

Date: June 28, 2011

Item No. 8 & 9  
File No. 11036

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Michael Petrelis against the Department of Public Works**
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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. 11036: Michael Petrelis v. Department of Public Works

**COMPLAINT**

**THE COMPLAINANT ALLEGES THE FOLLOWING:**

Complainant Michael Petrelis ("Complainant") alleges that the Department of Public Works ("DPW") failed to respond adequately to his February 7, 2011 public records request for "all documents related to who controls the Harvey Milk Plaza above the Muni station at Castro and Market Streets[, including] any agreement or memorandum of understanding related to the flag pole in the plaza."

**COMPLAINANT FILES COMPLAINT:**

On May 18, 2011, Complainant filed this complaint against DPW, alleging violations of unspecified laws governing public records laws.

**JURISDICTION**

DPW is a City department and therefore the Task Force generally has jurisdiction to hear an alleged violation of public records laws. Therefore, it appears that the Task Force has jurisdiction to hear this complaint. DPW did not contest jurisdiction.

**APPLICABLE STATUTORY SECTION(S):**

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records

**Section 54950 et seq. of the Cal. Gov't Code**

- Section 54954.3 governs the requirement for a legislative body to provide an opportunity for public comment at its meetings.

**APPLICABLE CASE LAW:**

- None

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**ISSUES TO BE DETERMINED**

**Uncontested/Contested Facts:** Complainant alleges that, on February 2, 2011, he made a public records request of DPW for "all documents related to who controls the Harvey Milk Plaza above the Muni station at Castro and Market Streets[, including] any agreement or memorandum of understanding related to the flag pole in the plaza." Complainant further alleges that, on March 8, 2011, DPW replied to his request by email, stating that "they had no records responsive to [his] request." Complainant further alleges that, on April 26, 2011, SF Weekly reporter Joe Eskenazi shared on the paper's website three-pages of records from Merchants of Upper Market/Castro ("MUMC") to DPW, dated September 2001, explaining the arrangement MUMC would have with DPW related to the flag pole. Because these documents existed, Complainant contends "that DPW should have the three-pages [sic]of records from MUMC that were provided to DPW, and that there must be a record showing DPW's replies to MUMC." Complainant concludes that, because DPW did not provide either the three pages from MUMC or a reply to those from DPW, DPW has violated public records laws.

DPW responded to the complaint with a detailed recital of its efforts to locate documents responsive to Complainant's public records request. DPW again asserts that it had no documents responsive to Complainant's request and therefore was not able to provide any. DPW notes that, during its search, it also made inquiry of MUMC and that they provided DPW with copies of the same documents Complainant says are in his possession, which they are willing to provide to Complainant if he desires additional copies.

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

- Did DPW ever have the MUMC documents in its custody or possession?
- If so, what was DPW's record retention policy with regard to such documents?
- If so, were the subsequently discarded?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Was DPW required to maintain the documents from MUMC in its custody under the requirements of Ordinance section 67.29-7?
- Has DPW complied with the requirements 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.**

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**CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)****SEC. 67.25. IMMEDIACY OF RESPONSE.**

(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 requester 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 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.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

**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.**

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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.

**SECTION 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.**

(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

**CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)****SECTION 6253**

(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:

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- (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.



<complaints@sfgov.org>

05/18/2011 01:55 PM

To <sotf@sfgov.org>

cc

bcc

Subject Sunshine Complaint

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Department of Public Works

CONTACTED:Frank W Lee

PUBLIC\_RECORDS\_VIOLATION:Yes

PUBLIC\_MEETING\_VIOLATION:No

MEETING\_DATE:

SECTIONS\_VIOLATED:

DESCRIPTION:I wish to file a complaint against the Department of Public Works because the agency, I believe, has not adequately replied to my public records request made on February 7, 2011. I asked DPW to provide me with all documents related to Harvey Milk Plaza and the flag pole in it, and any agreement or contract DPW may have with a private group called the Merchants of Upper Market/Castro. In a March 8, 2011, email reply DPW said they had no records responsive to my request. I am including these two emails as documentation for your consideration. However, a story posted on April 26, 2011, at the SF Weekly site reporter Joe Eskenazi shared three-pages of records from MUMC to DPW in September 2001 explaining the arrangement the private merchants group would have with the DPW. Source:

<http://media.sfweekly.com/6260902.0.pdf> . It is my contention that DPW should have the three-pages of records from MUMC that were provided to DPW, and that there must be a record showing DPW's replies to MUMC. Yet, neither the three-pages from MUMC or a reply were found in responsive to my public records request. I believe DPW has violated the Sunshine Ordinance and municipal public records laws, and wish to have this matter brought before the SOTF.

HEARING:Yes

PRE-HEARING:No

DATE:April 27, 2011

NAME:Michael Petrelis

ADDRESS:

CITY:

ZIP:

PHONE:

CONTACT\_EMAIL:mpetrelis@aol.com

ANONYMOUS:

CONFIDENTIALITY\_REQUESTED:No



mpetrelis@aol.com  
04/27/2011 04:22 PM

To soft@sfgov.org  
cc  
bcc  
Subject Complaint against SF Dept of Public Works

April 27, 2011

Sunshine Ordinance Task Force  
City Hall  
San Francisco, CA

Dear SOTF Members,

I wish to file a complaint against the Department of Public Works because the agency, I believe, has not adequately replied to my public records request made on February 7, 2011. I asked DPW to provide me with all documents related to Harvey Milk Plaza and the flag pole in it, and any agreement or contract DPW may have with a private group called the Merchants of Upper Market/Castro.

