

Date: Sept. 28, 2010

Item No. 10 & 11

File No. 10046

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Joseph Victor Lagana v Police Department**
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Completed by: Chris Rustom

Date: Sept, 23, 2010

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

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

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



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

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

**MEMORANDUM**

*September 22, 2010:*

*LAGANA V. SFPD (10046)*

**COMPLAINT**

**THE COMPLAINANT ALLEGES THE FOLLOWING:**

Complainant Joseph Victor Lagana alleges that the San Francisco Police Department (the "Department") failed to provide him with copies of Computer Assisted Dispatch ("CAD") reports documenting police response to calls for service at her residence.

**COMPLAINANT FILES COMPLAINT:**

On August 24, 2010, Mr. Lagana filed a complaint alleging a violation.

**JURISDICTION**

The Department clearly is a department under the Sunshine Ordinance and a public agency under the California Public Records Act. The Task Force therefore appears to have jurisdiction to hear the public records complaint.

**APPLICABLE STATUTORY SECTION(S):**

**Section 67 of the San Francisco Administrative Code:**

Section 67.21 deals with responses to a public records request and the format of requests and of responsive documents.

Section 67.26 deals with withholding of records.

Section 67.27 deals with written justification for withholding of records.

**Section 6250 et seq. of Cal. Gov't Code**

Section 6254 deals with responding to a public records request.

**APPLICABLE CASE LAW:**

- *None*

**Memorandum**

DATE: September 22, 2010  
 PAGE: 2  
 RE: Lagana vs. SFPD

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

**A. Uncontested Facts:** Lagana alleges that almost 2 years ago, he requested from the Department copies all arrest records naming him, and supplied his birth date. He further alleges that the Department responded by providing arrest records but no CAD reports.

Although Lagana's written complaint also is against the City Attorney's Office, the Task Force Administrator reports that Lagana has dropped that portion of his complaint.

**B. Contested Facts:** The Department has not contested these allegations. The Task Force Administrator reports that he suggested that Lagana request the CAD records from Emergency Management, as that agency may be the actual custodian of CAD records, but Lagana responded that he was not interested in doing so.

**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:**

- Is SFPD the actual custodian of CAD records?
- Does SFPD have responsive documents that it has not produced?
- If so, has it asserted some justification for not producing them?
- What was the precise nature of the privilege asserted for withholding?
- Was withholding footnoted or otherwise specifically justified by citation to a provision of the Sunshine Ordinance or Public Records Act?

**2. LEGAL ISSUES/LEGAL DETERMINATIONS:**

Were sections of the Sunshine Ordinance, Public Records Act, and/or California Constitution Article I, Section three violated?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

**Memorandum**

DATE: September 22, 2010  
PAGE: 3  
RE: Lagana vs. SFPD

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**ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED****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. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.****(d) Law Enforcement Information.**

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

**Memorandum**

DATE: September 22, 2010  
PAGE: 4  
RE: Lagana vs. SFPD

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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 6254**

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

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

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons

**Memorandum**

DATE: September 22, 2010

PAGE: 5

RE: Lagana vs. SFPD

involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

**Memorandum**

DATE: September 22, 2010  
PAGE: 6  
RE: Lagana vs. SFPD

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(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential.

# Exhibit A

Denial of due Process, Malicious Abuse of Process  
Conspiracy to withhold evidence -  
Violations of Pitchess, Brady v. Maryland  
and 14th Amendment of Due Process

RE: Conspiracy to violate rights <sup>section</sup> 1983  
withhold evidence



Joseph Victor Lagana  
3064 E. 15<sup>th</sup> St. Oakland, CA  
[josephvl@yahoo.com](mailto:josephvl@yahoo.com)  
408-510-0673

ORIGINAL  
FILED  
AUG 18 2009  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH V. LAGANA )  
Plaintiff )  
VS. )  
SAN FRANCISCO POLICE DEPT )  
& CCSF )

PLAINTIFF'S MOTION  
TO REOPEN DISCOVERY  
FOR POLICE PERSONNEL  
RECORDS

CASE 4:08-cw-03392

*Plaintiff requests this matter  
be reviewed by presiding  
Judge Claudia Wilken  
October 15<sup>th</sup> 2PM Judge Wilken  
2009*

