

Date: Sept. 22, 2009

Item No. 8

File No. 09039

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Rita O'Flynn v Mayor's Office of Housing
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Completed by: Chris Rustom

Date: Sept. 16, 2009

***This list reflects the explanatory documents provided**

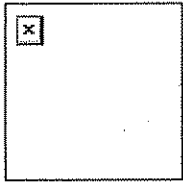
~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** 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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DENNIS J. HERRERA
City Attorney

ERNEST H. LORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

August 7, 2009

RITA O'FLYNN v. MAYOR'S OFFICE OF HOUSING (09039)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Complainant Rita O'Flynn has been investigating the federal Housing and Urban Development ("HUD") Lead Abatement Grant issued through the Mayor's Office of Housing. In 2008, Rita O'Flynn requested that she have the opportunity to review the entire HUD Lead Abatement files at the Mayor's Office of Housing ("MOH"). After she reviewed the files, she requested that the entire file be copied. Once she received the copies she realized that the provided records did not include the e-mails regarding 1672/1674 Great Highway that she had reviewed. When she requested the e-mail records she was advised that the e-mails records had been deleted since MOH only keeps electronic records for two years.

COMPLAINANT FILES COMPLAINT:

On July 20, 2009, Complainant Rita O'Flynn filed a complaint against MOH for its deletion of the e-mail records while the records were the subject of a Sunshine Ordinance Request for Records.

Memorandum**APPLICABLE STATUTORY SECTION:**

1. Sunshine Ordinance § 67.21 addresses general requests for public documents.
2. Sunshine Ordinance § 67.25 addresses Immediate Disclosure Requests.
3. Sunshine Ordinance § 67.26 deals with redaction of records.
4. Sunshine Ordinance § 67.27 addresses legal justification for withholding of records.
5. Sunshine Ordinance § 67.29-7 requires a Department Head to maintain and preserve documents and correspondence.
6. Sunshine Ordinance § 67.34 deals with willful failure to comply with the requirements of the Sunshine Ordinance and the comparable state statutes to be Official Misconduct.
7. State Government Code § 6253 addresses requests for public records.
8. State Government Code § 6255 addresses legal justification for withholding of records.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

- Complainant Rita O'Flynn made a public records request to review MOH records regarding the HUD Lead Abatement Program.
- Rita O'Flynn reviewed the records and requested copies of all of the records.
- Rita O'Flynn reviewed the records and noted that certain e-mail records were missing.
- Rita O'Flynn requested those e-mail records.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

- Whether MOH provided all its e-mails relevant to the public records request?
- Whether MOH deleted its e-mail records while a public records request for those records was pending?

Memorandum

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

When did complainant review the hard copy of the Mayor's Office of Housing HUD Lead Abatement files?

When did complainant received a copy from the Mayor's Office?

When did complainant realize that the e-mail records were missing?

When did complainant make her request for the e-mail records?

Did 2 years pass from the time the e-mails were created to the time that they were deleted?

Were the deletions in the normal course of managing e-mails?

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:

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 67.29-7 provides:

The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

Section 67.34 addresses willful failure as official misconduct.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

THE CALIFORNIA PUBLIC RECORDS ACT IS LOCATED IN THE STATE GOVERNMENT CODE SECTIONS 6250 ET SEQ. ALL STATUTORY REFERENCES, UNLESS STATED OTHERWISE, ARE TO THE GOVERNMENT CODE.

Section 6253 provides.

- a.) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.
- b.) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon

Memorandum

payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

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....

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 6255 provides:

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.

b.) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.



<complaints@sfgov.org>
07/20/2009 05:07 PM

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

Submitted on: 7/20/2009 5:07:01 PM

Department: The Mayor's Office of Housing

Contacted: Myrna Melgar-Iton, Douglas Shoemaker, Michael Palmer

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated:

Description: Removal of records from a file and deletion of records from e-mail while records were subject of Sunshine Ordinance Request for Records regarding 1672/1674 Great Highway.

Maintenance of a private file.

SOFT has already determined that I am entitled to these records. DIT has provided a cost estimate for retrieval. With this complaint, MOH should a) be found in non-compliance with Sunshine Ordinance and b) be required to pay for immediate retrieval of the documents.

I further request that MOH not be involved in the review and redaction process as they have demonstrated bias and abuse in their record management regarding 1672/1674 Great Highway.

Hearing: Yes

Pre-Hearing: No

Date:

Name: Rita O'Flynn

Address: 708 Great Highway

City: San Francisco

Zip: 94121

Phone: 415-386-8483

Email: rita_august@msn.com

Anonymous:

Confidentiality_Requested: No



Rita August O'Flynn
<rita_august@msn.com>
08/24/2009 04:07 PM

To <soft@sfgov.org>, <steve.kawa@sfgov.org>,
<myrna.melgar@sfgov.org>,
<douglas.shoemaker@sfgov.org>,

cc

bcc

Subject RE: SOTF Hearing Reminder: #09039_Rita O'Flynn v
Mayor's Office of Housing

I did not receive the e-mail referred to below. I do not agree to a continuance.

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

> Subject: Fw: SOTF Hearing Reminder: #09039_Rita O'Flynn v Mayor's Office of Housing
> To: Steve.Kawa@sfgov.org; rita_august@msn.com; myrna.melgar@sfgov.org;
douglas.shoemaker@sfgov.org; Michael.Palmer@sfgov.org
> From: soft@sfgov.org
> Date: Mon, 24 Aug 2009 14:49:00 -0700
>
>
> Mr. Douglas Shoemaker,
>
> The complainant has not responded to my email. The request for continuance,
> according to the Task Force's complaint procedure, shall be granted by a
> simple majority vote of the members present at tomorrow's meeting. Please
> be also aware that Section 67.21 (e) of the Ordinance requires the
> custodian of records or a representative of your department, who can speak
> to the matter, attend the meeting/hearing..
>
> Chris Rustom
> Sunshine Ordinance Task Force
> 1 Dr. Carlton B. Goodlett Place
> City Hall, Room 244
> San Francisco, CA 94102-4689
> SOTF@SFGov.org
> OFC: (415) 554-7724
> FAX: (415) 554-7854
>
> Complete a SOTF Customer Satisfaction Survey by clicking the link below.
> http://www.sfgov.org/site/sunshine_form.asp?id=34307
> ----- Forwarded by SOTF/SOTF/SFGOV on 08/24/2009 02:36 PM -----
>
> SOTF/SOTF/SFGOV
>
> 08/21/2009 04:14 To
> PM rita_august@msn.com
> cc
>
> Subject
> Fw: SOTF Hearing Reminder:
> #09039_Rita O'Flynn v Mayor's
> Office of Housing
>

> Doug Shoemaker
> Director, San Francisco Mayor's Office of Housing
> 1 South Van Ness, Fifth Floor
> San Francisco, CA 94103
> 415-701-5509

> |----->
> | From: |
> |----->

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> |SOTF/BOS/SFGOV |

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> |----->
> | To: |
> |----->

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> |Steve Kawa/MAYOR/SFGOV@SFGOV, rita_august@msn.com, Myrna
Melgar/OCDHH/MAYOR/SFGOV@SFGOV, Douglas
Shoemaker/OCDHH/MAYOR/SFGOV@SFGOV, |
> |Michael Palmer/OCDHH/MAYOR/SFGOV@SFGOV |

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> |----->
> | Date: |
> |----->

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> |08/21/2009 03:58 PM |

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> |----->
> | Subject: |
> |----->

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> |SOTF Hearing Reminder: #09039_Rita O'Flynn v Mayor's Office of Housing |

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> |----->
> | Sent by: |
> |----->

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> |SOTF |

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> This is a reminder that a hearing is scheduled with the Sunshine Ordinance Task Force, regarding the above titled complaint, to hear the merits of the complaint and to issue a determination.

>

> Date: Tuesday, August 25, 2009

> Location: City Hall, Room 408

> Time: 4:00 p.m.

>

> Complainants: Your attendance is required at this meeting/hearing.

>

> Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

>

> Attached is the DCA's Instructional Letter to the Task Force.

>

> [attachment "09039_Instructional.pdf" deleted by Douglas Shoemaker/OCDHH/MAYOR/SFGOV]

>

> To access the agenda please click on the link below. Then click on the associated item number to access the packet material related to your item.

>

> http://www.sfgov.org/site/sunshine_page.asp?id=109709

>

> Chris Rustom

> Sunshine Ordinance Task Force

> 1 Dr. Carlton B. Goodlett Place

> City Hall, Room 244

> San Francisco, CA 94102-4689

> OFC: (415) 554-7724

> FAX: (415) 554-7854

> SOTF@sfgov.org

>


>

**Douglas
Shoemaker/OCDHH/MAYOR/
SFGOV**

08/24/2009 06:36 PM

To SOTF/SOTF/SFGOV@SFGOV, "rita_august"
<rita_august@msn.com>, Myrna
Melgar/OCDHH/MAYOR/SFGOV@SFGOV, Michael
cc "Oliver Hack" <Oliver.Hack@sfgov.org>, "Sonia
Delgado-Schaumberg"
<Sonia.Delgado-Schaumberg@SFGOV.ORG>

bcc

Subject Re: SOTF Hearing Reminder: #09039_Rita O'Flynn v
Mayor's Office of Housing 

Mr. Rustom. I'm sorry that Ms. O'flynn does not to accept a continuance. However neither Ms. Melgar nor I are available. No one will be in attendance from MOH.



Rita August O'Flynn
<rita_august@msn.com>

08/24/2009 06:53 PM

To <douglas.shoemaker@sfgov.org>, <sotf@sfgov.org>,
<myrna.melgar@sfgov.org>, <michael.palmer@sfgov.org>
cc <oliver.hack@sfgov.org>,
<sonia.delgado-schaumberg@sfgov.org>,
<markoflynn@msn.com>

bcc

Subject RE: SOTF Hearing Reminder: #09039_Rita O'Flynn v
Mayor's Office of Housing

I have just been informed by Douglas Shoemake that Oliver Hack , who has been cc'd in on communications I have had with MOH is "the chief operating officer of MOH. He has responsibilities for sunshine activities". In addition, the bulk of my most recent requests have been addressed by Sonia Delgado-Schaumberg. There are other options to a continuance.

MOH has long been aware of this meeting and has had every opportunity to plan accordingly.

With Kind Regards

Rita O'Flynn 415-386-8224 Cell: 415-260-7608



Rita August O'Flynn
<rita_august@msn.com>
09/14/2009 09:33 AM

To : <oliver.hack@sfgov.org>
cc <dshoemaker@sfgov.org>, <markoflynn@msn.com>, <myrna.melgar@sfgov.org>, <sonia.delgado-schaumberg@sfgov.org>, <sotf@sfgov.org>
bcc

Subject RE: Request for Information for 1672/1674 Great Highway

Thank you for your acknowledgment.

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

> Subject: RE: Request for Information for 1672/1674 Great Highway
> To: rita_august@msn.com
> CC: dshoemaker@sfgov.org; markoflynn@msn.com; myrna.melgar@sfgov.org; sonia.delgado-schaumberg@sfgov.org; sotf@sfgov.org
> From: Oliver.Hack@sfgov.org
> Date: Mon, 14 Sep 2009 09:20:15 -0700

> Apologies for the delay. I'm working on this request and hope to have it to you shortly.

