

Date: June 28, 2011

Item No. 14 & 15
File No. 11040

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- William Clark against the Arts Commission
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Completed by: Chris Rustom

Date: June 24, 2011

***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
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: June 21, 2011
RE: *Complaint No. 11040, William & Robert Clark v. San Francisco Arts Commission*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainants William and Robert Clark ("Complainants") allege that the San Francisco Arts Commission (the "Commission") violated the Ordinance by failing to respond to their January 12, 2011 request during public comment for oral information answering the following questions:

- How did the Commission arrive at the figure of approximately \$189,000 for salaries and benefits for Street Artist Program employees?
- Why didn't the Commission include over \$30,000 in surplus from the previous fiscal year as revenue to be carried over and used by the Street Artist Program in the 2011/12 fiscal year; and
- Why didn't the Commission include a 5% supervision charge for Luis Cancel and Jill Manton as an anticipated expense for the 2011/12 fiscal year since the Street Artist Program was charged that expense the 2009/10 fiscal year?

COMPLAINANT FILES COMPLAINT:

On May 11, 2011, Complainant filed a complaint with the Task Force alleging a violation of section 67.22(c).

JURISDICTION

The Commission is a department under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against the Arts Commission. The Commission did not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.22 governs the release of oral public information.

MEMORANDUM

TO: Sunshine Task Force
DATE: June 21, 2011
PAGE: 2
RE: *Complaint No. 11040, William & Robert Clark v. San Francisco Arts Commission*

Section 6250 et seq. of the Cal. Gov't Code

- Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainants allege that the Commission violated the Ordinance by failing to respond to their January 12, 2011 request during public comment for oral information answering the following questions:

- How did the Arts Commission arrive at the figure of approximately \$189,000 for salaries and benefits for Street Artist Program employees?
- Why didn't the Arts Commission include over \$30,000 in surplus from the previous fiscal year as revenue to be carried over and used by the Street Artist Program in the 2011/12 fiscal year; and
- Why didn't the Arts Commission include a 5% supervision charge for Luis Cancel and Jill Manton as an anticipated expense for the 2011/12 fiscal year since the Street Artist Program was charged that expense the 2009/10 fiscal year?

Complainants further allege the following: "Both Mr. Cancel and Mr. Lazar refused to give us the oral public information we requested by claiming they were under no obligation to answer any questions under 'public comment' even though they both knew the answers to our questions and that the facts established by the answers to those questions would have a bearing on the outcome of the proposed fee adjustment that was being discussed. Since we received a copy of the proposed 2011/12 fiscal year Street Artist Program budget only 2 days before the Street Artist Committee hearing on the proposed budget and possible fee adjustment, the only time we could ask for that oral public information before the proposed budget and possible fee adjustment were approved by the Street Artist Committee was during our public testimony when the calendared proposed budget and possible fee adjustment was being discussed." Complainants further assert that Mr. Cancel and Lazar had personal knowledge of the information they were seeking and could easily have answered their questions orally.

From these allegations, Complainants argue that the Commission and Mssrs. Cancel and Lazar violated Section 67.22(c), governing the release of oral public information.

The Commission has not responded to the Complainant's allegations.

MEMORANDUM

TO: Sunshine Task Force
DATE: June 21, 2011
PAGE: 3
RE: *Complaint No. 11040, William & Robert Clark v. San Francisco Arts Commission*

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Commission complied with the requirements¹ of the Ordinance and the Public Records Act?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

¹ The Task Force previously has been advised that Section 67.22 requires that a department must designate a knowledgeable person to respond to oral inquiries from the public, so long as it would not take the designated representative longer than 15 minutes to find the responsive information. Because the Task Force has nevertheless found repeatedly that any City employee must respond to oral inquiries by the public, no additional analysis of this issue is again provided here.

MEMORANDUM

TO: Sunshine Task Force
DATE: June 21, 2011
PAGE: 4
RE: *Complaint No. 11040, William & Robert Clark v. San Francisco Arts Commission*

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.**

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.



<complaints@sfgov.org>

05/11/2011 10:45 AM

To <soft@sfgov.org>

cc

bcc

Subject Sunshine Complaint

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:San Francisco Arts
Commission

CONTACTED:Luis Cancel and Howard Lazar

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:Section 67.22(c)

