

Date: August 24, 2010

Item No. 23+24
File No. 10010

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Paula Datesh against the Arts Commission**
-
-
-
-
-
-
-
-
-
-

Completed by: Chris Rustom

Date: August 19, 2010

***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
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

May 19, 2010

PAULA DATESH VS. ARTS COMMISSION (10010)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Paula Datesh alleges that Howard Lazar of the San Francisco Arts Commission (the "Commission") failed to notify her of multiple meetings of the Street Artists Committee, the latest of which was held on November 4, 2009. Datesh further alleges that Lazar is required to provide her that notice under Article 24 of the Police Code. Ms. Datesh further alleges that many other violations of her rights by the Arts Commission and its staff, but never identifies any provision of public meetings or public records laws that were violated.

COMPLAINANT FILES COMPLAINT:

On March 2, 2010, Ms. Datesh filed a complaint with the Task Force alleging a violation.

JURISDICTION

The Arts Commission clearly is a policy body under the Sunshine Ordinance. The Task Force therefore has jurisdiction to hear a public meetings complaint. Complainant, however, fails to identify any provision of the ordinance that has been violated and it is not plain from the factual allegations made whether there could be a violation, even if they were true. It therefore appears that the Task Force lacks subject matter jurisdiction over this complaint.

Moreover, this appears to be almost exactly the same complaint made by Ms. Datesh to the Task Force as Complaint #10006, which was dismissed by the Complaint Committee for lack of jurisdiction at its meeting of March 9, 2009. Given this previous decision, unless complainant can bring allege new facts to support jurisdiction by the Task Force, that previous decision should be given weight in deciding on this complaint.

APPLICABLE STATUTORY SECTION(S):

Unknown

Memorandum

DATE: May 19, 2010
PAGE: 2
RE: Datesh v. Arts Commission

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested Facts: Ms. Datesh alleges that the Commission failed to notify her of multiple meetings of the Street Artists Committee, the latest of which was held on November 4, 2009. The Commission does not context this allegation.

Contested Facts: Ms. Datesh further alleges that the Commission is required to provide her notice of the above meetings under Article 24 of the Police Code. The Commission responds that there is no requirement in the Sunshine Ordinance to provide individual notice of such meetings on these facts, and that there therefore is no violation of public meetings laws.

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the Commission violate public meetings laws in failing to provide Ms. Datesh with individualized notice of the meetings she references?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

Memorandum

DATE: May 19, 2010
PAGE: 3
RE: Datesh v. Arts Commission

SAN FRANCISCO ADMINISTRATIVE CODE

SEC. 8.16. FILING OF ANNUAL REPORTS AND OFFICIAL DOCUMENTS WITH SAN FRANCISCO PUBLIC LIBRARY.

[. . .]

Further, it shall be the duty of the secretary or other executive officer of each board, commission or committee thereof, to file with the Documents Department *two copies of the agenda of each regularly scheduled meeting of such board, commission or committee thereof, at least 72 hours prior to the time of such meeting.* For special meetings of boards, commissions or committees, the agenda shall be filed with the Documents Department not less than 24 hours prior to the meeting. In addition, such secretary shall file with the Documents Department two copies of the minutes of the action taken at any meeting of such board, commission or committee thereof within 10 days of the date of such meeting. Any corrections, additions or amendments to said minutes shall be filed with the Documents Department within five working days after the date of any such correction, addition or amendment. The Documents Department shall retain such copies of agendas and minutes for a minimum period of 90 days.

The City Librarian shall designate a place in the central public library, accessible to the public, for the posting of agenda filed with the City Library pursuant to this Section. The City Librarian shall cause such agenda to be posted immediately upon receipt. The reports or documents required to be filed pursuant to the provisions of this Section shall be made available by the Documents Department for reference thereto by the People of the City and County. Any violation of the provisions of this Section on the part of any elective officer or any member of any board or commission shall be deemed to be official misconduct and any violation of the provisions of this Section on the part of any employee shall be deemed to be inattention to duties and considered cause for suspension or dismissal from service. The provisions of this Section shall be deemed directory only. Failure to comply with the provisions of this Section shall not provide a basis for invalidating any action taken. (Amended by Ord. 51-87, App. 2/27/87; Ord. 14-03, File No. 021815, App. 1/31/2003)

C. SEC. 8.17. MAILING OF DOCUMENTS.

[. . .]

Further, it shall be the duty of the secretary or other executive officer of each board, commission or committee thereof, to update the mailing lists at least once annually for the meetings of their respective board, commission or committee in order to remove addresses of individuals or organizations who are no longer interested in receiving the materials or who are no longer residing or operating at the listed address. (Added by Ord. 61-05, File No. 050136, App. 4/1/2005)

Memorandum

DATE: May 19, 2010
PAGE: 4
RE: Datesh v. Arts Commission

SEC. 67.7. AGENDA REQUIREMENTS; REGULAR MEETINGS.

