

Date: March 22, 2011

Item No. 18 & 19

File No. 11007

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: March 17, 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
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

March 18, 2011:

WILLIAM CLARK VS. ARTS COMMISSION (11007)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant William Clark alleges that the San Francisco Arts Commission (the "Commission") violated the Ordinance by failing to adequately respond to his February 3, 2011 public records request for a copy of the minutes or an audio cassette of the 7/28/10 meeting of the "management team" and for a copy of the draft minutes of the January 25, 2010 Executive Committee meeting. In addition, complainant alleges that the Commission failed to respond to his request for factual information, which had numerous parts.

COMPLAINANT FILES COMPLAINT:

On February 28, 2011, Complainant filed a complaint with the Task Force alleging a violation of sections 67.16, 67.21(b), and 67.22(c).

JURISDICTION

The Commission is a department under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against the Arts Commission. The Commission did not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.16 governs requirements for minutes for public meetings.
- Section 67.21 governs the process for gaining access to public records.
- Section 67.22 governs release of oral public information.
- Section 67.25 governs the immediacy of response.

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

- Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

None.

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ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that the Commission failed to adequately respond to his February 3, 2011 public records request for a copy of the minutes or an audio cassette of the 7/28/10 meeting of the "management team" and for a copy of the draft minutes of the January 25, 2010 Executive Committee meeting. In addition, complainant alleges that the Commission failed to respond to his request for factual information made in the same email, which had numerous parts related to a decision by the Commission to charge the Street Artists Program 5% of administrative costs related to certain management positions.

The Commission responds that they timely wrote complainant to invoke a 14-day extension to respond to his request, but that they were unable to respond within that time period due to the absence of Howard Lazar due to illness while in the middle of research needed to provide a response. The Commission further responds that on March 2, 2011, after his return to work, Mr. Lazar fully responded to the complainant's request.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did the Arts Commission timely respond to the initial request?
- Was the subsequent response of the Commission made within the time period of the extension invoked?
- Did the Commission fully respond to the requests made by complainant?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Commission complied with the requirements of the Ordinance and the Public Records Act?

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. 67.16. MINUTES.

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size.

**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. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.

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(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

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

(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 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:

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- (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.
- (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 6254

- (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 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.

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(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>

02/28/2011 06:24 PM

To <sof@sfgov.org>

cc

bcc

Subject Sunshine Complaint

To:sof@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:San Francisco Arts Commission

CONTACTED:Luis Cancel, Director of Cultural Affairs

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:67.16, 67.21(b) & 67.22(c)

DESCRIPTION:On February 3, 2011 I sent Luis Cancel an email which is posted below requesting some public information and for a copy of the minutes or an audio cassette copy of the 7/28/10 meeting of the Arts Commission's "management team" meeting and for a copy of the draft minutes of the Arts Commission's January 25, 2010 Executive Committee meeting. On February 7, 2010 I received an email from Mr. Cancel's secretary, Sharon Page_Ritchie, in which she invoked a 14 day extension and that Mr. Cancel would respond to my request no later than February 17, 2011. As of today, February 28,2011, I have not received any response from Mr. Cancel in regards to my request. I am sending you this email to get some information from you regarding a few questions I have. According to a November 1, 2010 email I received from Mr. Leo Levenson of the Controller's office, the Art Commission filed the following 2009-10 fiscal year accounting for all the expenditures which the Street Artist Program paid that fiscal year: The total FY 09/10 expenditures of \$244,700 charged to the fund are recorded as follows: Employee Salaries: \$118,759 Employee Benefits \$ 42,820 Materials and Supplies: \$ 2,136 Services of other depts: \$ 2,722 (for telephone and reproduction services) Other operating expenses: \$ 78,263 (includes among other items, 6/28/10 overhead allocation of \$38,348 and 7/29/10 allocation of \$18,875.18 "management supervision charges." According to the notes on the financial system document, the \$18,875.18 charged on 7/29/10 was for: "Abatement of management supervision charges for the program as per ordinance requirement to self support the program and to avoid general fund support. Reference 07/28/10 management team regular meeting decision (5% share of Director's of Cultural Affairs and Director's of Program cost)." What are the names of the people who comprise the Art Commission's "management team"? Who attended the 07/28/10 meeting of the "management team"? What was the actual vote tally by the "management team" regarding the decision to charge the Street Artist Program \$18,875.18 for management supervision charges for the 2009-10 fiscal year? Are there written minutes or audio of the 07/28/10 "management team" meeting available to the public? If so then please provide me with a copy. Also, I noticed that there are no minutes posted for the January 25, 2010 Executive Committee meeting at which item #5 on the agenda was a discussion and possible motion to approve the 2010-11 fiscal year budget for the Street Artist Program. Since the final minutes for that particular meeting apparently have never been approved by the Executive Committee or posted on the Art Commission's website, I am requesting a copy of the rough draft of the minutes for the January 25, 2010 Executive Committee meeting. I making these requests for public information pursuant to the provisions of the Sunshine Ordinance.

