Date: July 28, 2009

Item No. 10 & 11
File No. 09032

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

☒	Dominic Maionchi against the Dept. of Recreation and Park
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Completed by: Chris Rustom **Date:** July 16, 2009

***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.

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CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

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MEMORANDUM

July 20, 2009

DOMINIC MAIONCHI v. RECREATION AND PARK DEPARTMENT (09032)

COMPLAINT

THE COMPLAINANTS ALLEGE THE FOLLOWING:

Complainant Dominic Maionchi made a Public Records Request for slip holders who have signed contracts with the department of park and rec. also known as the Recreation & Park Department. Dominic Maionchi allegedly received word from the Department that it would be redacting the mailing addresses of the slip holders.

COMPLAINANT FILES COMPLAINT:

June 18, 2009, Dominic Maionchi filed a complaint against the Department alleging that the Department violated section 67.24 of the Sunshine Ordinance.

APPLICABLE STATUTORY SECTION;

1. Sunshine Ordinance, San Francisco Administrative Code Section 67.1 addresses Findings and Purpose.
2. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents.
3. Sunshine Ordinance, San Francisco Administrative Code Section 67.24 public information that must be disclosed. Section 67.24(e) deals with contracts bids and proposals.
4. Sunshine Ordinance, San Francisco Administrative Code Section. 67.25 deals with Immediate Disclosure Requests.
5. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.

6. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals with justification for withholding.

7. California Constitution, Article I, Section 3 addresses Assembly, petition, open meetings.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

- none

B. Contested facts/ Facts in dispute:

- Whether Dominic Maionchi made a public records request.
- Whether the department properly responded to the public records requests.

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Whether the Department responded to the public records request in a timely fashion.
- Whether the Department provided the requested records.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- **What information did the Department redact if any?**
- **What was the Department's justification for any redactions?**

LEGAL ISSUES/LEGAL DETERMINATIONS;

- **Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?**
- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

Memorandum

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

Memorandum

THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.

Article I Section 3 provides:

> a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
>
> b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
>
> 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
>
> 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
>
> 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
>
> 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
>
> 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Memorandum

ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

(a) Government's duty is to serve the public, reaching its decisions in full view of the public.

(b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.

(c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

(d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

(e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.

(f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Memorandum

Section 67.21 addresses general requests for public documents.

This section provides:

> (a) Every person having custody of any public record or public information, as defined herein, ... 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** (emphasis added) 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.

Section 67.25 provides for Immediate Disclosure Requests:

> 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 requestor 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

Section 67.25(e)(1) provides:

> 1. Contracts, contractors' bids, responses to request for proposal and all other records of communication 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 or responses t a Request for Proposal (RFP") has been completed, evaluation forms and score sheets and any other documents used by person 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 the RFP has been completed.

Section 67.26 provides:

> 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.

Section 67.27 provides:

> Any withholding of information shall be justified in writing, as follows:

Memorandum

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 of 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.

CITY AND COUNTY OF SAN FRANCISCO

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City Attorney

OFFICE OF THE CITY ATTORNEY

ERNEST H. LLORENTE
Deputy City Attorney

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E-MAIL: ernest.llorente@sfgov.org

July 6, 2009

Nick Goldman, Chair
Members of the Complaint Committee

Re: Dominic Maionchi v. Recreation and Park Department (09032)

Dear Chair Goldman and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Dominic Maionchi against the San Francisco Recreation and Park Department ("Rec & Park").

BACKGROUND

Dominic Maionchi alleges that he made a request under 67.24(e) of the Sunshine Ordinance for contracts for slip holders who have signed contracts with the Rec & Park. Rec & Park allegedly responded and stated it would redact the mailing addresses from the documents that would be provided.

COMPLAINT

On June 15, 2009, Dominic Maionchi filed a complaint against the Rec and Park alleging violations of the Sunshine Ordinance and the Public Records Act.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force ***does*** have jurisdiction over the allegation. The allegations are covered under (67.21 and 67.25) of the Ordinance.

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21

generally covers requests for documents and Section 67.25 covers Immediate Disclosure Requests. CPRA Section 6253 generally covers Public Records Requests.

In this case, the allegations that the Rec & Park intended to redact information from the requested documents in violation of 67.21 of the Ordinance put the case within the jurisdiction of the Task Force. The Task Force will determine whether Rec & Parks production of it documents violated the Ordinance and/or the Public Records Act.

<complaints@sfgov.org>
06/18/2009 01:34 PM

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

Submitted on: 6/18/2009 1:34:12 PM

Department: Park And Recreation

Contacted: Olive Gong

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: SEC. 67.24

Description: Under Article III SEC. 67.24 (e) Contracts entered into between depatments and persons have an enhanced rights of public access. I have requested the contracts for slip holders who have signed contracts with the dpartment of park and rec and these are the documents that they wish to redact mailing addresses from. I believe this is improper under the sunshine ordinance.

Hearing: Yes

Pre-Hearing: Yes

Date: June 15th

Name: dominic maionchi

Address: 250 avila street

City: san francisco

Zip: 94123

Phone: 415 385 8278

Email: dm567@pacbell.net

Anonymous:

Confidentiality_Requested: No

City and County of San Francisco
Recreation and Park Department

McLaren Lodge in Golden Gate Park
501 Stanyan Street, San Francisco, CA 94117
TEL: 415.831.2700 FAX: 415.831.2096 WEB: www.parks.sfgov.org

Honorable Members
Sunshine Ordinance Task Force
c/o Frank Darby, Administrator
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

July 21, 2009

Re: Complaint #09032 Filed By Dominic Maionchi Against The San Francisco Recreation and Park Department

Dear Task Force Committee Members:

This letter is in response to Complaint #09032 filed by Mr. Dominic Maionchi on June 15, 2009, against the San Francisco Recreation and Park Department. The Departments received a copy of the Complaint on June 19, 2009.

The Complaint concerns Mr. Maionchi's request for documents for contracts for slip holders who have signed contracts with the Recreation & Park Department. The Department did offer the documents to Mr. Maionchi, but he declined to take redacted documents. The Department consulted with Mr. Frank Darby (see attached email) of the Sunshine Ordinance Taskforce Committee, who also agreed that the documents should be redacted.

We hope this letter will be of assistance to the Task Force Committee. If I can be of further assistance to the Committee with respect to Mr. Maionchi's complaint, please do not hesitate to contact me.

Sincerely,

Olive Gong
Custodian of Records, SFRPD

attachment

Frank Darby/BOS/SFGOV
06/04/2009 03:32 PM

To Olive Gong/RPD/SFGOV@SFGOV
cc
Subject Re: Redaction of personal informationNotes Link

Hi Ms. Gong,

As we discussed below are legal statues that recognizes the right to personal privacy.
mailto:rak0408@earthlink.net

- Cal. Gov. Code Section 6250, 6254 (c), 6254 (k),
- Cal. Constitution, Article I, Section 1,
- San Francisco Administrative Code Section 67.1 (g))
- San Francisco Administrative Code Chapter 12M

You should let Mr. Maionchi know that personal information such as home address, license number, etc. have been redacted pursuant to the above statutes.

Frank Darby
Records & Information Manager
Board of Supervisors, COB
(415) 554-7725

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548

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