

Date: Oct. 25, 2011

Item No. 16 & 17

File No. 11061

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Micki Jones v Fire Department**
- 
- 
- 
- 
- 
- 
- 
- 
- 
- 

Completed by: Chris Rustom

Date: Oct. 20, 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.



<complaints@sfgov.org>  
09/10/2011 10:07 PM

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

To:sof@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Fire

CONTACTED:Deputy Chief Tom Siragusa

PUBLIC\_RECORDS\_VIOLATION:Yes

PUBLIC\_MEETING\_VIOLATION:No

MEETING\_DATE:

SECTIONS\_VIOLATED:

DESCRIPTION:I am an employee of the Fire Dept. I requested a copy of a complaint letter sent by a person from the public to the SFFD by submitting a public records request form to the Dept's records compliance officer. That request was denied. In the denial, the complaint letter I requested was defined as a "personnel record". I was instructed to contact the Fire Dept's Human Resources Director to discuss my rights as an employee to have access to this letter. Once again I was denied and told that the complaint letter was not in my personnel file (nor anyone else's personnel file). I requested the complaint letter again via a letter I mailed to Deputy Chief Tom Siragusa. My request was denied for a third time with Chief Siragusa's statement that said the Fire Dept. had "no obligation" to provide this to me. I have been told that this letter will be put into a "special file in the Chief's Office", where it is not accessible to the public or me, the employee. The Bd. of Supervisors website states in regard to document requests that "Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Records Act and the Sunshine Ordinance. Personal information will not be redacted." This policy pertains to not only the Bd. Of Supervisors, but every SF Department. The Fire Dept. is attempting to define a record they apparently do not wish to disclose as a "personnel record" in an attempt to exempt it from public disclosure. Further, since I am the only "personnel" mentioned in the complaint letter, I should have access to this complaint. The intent of the CA Public Records Act to exempt "personnel records" is to protect the privacy of the personnel, not City administrators.

HEARING:Yes

PRE-HEARING:Yes

DATE:9-10-11

NAME:Micki Jones

ADDRESS:1926 Mason Street

CITY:San Francisco

ZIP:94133

PHONE:415-298-7276

CONTACT\_EMAIL:sffd22@aol.com

ANONYMOUS:

CONFIDENTIALITY\_REQUESTED:No



October 3, 2011

FROM: Rhab Boughn, SFFD Compliance and Public Records Officer  
TO: Sunshine Ordinance Task Force  
SUBJECT: Complaint No. 11061

---

Dear Sunshine Ordinance Task Force Members,

This letter is in response to charges against the San Francisco Fire Department made by complainant Micki Jones, claiming that SFFD falsely withheld records which should otherwise be made public. The Department reserves the right to supplement our response to provide supporting documentation to be considered by committee members. The record in question is a letter of complaint sent by a member of the public to SFFD headquarters that prompted an investigation of Micki Jones, who is a SFFD employee.

Although letters the Department receives are often public records, not all correspondences remain as such. If allegations of misconduct, for example, are mentioned in a letter, an investigation is initiated, and the letter becomes part of the investigation file. Only records of confirmed misconduct as specified in the Sunshine Ordinance may be disclosed, otherwise they are determined to be "personnel information" (SF Administrative Code, Section 67.24(c)(7)), (CA Labor Code, Section 1198.5). Whether or not the personnel member may have access to those records is another question, and does not involve the SF Sunshine Ordinance.

Once the letter in question was received by the Department, an investigation was issued, and the letter became part of an investigation file. Once Ms. Jones was informed that she was the subject of an investigation, she requested a copy of the letter. At the time of her initial request, the investigation was still pending. The letter was withheld as a "personnel record". Section 67.24 only requires the disclosure of confirmed misconduct.

In the Department's response letter, Ms. Jones was advised that her rights as an employee differ from her rights as a member of the public.