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

CALIFORNIA GOV'T CODE**§ 54954.1. MAILED NOTICE TO PERSONS WHO FILED WRITTEN REQUEST; TIME; DURATION AND RENEWAL OF REQUESTS; FEE**

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

§ 54954.2. AGENDA; POSTING; ACTION ON OTHER MATTERS

(a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions

Memorandum

DATE: May 19, 2010
PAGE: 5
RE: Datesh v. Arts Commission

posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

May 10, 2010

Nick Goldman, Chair
Members of the Complaint Committee

Re: Paula Datesh v. Arts Commission (10010)

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 Paula Datesh against the San Francisco Arts Commission.

BACKGROUND

Complainant Paula Datesh alleges that Howard Lazar of the San Francisco Arts Commission (the "Commission") failed to notify her of a meeting of the Street Artists Committee held on November 4, 2009, at which her application for a street artist certificate was to be considered. Datesh further alleges that Lazar is required to provide her that notice under Article 24 of the Police Code. Ms. Datesh further alleges that Lazar failed to notify her of the outcome of the hearing on her certificate application. Ms. Datesh's complaint fails to identify any provision of the Sunshine Ordinance that Lazar is alleged to have violated

COMPLAINT

On March 2, 2010, Ms. Datesh filed a complaint with the Task Force alleging a violation.

SHORT ANSWER

Based on Complainant's allegation, the Sunshine Ordinance Task Force *does not* have subject matter jurisdiction over the allegations, which if true, could constitute a violation of state or local public meetings laws.

DISCUSSION AND ANALYSIS

The Arts Commission clearly is a policy body and legislative body under the Sunshine Ordinance. The Task Force therefore has jurisdiction to hear a public meetings complaint. It appears, however, that the allegations of the complaint, even if true, would not violate public meeting laws under the jurisdiction of the Task Force.



SUNSHINE ORDINANCE TASK FORCE
 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
 Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission SAN FRANCISCO ARTS
COMMISSION
 Name of individual contacted at Department or Commission HOWARD HAZEL

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting 11/4/09 8/22/07
4/9/03
 Sunshine Ordinance Section _____
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

SEE ATTACHED

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
 Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹
 Name PAUL DATESH Address 2590 DUCLOS AVE CA 94704 BERKELEY,
 Telephone No. 415 350 1559 E-Mail Address [REDACTED]@aol.com
 Date 3/2/10

I request confidentiality of my personal information. yes no Signature

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

March 2, 1010

Honorable Members , Sunshine Task Force
Cris Rustom, Administrator
Office of the Clerk, Board of Supervisors
Dr. Carlton B. Goodlett Place
City Hall Room 244
San Francisco, CA 94102

Members of the Sunshine Task Force:

I have been selling on the streets of San Francisco for over 30 years and an artist all of my life. There are several Street Artist Meetings that I was not noticed of and will start from the most recent and go backwards.

I was not notified of a Street Artist Meeting in which I was on the agenda of **November 4, 2009**. It was only through routine monitoring of the SFAC web site: www.sanfranciscoartscommisson.org, that I noticed my name 2 days before the scheduled Meeting. No charges were listed. See attached.

My sister, M. Grundman-had been emailing Howard Lazar asking if some issues were pending. She did not get an answer to her question. When she called 415-252-2583, no one picked up the phone. When she called 415-252-2581, some woman answered and sang gospel songs to her. See attached.

Several months before, I called Sharon Page Ritchie to ask if there was some pending matter. I made several calls and got the wrong information. See attached.

Two days before the hearing, I called Catharine Barnes of the City Attorney's Office and was told to ask a doctor to fax directly a letter to the SFAC. Victor Pacheco of the Board of Permits and Appeals said to email my response. See attached.

I constantly maintained the same address and was consistently represented by counsel. Nick Gregaratos did not receive a letter from Lazar relative to this meeting. Article 24 of the San Francisco Police Code requires Lazar to notice the respondent in a timely manner. He did not.

I was not noticed of the outcome of the November 4, 2009 meeting by mail or email. Two weeks later, Catharine Barnes told me the matter had been tabled indefinitely. I did not receive a letter from Lazar with the outcome. Weeks later, Sharon Page Ritchie said she would. "talk to Howard". I still did not receive any correspondence.