HEARING:Yes
PRE-HEARING:No
DATE:February 28, 2011
NAME:William J. Clark
ADDRESS:P.O. Box 882252
CITY:San Francisco
ZIP:94188
PHONE:415-822-5465
CONTACT_EMAIL:billandbobclark@access4less.net
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No



SAN FRANCISCO ARTS COMMISSION

GAVIN NEWSOM
MAYOR

LUIS R. CANCEL
DIRECTOR OF
CULTURAL AFFAIRS

March 14, 2011

Honorable Members, Sunshine Ordinance Task Force
Complaint Committee

c/o Chris Rustom, Deputy Administrator
Office of the Clerk, Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

PROGRAMS

CIVIC ART COLLECTION
CIVIC DESIGN REVIEW
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PERFORMING ARTS
PUBLIC ART
STREET ARTISTS LICENSES

ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.554.6080

RE: Sunshine Ordinance Task Force - #11007 William and Robert
Clark v. Arts Commission

WWW.SFARTSCOMMISSION.ORG

ARTSCOMMISSION@SFGOV.ORG

Dear Committee Members:

The San Francisco Arts Commission (the "Commission") is submitting this response to Complaint #11007, William and Robert Clark v. Arts Commission, which was received by the Commission on March 9, 2011. We note that the wording of the complaint is a repeat of a letter sent by William and Robert Clark on February 3, 2011 to Director of Cultural Affairs Luis R. Cancel, requesting answers to various questions in reference to the Commission's "Management Team" and its decision to levy a 5% administrative charge on the Street Artists Program; and requesting a "rough draft of the minutes for the January 25, 2010 Executive Committee meeting."

Mr. Cancel directed Street Artists Program Director Howard Lazar to research documents appropriate to the Clarks' request and to respond to it. Mr. Lazar immediately commenced to research. However, on February 16th, at his request, Program Assistant Alyssa Licouris informed the Clarks by e-mail that Mr. Lazar had been out of the office for a week due to illness, that he understood that their request was to be fulfilled by the next day (February 17th), but that he did not feel he would be able to do so before the following week. Mr. Lazar ultimately returned to work on February 28th and resumed his research relative to the request.



CITY AND COUNTY OF
SAN FRANCISCO

On March 2nd, Mr. Lazar responded in writing to the request and furnished relevant documents. Please see the attached copy of this letter which (a) fully responds to the Clarks' questions and (b) furnishes the

published minutes of the January 25, 2010 meeting of the Commission's Executive Committee.

In summary, both a response and documents were ultimately furnished. The delay in furnishing was due to (1) the Program Director's absence from his office due to illness, and (2) his responding to the work load which had accumulated in his absence.

We respectfully request that you please take these reasons into consideration as you assess this matter.