If the investigation resulted in findings of misconduct and disciplinary charges filed, Ms. Jones would have had an opportunity to view all records used in the investigation, including the letter. However, since there was no merit found to the claims, the Department is under no obligation to disclose investigative records to the accused. All investigative records remain separate from personnel files, are kept confidential, and do not automatically become accessible to the public after the investigation is concluded.

Since the letter Ms. Jones is requesting is in a confidential file of investigative records, it is not a public record. The decision whether the Department should disclose a confidential investigative record for which there was no merit to the employee who was subject to the claim is a personnel matter and not within the jurisdiction of the SOTF.

I certainly hope the information provided has been insightful and will aid in your determination on this claim. If you have any questions or comments, please feel free to contact me at (415) 558-3384 or at [FirePublicRecords@sfgov.org](mailto:FirePublicRecords@sfgov.org).

Thank You

Rhab Boughn  
Compliance & Public Records Officer

# SAN FRANCISCO FIRE DEPARTMENT



October 18, 2011

FROM: Rhab Boughn, SFFD Compliance & Public Records Officer  
TO: Sunshine Ordinance Task Force  
SUBJECT: Complaint No. 11061

---

Dear Sunshine Ordinance Task Force Members,

The following serves as the Department's supplemental response to the charges against the San Francisco Fire Department made by complainant Micki Jones, claiming that SFFD falsely withheld records which should otherwise be made public.

The record in question is a letter of complaint sent by a member of the public to SFFD headquarters that prompted an investigation of Micki Jones, who is a SFFD employee.

Consequently, the investigation resulted in no merit to any of the allegations made in the letter. Therefore, no records exist that must be disclosed per Section 67.24(c)(7) of the SF Administrative Code, which provides that confirmed misconduct of City employees is not exempt from disclosure if it falls within the following categories: personal dishonesty; misappropriation of public funds, resources or benefits; unlawful discrimination against another on the basis of status; abuse of authority; and violence.

---

The Sunshine Ordinance is very specific about the types of public information that must be disclosed. This is especially true when it comes to records of misconduct and disciplinary actions of public employees. The drafters of the Ordinance made it very clear, by carving out findings of confirmed misconduct in specified areas and making them explicitly public, that it was their intent to purposefully exclude other categories, as well as to exclude *unconfirmed allegations*. The Department agrees that the disclosure of the complaint letter, which as a result of the investigation has been determined to contain unconfirmed allegations, would clearly be in violation of Section 67.24(c)(7).

M. Jones has requested a copy of the letter several times: once as a public records request on 7/25/11, and; twice as a SFFD employee who was subject of an investigation, on 8/5/11 and 8/11/11. In all cases, the Department withheld the document from disclosure as the Department was under no legal obligation to issue her a copy of the complaint that prompted the investigation.

Since the letter M. Jones is requesting is in a confidential file of investigative records, it is not a public record. It contains no record of confirmed misconduct that must be disclosed per Section 67.24(c)(7). Additionally, it contains information that is protected by the CA Evidence Code and the California Constitution.

CA Evidence Code 1041, as supported by CA Records Act §6254(k), provides that “a public entity has a privilege to refuse to disclose the identity of a person who has furnished information...purporting to disclose a violation of a law...”

The Department is also not required to disclose information if the disclosure would result in an unwarranted invasion of personal privacy. Because the document responsive to her request is a personnel record containing information confidential under both the California Constitution and Section 6254(c) of the Public Records Act, the Department declined to produce the document. (California Constitution, Article I, §1; CA Records Act § 6254(c); see also CA Records Act §6254(k); SF Administrative Code § 67.21(k); *Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal. 4th 1, 35 (identifying privacy interest in precluding dissemination of sensitive, confidential information); *Teamsters Local 856 v. Priceless, LLC*, (2003) 112 Cal. App. 4th 1500, 1512 (public employees have right of privacy in their personnel files); *Braun v. City of Taft*, (1984) 154 Cal.App.3d 332, 345-347); *City of San Jose v. Superior Court*, (1999) 74 Cal.App.4<sup>th</sup> 1008 (court denied media's request for names and contact information of complainants).