> Best,
> Oliver Hack
> Oliver Hack
> Chief Operating Officer
> Mayor's Office of Housing
> 1 South Van Ness Avenue, 5th Floor
> San Francisco, CA 94103
> (415) 701-5512
> oliver.hack@sfgov.org

> Rita August
> O'Flynn
> <rita_august@msn.com> <oliver.hack@sfgov.org>
> cc
> 09/12/2009 09:12 <markoflynn@msn.com>,
> AM <dshoemaker@sfgov.org>,
> <myrna.melgar@sfgov.org>,
> <sonia.delgado-schaumberg@sfgov.org>
> >, <sotf@sfgov.org>
> Subject
> RE: Request for Information for
> 1672/1674 Great Highway

>
>
>
>
>
>
> What is the status of this request?
>
> Rita O'Flynn 415-386-8224 Cell: 415-260-7608
>
>
>
> From: rita_august@msn.com
> To: oliver.hack@sfgov.org
> CC: markoflynn@msn.com; dshoemaker@sfgov.org; myrna.melgar@sfgov.org;
> sonia.delgado-schaumberg@sfgov.org
> Subject: Request for Information for 1672/1674 Great Highway
> Date: Sat, 5 Sep 2009 11:57:08 -0700
>
> Dear Mr. Hack:
>
> I have done a cursory review of the fund disbursement for my property
> provided by MOH yesterday in response to a Sunshine Ordinance Request for
> Information and am requesting the following:
>
> A disbursement on 5/02/07 of \$1068.23 was made to Rhapsody Painting and
> Environmental. I do not see corresponding paperwork for this payment.
> Please scan and e-mail any and all information regarding this payment,
> including but not limited to communications within MOH and between MOH and
> Rhapsody regarding this payment, changes in scope, itemized invoices,
> dates of service, and authorization for payment. If there is any
> information as to why Owners were not made aware of or approved of this
> payment, please provide that as well or indicate that MOH has no documents
> responsive to the request.
>
> Please ensure that the Fund Disbursement Report MOH provided yesterday and
> a copy of this e-mail are part of the permanent record for 1672/1674 Great
> Highway.
>
>
> With Kind Regards,
>
> Rita O'Flynn 415-386-8224 Cell: 415-260-7608
>
>
>

Oliver
Hack/OCDHH/MAYOR/SFGO
V

09/14/2009 04:38 PM

To Rita August O'Flynn <rita_august@msn.com>

cc dshoemaker@sfgov.org, markoflynn@msn.com,
myrna.melgar@sfgov.org,
sonia.delgado-schaumberg@sfgov.org, sotf@sfgov.org

bcc

Subject RE: Prioritization of Deliverables

Ms. O'Flynn:

My apologies for the delay.

In response:

I believe you are correct in that you neither asked nor were provided with the **entire** contents of all the 2003 Lead files. Our records show that where available, you were provided with copies of the following from the files:

- Application
 - Scope of work
 - Owner agreement
 - Additional funding requests
 - Eligibility sheet, including AMI chart and verifications
 - Notice to Abate and/or notice of Violation
 - Project Log for approved applicants
 - Denial Letter for denied applicants
 - Relocation Documentation
 - Lead Tests for approved applicants
 - Correspondence with HUD
- Please provide complete applications with ages unredacted **or state that MOH has no documents responsive to my request.**

You have previously been provided with the applications from the 2003 Lead files. Beyond what has been provided, MOH has no further documents responsive to your request. As previously stated, information was redacted in accordance with Admin. Code Section 67.27 and CA State Government Code 6254(k) for Attorney-Client Privilege and Admin. Code Section 67.1(g) and/or CA State Govt. Code 6254(c) for Private Personal Information. Should you wish to have the redactions reviewed, you may contact the Supervisor of Records, Paula Jesson at the City Attorney's Office (415-554-6762).

- For each unit with a child under the age of 6, documentation of a pre-lead reduction/abatement lead blood test. If the lead test is for a child who resides on the property, do not redact the "home" address on the documentation **or please state the MOH does not have documents responsive to my request.**

As stated above, where available, lead tests have been provided to you. Beyond what has been previously provided, MOH has no further documents responsive to this request. Should you wish to have the redactions reviewed, you may contact the Supervisor of Records as mentioned in the response above.

- The financial records for the units addressed by MOH under the 2003 Lead Grant were either incomplete, incomprehensible, or entirely missing. **If MOH is unable to produce any documentation regarding which of the units met 50% of AMI and those that met 80% of AMI, please state that MOH has no documents responsive to my request.**

As stated above, where available, you have been provided with the Eligibility Sheet including AMI Chart and Verifications. Beyond what has been previously provided to you, MOH has no further documents responsive to this request.

Best,
Oliver Hack

Oliver Hack
Chief Operating Officer
Mayor's Office of Housing
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
(415) 701-5512
oliver.hack@sfgov.org

Rita August O'Flynn --09/14/2009 02:40:04 PM--Do you have any follow up to this request?



Rita August O'Flynn
<rita_august@msn.com>
09/14/2009 02:40 PM

To <oliver.hack@sfgov.org>
cc <dshoemaker@sfgov.org>, <markoflynn@msn.com>, <myrna.melgar@sfgov.org>, <sonia.delgado-schaumberg@sfgov.org>, <sotf@sfgov.org>
Subject RE: Prioritization of Deliverables

Do you have any follow up to this request?

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

From: rita_august@msn.com
To: oliver.hack@sfgov.org
CC: dshoemaker@sfgov.org; markoflynn@msn.com; myrna.melgar@sfgov.org; sonia.delgado-schaumberg@sfgov.org; sotf@sfgov.org
Subject: RE: Prioritization of Deliverables
Date: Sat, 12 Sep 2009 09:11:38 -0700

What is the status of this request?

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

From: rita_august@msn.com
To: oliver.hack@sfgov.org
CC: dshoemaker@sfgov.org; markoflynn@msn.com; myrna.melgar@sfgov.org; sonia.delgado-schaumberg@sfgov.org; sotf@sfgov.org
Subject: RE: Prioritization of Deliverables
Date: Thu, 10 Sep 2009 16:34:13 -0700

What is the status of this request?

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

From: rita_august@msn.com
To: oliver.hack@sfgov.org
CC: dshoemaker@sfgov.org; markoflynn@msn.com; myrna.melgar@sfgov.org;
sonia.delgado-schaumberg@sfgov.org; sotf@sfgov.org
Subject: RE: Prioritization of Deliverables
Date: Fri, 4 Sep 2009 13:39:36 -0700

Dear Mr. Hack:

In the e-mail below it is stated, "you have previously been provided with the entire contents of all the 2003 Lead grant files." **This statement is not true** and I do not know if this is made by MOH due to simple misunderstanding or design. Regardless, as my Sunshine Ordinance request for this information (which MOH has on file) clearly shows, I made a very focussed list of the documents I wanted to see. As **I did not request the entire contents of all of the 2003 Lead grant files**, thus I am within my rights to a) request additional information and b) request documents that were not provided as part of my original request regardless of what MOH believes they have provided.

As we have now clarified that I have not received entire records, please address the following:

- The materials previously provided by MOH were incomplete or missing significant sections. More importantly, MOH's redaction of ages in the previous files was inconsistent and seemed to be focused on the ages of alleged children in the units; thus if the administrative code quoted below did not result in the redaction of every single age in each application in my previous request, MOH's refusal to provide this information at this time is inappropriate and highly questionable. While DOB, SS#, and the actual lead blood test results may be considered "personal", ages of children for a contingency-based HUD fund cannot be. Please provide complete applications with ages unredacted **or state that MOH has no documents responsive to my request.**
- For each unit with a child under the age of 6, documentation of a pre-lead reduction/abatement lead blood test. If the lead test is for a child who resides on the property, do not redact the "home" address on the documentation **or please state the MOH does not have documents responsive to my request**
- The financial records for the units addressed by MOH under the 2003 Lead Grant were either incomplete, incomprehensible, or entirely missing. **If MOH is unable to produce any documentation regarding which of the units met 50% of AMI and those that met 80% of AMI, please state that MOH has no documents responsive to my request.**

I am aware of the funding MOH has and is scheduled to receive and argue that MOH's funding is not, "limited" as claimed. I, however, do not want to place an unreasonable demand on MOH staff. Therefore, I agree to having the files provided on a weekly incremental basis. Shall we say 10 files per week? I understand that I bear the financial burden of the copies responsive to my request.

With Kind Regards,

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

> Subject: Re: Prioritization of Deliverables
 > To: rita_august@msn.com
 > CC: dshoemaker@sfgov.org; markoflynn@msn.com; myrna.melgar@sfgov.org;
 sonia.delgado-schaumberg@sfgov.org
 > From: Oliver.Hack@sfgov.org
 > Date: Fri, 4 Sep 2009 11:53:03 -0700
 >
 > Ms. O'Flynn:
 >
 > Below, please find responses to your prioritized requests.
 >
 > 1. As you or your staff are aware, some of the key records regarding
 > properties addressed under the 2003 Lead Hazard Reduction Grant previously
 > requested via Sunshine Ordinance Request for Disclosure were either a) not
 > provided, b) incomplete, and/or c) improperly redacted. To address these
 > deficiencies I am requesting the following for disclosure: For all
 > properties addressed under the afore referenced HUD Grant
 > (exclusive of 1672/1674 Great Highway and 23 Boardman):
 >
 > · complete applications from each unit with the ages of house hold
 > members unredacted
 > · for each unit with a child under the age of 6, documentation of a
 > pre-lead reduction/abatement lead blood test. If the lead test is for a
 > child who resides on the property, do not redact the "home" address on the
 > documentation
 > · A list of which of the units met 50% of AMI and those that met 80% of
 > AMI
 > As most of these properties would still be under 5 year contractual
 > obligations under the Owner's Agreement and my request relates to HUD
 > requirements for the grant these records should be readily available to
 > MOH. (Originally requested 22 August 09). (I made MOH aware that this is
 > not a duplicative request on 27 August 09)
 >
 >
 > 1. You have previously been provided with the entire contents of all the
 > 2003 Lead grant files.
 > a) We are, however, still in possession of copies of 10 Lead Grant files
 > that you requested but never picked up dated September 5, 2008; a total of
 > 233 pages with an amount due of \$23.10. (These may be picked up at your
 > convenience at the MOH front desk here on the 5th floor of 1 South Van Ness
 > Ave).
 > b) To my knowledge, you were provided with the entire contents of all the
 > files excepting,
 > c) items that were redacted- allowable under Admin. Code Section 67.27 and
 > CA State Government Code 6254(k) for Attorney-Client Privilege and Admin.
 > Code Section 67.1(g) and/or CA State Govt. Code 6254(c) for Private
 > Personal Information.
 >
 >
 > 2. Please provide any and all certifications that MOH provided to HUD that
 > grant program recipients met HUD's Title X income eligibility requirements
 > as listed as a required action in HUD's 9 June 2005 Monitoring Review
 > letter to Matthew Franklin. If available electronically, please forward by
 > e-mail. (Originally requested 9 August 2009).