Sincerely,

Howard Lazar
Street Artists Program Director

Attachments

Cc: The Honorable P. J. Johnston, President, Arts Commission
The Honorable Greg Chew, Chairman, and Commissioners John
Calloway, Amy Chuang, Sherene Melania, and Jessica Silverman
- Street Artists Committee
Mr. Luis R. Cancel, Director of Cultural Affairs
Mr. Kan Htun, Chief Financial Officer
Ms. Jill Manton, Director of Programs



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

March 2, 2011

LUIS R. CANCEL
DIRECTOR OF
CULTURAL AFFAIRS

Mr. William J. Clark
Mr. Robert J. Clark
P. O. Box 882252
San Francisco, CA 94188

PROGRAMS

Re: February 3, 2011 request for information

CIVIC ART COLLECTION
CIVIC DESIGN REVIEW
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PERFORMING ARTS
PUBLIC ART
STREET ARTISTS LICENSES

Dear Mr. William J. Clark and Mr. Robert J. Clark:

On February 3, 2011, you e-mailed to Mr. Luis Cancel, Director of Cultural Affairs, a request for *"some information from you regarding a few questions I have."* On February 7th, Arts Commission Secretary Sharon Page Ritchie responded to you in writing that the Commission was *"invoking an extension of not more than 14 days from February 3, 2011, to respond to your request pursuant to the California Public Records Act"*, that *"because there is a voluminous amount of records the Arts Commission staff must search through and examine to determine if it has responsive records, and Arts Commission staff will need to consult with the City Attorney's Office regarding your request,"* and that the *"Commission will endeavor to respond to you as quickly as possible, and no later than February 17, 2011."*

Mr. William J. Clark replied by e-mail to Ms. Ritchie on February 7th, as follows: *"I didn't request an 'immediate disclosure request' on these matters. I made a normal public records disclosure request which requires the Arts Commission to respond within 10 working days. However, I will consider this your response and wait until you can provide me with the information and documents I requested."*

Mr. Cancel asked Street Artists Program Director Howard Lazar to research documents appropriate to your request and to respond to you. Mr. Lazar commenced immediately to research. However, on February 16th, at his request, Program Assistant Alyssa Licouris informed you by e-mail that Mr. Lazar had been out of the office for a week due to illness, that he understood that your document request was to be fulfilled by the next day (February 17th), but that he did not feel he would be able to do so before the following week. Mr. Lazar returned to work on February 28th and resumed his research relative to your request.



CITY AND COUNTY OF
SAN FRANCISCO

In your request, you have asked the following questions to which we respond:

“What are the names of the people who comprise the Art Commission’s ‘management team?’” In response, the “management team” is comprised of Director of Cultural Affairs Luis Cancel, Director of Programs Jill Manton, Director of Grants E. San San Wong, and Director of Finance Kan Htun.

“Who attended the 07/28/10 meeting of the ‘management team?’” In response, the meeting was attended by Director of Cultural Affairs Cancel, Director of Programs Manton, and Director of Finance Htun.

“What was the actual vote tally by the ‘management team’ regarding the decision to charge the Street Artist Program \$18,875.18 for management supervision charges for the 2009-10 fiscal year?” In response, there is no public record of such a “vote tally”. However, please see the enclosed February 4, 2011 e-mail from Mr. Htun to Howard Lazar with attached documents entitled “Street Artists Program FY 09-10 Charges” and “CITY AND COUNTY OF SAN FRANCISCO – NFAMIS 07/28/2010”; In his e-mail, Mr. Htun states: *“The Management Team meeting decided that to charge Director and Director of Programs supervision charge to be fixed at 5% of their total hours spent across all the programs, which is relatively liberal compares to their actual effort and time spent on the Street Artist program for the year. Accordingly, the attached abatement document was processed in FAMIS.”*

“Are there written minutes or audio of the 07/28/10 ‘management team’ meeting available to the public? If so then please provide me with a copy.” In response, there are no minutes or audio of the 07/28/10 meeting.

You have requested *“a copy of the rough draft of the minutes for the January 25, 2010 Executive Committee meeting”* which include *“a discussion and possible motion to approve the 2010-11 fiscal year budget for the Street Artists Program.”* In response, we are herewith furnishing you with the published minutes of the January 25, 2010 meeting of the Executive Committee.

Sincerely,

Howard Lazar
Street Artists Program Director

Enclosures

Cc: Arts Commissioners Greg Chew, John Calloway, Amy Chuang,
Sherene Melania, Jessica Silverman – Street Artists Program
Committee

Arts Commissioner P. J. Johnston, President

Director of Cultural Affairs Luis R. Cancel

Director of Programs Jill Manton

Chief Financial Officer Kan Htun

Deputy City Attorney Virginia Dario Elizondo

Deputy City Attorney Adine K. Varah