

Date: August 23, 2011

Item No. 8 & 9

File No. 11042

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Cynthia Carter v SFMTA**
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Completed by: Chris Rustom

Date: August 19, 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 23, 2011
RE: Complaint No. 11042, Cynthia Carter v. Municipal Transportation Agency ("MTA")

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Cynthia Carter ("Complainant") alleges that the Municipal Transportation Agency ("MTA") violated public records laws by failing to adequately respond to her May 12, 2011 request for public documents.

COMPLAINANT FILES COMPLAINT:

On May 31, 2011, Complainant filed this complaint against MTA, referring to "6254 C" as the specific provision of law violated.

JURISDICTION

MTA is a City department subject to the provisions of the Sunshine Ordinance. The Department 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 the 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.
- Section 6254(c) governs exemption from disclosure for personnel files under certain circumstances.

APPLICABLE CASE LAW:

None

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ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that on May 12, 2011, she made a public records request to MTA, asking for "my files [] (my entire files please) as well as central control logs[,] logs from the Flynn Mechanic Shop from reports of buses that I was driving and required service from road call, all inspection reports concerning me. cc logs, reports, phone recordings referring to me and emails, side letters, letters mailed to me referring to the supervisor test and station test as well as the actual dates of these tests."

Complainant also provides three responses from MTA to her request. The first is a May 18, 2011 email from MTA requesting further clarification of Carter's record request. This email describes the request as made on May 13, 2011 (rather than May 12) and seeking "my records from 2-1-99 – 8-11-10. I would also like all side letters, faxes, correspondence between management, etc, emails, notes, arbitrator reports, investigations." This suggests that Carter may have made more than one request around this time.

The second and third responses from MTA are letters dated May 23 and May 31, 2011. Each of these letters invoked an additional 14-day extension of time to respond to Complainant's records request. However, the first letter refers to Complainant's May 13, 2011 public records request, while the second letter refers to Complainant's May 19, 2011 public records request. Again, this suggests that Complainant made more than one public records request to MTA and that she has provided evidence referring to multiple requests.

Contested Facts: As of the date of this memorandum, I have not been provided with any response from MTA to the complaint, so it is unclear what, if any, allegations they contest.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did Complainant make more than one public records request?
- If so, what were the dates of those requests and what did they seek?
- Which request does this complaint involve?
- Which of the responses from MTA refer to the request that is the subject of this complaint?
- Did MTA ever provide an additional response to the request that is the subject of this complaint?
- If so, when was the response made?
- If so, were responsive documents provided to complainant?
- Did MTA withhold any documents in responding to this request?
- Was any withholding justified in writing with reference to appropriate exemptions?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the MTA violate the public records laws?

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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.**

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

(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.

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

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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.

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**

(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:

- (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.

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(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) **Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.** The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

SECTION 6254. EXEMPTION OF PARTICULAR RECORDS

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(c) Personnel, medical, or similar files, *the disclosure of which would constitute an unwarranted invasion of personal privacy.*

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>
05/31/2011 08:46 AM

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

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:S.F.M.T.A.

CONTACTED:KATHY FOWLIS

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:Yes

MEETING_DATE:

SECTIONS_VIOLATED:6254 C

DESCRIPTION:May 12, 2011, I went into the s.f.m.t.a. offices at 1 so. van ness requesting my records by way of a note left with martha acevedo, at the front desk, on the 6th floor, for kathy fowlis to provide me with my records in 10 days, it is now beyond the 10 days and I have yet to receive my files and papers requested. I need these papers for my rebuttal with the civil service commission and they needed to be turned in by the 31st of may 2011, the mta knew this and as a result they are holding on to my records and information that I need to respond to the civil service commission.

HEARING:Yes

PRE-HEARING:Yes

DATE:

NAME:Cynthia Carter

ADDRESS:1871 sunnydale ave

CITY:san francisco

ZIP:94134

PHONE:415 2862769

CONTACT_EMAIL:dimplescarter03@aol.com

ANONYMOUS:

From: Celaya, Caroline (Caroline.Celaya@sfmta.com)
To: dimplescarter1963@att.net;
Date: Wed, May 18, 2011 11:30:44 AM
Cc:
Subject: public records request

Hi Cynthia:

I'm in receipt of your public records request seeking "my records from 2-1-99 - 8-11-10. I would like all side letters, faxes correspondence between management etc. emails, notes, arbitrators reports investigations."

The Agency is gathering responsive documents though your request is vague and staff would like some clarification on the documents you are seeking. Can you please be more specific with regards to "my records"?

Thank you,

Caroline

Caroline Celaya
 San Francisco Municipal Transportation Agency
 One South Van Ness Avenue, 7th Floor
 San Francisco, CA 94103
 415.701.4670

RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO
 2011 JUN -6 AM 10:58
 BY AK
 1 OF 4 PAGES

ATTN: ~~Mr.~~ Ms. Kathy Jowles

I, Cynthia Carter am

requesting a copy of my files
from SFMTA (My entire file please)

as well as Central Control logs
Logs from the Lynn Mechanic Shop
from reports of buses that I was
driving and required service from Road Call,
all insp. reports concerning me, CA logs, reports
Phone recordings referring to me and emails, side
letters, Letters mailed to me referring to the
supervisor test & Station agent test as well as
the actual dates of these tests

Please do not pass
to Cynthia Lamada
~~at 64~~ thanks.

Thank You
Cynthia Carter

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Leona Bridges | Director

Cheryl Brinkman | Director

Malcolm Helnicke | Director

Bruce Oka | Director

Nathaniel P. Ford Sr. | Executive Director/CEO

May 23, 2011

SENT VIA EMAIL

Cynthia Carter

Dimplescarter1963@att.net

RE: Public Records Request dated May 13, 2011

Dear Ms. Carter:

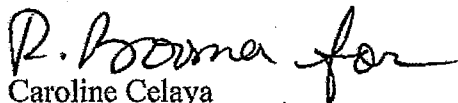
On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 13, 2011.

Please be advised we are hereby invoking an extension of an additional fourteen (14) calendar days from May 23, 2011, to respond to your request.

Under the California Public Records Act and the San Francisco Sunshine Ordinance, the deadline can be extended for an additional fourteen days due to "the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request," and "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." Cal. Gov't Code §6253(c)(2) and (3). The SFMTA is invoking the extension on these grounds because staff must (1) collect and examine a voluminous amount of material, and (2) consult with another City agency having substantial subject matter interest in the request. We will endeavor to respond to your request as soon as possible, but not later than June 6, 2011

Please do not hesitate to contact the Sunshine Request line at 415-701-4670 or sfmtasunshinerequests@sfmta.com if you have any questions.

Sincerely,


Caroline Celaya