>
>
> The Mayor's Office of Housing has previously provided you with the response
> letter from Matt Franklin to HUD in response to the HUD's June 9, 2005
> findings. There are no further documents responsive to your request.
>
>
> 3. Please provide a complete accounting, including invoices,
> authorizations, approvals, all disbursements from the escrow account for
> 1672 Great Highway. (Originally requested 10 August 2009). The following
> e-mail of 27 August 2009 clarified and narrowed the scope of the request.
> To re-cap, upon my tenant's re-occupancy, several thousand dollars remained
> in the escrow account. I am looking for a complete accounting for the
> remaining funds, not just that they were removed but the entire audit trail
> to the final recipient. As the funds in the escrow account were part HUD
> funds and subject to specific accounting requirements, an audit trail
> should be easy to provide.
>
>
> A full accounting has previously been provided to you. However, we are
> including with this email an updated Disbursement Report showing all
> disbursements made from the escrow account. Beyond the attached, there are
> no further documents responsive to your request.
>
>
> 4. Kindly provide all e-mail/communications (including those from me
> and/or my
> husband) in the above referenced file from May 18, 2009 to the present.
> (Originally requested 27 August 2009)
>
> My apologies for not having completed this request. I am still gathering
> the emails you have requested and will have them to you next week.
>
> Best,
> Oliver Hack
>
> (See attached file: O'Flynn Escrow Disbursement.pdf)
>
> Oliver Hack
> Chief Operating Officer
> Mayor's Office of Housing
> 1 South Van Ness Avenue, 5th Floor
> San Francisco, CA 94103
> (415) 701-5512
> oliver.hack@sfgov.org
>
>
>
> Rita August
> O'Flynn
> <rita_august@msn. To
> com> <oliver.hack@sfgov.org>
> cc
> 08/31/2009 06:29 <dshoemaker@sfgov.org>,
> PM <markoflynn@msn.com>,
> <myrna.melgar@sfgov.org>,
> <sonia.delgado-schaumberg@sfgov.org

- > >
- > Subject
- > Prioritization of Deliverables
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- > I would like responses to my Sunshine Ordinance Requests in the following order:
- >
- > 1. As you or your staff are aware, some of the key records regarding
- > properties addressed under the 2003 Lead Hazard Reduction Grant previously
- > requested via Sunshine Ordinance Request for Disclosure were either a) not
- > provided, b) incomplete, and/or c) improperly redacted. To address these
- > deficiencies I am requesting the following for disclosure: For all
- > properties addressed under the afore referenced HUD Grant
- > (exclusive of 1672/1674 Great Highway and 23 Boardman):
- >
- >
- >
- > complete applications from each unit with the ages of house hold
- > members unredacted
- > for each unit with a child under the age of 6, documentation of a
- > pre-lead reduction/abatement lead blood test. If the lead test is for
- > a child who resides on the property, do not redact the "home" address
- > on the documentation
- > A list of which of the units met 50% of AMI and those that met 80% of
- > AMI
- > As most of these properties would still be under 5 year contractual
- > obligations under the Owner's Agreement and my request relates to HUD
- > requirements for the grant these records should be readily available to
- > MOH. (Originally requested 22 August 09). (I made MOH aware that this is
- > not a duplicative request on 27 August 09)
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- >
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- > 2. Please provide any and all certifications that MOH provided to HUD that
- > grant program recipients met HUD's Title X income eligibility requirements
- > as listed as a required action in HUD's 9 June 2005 Monitoring Review
- > letter to Matthew Franklin. If available electronically, please forward by
- > e-mail. (Originally requested 9 August 2009).
- >
- >
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- > 3. Please provide a complete accounting, including invoices,
- > authorizations, approvals, all disbursements from the escrow account for
- > 1672 Great Highway. (Originally requested 10 August 2009). The following
- > e-mail of 27 August 2009 clarified and narrowed the scope of the request.
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- > in the escrow account. I am looking for a complete accounting for the
- > remaining funds, not just that they were removed but the entire audit trail
- > to the final recipient. As the funds in the escrow account were part HUD
- > funds and subject to specific accounting requirements, an audit trail

> should be easy to provide.

>

> 4. Kindly provide all e-mail/communications (including those from me
> and/or my
> husband) in the above referenced file from May 18, 2009 to the present.
> (Originally requested 27 August 2009)

>

> I am perfectly happy to receive information in daily increments as
> available.

>

> With Kind Regards,

>

>

>

>

> Rita O'Flynn 415-386-8224 Cell: 415-260-7608

>

>

>

> From: rita_august@msn.com

> To: oliver.hack@sfgov.org

> CC: dshoemaker@sfgov.org; markoflynn@msn.com; myrna.melgar@sfgov.org;

> sonia.delgado-schaumberg@sfgov.org

> Subject: RE: 1672/1674 Great Highway Request for Immediate Disclosure

> Date: Mon, 31 Aug 2009 17:34:50 -0700

>

> Dear Mr. Hack:

>

> Your e-mail is non-responsive to my requests. There is nothing in the
> Sunshine Ordinance that prohibits me from establishing a timeline for
> receipt of records to suit my schedule and needs. If MOH needs more time,
> MOH is free to request that under the Sunshine Ordinance. I am within my
> rights to request documents, including metrics/lists that one might
> reasonably assume would be maintained by MOH. If MOH does not have the
> documents requested, MOH may indicate that there are no documents
> responsive to my request.

>

> I strive to make my requests as clear and precise in scope as possible but
> if additional clarification is needed please let me know via e-mail in a
> timely fashion.

>

> As some of these requests are more than 14 days old and I have not received
> acknowledgement of receipt for other requests, I ask that a plan for
> delivery of the materials requested below and/or statements that there are
> no documents responsive to my requests by COB tomorrow. As, according to
> the e-mail below, it is MOH's intention to gate responses to my requests,
> this should already be in the works if not completed.

>

> 1. Kindly provide all e-mail/communications (including those from me
> and/or my
> husband) in the above referenced file from May 18, 2009 to the present.
> (Originally requested 27 August 2009)

>

> 2. Please provide any and all certifications that MOH provided to HUD that
> grant program recipients met HUD's Title X income eligibility requirements
> as listed as a required action in HUD's 9 June 2005 Monitoring Review
> letter to Matthew Franklin. If available electronically, please forward by

> e-mail. (Originally requested 9 August 2009). -

>

> 3. As you or your staff are aware, some of the key records regarding

> properties addressed under the 2003 Lead Hazard Reduction Grant previously

> requested via Sunshine Ordinance Request for Disclosure were either a) not

> provided, b) incomplete, and/or c) improperly redacted. To address these

> deficiencies I am requesting the following for disclosure: For all

> properties addressed under the afore referenced HUD Grant

> (exclusive of 1672/1674 Great Highway and 23 Boardman):

>

>

> complete applications from each unit with the ages of house hold

> members unredacted

> for each unit with a child under the age of 6, documentation of a

> pre-lead reduction/abatement lead blood test. If the lead test is for

> a child who resides on the property, do not redact the "home" address

> on the documentation

> A list of which of the units met 50% of AMI and those that met 80% of

> AMI

> As most of these properties would still be under 5 year contractual

> obligations under the Owner's Agreement and my request relates to HUD

> requirements for the grant these records should be readily available to

> MOH. (Originally requested 22 August 09). (I made MOH aware that this is

> not a duplicative request on 27 August 09)

>

> 4. Please provide a complete accounting, including invoices,

> authorizations, approvals, all disbursements from the escrow account for

> 1672 Great Highway. (Originally requested 10 August 2009). The following

> e-mail of 27 August 2009 clarified and narrowed the scope of the request.

> To re-cap, upon my tenant's re-occupancy, several thousand dollars remained

> in the escrow account. I am looking for a complete accounting for the

> remaining funds, not just that they were removed but the entire audit trail

> to the final recipient. As the funds in the escrow account were part HUD

> funds and subject to specific accounting requirements, an audit trail

> should be easy to provide.

>

>

>

> With Kind Regards,

>

> Rita O'Flynn 415-386-8224 Cell: 415-260-7608

>

>

>

> > Subject: RE: 1672/1674 Great Highway Request for Immediate Disclosure

> > To: rita_august@msn.com

> > CC: dshoemaker@sfgov.org; markoflynn@msn.com; myrna.melgar@sfgov.org;

> > sonia.delgado-schaumberg@sfgov.org

> > From: Oliver.Hack@sfgov.org

> > Date: Mon, 31 Aug 2009 16:13:43 -0700

> >

> > Dear Ms. O'Flynn,

> >

> > Over the past several months, you have made more than a dozen public

> > records requests to the Mayor's Office of Housing (MOH). Almost all of

> > these requests have been styled as immediate disclosure requests. In all

> > cases we have fulfilled your requests within the allowable time frame for

> > responding to an immediate disclosure request, even though your requests
> > have often not been "simple, routine, or otherwise readily answerable,"
> > as
> > the Sunshine Ordinance requires for such requests (S.F. Admin. Code SEC.
> > 67.25(a)). Your frequent requests for information have also often
> > included
> > demands for analysis and policy guidance that are not covered under the
> > Sunshine Ordinance or the California Public Records Act. Nevertheless, in
> > an effort to be responsive, we have attempted to promptly provide you
> > with
> > the information you have requested.
> >
> > Your repeated requests have placed enormous burdens on the resources of
> > this office, yet we continue to devote as many resources as can
> > reasonably
> > be made available to respond to your requests.
> >
> > We take our obligations under the Sunshine Ordinance and other public
> > records laws very seriously and have, in good faith, provided everything
> > you have requested. To the extent your requests include one or more
> > requests for MOH to create documents, or an explanation of certain
> > content,
> > we respectfully decline and note that we are not required to perform such
> > acts under the Sunshine Ordinance or the California Public Records Act.
> >
> > As you know, the primary mission of the Mayor's Office of Housing is to
> > facilitate and provide housing opportunities for low income San
> > Franciscans. We do this through various programs for the benefit of
> > low-income renters and homeowners. Your use of this department's limited
> > resources impacts the ability of our staff to work on other matters
> > directly related to the provision of affordable housing. We hereby notify
> > you that we will be limiting the time we spend responding to any future
> > public records requests you submit to a reasonable amount of time each
> > week, to allow staff at MOH to perform our other work. In addition, we
> > will
> > look more closely at all requests styled as immediate disclosure requests
> > to see if they are truly "simple, routine, or otherwise readily
> > answerable," or rather are "more extensive or demanding requests," for
> > which the normal time frame for responding to public records requests
> > apply. (S.F. Admin. Code SEC. 67.25(a))
> >
> > We remain deeply committed to open government and public scrutiny-
> > including transparency in the City's policy making- and regret that your
> > repeated requests for the immediate release of voluminous collections of
> > sensitive documents has forced us to apply the doctrine of implied rule
> > of
> > reason, well established under California case law, which sets reasonable
> > limits for responding to public records requests.
> >
> > We respectfully request that you define and narrow any future Sunshine
> > request so that this office may provide you with the requested materials
> > in
> > a prompt and efficient manner. Again, we shall comply with any and all
> > Sunshine requests, but will be limiting our staff time on your requests
> > as
> > set forth above.
> >