In a March 8, 2011, email reply DPW said they had no records responsive to my request. I am including these two emails as documentation for your consideration.

However, a story posted on April 26, 2011, at the SF Weekly site reporter Joe Eskenazi shared three-pages of records from MUMC to DPW in September 2001 explaining the arrangement the private merchants group would have with the DPW. Source: <http://media.sfweekly.com/6260902.0.pdf>.

It is my contention that DPW should have the three-pages of records from MUMC that were provided to DPW, and that there must be a record showing DPW's replies to MUMC. Yet, neither the three-pages from MUMC or a reply were found in responsive to my public records request.

I believe DPW has violated the Sunshine Ordinance and municipal public records laws, and wish to have this matter brought before the SOTF.

If you have any questions or need clarification, you can contact me at 415-621-6267. Please confirm receipt of this complaint.

Sincerely,  
Michael Petrelis

1.

-----Original Message-----  
From: mpetrelis@aol.com  
To: Frank.W.Lee@sfdpw.org; gloria.chan@sfdpw.org  
Sent: Mon, Feb 7, 2011 9:44 am  
Subject: Records request: Harvey Milk Plaza agreement

Frank W. Lee  
Department of Public Works  
City Hall  
San Francisco, CA



Dear Mr. Lee,

Under the full provisions of all applicable municipal and state open records laws, I am filing a request for copies of all documents related to who controls the Harvey Milk Plaza above the Muni station at Castro and Market Streets. Furthermore, I am very interested in any agreement or memorandum of understanding related to the flag pole in the plaza.

I've been told by leaders of the Merchants of Upper Market/Castro, MUMC, that about 12-years ago they were granted control over Harvey Milk Plaza and the large flag pole. MUMC claims that they are responsible for maintaining the plaza, paying insurance on the flag pole, and raising funds to purchase new rainbow flags when they become frayed.

I am also requesting that you provide me with copies of any responsive records in electronic format. Please send the records via email.

If you have any questions or need clarification, you can call me at 415-621-6267.

Looking forward to your reply. Thanks.

Michael Petrelis  
132 Clinton Park, #1  
SF, CA 94103

2.

-----Original Message-----

From: Rodis, Nathan <Nathan.Rodis@sfdpw.org>  
To: mpetrelis@aol.com <mpetrelis@aol.com>  
Cc: Chan, Gloria <Gloria.Chan@sfdpw.org>  
Sent: Tue, Mar 8, 2011 1:42 pm  
Subject: Re: Records request: Harvey Milk Plaza agreement

Dear Mr. Petrelis,

We completed our research and did not find any documents that would be responsive to your request. This, therefore, concludes your Public Records Request. If you have any questions, please let us know. I would also like to apologize for the delay in our response. Frank had a medical emergency and has been out for a couple of weeks now.  
Thank you for your patience and understanding.

Sincerely,  
Nathan Rodis



Edwin M. Lee, Mayor  
Edward D. Reiskin, Director

Office of the Director  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 348  
San Francisco, CA 94102  
(415) 554-6920 ■ www.sfdpw.org



May 27, 2011

Sunshine Ordinance Task Force  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Subject: Sunshine Complaint #11036  
Michael Petrelis v Public Works

Dear Sunshine Ordinance Task Force:

We researched Mr. Petrelis' Public Records Request thoroughly and found that our department did not have the documents that he requested.

We did not find any records of "who controls the Harvey Milk Plaza above the MUNI station at Castro and Market streets" and "any agreement or memorandum of understanding related to the flag pole in the plaza".

Our research was conducted, as follows:

- First, thinking that such documents should be recorded, we searched our DPW Order, but we found nothing responsive.
- We then asked the two bureaus where such agreements may also be kept – our Bureau of Street-Use and Mapping (BSM) and our Office of Financial Management and Administration (OFFMA) – to look and, they found no responsive documents.
- We also asked the bureau that oversees the maintenance of the Harvey Milk Plaza – our Bureau of Street Environmental Services (BSES) – to look and, they found nothing.
- The office of Communications and Public Affairs looked and found nothing.
- The office of the Deputy Director of Operations found nothing.
- The office of the Director also found nothing.

We understand that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Please see California Government Code § 6253(b).) Our obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in our custody. (See San Francisco Administration Code § 67.20(b).) There is no requirement that our department or officers construct a document to meet the specifications of any request. Therefore, we informed Mr. Petrelis that we had no responsive documents to give to him.



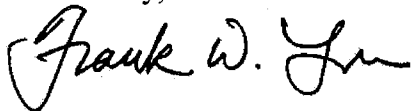
Although it was not required of us, during our research process, BSM made inquiries to other agencies, including BART and SFMTA/MUNI, and the Merchants of Upper Market and Castro (MUMC) – since this group was mentioned in Mr. Petrelis' request – for possible responsive documents.

MUMC responded to BSM in April with the exact documents that Mr. Petrelis supplied to you as evidence to support his case. Although Mr. Petrelis already possess these documents, we could give him a copy of ours.

BART also responded to BSM in April with a maintenance agreement between BART and the City and County of San Francisco. This agreement covers the various MUNI/BART Joint Stations within San Francisco, including the Harvey Milk Plaza. If Mr. Petrelis would like to inspect this document, we will make it available to him.

In summary, our department responded to Mr. Petrelis' request properly and with due diligence.

Sincerely,



Frank W. Lee  
Executive Assistant to the Director

