

Date: September 23, 2008

Item No. 10a
File No. 08044a

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Brian Browne v. Dept. of Building Inspection**
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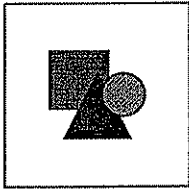
Completed by: Frank Darby

Date: September 17, 2008

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

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

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



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City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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MEMORANDUM

September 12, 2008

BRIAN BROWNE v. DEPARTMENT OF BUILDING INSPECTION (08044)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Complainant Brian Browne made an Immediate Disclosure Request ("IDR") with the Department of Building Inspection ("DBI") on 8/14/08 for information regarding the properties in the area of 550 Battery Street. Brian Browne states that he did not receive a response to his IDR.

COMPLAINANT FILES COMPLAINT:

On August 18, 2008, Brian Browne filed a complaint against DBI alleging a violation of the Sunshine Ordinance section 67.25.

THE RESPONDENT AGENCY STATES THE FOLLOWING:

On August 25, 2008, William Strawn, Communications Manager of DBI e-mailed Chris Rustom of the Task Force and advised him that representatives of DBI met with Brian Browne and provide him with the information that he wanted. Mr. Strawn believed that Briane Browne would be dismissing his complaint.

JURISDICTION

Memorandum

Based on the allegations of the complaint and the sections of the Ordinance stated below, the Task Force has jurisdiction to hear this matter. In addition the parties in this case do not contest jurisdiction.

APPLICABLE STATUTORY SECTION;

1. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents including records in electronic format.
2. Sunshine Ordinance, San Francisco Administrative Code Section 67.21-1 addresses the policy regarding the use and purchase of computer systems.
3. Sunshine Ordinance, San Francisco Administrative Code Section 67.25 deals with Immediate Disclosure Requests.
4. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
5. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals with justification for withholding.
6. Sunshine Ordinance, San Francisco Administrative Code Section. 67.28 deals with fees for duplication.
7. California Public Records Act, Government Code Section 6253 deals with public records open to inspection, agency duties, and time limits.
8. California Public Records Act, Government Code Section 6255 deals with justification for withholding of records.

APPLICABLE CASE LAW: none

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES**

- A. **Uncontested Facts: Brian Browne made an Immediate Disclosure Request regarding information on properties in the area of 550 Battery Street, San Francisco**
- B. **Contested facts/ Facts in dispute: Whether DBI responded in a timely manner and whether they provided the information requested.**

Memorandum

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS;

- **When did DBI receive the IDR?**
- **When did DBI respond to the IDR?**
- **How did DBI respond to the IDR?**

LEGAL ISSUES/LEGAL DETERMINATIONS;

- **Were sections of the Sunshine Ordinance (Section 67.21 or 67.25), 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.

c.) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

...

k.) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act Government Code Section 6250 et seq.) In particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.

l.) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department t program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

Section 67.25 provides:

a.) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in

Memorandum

this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

b.) If the voluminous nature of the information requested its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requestor shall be notified as required by the close of business on the business day following the request.

c.) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request

d.) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected.

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 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 therefore....



<complaints@sfgov.org>
08/18/2008 12:10 PM

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

Submitted on: 8/18/2008 12:10:29 PM

Department: Department of Building Inspections

Contacted: Wing Lau

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: Failing to comply with a written sunshine request

Description: Mr. Wing Lau and/or SF-BID have failed to respond.
8.15.08

IMMEDIATE DISCLOSURE REQUEST ([\$67.25(A)] - 14 August 2008

Sunshine Ordinance Request

Dear Mr. Lau -

BUILDING INSPECTION DEPT

Please advise as to the hours that the contractors have permits to work at, in, around the environs of 550 Battery Street, San Francisco, California 94111.

Postings in the lobby indicate overlapping activities could start at 6AM and continue through 5PM M-F. Confirm and provide details about these these permits by 12.05 PM on Monday 18 August 2008.

Thank you,

Brian Browne

Hearing: Yes

Pre-Hearing: No

Date:

Name:

Address:

City:

Zip:

Phone:

Email:

Anonymous: [REDACTED] 415-[REDACTED] [REDACTED].com

Confidentiality_Requested: Yes

User Data

Client IP (REMOTE_ADDR) : 69.226.225.174

Client IP via Proxy (HTTP_X_FORWARDED_FOR) :



<complaints@sfgov.org>
08/18/2008 12:10 PM

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

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Brian Browne

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Pre-Hearing: No

Date:

Name:

Address:

City:

Zip:

Phone:

Email:

Anonymous: Brian Browne 415-

Confidentiality_Requested: Yes

User Data

Client IP (REMOTE_ADDR) : 69.226.225.174

Client IP via Proxy (HTTP_X_FORWARDED_FOR) :

Patrick G
O'Riordan/DBI/SFGOV
09/08/2008 10:21 AM

To SOTF@SFgov.org
cc Edward Sweeney/DBI/SFGOV@SFGOV, Daniel
Lowrey/DBI/SFGOV@SFGOV
bcc
Subject Re: #08044_Brian Browne v Building Inspection Dept

Hi Chris,

Mr Browne has been mailed permit information for 550 Battery Street, a copy of the police code regarding construction noise at night and a definition of "start" all of which he has requested. The definition of "start" was taken from The Random House Dictionary.

Regards,

Patrick.