> > Sincerely,
> > Oliver Hack
> >
> > Oliver Hack
> > Chief Operating Officer
> > Mayor's Office of Housing
> > 1 South Van Ness Avenue, 5th Floor
> > San Francisco, CA 94103
> > (415) 701-5512
> > oliver.hack@sfgov.org
> >
> >
> > Rita August
> > O'Flynn
> > <rita_august@msn. To
> > com> <oliver.hack@sfgov.org>
> > cc
> > 08/31/2009 09:16 <myrna.melgar@sfgov.org>,
> > AM <dshoemaker@sfgov.org>,
> > <sonia.delgado-schaumberg@sfgov.org
> > >, <markoflynn@msn.com>
> > Subject
> > RE: 1672/1674 Great Highway Request
> > for Immediate Disclosure
> >
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> >
> > What is the status of this request?
> >
> > Rita O'Flynn 415-386-8224 Cell: 415-260-7608
> >
> >
> >
> > From: rita_august@msn.com
> > To: oliver.hack@sfgov.org
> > CC: myrna.melgar@sfgov.org; dshoemaker@sfgov.org;
> > sonia.delgado-schaumberg@sfgov.org; markoflynn@msn.com
> > Subject: 1672/1674 Great Highway Request for Immediate Disclosure
> > Date: Thu, 27 Aug 2009 18:03:30 -0700
> >
> > Kindly provide all e-mail/communications (including those from me and/or
> > my
> > husband) in the above referenced file from May 18, 2009 to the present.
> >
> > Rita O'Flynn 415-386-8224 Cell: 415-260-7608
> >
> >
> >
> >

Oliver
Hack/OCDHH/MAYOR/SFGO
V

09/14/2009 09:20 AM

To Rita-August O'Flynn <rita_august@msn.com>
cc dshoemaker@sfgov.org, markoflynn@msn.com,
myrna.melgar@sfgov.org,
sonia.delgado-schaumberg@sfgov.org, sotf@sfgov.org
bcc

Subject RE: Request for Information for 1672/1674 Great Highway 

Apologies for the delay. I'm working on this request and hope to have it to you shortly.

Best,
Oliver Hack

Oliver Hack
Chief Operating Officer
Mayor's Office of Housing
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
(415) 701-5512
oliver.hack@sfgov.org

Rita August O'Flynn ---09/12/2009 09:12:31 AM---What is the status of this request?



Rita August O'Flynn
<rita_august@msn.com>
09/12/2009 09:12 AM

To <oliver.hack@sfgov.org>
cc <markoflynn@msn.com>, <dshoemaker@sfgov.org>,
<myrna.melgar@sfgov.org>,
<sonia.delgado-schaumberg@sfgov.org>, <sotf@sfgov.org>
Subject RE: Request for Information for 1672/1674 Great Highway

What is the status of this request?

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

From: rita_august@msn.com
To: oliver.hack@sfgov.org
CC: markoflynn@msn.com; dshoemaker@sfgov.org; myrna.melgar@sfgov.org;
sonia.delgado-schaumberg@sfgov.org
Subject: Request for Information for 1672/1674 Great Highway
Date: Sat, 5 Sep 2009 11:57:08 -0700

Dear Mr. Hack:

I have done a cursory review of the fund disbursement for my property provided by MOH yesterday in response to a Sunshine Ordinance Request for Information and am requesting the following:

A disbursement on 5/02/07 of \$1068.23 was made to Rhapsody Painting and Environmental. I do not see corresponding paperwork for this payment. **Please scan and e-mail any and all information regarding this payment, including but not limited to communications within MOH and between MOH and Rhapsody regarding this payment, changes in scope, itemized invoices, dates of service, and authorization**

for payment. If there is any information as to why Owners were not made aware of or approved of this payment, please provide that as well or indicate that MOH has no documents responsive to the request.

Please ensure that the Fund Disbursement Report MOH provided yesterday and a copy of this e-mail are part of the permanent record for 1672/1674 Great Highway.

With Kind Regards,

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

O'FLYNN'S SUBMISSION TO THE SOTF FOR 9/22/09 HEARING

RE: Sunshine Ordinance Request for Records for 1672/1674 Great Highway

1672/1674 Great Highway are two separate single family homes sited on a single lot owned jointly by my husband Mark and me. MOH conducted lead abatement on my property in 2005 under HUD's Lead Hazard Reduction Grant program (Notice of Funding Availability (NOFA) for the Lead Hazard Reduction Demonstration Grant Program for Fiscal Year 2003). This program is legislated by Title X to reduce the lead exposure to young children in buildings built prior to 1948 which are occupied by low income owners or tenants who have a child under the age of six residing at or spending at least 6 hours per week at the property. MOH's condition of the grant is that the property is to remain occupied by low income individuals for a period of five years, otherwise the owner may choose to opt out by repaying the grant funds.

In July of 2006 my husband and I attempted an Owner Move-in Eviction at 1672 Great Highway. In January of 2007, during the course of the eviction, we notified MOH in writing of our intention to "opt out" of the Lead Program and return the funding if we were successful in evicting the tenants at 1672 Great Highway; we also advised MOH of our suspicions regarding our tenants' ineligibility for the grant funds under their program due to there being no child under the age of six residing at or spending six hours per week at the property. (See Exhibit 1-O'Flynn correspondence to MOH dated January 9, 2007.) The Tenant we were attempting to evict is a neighborhood activist, recent president of the Sunset Democratic Club, and a San Francisco Taxi Commissioner.

At the owner move-in eviction hearing in March of 2007, Myrna Melgar-Iton of the Mayor's Office testified that MOH never received our opt out letter. (See Exhibit 2, Sworn Testimony of Myrna Melgar-Iton, p. 265, lines 17-20.) We lost at the eviction hearing and as such, did not return the funding. The tenant subsequently sued us for unlawful eviction and her case was settled \$50,000.

As a former federal employee, some of Melgar-Iton testimony regarding our property and the HUD lead abatement grant struck me as atypical for a federal program. After the trial, I was made aware of the availability of record review and receipt under the Sunshine Ordinance and in March of 2007 requested an opportunity to review the files for 1672/1674 Great Highway. My review of the file at the MOH office confirmed the concerns I developed from Melgar-Iton's sworn testimony so I requested a complete copy of the files for 1672/1674 Great Highway. When I went to pick up the copies, I was informed that Melgar-Iton wished to speak with me prior to the release of the copies. I refused this meeting, then paid for and received the copy of the files. At home that same day I noticed that a considerable amount of the communications that I had reviewed at the MOH office was missing. Missing communication included extensive communication between the tenant at 1672 Great Highway and Melgar-Iton regarding grant qualification, relocation, and politics. Specifics include an e-mail from my tenant to Melgar-Iton where she stated she could claim her grandson plays in front of our second free-standing property so that additional funding could be obtained; communication from Melgar-Iton regarding relocating my tenant to the Grovesner Hotel and her subsequent relocation to an all inclusive executive suite hotel outside of the city. I made repeated attempts to get the missing information from MOH however I finally received a letter from Douglas Shoemaker indicating that as MOH considered 1672/1674 Great Highway to have been completed 2 years before my requests, records were destroyed in compliance with their written record keeping policies. This statement is inconsistent with the fact I had reviewed these records at the MOH office and I believe these documented communications were destroyed in violation of MOH's own policies and the Sunshine Ordinance.

In July of 2007, we filed an Ellis Act eviction on 1672/1674 Great Highway. The tenant at 1672 Great Highway claimed to be a "protected tenant" and exercised her right to 1 year notice. In July of 2008 the tenant did not relinquish possession of 1672 Great Highway and an unlawful detainer was filed against the tenant at 1672 Great Highway.

In December of 2008, in response to a subpoena in the Ellis Act eviction, Melgar-Iton produced our opt out letter of January 2007 which she previously denied receiving. (Exhibit 1.) She also produced an unsigned response/demand letter from MOH dated February 26, 2007, requesting repayment of the grant funds. (See Exhibit 3, Michael Palmer's response letter to O'Flynn dated February 26, 2007.) It is important for the SOTF to understand that this response letter was dated prior to her testimony at the owner move-in eviction hearing in March 2007 where she stated under oath and penalty of perjury that she never received our opt-out letter. Melgar-Iton further stated in her response to this subpoena that the Department of Information (DIT) restored all of her deleted e-mail and that there are no additional documents regarding 1672/1674 Great Highway available. (See Exhibit 4, Melgar-Iton subpoena response letter to Greenquist dated December 19, 2008.) DIT, however, has no written record of any requests for restoration of e-mail from MOH or of any materials provided to MOH. (See Exhibit 5, e-mail communication from DIT to Rita O'Flynn dated August 12, 2009.) MOH confirms they made no written request for back ups of deleted e-mail as stated by Melgar-Iton in her response letter to the subpoena. (See Exhibit 6, e-mail communication from MOH to Rita O'Flynn dated August 27, 2009.)

In January of 2009 we received a unanimous 12-0 jury verdict in the Ellis Act eviction hearing. Our tenant has filed an appeal and has received a stay of her eviction pending her appeal. As of this hearing, the tenant remains in possession of the property.

Based on my request for restoration of records that had been inappropriately destroyed, the Sunshine Ordinance Task Forces issued an Order of Determination on 1 April 2009 indicating that the documents regarding 1672/1674 Great Highway that had been destroyed/deleted by MOH should be restored and provided to me.

On April 20, 2009 MOH sued Mark (but not me) for Breach of Contract, Specific Performance, Money Had and Received, Equitable Estoppel, Declaratory Relief, Unjust Enrichment, and Breach of Covenant of Good Faith and Fair Dealing regarding 1672 Great Highway. The basis for this complaint is the January 2009 jury decision in our favor, however the complaint fails to state that the eviction is stayed and that the tenant remains in possession of 1672 Great Highway. The complaint also alleges non-responsiveness of Mark to 2 demand letters sent by MOH. Mark and I never received either of the alleged demand letters nor were any demand letters ever provided by MOH in response to any Sunshine Ordinance Request for Information for 1672/1674 Great Highway.

The SOTF should also be aware that the tenant is being represented by the Tenderloin Housing Clinic, a non-profit legal aid organization which receives a substantial portion of their funding from the MOH and that Melgar-Iton made a personal referral of our tenant to the THC for free legal representation in the eviction proceedings. (See Exhibit 7, Melgar's letter to the editor of BeyondChron, dated January 13, 2009.)

In addition to the missing documentation referred to above, my review of the files for 1672/1674 Great Highway to date revealed the following:

- MOH accepted an application from the tenant at 1672 Great Highway who signed under penalty of perjury as owner of the property without owner's review or approval.