Memorandum

1. Plaintiff filed a "PITCHESS MOTION; BRADY MOTION FOR DISCOVERY OF POLICE PERSONNEL RECORDS PURSUANT TO 1043". This motion is therefore both a motion to reopen discovery and to reconsider the "Pitchess/Brady Motion".
2. The magistrate in charge of these matters refused to provide such discovery because her rules are that all discovery matters need to be discussed. However Plaintiff has discussed these matters in an interrogatory (see attached interrogatory responses from Defendant dated January 12<sup>th</sup> 2009 page 5 lines 19 thru 26 and page 7 lines 1 thru 7) and by phone with the Defense counsel.
3. Plaintiff further contacted counsel about this matter and Defendant believes the reason Plaintiff has an issue with their time extension is because of discovery issues. This is partly true however to go further is that the matters in this case, if placed before a jury, the Plaintiff can prevail, however if placed before a judge to decide he will not. Defendant's counsel admits the Summary Judgment Motion was prepared hastily which may be true because the only defense counsel provides is lack of plaintiff taking discovery and statements of the involved officers. However, Plaintiff feels the Defendant may be trying to delay the court proceeding because trial is to begin soon in November and Plaintiff will not have time to argue bringing about his Pitchess/Brady motion. Plaintiff made it clear to Defense counsel in June that at the Case Management Conference that was originally scheduled for August 13<sup>th</sup> then 18<sup>th</sup> he would argue the importance of providing this discovery. Plaintiff has asked Defendant in an interrogatory if it could provide records of police officers' prior conduct and has stated it will not provide those documents because they are private. Defense counsel has admitted on the phone that those documents cannot be provided

1 DENNIS J. HERRERA, State Bar #139669  
City Attorney  
2 JOANNE HOEPER, State Bar #114961  
Chief Trial Deputy  
3 ANDREW GSCHWIND, State Bar #231700  
Deputy City Attorney  
4 Fox Plaza  
1390 Market Street, Sixth Floor  
5 San Francisco, California 94102-5408  
Telephone: (415) 554-3800  
6 Facsimile: (415) 554-3837

7 Attorneys for Defendant  
City and County of San Francisco

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 JOSEPH LAGANA,

12 Plaintiff,

13 vs.

14 SAN FRANCISCO POLICE DEPT. &  
CCSF,

15 Defendant(s).

Case No. C-08-03392 CW

**CITY'S RESPONSE TO PLAINTIFF'S  
INTERROGATORIES**

16  
17 RESPONDING PARTY: Defendant CITY AND COUNTY OF SAN FRANCISCO

18 PROPOUNDING PARTY: Plaintiff JOSEPH LAGANA  
19

20 Pursuant to Federal of Civil Procedure 33, defendant City and County of San Francisco  
21 ("Defendant" or the "City") hereby responds to Plaintiff's Interrogatories as follows:  
22

23 **PRELIMINARY STATEMENT**

24 Defendant's responses to the following interrogatories are made to the best of its present  
25 knowledge, information, and belief. The responses are at all times subject to such additional or  
26 different information as discovery or further investigation may disclose and, while based on  
27 Defendant's present state of recollection, are subject to such refreshing of recollection, and such  
28 additional knowledge of facts, as may result from discovery or further investigation. Therefore, the

1 RESPONSE TO INTERROGATORY NO. 15:

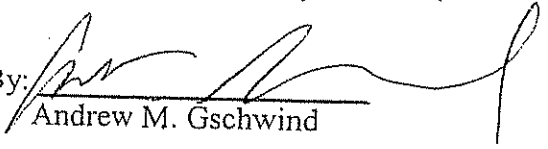
2 Defendant City objects to this Interrogatory on the ground that it seeks information that is  
3 neither relevant to this action nor reasonably calculated to lead to the discovery of admissible  
4 evidence. The City further objects to this interrogatory on the ground that it seeks confidential,  
5 privileged information, including but not limited to information protected by the right to privacy and  
6 Cal. Penal Code § 832.7. In addition, the City objects to this Interrogatory on the ground that it  
7 assumes facts not in evidence.

8  
9 **RE: CADS & Records**

10 Dated: January 12, 2009

11 DENNIS J. HERRERA  
12 City Attorney  
13 JOANNE HOEPER  
14 Chief Trial Deputy  
15 ANDREW M. GSCHWIND  
16 Deputy City Attorney

**"Privileged"**

17 By:   
18 Andrew M. Gschwind

19 Attorneys for Defendant  
20 City & County of San Francisco



DENNIS J. HERRERA  
City Attorney

JANA CLARK  
Deputy City Attorney

Direct Dial: (415) 554-3968  
Email: jana.clark@sfgov.org

**MEMORANDUM  
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force  
FROM: Jana Clark  
Deputy City Attorney  
DATE: September 7, 2010  
RE: *10046 Joseph Victor Laguna v. San Francisco Police Department*

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**Background**

Complainant Joseph Victor Laguna alleges that the San Francisco Police Department violated the Ordinance by failing to respond to his request for CAD (Computer Assisted Dispatch) records pertaining to his June 13, 2008 arrest.

**Complaint**

On August 24, 2010, Complainant filed a complaint with the Task Force alleging a public records violation.

**Discussion and Analysis**

The Police Department is a charter department under the Ordinance. The Task Force therefore has jurisdiction to hear the complaint against the Department.