When considering requests for records, the Department must balance the privacy interests of affected individuals against the public's interest in monitoring government. (*Trentadue v. Integrity Committee* (C.A.10 2007), 501 F.3d 1215, 1233 (court must consider whether release of private information in response to public records request under [the federal Freedom of Information Act] would "shed light" on the government's performance of the prevailing wage laws)

In weighing the public interest in disclosure, public agencies must consider the extent to which the disclosure of the information will shed light on how the local agency conducts the public's business. (*Commission on Peace Officers Standards and Training v. Superior Court*, 42 C.4th 278, 299 (2007))

It is possible that the requestor may argue that disclosure of the complaint letter would be in the public's interest, as supported by SF Administrative Code §67.24(i), which states that documents may not be withheld based on a finding that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings must be based on an express provision of the Sunshine Ordinance or on an express and specific exemption provided by the CA Public Records Act.

As cited previously, the CA Evidence Code continues, by stating that “Disclosure of the identity of the informer is against the public interest because there is a necessity for preserving the confidentiality of his identity that outweighs the necessity for disclosure in the interest of justice... In determining whether disclosure of the identity of the informer is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.”

In some circumstances, there is an absolute statutory bar to disclosure of information based on the privacy interests of individuals. In many circumstances, the bar to disclosure is not absolute, but is still high; there must be a strong justification before a department may release a record that compromises an individual's privacy. In either

event, the Department may not disclose a record where disclosure would violate the right to privacy protected by federal or state law.

If the Department were to disclose the complaint letter, it potentially could have the following negative results:

1. Requiring public disclosure of unfounded complaints against City employees would risk serious damage to the reputation of those employees and would potentially violate their privacy rights under the California Constitution;
2. Disclosure of complaints that do not result in a finding of confirmed misconduct might expose the complainant to retaliation, and;
3. Requiring disclosure of complaints for which the City has not confirmed misconduct could compromise ongoing and future investigations.

The Department maintains that the requested record continue to be withheld for the reasons cited above, cumulatively protecting the rights of informants, the rights of employees, and ultimately the integrity of the complaint process as a whole.

I certainly hope the information provided has been insightful and will aid in your determination on this claim. If you have any questions or comments, please feel free to contact me at (415) 558-3384 or at [FirePublicRecords@sfgov.org](mailto:FirePublicRecords@sfgov.org).

Thank You

Rhab Boughn  
Compliance & Public Records Officer

ATTACHMENTS:

PUBLIC RECORDS REQUEST FORM: M. Jones to San Francisco Fire Department requesting letter of complaint that prompted her investigation (7/25/11)

PUBLIC RECORDS REQUEST RESPONSE LETTER: San Francisco Fire Department to M. Jones informing her that responsive records are being withheld (7/28/11)

LETTER: M. Jones to Chief Siragusa requesting copy of complaint letter (8/5/11)

E-MAIL: G. Franklin, Assistant to Chief Siragusa to DCA G. Roccanova seeking advice over production of complaint letter (8/10/11)

LETTER: M. Jones to Chief Siragusa inquiring about not receiving a response to her request for copy of complaint letter (8/11/11)

LETTER: Chief Siragusa to M. Jones stating no obligation to provide copy of complaint letter (8/16/11)

*Personnel information has been redacted in accordance with the California Public Records Act (CA Government Code §6254(c)), none of which may be considered not exempt from disclosure per the San Francisco Sunshine Ordinance (SF Administrative Code §67.24(c)).*





[REDACTED]  
07/26/2011 09:43 PM

To firepublicrecords@sfgov.org  
cc  
bcc  
Subject Request for Public Records attached

Please see the attached request for public records. The same request form is being sent via US mail and should arrive shortly.