- No application was submitted by either the tenant of 1674 Great Highway or us as owners of 1672/1674 Great Highway.
- MOH did not document that a child under the age of 6 resides at both 1672 and 1674 Great Highway in violation of the grant agreement between MOH and HUD for this grant.
- No lead testing of any alleged children was performed per HUD's Notice of Funding Availability (NOFA), Section V (N) (1) (c) (see Exhibit 9) ; HUD's Policy Guidance Number 2000-04 (See Exhibit 10); and the grant agreement between MOH and HUD for this grant, Section 31(i).
- MOH has no or incomplete documentation or verification that the households of 1672 or 1674 Great Highway met or continues to meet the income requirements set forth by the Title X, NOFA, HUD's Policy Guidance Number 2005-01 for this grant as follows:
 - o According to the tenant's application, there were 3 adults residing at 1672 Great Highway, all of whom were receiving income. MOH increased the occupancy to 4 to include a child who doesn't spend at least 50% of their time in the. Furthermore, MOH only documented the income from only one household member.
 - o Income from a business being run out of 1672 Great Highway and that from another tenant residing at 1672 Great Highway was not included in the income verification by MOH.
 - o Verification of income for 1672 Great Highway was not done by MOH within 6 months of abatement as required by HUD.
 - o The qualifying income limits used by MOH exceed the maximum income limits established by HUD for this grant.
 - o There was no verification of income whatsoever for 1674 Great Highway.
 - o There was no documentation of a child under the age of six residing or spending at least 6 hours per week at 1674 Great Highway.

Thus, without adequate due diligence or verification of program eligibility, a grant was approved for \$27,215 for 1672 Great Highway. This grant amount is in excess of the maximum \$25,000 per unit lead reduction activities allowed per Title X. Title X requires units that receive in excess of \$25,000 in HUD grant funds be abated and that pre-approval from HUD is obtained prior to abatement. Complete lead abatement was not performed nor was there pre-abatement approval for 1672 Great Highway from HUD as is was required by the NOFA Section IV (C) (1) (b) ii.

MOH, specifically Melgar-Iton, made misrepresentations including that the required due diligence and verification of grant eligibility had been performed for 1672 Great Highway; specifically that the tenants at 1672 Great Highway met HUD's requirements for income eligibility, that a child under the age of 6 resided at, or spends at least 6 hours per week at, 1672 Great Highway, and that all pre-abatement/reduction environmental reviews had been satisfied. Based on these misrepresentations, Mark executed an "Owner's Agreement" provided by MOH for the abatement of lead at 1672 Great Highway.

After lead-related demolition at 1672 Great Highway began, MOH requested that owner sign a new Owner's Agreement for HUD funding of \$10,950.00 for the separate single family residence at 1674 Great Highway. Mark refused to execute this agreement and therefore did not enter into any agreement for lead abatement or reduction activities at 1674 Great Highway. This

unsigned agreement is not on file with MOH and MOH now claims to have "verbal agreement" for this funding and its expenditure.

We did not approve of, or authorize any payments to the lead abatement contractor selected by MOH. In addition, we were not made aware of, approved of, nor authorized payment for the 3 changes in scope submitted by the lead abatement contractor.

In addition to problems with documentation noted above, there were numerous instances of project mismanagement, including but not limited to serious violations of city, state, and federal law regarding lead abatement at 1672/1674 Great Highway. Owner brought these issues to the attention of MOH. Specific violations/mismanagement included, but were not limited to the following:

1. The lead abatement contractor demolished a large portion of 1672 Great Highway with a bulldozer without lead containment of any sort. Mark reported this to MOH, however they did not document his report.
2. The lead abatement contractor did not obtain all lead abatement permits prior to abatement as required by the City of San Francisco for abatement.
3. The lead abatement contractor performed exterior dry hand and mechanical sanding without HEPA filtration as required by HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (HUD Guidelines), Chapters 11 and 12.
4. The lead abatement contractor performed services which he was not licensed to perform including demolition, structural modification, and window replacement.
5. There was no Historic Preservation Review or Rehabilitation Environmental Review (RER) conducted for 1674 Great Highway.
6. A required concurring letter of from the State Historical Preservation Officer (SHPO) was not sought by MOH until after grant funds were expended.
7. The lead certification of Michael Palmer of MOH was expired for a significant amount of the time he was designing the lead abatement/reduction plan for 1672 Great Highway.
8. MOH notified the tenants in writing that it was "safe to return" to 1672 Great Highway in early September 2005. This was done prior to the completion of lead-related construction including MOH-specified window replacement and without a final lead clearance in violation of 24 CFR Part 35, subpart A, 40 CFR Part 745, and HUD Policy Guidance #99-01.
9. The Rehabilitation Environmental Review (RER) for 1672 Great Highway was prepared after the funding was expended on the project and after Melgar-Iton declared the unit "safe to re-occupy" as noted above.
10. The lead-related construction was complete on 31 January 2006. The tenants re-occupied the property on 1 February. As of this notice, there is no final clearance per 24 CFR Part 35, subpart A, 40 CFR Part 745, and HUD Policy Guidance #99-01 for 1672/1674 Great Highway.
11. MOH has just provided additional financial records for 1672/1674 Great Highway that differ from those originally provided which include payments made to the painting contractor well into 2007, long after MOH states the project was completed. MOH has been non-responsive to my formal requests for clarification of these expenditures.

Most egregious is the evidence provided to me by MOH on September 11. Specifically, MOH provided me e-mail from Michael Palmer regarding 1672/1674 Great Highway that was not part of the file for 1672/1674 Great Highway when I did my on-site review or provided under any of my previous requests for information. This is an e-mail from Michael Palmer to Melgar-Iton on 14 February 2007 with an attached draft letter. (See Exhibit 8, email from Palmer to Melgar with attached draft letter to O'Flynn dated February 13, 2007.) Although Melgar-Iton denied having

received our opt-out letter under penalty of perjury, she was clearly aware of our letter and MOH was taking action to mitigate its affect on our Owner Move-In Eviction. I believe Melgar-lon and others in the MOH continue to engage in inappropriate activities to cover up the repeated illegal actions on their part.

We have filed a formal complaint regarding 1672/1674 Great Highway with HUD in August of 2009.

I respectfully request that the Sunshine Ordinance Task Force make a determination that the MOH should have the requested emails restored by DIT at MOH's costs and that redaction of records be addressed by an independent third-party to minimize the bias that has been clearly demonstrated by the MOH. I also request that SOFF refer this matter to the Ethics Commission and the District Attorney's Office for further investigation.

Respectfully,

Rita O' Flynn

**EXHIBIT 1:
O'FLYNN CORRESPONDENCE TO MOH DATED
JANUARY 9, 2007**

Mark O'Flynn
1766 Union Street, Suite E
San Francisco CA 94123-4423
Office (415) 775-6011
Facsimile (415) 921-3991

January 9, 2007

LHR Program Manager
Mayor's Office of Housing
25 Van Ness Avenue, Suite 600
San Francisco CA 94102

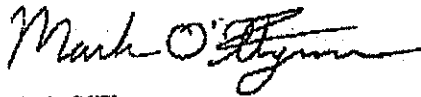
Dear LHR Program Manager,

I am writing regarding my July 7, 2005 Agreement Regarding Lead Hazard Reduction Activities (the "Agreement") at 1672 Great Highway (the "Premises") for a grant in the amount of \$27,215.00 .

It has come to my attention that my tenant, Susan Suval, may have misrepresented in her grant application that a child under the age of 6 years resides at or spends 6 hours or more a week on the Premises. I request your office to investigate whether Ms. Suval did in fact make such misrepresentations in her grant application and inform me of the repercussions if a child under the age of 6 is in fact not spending at least 6 hours a week on the Premises.

I am in the process of pursuing an owner-move-in eviction of the Premises and if successful will opt out of the Agreement pursuant to section 1 (d) (1).

Sincerely,



Mark O'Flynn

MARK OFELVNN
ATTORNEY AT LAW
1766 UNION ST STE B
SAN FRANCISCO, CA 94123

RECEIVED

Housing

MARK PROGRAM MANAGER
MAYOR'S OFFICE OF HOUSING
25 VAN NESS AVE STE 600
SAN FRANCISCO CA 94102-5416



\$0.39⁹
JAN 09 2007



FIRST CLASS MAIL
MAILED FROM 94123
0625000094545

MARK PROGRAM MANAGER

NOTIFY SENDER OF NEW ADDRESS
MAYOR'S OFFICE OF HOUSING
25 VAN NESS AVE STE 600
SAN FRANCISCO CA 94102-5416

94102-5416 FOR
94102-5416

94102-5416 *1240-02090-09-98

EXHIBIT 2:
SWORN TESTIMONY OF MYRNA MELGAR-ITON

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APPELLATE DIVISION OF THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

-000-

ENDORSED
FILED
San Francisco County Superior Court

JUN 11 2007

MARK O'FLYNN, et al.,
Plaintiffs/Appellants,
versus
SUSAN SUVAL, et al.,
Defendants/Respondents.

GORDON W. PERKINS, Clerk
BY: _____ Deputy Clerk

CASE NUMBER
CUD-06-620331

COPY

ON APPEAL FROM THE JUDGMENT
OF THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
LIMITED JURISDICTION

BEFORE THE HONORABLE DIANE ELAN WICK, JUDGE

REPORTER'S TRANSCRIPT ON APPEAL

FRIDAY, MARCH 9, 2007 AND MONDAY, MARCH 12, 2007

VOLUME II OF II (Pages 247 - 490)

-000-

FOR PLAINTIFFS/APPELLANTS: DAVID P. WASSERMAN, ESQUIRE
DANIEL R. STERN, ESQUIRE
Wasserman-Stern
2960 Van Ness Avenue
San Francisco, CA 94109
(415) 567-9600

FOR DEFENDANTS/RESPONDENTS: DEAN PRESTON, ESQUIRE
RAQUEL FOX, ESQUIRE
Tenderloin Housing Clinic
126 Hyde Street, 2nd Floor
San Francisco, CA 94102
(415) 771-9850

1 (Thereupon Myrna Melgar Iton was duly
2 and regularly sworn by the courtroom
3 clerk.)
4 THE WITNESS: I do.
5 THE CLERK: Please be seated.
6 Please state your full name and spell it for
7 the record.
8 THE WITNESS: My name is Myrna Melgar Iton,
9 M-y-r-n-a, M-e-l-g-a-r, I-t-o-n.
10 TESTIMONY OF
11 MYRNA MELGAR ITON,
12 called as a witness by the defendants, having been first
13 duly and regularly sworn, was examined and testified as
14 follows:
15 DIRECT EXAMINATION
16 BY RAQUEL FOX:
17 Q Good morning.
18 A Good morning.
19 Q Could you tell us where you're employed?
20 A I work for the City and County of San
21 Francisco.
22 Q And in what capacity?
23 A I am the Director of Home Ownership Programs
24 at the Mayor's Office of Housing.
25 Q And prior to having that role where were you
26 working?
27 A I was also working at the Mayor's Office of
28 Housing as the Lead Program Manager.

