

Date: September 27, 2011

Item No. 15 & 16
File No. 11058

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Nick Pasquariello v Film Commission**
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Completed by: Chris Rustom

Date: Sept. 22, 2011

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

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

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



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: September 21, 2011
RE: *Nick Pasquariello v. Film Commission (11058)*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Nick Pasquariello ("Complainant") alleges that the San Francisco Film Commission (the "Commission") failed to provide public records in response to his public records request, made on August 4, 2011 and amended on August 6, 2011, for various categories of information regarding TV spots and commercials filmed in the City during 2010 and 2011.

COMPLAINANT FILES COMPLAINT:

On August 16, 2011, Complainant filed this complaint against the Commission.

JURISDICTION:

The Commission is a City department subject to the provisions of the Sunshine Ordinance. The Department has not contested jurisdiction.

APPLICABLE STATUTORY SECTION(S):

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

Contested/Uncontested Facts: Complainant alleges that he made a public records request on August 4, 2011 to the Commission, and amended it August 6, 2011. His request was for "the following public information from [the Commission's] permit files for all TV spots and commercials shot in San Francisco for the period August 1, 2010 up to and including August 1, 2011[:] [t]he name [addresses, [] phone numbers and email addresses] of the production company[:] [t]he name of the person who filed the permit[:] [t]he number of days of the shoots[:] [t]he dates of the shoots. Also [] the gross aggregate count for the number of shooting days for

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all TV spot commercials for the [periods] August 1, 2010 through August 1, 2011 and August 1, 2009 through August 1, 2010."

As of the time this memorandum was drafted, no response to the complaint from the Commission had been provided to me.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did the Commission respond to the records request?
- If so, when did it respond and how?
- Were any records provided in response to the IDR?
- Is the information requested by Complainant available in documentary form or would responding require the Commission to compile the information from other sources or created new documents?
- Were any responsive records withheld?
- If so, was withholding held to a minimum?
- If so, was a written justification for withholding provided to Complainant that is consistent with the Ordinance?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Commission timely responded to the public information request?
- Did the Commission justify any withholding in accordance with the requirements of the Ordinance?
- Are the Commission's justifications for withholding, if any, reasons allowed by the Ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

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

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

...

SEC. 67.25. IMMEDIACY OF RESPONSE.

- (a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.
- (b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.
- (c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.
- (d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

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SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

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

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

- (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 record 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 therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would

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result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.



<complaints@sfgov.org>
09/07/2011 11:13 AM

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

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Film Commission
CONTACTED:Susannah Robbins
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:
DESCRIPTION:Failure to release public records. (See attached)
HEARING:Yes
PRE-HEARING:No
DATE:August 16, 2011
NAME:Nick Pasquariello
ADDRESS:PO Box 42791
CITY:San Francisco
ZIP:CA 94142
PHONE:
CONTACT_EMAIL:jpk@pobox.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No

Chris Rustom,

I wish to file a complaint against Sussanah Robbins, director of the San Francisco Film Commission for failing to release the public records I made via email on August 6, 2011.

Below please find my request to Robbins send via email.

Nick Pasquariello
Post Office Box 42791
San Francisco, California 94142

ATTACHMENT:

Susannah Robbins,

Please note two very important amendments to my IMMEDIATE DISCLOSURE REQUEST of August 4, 2011.

Please do not send any data I am requesting via email. Please mail all data on a CD disk to Post Office Box 42791, San Francisco, CA 94142.

In addition please include the addresses, all phone numbers and email addresses of the production companies that applied for and received permits to shoot in San Francisco for the periods indicated below.

Please send me the following public information from your permit files for all TV spots and commercials shot in San Francisco for the period August 1, 2010 up to and including August 1, 2011.

The name of the production company

The name of the person who filed the permit

The number of days of the shoots

The dates of the shoots.

Also would you please send me the gross aggregate count for the number of shooting days for all TV spot commercials for the August 1, 2010 through August 1, 2011 and August 1, 2009 through August 1, 2010. I realize the first number will be for the same period in the above listing just the total number of shooting days.

I appreciate your help.

Nick Pasquariello