Micki Jones  
[REDACTED]



Request for Public Records SFFD.pdf

### Public Records Request Form

#### REQUEST FOR PUBLIC RECORDS

To facilitate the effort to inspect, copy and acquire documents pursuant to the California Public Records Act, Government Code Section 6250, and the San Francisco Sunshine Ordinance, San Francisco Administrative Code Section 67.1, the Sunshine Ordinance Task Force recommends that

1. The requester and the department treat each other with respect and politeness
2. The requester specify a time they are available to review the public records
3. The requester indicate if the request is an Immediate Disclosure Request (within 24 hours)

The cost for copies is 10 cents per page (20 cents per page for two-side copies), except for mass-produced records for agenda items for policy body meetings. Postage costs are additional.

**PLEASE SEND REQUESTS FOR PUBLIC DOCUMENTS TO THE RESPONSIBLE DEPARTMENT. DO NOT SEND REQUESTS TO THE SUNSHINE ORDINANCE TASK FORCE.**

#### PUBLIC RECORDS REQUEST FORM

To: Custodian of Records

Date: JULY 25, 2011

SF FIRE DEPT.

698 - Second St. 94107

Department

Department Address

Name of Requester: Micki Jones

Requester Address: [REDACTED]

City/State/Zip: [REDACTED]

Telephone: [REDACTED] Number to be called when documents are available or to clarify request

M-F

(Indicate times when you can be contacted)

Subject or Item Requested: (Please be as specific as possible)

Letter of complaint that prompted investigation of Inspector Micki Jones, possibly from 1916 Mason Street -

I want to see the records. Please call me at the above phone number when the records are ready for viewing. Do not make copies on my behalf. I will review the documents first and then indicate those documents I wish copied.

- I want copies of the pages in the records that I have marked.
- I want the entire records copied.
- I want the information mailed to the address above.
- If payment is required before releasing copies, please let me know

\*Immediate Disclosure Requests (Requests 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.

CITY AND COUNTY OF SAN FRANCISCO  
SAN FRANCISCO FIRE DEPARTMENT

698 Second Street  
San Francisco, CA  
94107-2015  
Telephone (415) 558-3403  
Facsimile (415) 558-3407

JOANNE M. HAYES-WHITE  
THOMAS A. SIRAGUSA  
MONICA L. FIELDS

Chief of Department  
Deputy Chief of Operations  
Deputy Chief of Administration

July 28, 2011

VIA US MAIL

Micki Jones  
[REDACTED]

Re: Public Records Request- Letter of Complaint  
File: 11-07-25

Dear M. Jones:

The Department has undertaken a diligent search in an attempt to provide any and all records that could reasonably be identified as responsive to your request for public records. Your request sought the following:

- Letter of complaint that prompted investigation of Inspector Micki Jones, possibly from 1916 Mason Street

The records you are requesting constitute personnel records which are exempt from disclosure in accordance with the California Public Records Act (CA Government Code §6254(c)), none of which may be considered not exempt from disclosure per the San Francisco Sunshine Ordinance (SF Administrative Code §67.24). Responsive records are therefore being withheld from public disclosure.

Please Note: Your rights as a San Francisco Fire Department employee differ from your rights as a member of the public. For questions regarding the records you have rights to as an employee, please contact Human Resources Director, Jesusa Bushong: (415) 558-3615.

The San Francisco Fire Department has provided all records and/or information it has been able to reasonably identify in response to your request.

Should you have any questions or concerns, please do not hesitate to contact the Public Records Officer, Rhab Boughn, at (415) 558-3384 or via email at [FirePublicRecords@sfgov.org](mailto:FirePublicRecords@sfgov.org).

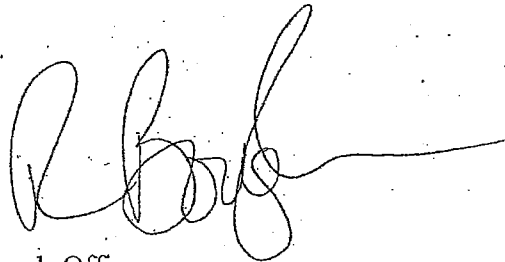
Thank You

Very truly yours,

Joanne Hayes-White  
CHIEF OF DEPARTMENT

By: FF/PM Rhab Boughn  
Compliance & Public Records Officer

cc: Thomas A. Siragusa, Deputy Chief of Operations  
Monica L. Fields, Deputy Chief of Administration