DENISE L. DOUCETTE, CSR, RDR, CLVS, FAPR 258

1 Q Could you tell the jury what type of training
2 you received to be able to qualify for that position.

3 A Yes. I have a bachelor of arts from Regents
4 College at the University of the State of New York. I
5 have a master's degree in urban planning from Columbia
6 University in New York. I'm a Certified Urban Planner.
7 I am also a Lead in Construction Lead Risk Assessor
8 certified by the Department of Health Services in
9 California.

10 Q Thank you.

11 I want to direct your attention back to 2005.
12 Did you receive a call from Mark O'Flynn?

13 A I actually received a call from Mark O'Flynn
14 in 2004.

15 Q Okay. Could you tell the jury about that.

16 A Yes. Mr. O'Flynn called me because the City
17 had just received a large award from the Department of
18 Housing and Urban Development. It was a \$3 million
19 grant to do lead abatement in properties occupied by
20 low-income families with children. And HUD put out a
21 press release; and my name as the Lead Program Manager,
22 since I wrote the grant proposal, was on the website
23 with my contact information.

24 And he found us and called me and we had a --
25 you know, maybe a 20-minute conversation. It was very
26 amicable, and he was interested in the program. He did
27 question me as to why he hadn't heard of it through
28 local sources but, rather, learned of it from the HUD

DENISE L. DOUCETTE, CSR, RDR, CLVS, FAPR 259

1 website. And I explained to him that we do very
2 targeted marketing in neighborhoods where there are high
3 rates of lead-poisoned children, which is usually very
4 poor neighborhoods, the Mission, Bayview/Hunters Point,
5 you know.

6 So he told me that he had a tenant in his
7 property who was low income and who had a child who
8 visited, and he thought she was qualified for the
9 program. And we left it at that.

10 Q At some point in time were you contacted by
11 Susan Suval to apply for this lead program?

12 A Yes. Shortly thereafter -- and I don't
13 remember exactly how long thereafter -- I got a call
14 from Susan. And she was -- she had talked to Mr.
15 O'Flynn about the program. And she told me she had a
16 grandson who would spend a period of time during the
17 summer with them. He -- the grandson lived with his
18 mother but would come and visit, and she was concerned
19 about the lead in the property, but also wanted to know
20 what kind of tenant protections we could provide, you
21 know, while the work was going on, because she was
22 afraid of -- you know, of the environmental issues.

23 We had a fairly long conversation, and I
24 learned she was disabled and that she was a very active
25 member of the community, so we -- it was a long
26 conversation.

27 Q Okay. Did she also express concern to you
28 about tenant protection if she were to move out, about

1 being able to come back in?

2 A Yes, she did. And so what our standard policy
3 is to help with relocation, we pay for the relocation of
4 the tenants while the work is being done. We make sure
5 that they are housed and fed.

6 She was concerned that she was a
7 rent-controlled, protected tenant and that this was a
8 new landlord. She wasn't sure about the relationship
9 she had with the landlord. She was concerned that if
10 she moved out, she wouldn't be able to come back in.

11 So what I explained to her is that our program
12 provides grants for the property owners to do the work,
13 and in the grant agreement they must agree to keep the
14 property rented to a low-income household with children
15 who either live or visit for a period of five years. If
16 they somehow want to get out of the grant, they must
17 repay it. But then, also, if the property becomes
18 vacant, they have to agree to give priority in rerenting
19 to another low-income family with a child under six
20 years old.

21 Q Okay. Now, the lead program itself has two
22 compartments, components?

23 A Yes. Well, we -- yes. Roughly, we have a
24 financing period where we make sure we're complying with
25 all the federal, state, and local laws that deal with
26 lead and the environmental hazards. And during that
27 phase of the project, we go through historic review; we
28 do a full risk assessment; and then we approve the

DENISE L. DOUCETTE, CSR, RDR, CLVS, FAPR 261

1 funding for the project.

2 During the second phase we actually do the
3 construction and we do the construction management. And
4 it's a very work-intensive period, because the law
5 requires us to go out there and do very regular
6 inspections to make sure that the containment is being
7 done properly, that the guys who are working are wearing
8 their masks and their gloves, and that things are being
9 done properly.

10 Q Now, in this particular instance, you were the
11 finance person?

12 A Yes. So I am in charge of the first phase, so
13 I order the historic review and the environmental
14 review. I order the risk assessment, review the scope
15 of work, approve the funding, and make sure that the
16 property owner signs all the paperwork.

17 Q Let's go step by step. So in this case you
18 did a historical check of the property?

19 A Yes. The first thing we did with this
20 property is have a risk assessor from the Public Health
21 Department go out and see if there was lead in the
22 property, which there was. There was very high lead
23 levels.

24 Then we ordered a more thorough risk
25 assessment from a company named Benchmark. They came in
26 and tested for lead in every wall, every window,
27 interior, exterior, and soil.

28 And then our construction project manager,

DENISE L. DOUCETTE, CSR, RDR, CLVS, FAPR 262

1 Michael Palmer, went out with the report from Benchmark
2 and wrote a scope of work. So he looked at the risk
3 assessment and saw where the levels of lead were high,
4 and then he looked at the actual condition of the
5 building and saw whether things needed to be replaced or
6 they could actually just be fixed, you know, contained
7 and then repainted.

8 And after the scope of work was written and I
9 approved it, he bid the project out. We had three
10 bidders on this project, and the one we selected was
11 Rhapsody, Rhapsody Environmental and Painting Company.

12 Q Now, do you recall what the scope of the work
13 was supposed to be?

14 A Yes. We were supposed to do exterior
15 containment, repainting, and some demolition on the
16 front side of the building, the back side, and the
17 side -- so if you're facing the house, it's on the left
18 side. So that was the exterior work.

19 The interior work was pretty extensive.
20 Almost every surface needed some kind of either scraping
21 and painting and replacement, and then we replaced most
22 of the windows.

23 The back of the house had a laundry porch that
24 was -- had structural issues. And it was also covered
25 in lead paint on the inside and on the outside, and it
26 was peeling. And so we called for demolition of that
27 altogether because there was no way to fix it.

28 Q Okay. So once you had the scope of the work,

1 sent out bids, and you eventually picked Rhapsody, did
2 you pick Rhapsody because that was the lowest bid?

3 MR. STERN: Objection, your Honor. Related to
4 the motion in limine.

5 THE COURT: I'm going to sustain it. I think
6 you need to move away from there.

7 MS. FOX: Q Did you pick Rhapsody because
8 Mr. Ruiz was someone that was employed through that
9 company?

10 A We have about ten contractors who regularly
11 bid on our projects. We have them because in order to
12 do lead work in California, you must be certified by the
13 Department of Health Services, which requires extensive
14 training and tests. It's not just anyone who can do
15 this work.

16 Mr. Ruiz has had a history with the lead
17 program. We have a relationship with him through the
18 lead program, and we picked him because, among other
19 things, he's very good with tenants who need a little
20 more hand-holding. So whenever we have residents who
21 are either limited English-speaking or elderly or
22 disabled or have small children, Mr. Ruiz, in our
23 experience, is very sensitive to their issues. So that
24 was one of the reasons why we picked him for this job.

25 Q Okay. And once you had Mr. Ruiz as the
26 contractor, did you then meet with Mr. O'Flynn to have
27 some paperwork signed?

28 A Yes. Mr. O'Flynn came into our office at 25

1 Van Ness and signed an owner's agreement. We met for
2 between 45 minutes and an hour. It was a very amiable
3 meeting. We went through the program, through all the
4 stipulations of the program, and he signed the owner's
5 agreement, and he initialed and signed the scope of work
6 with Joseph Ruiz.

7 Q Okay. Now, was he required to put up some
8 money into escrow for the rebuilding phase?

9 MR. STERN: Objection, your Honor; again
10 related to the motion in limine.

11 THE COURT: I'll sustain that.

12 MS. FOX: Q The stipulation is the one you've
13 spoken about, about renting out for five years?

14 A Yes.

15 MR. STERN: Objection; leading question.

16 THE COURT: I'll allow it.

17 MS. FOX: Q Now, have you received any kind
18 of letter from Mr. O'Flynn telling you that he's opting
19 out of the program?

20 A No, I have not.

21 Q Now, did you monitor the program while it was
22 in progress?

23 A Oh, yes. We are required to do that.

24 Q And at some point in time did you become
25 suspicious that he was trying to do work outside the
26 scope?

27 A Well, we always knew he was doing work outside
28 the scope. We actually required him to do some work

1 outside the scope.

2 We started having disagreements about the
3 length of the work and how it was being done in
4 conjunction with the lead program.

5 We often have property owners who do work
6 that's not lead related while we do the lead-related
7 work because it just makes sense. You know, we have
8 already a contractor; we have containment; we have all
9 these things in place; so we encourage that. But we
10 require that it be done in coordination, because it
11 might jeopardize the environmental containment. And
12 also, it may jeopardize the timing of the project, so we
13 require that things be done in coordination and be
14 closely watched.

15 In this instance, the project stretched on way
16 longer than we had agreed to.

17 Q Okay. If you recall, was there anything --
18 strike that.

19 At some point in time did you write a letter
20 to Susan letting her know that she could return?

21 A Yes. In September of '05. I had gotten
22 several faxed letters from Mr. O'Flynn. There was a
23 disagreement about a window in the bathroom.

24 When we did the historic review of the
25 property, the architectural historian that we hired
26 found that this project was extremely historic. It was
27 originally part of the little village called Oceanside,
28 which wasn't even part of San Francisco; it was a

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1 settlement on the other side of the sand dunes.

2 And the architectural historian was concerned
3 that we replace everything on the property with in kind
4 to preserve the architectural integrity of the building,
5 so we did amend the scope of work. We upgraded the
6 windows. They are wooden windows and in keeping, you
7 know, with the character of the building.

8 In the bathroom there was two windows, one
9 double-hung and one casement window. There was a
10 disagreement -- when Mr. O'Flynn remodeled the bathroom,
11 one of those windows was removed, and the window that
12 was replaced by the lead program was a casement window.
13 Mr. O'Flynn was not happy with that.

14 There was also a disagreement about the
15 timing, because Mr. O'Flynn's contractor was doing some
16 work with the foundation, and our contractor was
17 concerned that if the window was put in while the
18 structure was being messed with, that the window might
19 be cracked.

20 So there was some disagreement about both the
21 timing and the particular window that was going in. Mr.
22 O'Flynn had wanted a different type of window, which was
23 ordered at the contractor's expense; the lead program
24 did not pay for it. And that, you know, stretched out
25 the project because the window didn't come in right
26 away.

27 As I remember, Mr. O'Flynn had wanted his
28 contractor to replace the siding outside that window.

1 And there was some plumbing work that needed to be
2 redone, and his contention was that until we replaced
3 that window, his contractor could not do the work that
4 Mr. O'Flynn had wanted to.

5 However, there was no danger to the occupant
6 from any of that work, because it was exterior work; it
7 was done with proper containment. So my stipulation to
8 Ms. Suval was that there was no longer any lead hazard;
9 she could come and reoccupy the property.

10 We had by this time not only finished the work
11 and cleaned up the work, but we had done lead wipe
12 samples that had come back from the laboratory that said
13 that the property was free of lead hazards and it was
14 safe for her to reoccupy.