August 22, 2007 failure of the SFAC and Howard Lazar to notice me of a Street Artist hearing in timely manner. I was on the Street Artist agenda which posted to their web

site for this date. Two days before the meeting, I noticed my name removed from their agenda. I was told by Victor Pacheco to send an email requesting that it be put back on calendar and to go to the reception area of the City Attorney's Office to hand deliver a letter to Adine Varah-requesting that it be put back on calendar. It was not and I did not receive any correspondence from either the SFAC or Varah. See attached.

I was told by Howard Lazar in the weeks before to call him on a daily basis to see if there was a quorum. I did call each weekday. When I called 415-252-2583 (Lazar's phone) some woman picked up the phone. I did not speak but she said, "Paula, you are going back to jail." I sent several follow up emails asking who that woman was and what was going on. I did not get a response. See attached.

On February 4, 2009 I got an email notice to appear in *San Francisco Criminal Court*. Evelyn Russell, a woman who I do not know alleged that I violated a no contact order by, "grunting" twice over the phone. She is in fear for her life/I know where she lives/ the make and model of her car/ wears a leg brace and can not run. I was commuting from New York to make Court dates until January 12, 2010 when the case was dismissed. Russell did not show. When I called Lazar to ask if there was a quorum for the above Street Artist Meeting-he never answered the question. Rather he screamed, "where are you?" He wanted to know how to access the *San Francisco Superior Court* e-filing system via Internet. He wanted dirt on Addario.

Note Franz Feutsch never turned over the file which contained a letter on SFAC letterhead and signed by Lazar stating the phone were rolling over and had been for 30 years. It is a matter of Public Informaiton.

This is negligence on the part of Lazar. I was noticed of the phones rolling over by email on February 9, 2009 after the charges were filed. I spent 55 days in jail. Upon my release, I called Lazar to ask a specific question. Typically, he used it as a segway to question me about Russell. I told him to speak to his secretary. I have never known Lazar to answer a simple question. Rather he gossips to me about people I do not know, tries to involve me in matters that do not concern me and is always off-topic. Lazar is negligent in noticing me of the August 22, 2007 hearing and should be held accountable.

April 9, 2003 failure of the SFAC and Howard Lazar to notice me of a Street Artist Meeting where I was on the agenda. I was in custody at the San Francisco County Jail Fighting an extradition matter for 8 months. The meeting was postponed for several months prior due to a lack of a quorum. I knew something was pending but did not know when there would be a quorum. The Northern California Service League called Lazar to tell him where I was. Nick Gregaratos called Lazar and I wrote a letter. No one received a return call from Lazar. When I beat the case, I immediately went to the City Attorney's Office and was given a copy of the minutes. I asked how I could get that permit back and was not given a response. The SFAC and Howard Lazar failed to notice me of a public

hearing and should be held accountable.

Years later, I found that out-of-print Rulebook (*Bluebook*-Street Artist Program) in the Archives of the San Francisco Public Library. It clearly states that after 1 year, the respondent may reapply. Lazar (the author) clearly knew that but choose not to impart that information. It was easier to hang up the phone and claim that I was stalking him.

There were several secret meetings of the Street Artist Program in the summer of 2009. I was working in the Embarcadero one Saturday and Mat Pocaro-an inspector said, "we had a meeting about you" and left. It left me with an odd feeling. I know no more than that.

In summary, the San Francisco Arts Commission and Howard Lazar never noticed me of the April 9, 2003 hearing. I was denied due process under the United States Constitution; the California State Constitution and the San Francisco Police Code-Article 24. I was never given the chance to explain the events of December 24, 2002. Susan Peet, who ran the lottery that morning made a mistake and assigned 2 people to the same space: Z-54. I was the first to get there. Typically, Lazar was not available by phone and at least 10 Street Artists and PO Carl Payne came. I showed Payne my lottery ticket. He called Lazar-who did not pick up the phone. I left. The following week, I was served with 5 T/R/O's. I was ganged up on, the allegations were false and I still have the lottery ticket.

These same individuals who I do not know, still slander me. See attached.

Members of the Sunshine Task Force, I think it is about time for this witch hunt to end. I plead guilty to crimes I did not commit; paid extensive amounts in legal fees over what is a First Amendment Right (sell Artwork in the street) and have no violations. There are many in your local government who have done far worse: Michael Marcum, Ida McCray and Nick Gregaratos-to name a few. What has taken place with me is nothing short of a witch hunt: amateur detectives, Street Artist Meetings that are badly run and allow one person (Mike Addario) to monopolize the discussion, lack of investigation, rush to judgment, bad judgment and gossip.

Seven years of suffering is long enough. Howard Lazar and the San Francisco Arts Commission should be found in violation of Chapter 67 of the Sunshine Ordinance for repeated failure to notice me of multiple public hearings.

In a City as progressive as San Francisco, this should not have happened.