Micki Jones  
[REDACTED]  
[REDACTED]

Deputy Chief Thomas Siragusa  
San Francisco Fire Department  
698 2<sup>nd</sup> Street  
San Francisco, CA 94107

August 5, 2011

Dear Chief Siragusa,

I am requesting a copy of a letter that I have been told prompted the investigation of my actions that you are directing. My first request was to Battalion Chief Charles Crane, who agreed to provide a copy of the complaint, but before it could be provided to me, BC Crane was ordered not to do so. I requested it again through a letter to the SFFD's Records Compliance Officer. That request was also denied, defining the complaint against me as a "personnel record". The denial letter directed me to call the Human Resources Director Jesusa Bushong for information on my rights as an employee to have access to this letter of complaint.

On the morning of August 3<sup>rd</sup> I spoke to Ms. Bushong about this matter. I explained that I was contacting her per the instructions in the letter I had received from the Compliance Officer. She stated that she had no knowledge of the letter from the Compliance Officer and that the "Chief's Office is also unaware of this letter", despite the letter (dated July 28, 2011) including both you and Deputy Chief Fields as "cc" recipients. Ms. Bushong also denied my request for a copy of this alleged complaint letter, unless, she pointed out, the SFFD chooses to bring charges against me. I have been directed to make all future requests to you.

This letter is my third request for a copy of the complaint letter that the SFFD claims prompted the investigation of me. Section 3253(g) of the CA Firefighter's Bill of Rights states that management is not prohibited from providing any kind of discovery, even pre-interrogation discovery. Certainly, now that my interrogation has been completed (on July 27<sup>th</sup>, 2011), there is even less reason to not provide this document.

I would appreciate an un-redacted copy of the complaint letter or a written response by the end of this business day. If you have any questions, I can be reached at the phone number listed below.

Sincerely,

*Micki Jones*

Inspector Micki Jones  
[REDACTED]

cc: Chief of Department Joanne Hayes-White



Ginny Franklin/SFFD/SFGOV  
08/10/2011 11:06 AM

To: Gina Rocanova/CTYATT@CTYATT  
cc  
bcc  
Subject: Complaint involving Insp Micki Jones

Hi Gina:

The Department received a complaint against Inspector Micki Jones for [REDACTED].  
Attached is the complaint.  
Once investigated, the Investigator found no merit to her case.

Inspector Jones is requesting a copy of the original complaint. In the past, I have not given any documentation to the person in question if there was no merit found in the case.

Are there exceptions to this practice?



Jones' Case.pdf

Ginny

Micki Jones



Deputy Chief Thomas Siragusa  
San Francisco Fire Department  
698 2<sup>nd</sup> Street  
San Francisco, CA 94107

August 11, 2011

Dear Chief Siragusa,

I have received no response from you to my letter dated August 5, 2011. It is apparent that my request for an un-redacted copy of the letter the SF Fire Dept. administration states prompted the investigation of my off-duty actions has been denied.

Sincerely,

A handwritten signature in cursive script that reads "Micki Jones".

Inspector Micki Jones



→ to file

JOANNE HAYES-WHITE  
CHIEF OF DEPARTMENT



EDWIN M. LEE  
MAYOR

TOM SIRAGUSA  
Deputy Chief of Operations

**SAN FRANCISCO FIRE DEPARTMENT**  
CITY AND COUNTY OF SAN FRANCISCO

August 16, 2011

Inspector Micki Jones  
[REDACTED]

Dear Inspector Jones:

The San Francisco Fire Department completed a thorough investigation on your actions as it relates to allegedly [REDACTED]

After reviewing the pertinent information on your case, the Chief has concluded that there was no basis for any rule violations in this matter.

The Department is under no obligation to issue you a copy of the complaint that prompted the investigation. The Department considers this matter closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Siragusa".

Tom Siragusa  
Deputy Chief, Operations