

Date: July 26, 2011

Item No. 11 & 12

File No. 11044

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Allen Grossman against the Assessor-Recorder's Office**
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Completed by: Chris Rustom

Date: July 21, 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: July 22, 2011
RE: *Complaint No. 11044, Urban Forest Coalition v. Assessor, et al.*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

The San Francisco Urban Forest Coalition ("Complainant") alleges that the San Francisco Assessor-Recorder ("Assessor"), as well as Assessor Phil Ting and Chief Appraiser Matthew Thomas, violated public records laws by failing to respond within 10 days to Complainant's June 1, 2011 public records request .

COMPLAINANT FILES COMPLAINT:

On June 14, 2011, Complainant filed this complaint against the Assessor, Ting, and Thomas, alleging violations of the public records laws, including specifically Sunshine Ordinance section 67.21(b) and Public Records Act section 6253(b) and (c).

JURISDICTION

The Assessor is a City department, and therefore the Task Force generally has jurisdiction to hear a public records complaint against it. The Assessor does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- 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 written justifications for withholding of records

Section 6250 et seq. of Cal. Gov't Code (PRA)

- Section 6253 governs time limits for responding to public records requests.

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ISSUES TO BE DETERMINED**Contested/Uncontested Facts:***Complainants' Allegations*

Complainant alleges that, on June 1, 2011, its Executive Director, Allen Grossman, sent by fax and email to Chief Assessor Thomas a public records request seeking "all records [] to or from persons in the [] Assessor's Office [] and/or to or from persons in any other San Francisco office or departments, including the [] City Attorney [] pertaining or with reference to public records request dated April 28, 2011¹, submitted by SF Urban Forest Coalition that date[.]" Complainant further alleges that, as of the date of the complaint, it had received no response from the Assessor.

The Assessor's Response

Although the Assessor reference this complaint number in its response to Complainant's related complaint number 11051, that response did not contain any information apparently related to this complaint. In addition, the Assessor apparently did not separately respond to this complaint.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Has Assessor responded to the request?
- Did the Assessor withhold responsive documents?
- If so, what was the nature of those withheld documents?
- In doing so, did the Assessor provide a written justification for such withholding?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Are any withheld documents exempt from disclosure under the Sunshine Ordinance and the Public Records Act?
- Has the Commission complied with the requirements of the Ordinance, the PRA and the Brown 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 April 28, 2011 public records request is the subject of Complainant's separate complaint designated Complaint 11051, to be heard by the Task Force on this same agenda.

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CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

- (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.
- (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.
- (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.
- (d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.
- (e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine

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Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the *superior court* shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout

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or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

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

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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.

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 therefore. 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.

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(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 6254. EXEMPTION OF PARTICULAR RECORDS

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

SECTION 6255. JUSTIFICATION FOR WITHHOLDING OF RECORDS

(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.



<complaints@sfgov.org>

06/14/2011 01:34 PM

To <soft@sfgov.org>

cc

bcc

Subject Sunshine Complaint

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Assessor-Recorder

CONTACTED:Phil Ting, Matt Thomas

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:Section 67.21 (b) of the San. Francisco Sunshine Ordinance and Sections 6253(b) and (c) of the California Public Records Act.

DESCRIPTION:Failure to respond within 10 days from date of request to Complainant's public records request dated June 1, 2011, in violation of Section 67.21 (b) of the San. Francisco Sunshine Ordinance and Sections 6253(b) and (c) of the California Public Records Act.

HEARING:Yes

PRE-HEARING:No

DATE:June 14, 2011

NAME:Allen Grossman

ADDRESS:5758 Geary Blvd., #105

CITY:San Francisco

ZIP:CA 94121

PHONE:831-3720

CONTACT_EMAIL:Home@SFUrbanforestCoalition.org

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

BY FACSIMILE

SUNSHINE ORDINANCE COMPLAINT

Date: June 14, 2011

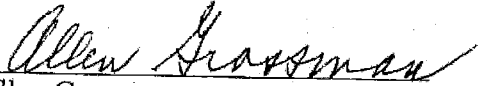
Complainant: SF Urban Forest Coalition, a California not-for-profit corporation.

Respondents: Phil Ting, Assessor-Recorder and Mathew Thomas, Chief Appraiser.

Violations Alleged: Failure to respond within 10 days from date of request to Complainant's public records request dated June 1, 2011 in violation of Section 67.21 (b) of the San Francisco Sunshine Ordinance and Sections 6253(b) and (c) of the California Public Records Act.

Documents Submitted: (1) Facsimile Cover Sheet, (2) Request for copies of public records (2 pages), (3) Facsimile Transmission Verification and (4) Email to Respondents, all of which were sent June 1, 2011.

