

Date: July 26, 2011

Item No. 15 & 16
File No. 11045

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- William Clark against the Arts Commission**
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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: June 21, 2011
RE: *Complaint No. 11045, William Clark v. San Francisco Arts Commission*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant William Clark ("Complainant") alleges that the San Francisco Arts Commission (the "Commission") violated the Ordinance by failing to respond to his May 27, 2011 email request for information answering a series of questions detailed in his complaint.

COMPLAINANT FILES COMPLAINT:

On June 14, 2011, Complainant filed a complaint with the Task Force alleging a violation of section 67.21(b) and 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 67.21(b) governs the time to respond to a request for a public record.
- Section 67.22 governs the release of oral public information.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that the Commission violated the Ordinance by failing to respond to his May 27, 2011 email request for information answering a series of questions detailed in his complaint. Complainant further alleges that, at the time the complaint was filed, the Commission had not responded to his request in any way.

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

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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.

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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.

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.

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(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>
06/14/2011 06:13 PM

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

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

CONTACTED:Howard Lazar

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:Section 67.22(c) and Section 67.21(b)

DESCRIPTION:On September 21, 2009, a proposal to designate 4 new street artist selling spaces on Hayes Street which my brother and I presented to the SF Arts Commission and the Arts Commission approved was calendared to be heard by the Board of Supervisors' Land Use and Economic Development Committee. At that meeting, instead of voting on our proposal the committee put our proposal to the Call of the Chair. The committee did this as a result of being told by Mr. Cancel and Mr. Lazar that the Arts Commission was withdrawing their support for our proposal and instead supporting an alternative proposal offered to them by the Hayes Valley Merchants Association which would connect artists in the Street Artist Program with businesses and galleries in the Hayes Valley business district. Since we hadn't heard anything from the Arts Commission regarding the Hayes Valley merchant Association's alternative proposal since that time, we sent Howard Lazar the following email on May 27, 2011: Mr. Lazar, I am not requesting any documents but I would like an answer to the following questions: Has anything developed from the proposal Director of Cultural Affairs Luis Cancel and Mr. Lazar received in 2009 from Hayes Street Merchants President Russell Pritchard to commence, "a partnership" between the Arts Commission's Street Artists Program and the Hayes Valley Merchants Association "to connect artists within the Street Artists Program with Hayes Valley merchants . to develop and institute a program of matching up artists and merchants" which "will provide another avenue for local artists to show and to sell their work."? Has the Arts Commission and/or the Hayes Street Merchants done anything to implement the Hayes Street Merchant's alternative proposal to our proposal which was to designate 4 street artist sales spaces on Hayes Street? William J. Clark It has been more than 10 days since I sent Mr. Lazar the email and as of today, I have not received any response or information from Mr. Lazar regarding this public information request. We are requesting this information pursuant to the provisions of the San Francisco Sunshine Ordinance. William J. Clark Robert J. Clark

HEARING:Yes

PRE-HEARING:No

DATE:June 14, 2011

NAME:William J. Clark

ADDRESS:P. O. Box 882252

CITY:SF

ZIP:94188

PHONE:415-822-5465

CONTACT_EMAIL:billandbobclark@access4less.net
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No