

**APPLICABLE CASE LAW:**

none

**ISSUES TO BE DETERMINED**

**1. FACTUAL ISSUES**

**A. Uncontested Facts:**

- Alvin Xex made a public records request for information about the department.

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

- Whether the department timely responded to the public records requests.

The Task Force must determine what facts are true.

**i. Relevant facts in dispute:**

- Whether the Department responded to the public records request in a timely fashion.
- Whether the Department provided the requested records.

**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, 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 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.

**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.

**Memorandum**

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 Code Section 6456.1, the requestor shall be notified as required by the close of business on the business day following the request.

c.) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a

**Memorandum**

record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

Section 67.26 provides:

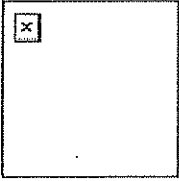
No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated 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.

Section 67.27 provides:

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 of 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.





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June 2, 2009

Nick Goldman, Chair  
Members of the Complaint Committee

Re: Alvin Xex (09027) v. the Mayor's Office of Economic and Workforce Development

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 Mayor's Office of Economic and Workforce Development ("MOEWD")

#### BACKGROUND

On May 2009, Complainant Alvin Xex made an Public Records Request with the Mayor's Office of Economic and Workforce Development. He requested the names programs/efforts and number of employees within this government department. He also requested the number of and the names or efforts and programs for Women and Black males.

To his request, Alvin Xex claims that he did not get a response.

#### COMPLAINT

On May 14, 2009, Alvin Xex filed a complaint against MOEWD 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 of the Ordinance.

#### 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.

Letter to the Complaint Committee  
Page 2  
June 2, 2009

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, Alvin Xex made an Public Records Request. Alvin Xex alleges that MOEWD did not respond. Based on the allegations, the Task Force has jurisdiction to hear this complaint and will determine whether MOEWD violated the Ordinance and/or the Public Records Act.



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 Economic Workforce

Name of individual contacted at Department or Commission DEPARTMENT  
BONDA SIMON ET AL

Alleged violation public records access  
 Alleged violation of public meeting. Date of meeting 5/14/09 calls

Sunshine Ordinance Section b7.34, b7.32, b7.35 ET AL  
(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 the names of programs/efforts  
and number of employees within this Government  
Department. Also, the number of, and name of  
efforts and programs for women and Black males  
if any. - Employee refused requests!

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 ALVIN XEX Address [REDACTED]

Telephone No. 415 [REDACTED] E-Mail Address [REDACTED] @Aol.com

Date 5/14/09 Signature Alvin Xex

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).



OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT  
WORKFORCE DEVELOPMENT DIVISION  
MEMORANDUM

TO: SUNSHINE ORDINANCE TASK FORCE  
FROM: RHONDA SIMMONS, DIRECTOR OF WORKFORCE DEVELOPMENT  
SUBJECT: RESPONSE TO COMPLAINT  
DATE: 6/1/2009  
CC: MICHAEL COHEN, DIRECTOR OF ECONOMIC AND WORKFORCE DEVELOPMENT  
JOE ARELLANO, MAYOR'S OFFICE – COMMUNICATIONS DIVISION

In response to the complaint filed by Alvin Xex on May 14, 2009, OEWD provides the following information.

All OEWD Programs serve women and black males. These programs are:

- Workforce Investment Act programs that serve Adults, Dislocated Workers
- Business Services
- OneStop Career Link Centers and Neighborhood Workforce Centers
- CityBuild Academy
- GoSolar
- RAMP
- HopeSF

We collect detailed client level data in particular for our OneStop Career Link Centers, our WIA-funded programs and the CityBuild Academy.

- We have served nearly 20,000 people in the OneStops since July 1, of which roughly 46% are female and 32% are African American.
- Our Workforce Investment Act programs have served 1578 individuals this year, of which 60% are female and 24% are African American.
- The CityBuild Academy has graduated two cycles this year. Of the 104 graduates, 14% are female and 38% are African American.

The Workforce Development Division of the Office of Economic and Workforce Development currently consists of 25 staff members.