Complainant requests a public hearing before the Sunshine Ordinance Task Force.
No pre-hearing conference before the Complaint Committee is requested.



Allen Grossman,
Executive Director
SF Urban Forest Coalition
5758 Geary Blvd. #105
San Francisco, CA 94121-2112
Email: Home@SFUrbanforestCoalition.org
Phone: (415) 831-3720
FAX: (415) 831-3721

SF Urban Forest Coalition
5758 Geary Blvd. #105
San Francisco, CA 94121-2112
Facsimile: (415) 831-3721
Emails: Home@SFUrbanforestCoalition.org/
sfufc@mac.com

FACSIMILE TRANSMITTAL

To: Matt Thomas, Chief Appraiser
Of: Office of the Assessor-Recorder
FAX Number: (415) 554 - 7915
Phone Number: (415) 554 - 5596
Number of Pages: 3, including cover sheet
Date: June 1, 2011
From: Allen Grossman, Executive Director
Message: Records Request dated today (June 1, 2011)

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

SF Urban Forest Coalition
5758 Geary Blvd. #105
San Francisco, CA 94121-2112
Email: Home@SFUrbanforestCoalition.org
FAX: (415) 831-3721

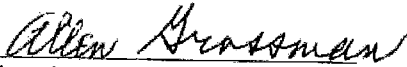
BY FACSIMILE

June 1, 2011

Mr. Matt Thomas
Chief Appraiser
Office of the Assessor-Recorder
City Hall, Room 190
San Francisco, CA 94102

This is a public records request pursuant to the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance for copies of any and all records, including communications of every kind and form whatsoever, such as notes, emails and memoranda, to or from persons in the Office of the Assessor-Recorder (Assessor's Office) and/or to or from persons in any other San Francisco offices or departments, including the Office of the San Francisco City Attorney, in your custody, maintained by or available to you or in the custody of, maintained by or available to any other person in Assessor's Office relating, pertaining or with reference to the public records request dated April 28, 2011, submitted by SF Urban Forest Coalition to you that date, a copy of which is attached hereto.

In accordance with Section 67.25(d) of the San Francisco Sunshine Ordinance, please produce the copies of any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis. If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address. If the records are kept in some other format, please scan the relevant page(s) to PDF format and send them by email to the above email address. This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly.



Allen Grossman
Executive Director

SF Urban Forest Coalition
5758 Geary Blvd. #105
San Francisco, CA 94121-2112
Email: Home@SFUrbanforestCoalition.org
FAX: (415) 831-3721

BY FACSIMILE

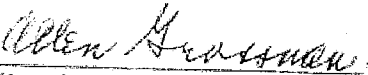
February 28, 2011

Mr. Matt Thomas
Chief Appraiser
Office of the Assessor-Recorder
City Hall, Room 190
San Francisco, CA 94102

This is a public records request pursuant to the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance for copies of any and all records in the custody of, maintained by or available to Office of the Assessor-Recorder (Assessor's Office) relating, pertaining or with respect to the new construction covered by the following Department of Building Inspection building permit numbers for the properties at the following street addresses, including, without limitation, the Property Owner's Statement(s) of New Construction, each appraisal of such new construction, the appraiser's notes or calculations supporting the appraisal and each assessment made by the Assessor's Office:

<u>Permit Number(s):</u>	<u>Property Address:</u>
200710316954	433 25 th Avenue
200912143165	298 32 nd Avenue
200606295405/200908315866	322 22 nd Avenue
200403108303/200807036006	6847 California Street
200506296351	353 25 th Avenue
200501274127	899 27 th Avenue
200501102859/200905198698	246 29 th Avenue

In accordance with Section 67.25(d) of the San Francisco Sunshine Ordinance, please produce the copies of any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis. If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address. If the records are kept in some other format, please scan the relevant page(s) to PDF format and send them by email to the above email address. This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly.


Allen Grossman
Executive Director

TRANSMISSION VERIFICATION REPORT

TIME : 06/01/2011 12:00
NAME : SFUFC/GROSSMAN
FAX : 4158313721
TEL : 4158313720
SER.# : 60J395977

DATE, TIME	06/01 12:00
FAX NO./NAME	5547915
DURATION	00:00:42
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

From: SF Urban Forest Coalition <sfufc@mac.com>
Subject: **Records Request dated June 1, 2011**
Date: June 1, 2011 5:27:33 PM PDT
To: matthew.thomas@sfgov.org
Cc: assessor@sfgov.org, David.Chai@sfgov.org
1 Attachment, 18.5 MB

Mr. Thomas,

So that you have an electronic copy, attached in PDF format is the Records Request sent you and the Assessor earlier today by facsimile.

Thank You

Allen Grossman,
Executive Director
SF Urban Forest Coalition



Assessor Rec...11 (18.5 MB)