15 Q There should be a folder up there. Could you
16 turn to Exhibit 32, please.

17 A Okay.

18 Q Is this a letter that you're referring to
19 where you let Susan know that she could return to her
20 home because it was now safe to return?

21 A Yes.

22 Q And could you for the jury let them know the
23 date of this letter.

24 A It's September 13, 2005.

25 Q Okay. And could you read what the letter
26 states.

27 A Um-hmm.

28 "Dear Susan: After our

1 conversation over the phone this
2 morning, the lead hazard remediation
3 in your home was finished last week.
4 Thus, the wipe samples taken confirm
5 that the dust lead levels are within
6 the safe limits allowable by the
7 Environmental Protection Agency.
8 This letter serves to inform you that
9 it is now safe to reoccupy your unit.
10 Any further delay in your reoccupancy
11 is not due to the activities of the
12 lead program. If you have any
13 questions about your rights as a
14 tenant, please refer to San Francisco
15 Administrative Code, Chapter 7,
16 particularly Section 37.911 and 14,
17 which deal with temporary evictions
18 for capital improvement activities.
19 You can also consult the San
20 Francisco Rent Board staff at area
21 code 415-252-4647, or in person at 25
22 Van Ness, Suite 300, between eight
23 and five. Please let me know if I
24 can assist you further, Susan. And I
25 hope that you now have greater peace
26 of mind that your grandson can stay
27 with you and be safe."
28 Q And was this co'd to Mark O'Flynn, also?

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1 A Yes, it was.

2 Q And to Maggie Davis?

3 A Yes, and to Supervisor Fiona Ma, who had
4 called me and expressed interest in this case.

5 Q Okay. And prior to today had you ever
6 actually met Susan Suval in person?

7 A No, actually, I had not. I spent hours on the
8 phone with her, but I had never met her in person.

9 Q Okay. Did you find Mr. O'Flynn to be very
10 difficult to deal with?

11 MR. STERN: Your Honor, objection.

12 THE COURT: Sustained.

13 MS. FOX: Q Did you find that he was less
14 than truthful?

15 MR. STERN: Your Honor, objection.

16 THE COURT: Sustained.

17 MS. FOX: Q Did Mr. O'Flynn start stretching
18 and making excuses as to why the work was taking longer?

19 MR. STERN: Your Honor, same objection.

20 THE COURT: I'll sustain. You can rephrase.

21 MS. FOX: Q Did you find -- well, strike
22 that.

23 Did Mr. O'Flynn start extending the scope of
24 the work that had been agreed upon initially?

25 MR. STERN: Your Honor, asked and answered.

26 THE COURT: I'll allow it.

27 THE WITNESS: A Yes.

28 MS. FOX: Q Could you tell the jury how that

1 started taking place.

2 A So the work that Mr. O'Flynn was doing really
3 presented access problems and containment problems for
4 our contractor, so I must stress that our grant funds
5 from HUD are very restricted in how the work needs to be
6 performed. We need to do containment. The workers need
7 to wear protective equipment. And we need to monitor
8 the things that are being done.

9 We found that Mr. O'Flynn's contractor did not
10 use proper containment and was jeopardizing the way that
11 we were doing our work. For example, when he removed
12 the back siding that was needed to be done in order to
13 rebuild the porch, a lot of the work was done very
14 sloppily without any containment; there were lead-based
15 paint chips all over the backyard so that it took our
16 contractor quite a bit more time and effort to clean it
17 up so that we could then pass clearance at the end of
18 our project.

19 So it seemed that not only during the work,
20 but after the work was done, Mr. O'Flynn had a lot of
21 problems with the work that was being done. We received
22 a long -- our contractor -- our project manager, Michael
23 Palmer, wrote down an extensive list of things that Mr.
24 O'Flynn wanted our contractor to come back and do that
25 were mostly cosmetic that stretched out the amount of
26 time that we were involved in this project.

27 MR. STERN: Your Honor, I'm going to strike.
28 That was well beyond the scope of the question.

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1 Moreover, it contained hearsay.

2 THE COURT: I'll overrule it at the moment.
3 Ask more distinct questions that don't require a
4 narrative answer, please.

5 MS. FOX: Yes, your Honor.

6 THE COURT: And again, if you would please
7 listen to the question and answer only what the question
8 asks for.

9 MS. FOX: Q. Did you have an opportunity to
10 look at the bathroom after it had -- the property had
11 been remodeled?

12 A I did not.

13 Q Okay. Did it ever come to your attention that
14 the work in the bathroom was not suitable for someone
15 that was handicapped?

16 A Yes. Ms. Suval --

17 Q Okay. Go ahead.

18 A Ms. Suval mentioned to me that it was not
19 usable by her because of her disability.

20 Q And did she explain what was missing?

21 A The towel bar -- or the bar that she would
22 hold onto when, you know, taking a shower.

23 Q Did you find Mr. O'Flynn to be super smart,
24 very highly -- just highly intelligent?

25 MR. STERN: Your Honor, I'm going to object.

26 THE COURT: Sustained.

27 MS. FOX: Q If Mr. O'Flynn had applied for
28 this program as an owner occupant, would he have

1 qualified?

2 A I don't know, because Mr. O'Flynn never

3 presented his own income. The program is only available

4 to households that are low income and who either have

5 children who reside at the property or visit for six

6 hours in a week or more.

7 Q Now, just getting back -- without mentioning

8 the amount of the grant, Mr. O'Flynn did receive a

9 grant?

10 A Yes, he did.

11 Q And he used that grant money not only for the

12 front property, but for the back property?

13 MR. STERN: Objection, your Honor; calls for

14 speculation.

15 THE COURT: Well, it calls for a "yes" or

16 "no," I believe, so if you can answer with a "yes" or

17 "no."

18 THE WITNESS: A Yes.

19 MS. FOX: Q Okay. And was he required, as

20 part of the agreement, to pay for the rebuilding of the

21 laundry porch?

22 A Yes.

23 Q And the City paid for the demolition and

24 cleanup?

25 A Yes.

26 Q And the City paid for most of those windows to

27 be replaced?

28 A Yes.

1 Q And the City paid for all the painting in the
2 exterior?
3 A Yes.
4 Q And the City paid for the interior of the
5 front house?
6 A Yes. Let me clarify --
7 MR. STERN: Your Honor, objection; leading
8 question.
9 THE COURT: Avoid the leading questions.
10 THE WITNESS: It was just a clarification
11 that -- you said all the painting of the exterior, and
12 it was not all the exterior that was done; it was three
13 sides.
14 MS. FOX: Q Three sides. Okay. Could you
15 explain which sides were repainted.
16 A It was the front; the -- if you're standing in
17 front of the property, the right-hand side; and then the
18 back.
19 Q Okay. Thank you.
20 A You're welcome.
21 MS. FOX: I have nothing further.
22 THE COURT: Mr. Stern?
23 **CROSS-EXAMINATION**
24 **BY DANIEL R. STERN:**
25 Q Ms. Melgar, directing your attention to
26 Exhibit 32, at this time the exterior painting hadn't
27 been completed, correct, when you sent this letter?
28 A I have to check the project log. I don't

1 remember exactly.

2 Yes, that is correct; the exterior had not
3 been finished. I have in the project --

4 Q No; that's just -- we wanted to find out --

5 THE COURT: Just answer what the question asks
6 for.

7 MR. STERN: Q And also at this time when you
8 sent this letter, the windows hadn't been replaced,
9 either; had they?

10 A That is correct.

11 Q Okay. And Mr. O'Flynn spent a substantial
12 amount of his own money on this project, as well; did he
13 not?

14 THE COURT: Without going into any amounts.

15 THE WITNESS: It's the word "substantial."
16 I'm not sure what --

17 THE COURT: Why don't you rephrase the
18 question, then.

19 MR. STERN: Q A large amount of Mr. O'Flynn's
20 own money was used on this project, as well; correct?

21 A Yes.

22 MR. STERN: I have nothing further.

23 THE COURT: All right. And within that very
24 limited scope, Ms. Fox?

25 MS. FOX: Yes.

26 REDIRECT EXAMINATION

27 BY RAQUEL FOX:

28 Q When you sent the letter on September 13,

DENISE L. DOUCETTE, CSR, RDR, CLVS, FAPR 275

1 2005, it was your professional opinion, based on your
2 training and experience with the lead program, that it
3 was safe for Mrs. Susan Suval to return?

4 A Yes. The law does not require relocation for
5 exterior lead work.

6 Q And do you know why?

7 A Because it can be done with proper
8 containment.

9 MS. FOX: Thank you. Nothing further.

10 THE COURT: Within that limited scope, Mr.
11 Stern?

12 MR. STERN: Nothing further, your Honor.

13 THE COURT: Is the witness excused?

14 MR. STERN: Yes, your Honor.

15 MS. FOX: Yes, your Honor.

16 THE COURT: Thank you very much for your
17 testimony, Ms. Melgar. You may step down, and you're
18 free to leave.

19 THE WITNESS: Thank you.

20 THE COURT: Please call your next witness.

21 MR. PRESTON: Your Honor, defendants call Ian
22 Wallace.

23 THE COURT: Sir, if you would please come up
24 to the witness stand.

25 Remain standing.

26 (Thereupon Ian Wallace was duly and
27 regularly sworn by the courtroom
28 clerk.)

DENISE L. DOUCETTE, CSR, RDR, CLVS, FAPR 276

**EXHIBIT 3:
MICHAEL PALMER'S RESPONSE LETTER TO
O'FLYNN DATED FEBRUARY 26, 2007**

**MAYOR'S OFFICE OF HOUSING
CITY AND COUNTY OF SAN FRANCISCO**



**GAVIN NEWSOM
MAYOR**

**MATTHEW O. FRANKLIN
DIRECTOR**

February 26, 2007

Mark O'Flynn
1766 Union Street
San Francisco, CA 94123

RE: 1872-1674 Great Highway

Dear Mr. O'Flynn:

This letter is response to your letter dated January 8, 2007. We have reviewed our files and have determined that the Ms. Susan Suval was in compliance with the requirements of our program at the time the grant was made.

Regarding the owner move in eviction, since you are no longer renting the property under the terms of your agreement with the Lead Program and intend to occupy the property yourself, you are now obliged to repay the entire sum of the grant. This payment became due at the time the property was removed from the rental market. The grant amount you are obliged to repay is \$38,165.00. Please remit this amount payable to the City and County of San Francisco. Payment should be delivered to the address below.

Should you have any questions or concerns, please submit all inquiries in writing to:

Lead Program
Mayor's Office of Housing
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Sincerely,

Michael Palmer
Lead Program Manger

cc: Myrna Melgar, MOH

1 South Van Ness Ave. 5th Floor, San Francisco, CA 94103
Phone: (415) 701-5500 □ FAX: (415) 701-5501 □ www.sfgov.org/moh

**EXHIBIT 4:
MELGAR-ITON SUBPOENA RESPONSE LETTER TO
GREENQUIST DATED DECEMBER 19, 2008**

**MAYOR'S OFFICE OF HOUSING
CITY AND COUNTY OF SAN FRANCISCO**



**GAVIN NEWSOM
MAYOR**

**DOUGLAS SHOEMAKER
ACTING DIRECTOR**

December 19, 2008

Kevin P. Greenquist, Esq
Wiegel and Fried
414 Gough St
San Francisco CA 94102

Mr. Greenquist,

As per our conversation, I am enclosing a full copy of the hard file for the lead remediation project at 1672 Great Highway, as well as printouts of all documents in my electronic files pertaining to this project. In addition I was provided with backups of my e-mails by the Department of Information Technology, and I have searched for any additional emails pertaining to this project between myself and Fiona Ma, Susan Suval and Michael Palmer. There are no other documents other than those enclosed and already provided.

