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**MEMORANDUM  
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force  
FROM: Jana Clark  
Deputy City Attorney  
DATE: July 22, 2010  
RE: *Nick Pasquariello v. Department of Technology (10034)*

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**COMPLAINT**

**THE COMPLAINANT ALLEGES THE FOLLOWING:**

Complainant Nick Pasquariello ("Complainant") alleges that he made an Immediate Disclosure Request ("IDR") to Mr. Barry Fraser at the Department of Technology ("Department") for all contracts between the Bay Area Video Coalition ("BAVC") and Salesforce.com, Inc. dba Delaware Salesforce.com ("Salesforce") in accordance with the August 20, 2009 contract between the City and BAVC (Contract), and that the Department did not provide the requested information.

**COMPLAINANT FILES COMPLAINT:**

On June 28, 2010, Complainant files this Sunshine Complaint against the Department.

**JURISDICTION:**

The Bay Area Video Coalition, or BAVC (pronounced "bay-vac"), is a nonprofit media arts center under contract with the Department of Technology ("DT") to provide public access operations for the City. See [http://sfgov.org/site/publicaccess\\_index.asp](http://sfgov.org/site/publicaccess_index.asp).

The Department does not contest jurisdiction.

**APPLICABLE STATUTORY SECTION(S):**

Section 12L of the Administrative Code governs public access to records and meetings of nonprofit organizations.

Section 67.24(e) of the Administrative Code governs disclosure of public information in the form of contracts, bids and proposals.

**APPLICABLE CASE LAW:**

None.

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**ISSUES TO BE DETERMINED****Uncontested Facts:**

Complainant alleges that he made an IDR to the Department for all contracts between BAVC and Salesforce and by June 24, 2010 had not received a response. Complainant sought those documents pursuant to article 12 (Disclosure of Information and Documents) and article 13 (Assignments and Subcontracting) of the Contract. Complainant did not provide a copy of the Contract. Section 12L.2 of the Sunshine Ordinance requires that all contracts between nonprofits and the City be subject to Chapter 12L of the Ordinance and imposes the requirements set forth in sections 12L.4 through 12L.7 of the Ordinance.

**Contested Facts:**

On June 28, 2010, on behalf of the Department, Mr. Fraser stated that the Department had no records responsive to the IDR.

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

- Does BAVC receive more than \$250,000 per year in City funds, such that it may be considered a "nonprofit organization" as defined by section 12L.3 of the Ordinance?
- Does the Contract include provisions imposing the requirements set forth in Sections 12L.4 through 12L.7 as required by section 12L.1 of the Ordinance?
- Does Article 13 of the Contract impose any additional disclosure requirements regarding "Assignments and Subcontracting"?
- Is Salesforce a subcontractor assigned to perform all or part of the Contract between the City and BAVC?
- Are there any documents responsive to the June 24, 2010 request?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Is BAVC a "nonprofit organization" as defined by section 12L.3 of the Ordinance?
- Are the documents sought by complainant required to be provided under Section 12L.5?
- Does Article 12 of the Contract require BAVC to comply with Section 67.24(e) of the Ordinance?
- Does Article 12 of the Contract require BAVC to provide the documents requested?
- If so, does that give the Task Force jurisdiction to adjudicate a violation of that contract provision?

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**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

**SAN FRANCISCO ADMINISTRATIVE CODE****SEC. 12L.5. PUBLIC ACCESS TO RECORDS.**

(a) Disclosure of Financial Information. Subject to Section 12L.5.(c), each nonprofit organization shall maintain and make available for public inspection and copying a packet of financial information concerning the nonprofit organization. The packet shall include, at a minimum, (1) the nonprofit organization's most recent budget as already provided to the City in connection with the nonprofit organization's application for, or in connection with the review and/or renewal of, the nonprofit organization's contract, (2) its most recently filed State and federal tax returns except to the extent those returns are privileged, and (3) any financial audits of such organization performed by or for the City and any performance evaluations of such organization performed by or for the City pursuant to a contract between the City and the nonprofit organization, to the extent that such financial audits and performance evaluations (i) are in the nonprofit organization's possession, (ii) may be publicly disclosed under the terms of the contract between the City and the nonprofit organization, and (iii) relate to the nonprofit corporation's performance under its contract with the City within the last two years. A member of the public may request additional financial information other than that described above, pursuant to Section 12L.5(b) herein; however, the provision of such additional financial information by a nonprofit organization shall be voluntary, not compulsory.

(b) Dispute Resolution. A member of the public who requests additional financial information other than that described in Section 12L.5(a), above, or who has a complaint concerning a nonprofit organization's compliance or noncompliance with this Chapter, may submit that request or complaint to the City agency or department which is a party to and/or which administers the nonprofit organization's contract. That City agency or department shall consider the request or complaint and shall recommend a resolution thereof in accordance with procedures established by that City agency or department. Following such consideration and recommendation, the member of the public or the nonprofit organization may seek an advisory opinion concerning the request or complaint from the Sunshine Ordinance Task Force, which that Task Force shall be authorized to provide; provided, however, that failure to seek such an advisory opinion from the Sunshine Ordinance Task Force shall not prejudice the right of the member of the public and/or the nonprofit organization to obtain a review of the City agency or department's recommendation by the Board of Supervisors as provided herein. The member of

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the public or the nonprofit organization may request that the Board of Supervisors review the recommendation of the City agency or department, which review shall be conducted in accordance with procedures established by the Board of Supervisors, provided that such request is made in writing to the Clerk of the Board of Supervisors within ten days of the issuance of the City agency or department's recommendation or the Sunshine Ordinance Task Force's advisory opinion, whichever is later. Subject to Section 12L.7. herein, the recommendation of the City agency or department, or the determination of the Board of Supervisors, with respect to any request or complaint by a member of the public shall be nonbinding upon the nonprofit organization.

**SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**

(e) Contracts, Bids and Proposals

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.