

Date: March 22, 2011

Item No. 20 & 21  
File No. 11008

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- William Clark v Arts Commission**
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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

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## MEMORANDUM

*March 18, 2011:*

*WILLIAM CLARK VS. ARTS COMMISSION (11008)*

### 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 4, 2011 public records request for a copy of the audio cassette tape of the January 12, 2011 Street Artists Program Committee meeting.

#### COMPLAINANT FILES COMPLAINT:

On February 28, 2011, Complainant filed a complaint with the Task Force alleging a violation of section 67.21(b).

#### 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 67.21 governs the process for gaining access to public records.

##### 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 on February 4, 2011, he requested a copy of the January 28, 2011 public records request for a copy of the audio cassette tape of the January 12, 2011 Street Artists Program Committee meeting. He further alleges that as of the time of his complaint, he had not been provided the tape record.

The Commission responds that that they were unable to timely respond due to the absence of Howard Lazar due to illness , but that Mr. Lazar did provide the requested record after his return, on March 9, 2011. At that time, Mr. Lazar responded by email with attached electronic files of the recorded meeting, and also mailed 3 CDs that day with copies of the audio files on them.

Complainant responds to the Commission by stating that the audio files provided by the Commission were of such poor quality that they requested access to the original tape recording. They further respond that after listening to the tape, they determined that this was not the original tape recording of the January 12, 2011 meeting, based on the absence from the tape of Robert Clark's public testimony at that meeting and the response to that testimony by Commission Chair Luis Cancel. Due to this, complainant does not accept that he has been provided the full, unredacted version of the public record that he requested.

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

- Did the Arts Commission timely respond to the initial request?
- Did the subsequent response of the Commission withhold any part of the records requested?
- If so, did the Commission justify such withholding in writing?

## **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. 67.21. 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

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until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

**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

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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.

**(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.

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- (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>  
02/28/2011 07:02 PM

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

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:San Francisco Arts  
Commission Street Artist Program  
CONTACTED:Howard Lazar, Director of the Street Artist Program  
PUBLIC\_RECORDS\_VIOLATION:Yes  
PUBLIC\_MEETING\_VIOLATION:No  
MEETING\_DATE:  
SECTIONS\_VIOLATED:Section 67.21(b)  
DESCRIPTION:On February 4, 2011 I sent Howard Lazar an email requesting an audio cassette  
copy of the January 12, 2011 Street Artist Program Committee meeting. As of today, February  
28, 2011, I have not any response or an audio cassette copy of the January 28, 2011 Street Artist  
Program Committee Meeting from Mr. Lazar.  
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

EDWIN M. LEE  
MAYOR

LUIS R. CANCEL  
DIRECTOR OF  
CULTURAL AFFAIRS

March 10, 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 - #11008 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 #11008, William and Robert Clark v. Arts Commission, which was received by the Commission on March 9, 2011. According to the complaint, William J. Clark states: *"On February 4, 2011 I sent Howard Lazar an email requesting an audio cassette copy of the January 12, 2011 Street Artist Program Committee meeting. As of today, February 28, 2011, I have not [received] any response or an audio cassette copy of the January 28, 2011 Street Artist Program Committee Meeting from Mr. Lazar."*

Although Street Artists Program Director Howard Lazar had been ill and out of the office for the better part of the two weeks of February 14 – 27, he did provide the response on March 9<sup>th</sup>.

On March 9<sup>th</sup>, Mr. Lazar sent an e-mail to William and Robert Clark with attached audio files of the recording of the requested meeting. In the same e-mail, Mr. Lazar informed them that his office was also sending them three (3) CDs which comprised the entire recording of the meeting.

In summary, both a response and a recording 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, including a research of documents for another (February 3, 2011) Clark request.



CITY AND COUNTY OF  
SAN FRANCISCO

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

Sincerely,

Howard Lazar  
Street Artists Program Director

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



Bill and Bob Clark  
<billandbobclark@access4less.net>

03/16/2011 01:31 PM

Please respond to  
Bill and Bob Clark  
<billandbobclark@access4less.net>

To sotf@sfgov.org

cc saudage38@hotmail.com, anordquist@hotmail.com,  
smac41@netzero.net, kathyleather@gmail.com,  
addariophotography@myastound.net, glasmanw@aol.com,

bcc

Subject Complaint #11008

Hi Chris,

On March 9, 2011, I received an email from Mr. Lazar which contained a digital audio version of what he purported to be the audio cassette recording of the January 12, 2011 Arts Commission's Street Artist Program Committee meeting. In that email, he also informed me that he sent me 3 CDs of the meeting in the mail.

After I listened to both versions of the meeting, the quality was so poor it was very difficult to hear many portions of the meeting so on March 10, 2011 I sent Mr. Lazar an email requesting that I be allowed to inspect the original audio cassette recording of the January 12, 2011 Arts Commission's Street Artist Program Committee meeting.

On March 15, 2011, my brother and I inspected what Mr. Lazar purported to be the original audio cassette recording of the January 12, 2011 Arts Commission's Street Artist Program Committee meeting.

Upon inspection of the audio cassette recording, we discovered that a portion of the meeting which contained some of my brother's testimony and the Director of Cultural Affairs, Luis Cancel's response to my brother's testimony was deleted from the audio cassette recording.

I returned the audio cassette recording to Aylssa Licouris, Program Assistant of the Street Artist Program and informed her that the audio cassette recording she gave to me was not the original audio cassette recording of the January 12, 2011 Arts Commission's Street Artist Program Committee meeting because a portion of the meeting was missing. I then told her I would not accept this audio cassette recording as being the original true and accurate audio cassette recording of the January 12, 2011 Arts Commission's Street Artist Program Committee meeting. I also told her to tell Mr. Lazar to bring the original unedited audio cassette recording of the January 12, 2011 Arts Commission's Street Artist Program Committee meeting to the Sunshine Ordinance Task Force hearing on this matter.

I want to inform the Sunshine Ordinance Task Force that I do not accept the audio cassette recording of the January 12, 2011 Arts Commission's Street Artist Program Committee meeting that was provided to me by Mr. Lazar as being the true, accurate and complete audio cassette recording of the January 12, 2011 Arts Commission's Street Artist Program Committee meeting.

Please include a copy of this email in the file of complaint #11008.

Thank you,

William J. Clark