Sincerely,

A handwritten signature in black ink, appearing to read "Myrna Melgar".

Myrna Melgar
Director of Homeownership Programs

1 South Van Ness Ave. 5th Floor, San Francisco, CA 94103
Phone: (415) 701-5500 FAX: (415) 701-5501 www.sfgov.org/moh

**EXHIBIT 5:
E-MAIL COMMUNICATION FROM DIT TO RITA
O'FLYNN DATED AUGUST 12, 2009**

RE: Request for Immediate Disclosure-Sunshine Ordinance Request
From: Rita August O'Flynn (rita_august@msn.com)
Sent: Tue 8/11/09 6:49 PM
To: barry.fraser@sfgov.org
Cc: ron.vinson@sfgov.org

Have you been able to find any record of backup e-mail being provided to Iton as indicated in the e-mail string below? I would like to wrap this up this week and am looking for something from your department, either the backups that were provided to Iton or confirmation that no such request was made of your department.

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

From: rita_august@msn.com
To: barry.fraser@sfgov.org
CC: ron.vinson@sfgov.org
Subject: RE: Request for Immediate Disclosure-Sunshine Ordinance Request
Date: Tue, 4 Aug 2009 17:26:11 -0700

Dear Mr. Fraser:

If ultimately, your office has not record of providing Melgar with backups, will you state so in writing?

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

Subject: Re: Request for Immediate Disclosure-Sunshine Ordinance Request
From: Barry.Fraser@SFGOV.ORG
To: rita_august@msn.com
CC: ron.vinson@sfgov.org
Date: Tue, 4 Aug 2009 16:49:56 -0700

Ms. O'Flynn:

I'm still researching your request, but so far I've found no records of any written request from the Mayor's Office of Housing (MOH) for the back-up email your reference. We are investigating whether any oral requests were made and fulfilled.

If any back-ups were provided, they would have consisted of all restored user accounts for the time period requested. DT would make the restored accounts available under terms of the service level agreement with the client department (MOH). The client department would then have to bear the costs of searching through the user accounts and identifying the specific emails.

<http://co117w.col117.mail.live.com/mail/PrintShell.aspx?type=message&cpids=8e767b92-...> 9/15/2009

As you know, we cannot provide the raw user account files to the public because they contain a very large number of emails, some of which may be exempt from disclosure under state law or local ordinance.

If I find additional information or records, I will notify you.

Barry Fraser
Telecommunications Policy Analyst
City and County of San Francisco
Department of Technology
One South Van Ness, 2nd Floor
San Francisco, CA 94103

Phone: 415-581-3378
Fax: 415-581-3970
barry.fraser@sfgov.org

-----Rita August O'Flynn <rita_august@msn.com> wrote: -----

To: <barry.fraser@sfgov.org>, <soif@sfgov.org>, <chris.rustom@sfgov.org>
From: Rita August O'Flynn <rita_august@msn.com>
Date: 08/03/2009 04:50PM
Cc: <ron.vinson@sfgov.org>
Subject: Request for Immediate Disclosure-Sunshine Ordinance Request

Dear Mr. Fraser:

In preparing for my case against the Mayor's Office of Housing for retrieval of records illegally destroyed by MOH, I found correspondence from Myrna Melgar to my attorney dated 19 December 2008 in which she states, "...I was provided with a backups of my e-mails by the Department of Information Technology..."

This e-mail serves as my request for the following:

1. All the backup e-mail provided to Melgar per MOH's request.
2. Any and all charges from DIT to MOH for the retrieval of the back up e-mail and its conversion into a format that Melgar could review.
3. Any and all communication between MOH and DIT regarding Melgar's back up e-mail.

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

<http://co117w.col117.mail.live.com/mail/PrintShell.aspx?type=message&cpids=Be767b92-...> 9/15/2009

**EXHIBIT 6:
E-MAIL COMMUNICATION FROM MOH TO RITA
O'FLYNN DATED AUGUST 27, 2009**

Re: Sunshine Ordinance Request for Records

From: Oliver Hack (Oliver.Hack@sfgov.org)
Sent: Thu 8/27/09 3:32 PM
To: Rita August O'Flynn (rita_august@msn.com)
Cc: dshoemaker@sfgov.org; markoflynn@msn.com; myrna.melgar@sfgov.org; sonia.delgado-schaumberg@sfgov.org

Ms. O'Flynn:

The Mayor's Office of Housing has no records responsive to this request.

Best,
Oliver Hack

Oliver Hack
Chief Operating Officer
Mayor's Office of Housing
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
(415) 761-5512
oliver.hack@sfgov.org

Rita August
O'Flynn
<rita_august@msn.com>

08/26/2009 05:37
PM

To
<dshoemaker@sfgov.org>,
<sonia.delgado-schaumberg@sfgov.org>
, <myrna.melgar@sfgov.org>
cc
<markoflynn@msn.com>,
<oliver.hack@sfgov.org>
Subject
Sunshine Ordinance Request for
Records

Please provide documentation of MOH's request to DIT for restoration of
deleted e-mail referred to Melgar's letter of 19 December 08 regarding MOH
records for 1672/1674 Great Highway. Include what was requested, when it
was requested, amount paid for retrieval, and amount paid for review or
indicate that you do not have documents responsive to my request.

Rita O'Flynn 415-386-8224 Cell: 415-260-7608

http://by135w.bay135.mail.live.com/mail/PrintShell.aspx?type=message&cpids=de7b7593... 9/15/2009

**EXHIBIT 7:
MELGAR'S LETTER TO THE EDITOR OF
BEYONDCHRON DATED JANUARY 13, 2009**

1-13-09

To the Editor:

In response to your article today calling for the suspension of the lead and rehab programs at the Mayor's Office of Housing, I'd like to point out a few facts that are missing from your analysis.

The lead abatement program was created as a response to childhood lead poisoning - not to Ellis Act evictions. The primary purpose of the program is to protect children under the age of 6 from childhood lead poisoning. Lead is a toxin - ubiquitous in San Francisco, that permanently and irreversibly damages children's neurological systems- regardless of whether the child's landlord is low income or not.

Because our primary purpose is to protect low income children during those early years when they are most vulnerable physically- the income qualifications that are used are for the tenants, not the landlord's. There is strong statistical correlation between family income and childhood lead poisoning rates. No such correlation exists between lead poisoning rates and landlord income.

San Francisco's lead program is entirely funded by grants from HUD, and the primary purpose of the program as well as the guidelines for income qualifications were mandated by Congress when they set up the program. We recognize the fact that landlords are getting work done on their properties with taxpayer money - and in exchange, we are getting housing for families in which children can grow up free of lead hazards - where they will have a chance to succeed in school without having physical impediments to their neurological systems and IQ.

Nowhere in your analysis do you acknowledge the fact that the program did serve that purpose. Ms Suval's grandchild, who was a toddler at the time the work was done, has been able to visit with his grandmother and father free of the danger of becoming permanently brain damaged - as the house had significant lead hazards, which were abated by the program.

Ms Suval's landlord moved to evict Ms Suval in violation of his agreement with the lead program but also in violation of the City's Rent Stabilization ordinance. Your expectation then is that the lead abatement program should do not only what is its primary purpose, but additionally to take on what even the Rent Stabilization Ordinance cannot do - prevent Ellis Act evictions- and that if it cannot, it should cease to exist. I would argue that this is an unreasonable mandate.

Someday, perhaps, our Rent Stabilization ordinance will protect children against lead poisoning. Someday, perhaps, our Public Health Department will have enough inspectors, and they will be empowered enough with legislation to find all of the substandard housing with lead hazards in San Francisco and protect all our children. Someday, perhaps even the Tenderloin Housing Clinic will represent clients to enforce the lead poisoning prevention laws that we do have on the books.

That day is not today - not by a long shot. And until then the lead program is absolutely needed- to keep serving the folks that we serve- to keep protecting low income families with children. Overwhelmingly, the lead abatement program does its work in rental housing occupied by Latino and African American families earning below 30% of the AMI. To invalidate the public good that has come from the remediation of over 1500 units in San Francisco because of the bad actions of 1 landlord is ill-informed at best, and irresponsible at worst.

As Ms. Fox can attest to, the staff at the Lead Program has also logged in countless hours on this particular case. Your portrayal of our non-involvement in this particular eviction is patently false; as a matter of fact it was I who referred Ms Suval to the Tenderloin Housing Clinic. We not only monitor these units for compliance- we take strong action against those who do not.

Myrna Melger
Director of Homeownership Programs
Mayor's Office of Housing

<http://quartz.hs.net/~beyondch/news/nucleus/plugins/print/print.php?itemid=6482>

9/15/2009



O'Flynn draft

Michael Palmer t Myrna Melgar
:

02/14/2007 09:20 AM



02-13-07 Lit.doc

Michael Palmer
(415) 701-5530

Lead Program
Mayor's Office of Housing
City of San Francisco

**MAYOR'S OFFICE OF HOUSING
CITY AND COUNTY OF SAN FRANCISCO**



**GAVIN NEWSOM
MAYOR**

**MATTHEW O. FRANKLIN
DIRECTOR**

DRAFT

February 13, 2007

Mark O'Flynn
1766 Union Street
San Francisco, CA 84123

RE: 1672-1674 Great Highway

Dear Mr. O'Flynn:

This letter is response to your letter dated January 9, 2007. We have reviewed our files and have determined that the Ms. Susan Suval was in compliance with the requirements of our program at the time the grant was made.

Regarding the owner move in eviction, the Lead Program has been informed by ~~XXXXXXXXXXXX~~ that you are asserting that Ms Suval is currently occupying the residence at 1672 Great Highway illegally and that you are refusing to accept any rental payments from her based on the argument that there is no legal tenant at this time. If this is true, and the property is legally vacant, and you have not rented the property under the terms of your agreement, you were obliged to repay the entire sum of the grant at the time the property became legally vacant. The grant amount you are obliged to repay is \$38,165.00. Please remit this amount payable to the City and County of San Francisco. Payment should be delivered to the address below.

Should you have any questions please submit all inquiries or concerns in writing to:

Lead Program
Mayor's Office of Housing
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Sincerely,

Michael Palmer
Lead Program Manger

cc: Myma Melgar, MOH
\$27,215.00+\$10,950.00

1 South Van Ness Ave, 5th Floor, San Francisco, CA 94103
Phone: (415) 701-5500 FAX: (415) 701-5501 www.sfgov.org/moh

TO: Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

From: Rita O'Flynn

43.
~~41~~ pages w/ cover

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