<complaints@sfgov.org>

08/24/2010 06:15 PM

To <sotf@sfgov.org>

cc

bcc

Subject Sunshine Complaint

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:SFPD and City Attorney's Office

CONTACTED:Filed out form and submitted to SFPD. Andrew Gschwind Deputy City Attorney

PUBLIC\_RECORDS\_VIOLATION:Yes

PUBLIC\_MEETING\_VIOLATION:No

MEETING\_DATE:n/a

SECTIONS\_VIOLATED:General public records

DESCRIPTION:I have been asking for the CAD (Computer Assisted Dispatch) records involved in my case for sometime now.e I have even filed a request with the SFPD records bureau almost 2 years ago and the only person to ever hand over a single document was Deputy City Attorney Andrew Gschwind. He has been pretty cordial but still says I need to make a documents request. This is public information and I asked for ALL Documents related to ALL arrest naming myself, Joseph Victor Lagana (Birthdate 3/20/1984) The records in question that are the most important involved myself and Officers Larry Bertrand and Cadenazzi (The arresting officers) and the date the arrest occurred is June 13th 2008. I received the Police reports, however no CAD transcripts to this day. I had two contacts with Larry Bertrand also should be noted...

HEARING:Yes

PRE-HEARING:Yes

DATE:8/24/2010

NAME:JOSEPH VICTOR LAGANA

ADDRESS [REDACTED] WILLOW ST.

CITY:ALAMEDA

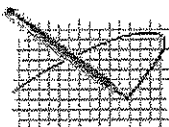
ZIP:94501

PHONE [REDACTED]

CONTACT\_EMAIL [REDACTED]@gmail.com

ANONYMOUS:Telephone is best [REDACTED] my cell [REDACTED] gf phone

CONFIDENTIALITY\_REQUESTED:Yes



**Simon  
Silverman/SFPD/SFGOV**  
08/30/2010 11:59 AM

To SOTF@sfgov.org  
cc  
bcc  
Subject Complaint 10046

History: This message has been forwarded.

Dear Mr. Rustom,

I am representing the San Francisco Police Department regarding SOTF complaint 10046.

The complainant, Mr. Joseph Victor Lagana, asserts that he has not received computer aided dispatch (CAD) records from the SFPD. However, the SFPD is not the custodian of CAD records. Computer aided dispatch records are held by the Department of Emergency Management. These records are listed in the Department of Emergency Management's index in the City's Index of Records, but they are not listed in the Police Department's index.

Therefore, the Police Department is improperly named as a respondent in this complaint.

Furthermore, the SFPD has no record of any public records request for CAD information made by Mr. Lagana.

Please advise if the Police Department must still attend the pre-hearing conference scheduled for Tuesday 9-14-2010.

Thank you,

Lt. Simon Silverman #1543  
Commanding Officer  
Legal Division  
San Francisco Police Department  
PH: 415-553-7929  
FAX: 415-553-7307



Joseph Lagana  
<calidjtsunami@gmail.com>  
08/31/2010 08:08 PM

To sotf@sfgov.org  
cc  
bcc  
Subject Re: Fw: Complaint 10046

No I do not wish to withdraw my complaint. I have been dealing with the Deputy City Attorney of San Francisco for the last 2 years. This hearing needs to go forward. The City as a whole has been denying me due process to public information.

I refrain from filing a complaint against OEM because they been denying me this until I recently found out they maintain the records. The SFPD and Deputy City Attorney Andrew Gschwind has been withholding evidence purposely (C.A.D. records).

See CGC-08-475803 Superior Court case (Currently Active)

See 4:08-CV-03392-CW U.S. District Court Case (On Remand)

-Joseph Lagana

[calidjtsunami@gmail.com](mailto:calidjtsunami@gmail.com)

408-510-0673

On Mon, Aug 30, 2010 at 3:34 PM, <[sotf@sfgov.org](mailto:sotf@sfgov.org)> wrote:

Mr. Joseph Victor Lagana,

I am forwarding the response I received from the Police Department. If you agree, I would withdraw the complaint and file a new one against the Office of Emergency Management.

However, please be aware that the Task Force was told in a similar case earlier this year that the Office of Emergency Management's Emergency Communications Division receives over 1 million calls per year and it does not have the capacity to individually identify each request for information.

Chris Rustom



Joseph Lagana  
<[REDACTED]@gmail.com>  
09/14/2010 05:58 AM

To sotf@sfgov.org  
cc  
bcc

Subject Re: SOTF hearing reminder: #10046\_Joseph Victor Lagana  
vs Police Department

i joseph lagana was falsely arrested twice in order to hamper this investigation and my civil court case. g was jailed for six days and had to take a plea on a case that i probably would have been found innocent. someone pulled some strings. i intend on attending the hearing today at city hall and intend and filing a further claim of conspiracy against san francisco district attorney kamala harris she is and has been abusing her power

jose na  
408 [REDACTED] 408 [REDACTED] [REDACTED]@gmail.com