DESCRIPTION:At the January 12, 2011 Street Artist Committee meeting, during our public testimony on the calendered item proposing the new Street Artist Program budget for the 2011/12 fiscal year, we asked Mr. Cancel and Mr. Lazar for oral public information by asking them several questions regarding how they determined some of the figures in the proposed 2011/12 fiscal year Street Artist Program budget. Among those questions were how did the Arts Commission arrive at the figure of approximately \$189,000 for salaries and benefits for Street Artist Program employees, why didn't the Arts Commission include over \$30,000 in surplus from the previous fiscal year as revenue to be carried over and used by the Street Artist Program in the 2011/12 fiscal year and why the Arts Commission didn't include a 5% supervision charge for Luis Cancel and Jill Manton as an anticipated expense for the 2011/12 fiscal year since the Street Artist Program was charged that expense the 2009/10 fiscal year? Both Mr. Cancel and Mr. Lazar refused to give us the oral public information we requested by claiming they were under no obligation to answer any questions under "public comment" even though they both knew the answers to our questions and that the facts established by the answers to those questions would have a bearing on the outcome of the proposed fee adjustment that was being discussed. Since we received a copy of the proposed 2011/12 fiscal year Street Artist Program budget only 2 days before the Street Artist Committee hearing on the proposed budget and possible fee adjustment, the only time we could ask for that oral public information before the proposed budget and possible fee adjustment were approved by the Street Artist Committee was during our public testimony when the calendered proposed budget and possible fee adjustment was being discussed. Since Section 67.22(c) explicitly states that the only time an employee of the City is not required to respond to an inquiry or inquiries from an individual is if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries and in this case, both Mr. Cancel and Mr. Lazar had personal knowledge of the oral public information we requested, we assert that Mr. Cancel and Mr. Lazar were required by law to give us the oral public information we requested and therefore, both Mr. Cancel and Mr. Lazar violated Section 67.22(c) of the Sunshine Ordinance when they refused to give us that oral public information. when they refused to give us the oral public information when we requested it. questions

HEARING:Yes

PRE-HEARING:No

DATE:May 11, 2011

NAME:William J. Clark and Robert J. Clark
ADDRESS:P.O. Box 882252
CITY:San Francisco
ZIP:94188
PHONE:415-822-5465
CONTACT_EMAIL:billandbobclark@access4less.net
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No



Bill and Bob Clark
<billandbobclark@access4les
s.net>

06/15/2011 05:03 PM

Please respond to
Bill and Bob Clark
<billandbobclark@access4less.
net>

To sotf@sfgov.org

cc

bcc

Subject Complaint #11040

Hi Chris,

We would like you to put this email into the file of complaint #11040. The following statement was made by Arts Commissioner Lloyd at the November 12, 2008 Street Artist Committee meeting. Commissioner Lloyd's statement states that the Sunshine Ordinance is the reason why the Arts Commission won't allow a back and forth discussion between the committee members or staff with any member of the public during the Street Artist Committee meetings:

"I'm sorry I can't go back and forth. We had a whole lesson about sunshine and it's not supposed to be a discussion back and forth. You guys can have public comment and this is not the way I set it up. This is the way the Sunshine, Sunshine Ordinance set all this stuff up and I have to follow those rules so we can't go back and forth. Hold your, please, you guys, there'll be plenty of time fairly to comment on the whole process and I know there's a lot of you who want to speak but if we go back and forth it will delay the whole process and we won't have time to finish it so."

Thanks,

William J. Clark
Robert J. Clark



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

LUIS R. CANCEL
DIRECTOR OF
CULTURAL AFFAIRS

June 21, 2011

Honorable Members, Sunshine Ordinance Task Force
Complaint Committee
c/o Chris Rustom, Deputy Administrator
Office of the Clerk, Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

PROGRAMS

CIVIC ART COLLECTION
CIVIC DESIGN REVIEW
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PERFORMING ARTS
PUBLIC ART
STREET ARTISTS LICENSES

ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.554.6080

RE: Sunshine Ordinance Task Force - #11040 William and Robert
Clark v. Arts Commission

WWW.SFARTSCOMMISSION.ORG
ARTSCOMMISSION@SFGOV.ORG

Dear Committee Members:

The San Francisco Arts Commission (the "Commission") is submitting this response to Complaint #11040, William and Robert Clark v. Arts Commission, which was received by the Commission on May 19, 2011.

Their complaint that the Arts Commission violated Section 67.22(c) is without merit.

Under Section 67.22(c), the Arts Commission is not required to respond to an inquiry or inquiries from an individual "if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries." The Clarks – in the midst of a public comment session - asked a series of complex budgetary and financial questions that would have taken the Arts Commission staff more than fifteen minutes to research and answer. Specifically, the Clarks asked (as stated in their complaint): "...how did the Arts Commission arrive at the figure of approximately \$189,000 for salaries and benefits for Street Artist Program employees, why didn't the Arts Commission include over \$30,000 in surplus from the previous fiscal year as revenue to be carried over and used by the Street Artist Program in the 2011/12 fiscal year, and why the Arts Commission didn't include a 5% supervision charge for Luis Cancel and Jill Manton as an anticipated expense for the 2011/12 fiscal year since the Street Artist Program was charged that expense the 2009/10 fiscal year?" Accordingly, their complaint is without merit.



CITY AND COUNTY OF
SAN FRANCISCO

Please note, however, that the Arts Commission made publicly available the budget documents to be considered by the Board of Supervisors for the budget hearings.

Sincerely,

Howard Lazar
Street Artists Program Director

Cc: The Honorable P. J. Johnston, President, Arts Commission
The Honorable Greg Chew, Chairman, and Commissioners John
Calloway, Amy Chuang, Sherene Melania, and Jessica Silverman
- Street Artists Committee
Mr. Luis R. Cancel, Director of Cultural Affairs
Mr. Kan Htun, Chief Financial Officer
Ms. Jill Manton, Director of Programs