

Date: Nov. 29, 2011

Item No. 9 & 10
File No. 11070

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Jason Grant Garza against the Department of Public Health**
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Completed by: Chris Rustom

Date: Nov. 22, 2011

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

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

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



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MEMORANDUM

October 21, 2011:

JASON GRANT GARZA V. DEPARTMENT OF PUBLIC HEALTH (11070)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Jason Grant Garza ("Complainant") alleges that the Department of Public Health ("DPH") has failed to respond to his September 15, 2011 Immediate Disclosure Request ("IDR") for 1) his medical records from August 2011 and June 2010 from Tom Waddell clinic; 2) a copy of his signed HIPAA release for his Tom Waddell health care information to have been released through SF General to HAFCI; 3) documentation provided by DPH to state and federal regulatory agencies related to an investigation of his HIPAA violation; and 4) internal documentation generated by this Sunshine request.

COMPLAINANT FILES COMPLAINT:

On September 26, 2011, Mr. Garza filed a complaint with the Task Force.

JURISDICTION

DPH is a department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Ordinance against the DPH.

APPLICABLE STATUTORY SECTION(S):

Sunshine Ordinance (S.F. Administrative Code Section 67.1, et seq.)

- Section 67.24(i) governs requirements for asserted exemptions from disclosure of a document.
- Section 67.25 governs the timing of responses to public records requests.
- Section 67.26 governs withholding of documents responsive to a records request.
- Section 67.27 governs requirements for justification of withholding responsive documents.

California Government Code

- Section 6253 governs timing of responses to public records requests.
- Section 6254 governs exemptions from disclosure.

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U.S. Code of Federal Regulations: 45 C.F.R. §164.524 and § 164.508 govern confidentiality of medical records.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that DPH has failed to comply with his September 15, 2011 IDR requesting 1) his medical records from August 2011 and June 2010 from Tom Waddell clinic; 2) a copy of his signed HIPAA release for his Tom Waddell health care information to have been released through SF General to HAFCI; 3) documentation provided by DPH to state and federal regulatory agencies related to an investigation of his HIPAA violation; and 4) internal documentation generated by this Sunshine request.

DPH alleges that it timely responded to the IDR on September 16, 2011, by invoking a 10-day extension, as allowed section 67.25(a) of the Ordinance for responding to more extensive or demanding requests. It further alleges that it provided a more substantive response to the IDR on September 30, 2011, including all records responsive to his request except his medical records sought in category 1, above. The September 30, 2011 response from Eileen Shields stated that "your medical record is not a public document and I am not able to obtain a copy for you. You will need to go the clinic, sign an authorization form, and then the clinic will provide you with a copy."

DPH further alleges that Mr. Garza again made the same request on October 2, 2011, which DPH responded to on October 3, 2011. In the October 3, 2011 DPH response, DPH included copies of its policy on HIPAA compliance and its Authorization to Disclose Health Information, and again explained its justification for not providing the medical records requested.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What exactly was the request made by Mr. Garza on October 2, 2011?
- What type of documents responsive to the IDR are in the custody of DPH?
- Are the documents provided by DPH in response to the IDR those sought by the complainant? Are there additional responsive documents that have not been provided?
- Are any documents requested but not provided covered by the HIPAA privacy rule?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has DPH timely responded to the IDR by invoking an extension under section 67.25?
- Was DPH's subsequent response on October 30, 2011 timely, within the 10-day extension that it invoked?
- Do the medical records sought fit within any exemption from disclosure provided for by the Sunshine Ordinance and/or the PRA?

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- Does state or federal law require the signing of an Authorization to Disclose Health Information before releasing medical records sought by the IDR?
- Does the Sunshine Ordinance preempt any state or federal law that requires Authorization to Disclose Health Information before DPH may release records?

SUGGESTED ANALYSIS

This analysis addresses only the issue of whether medical records are exempt from disclosure under the Ordinance. Health providers typically require that medical records will not be disclosed until the patient provides an Authorization to Disclose Health Information. The following laws bear on this issue: Sunshine Ordinance section 67.24(i), PRA section 6254 and the Privacy Rule of the Health Insurance Portability and Accountability Act ("Privacy Rule"), 45 C.F.R. sections 164.500, et seq.

The Ordinance provides that withholding may be justified on the basis that disclosure is prohibited by law, or disclosure could result in civil liability, citing the specific statutory authority in the PRA or elsewhere. Sunshine Ordinance §67.27(b)& (c).

The federal Privacy Rule provides a floor of privacy protections for a person's "individually identifiable health information." Health information fits this category if it "identifies the individual" or there is a "reasonable basis to believe the information can be used to identify the individual." 45 C.F.R. § 160.103. The Privacy Rule preempts state or local laws that are in conflict with it. 45 C.F.R. §§ 160.201-160.205. Violations of the Privacy Rule may result in the imposition of civil money penalties. 45 C.F.R. §§ 160.401-160.424.

The Privacy Rule requires that individuals be allowed access to inspect and obtain copies of their protected health information or medical records. 45 C.F.R. § 164.524(a). It permits health care providers to require that requests be in writing. 45 C.F.R. § 164.524 (b). The Privacy Rule requires that medical records not be disclosed without authorization and sets out the particular requirements for acceptable authorizations, *including a signature of the individual* whose medical records are at issue. 45 C.F.R. §164.508(c)(vi). Finally, the Privacy Rule appears to contemplate the use of an authorization when the records are requested by the subject of the records. (see 45 C.F.R. § 164.508(c)(iv) [A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.])

Based on the above, it appears that any medical provider may require that the subject of the medical records requested complete a written authorization prior to disclosing records. These requirements are a part of federal law, which specifically preempts local and state law. Where possible, local and state law should be read in such a way as not to conflict with the requirements of a federal law. This is easily done. Ordinance § 67.27(b) expressly allows withholding where disclosure is forbidden by federal law, as would be the case where medical records were disclosed in violation of the Privacy Rule. Likewise, § 67.27(c) allows withholding where

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disclosure would result in civil liability; the Privacy Rule provides for civil penalties for violations.

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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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.

SECTION 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

(i) [] All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question **or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.** (emphasis added)

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,

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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.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

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

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

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

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

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

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

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(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.
- (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.

SECTION 6254: RECORDS EXEMPT FROM DISCLOSURE REQUIREMENTS

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.

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U.S. CODE OF FEDERAL REGULATIONS**45 C.F.R. § 164.524**

§ 164.524 Access of individuals to protected health information.

(a) Standard: Access to protected health information. (1) Right of access. Except as otherwise provided in paragraph (a)(2) or (a)(3) of this section, an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set, except for:

(i) Psychotherapy notes;

(ii) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and

(iii) Protected health information maintained by a covered entity that is:

(A) Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. 263a, to the extent the provision of access to the individual would be prohibited by law; or

(B) Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 C.F.R. 493.3(a)(2).

(2) Unreviewable grounds for denial. A covered entity may deny an individual access without providing the individual an opportunity for review, in the following circumstances.

(i) The protected health information is excepted from the right of access by paragraph (a)(1) of this section.

(ii) A covered entity that is a correctional institution or a covered health care provider acting under the direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.

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(iii) An individual's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research.

(iv) An individual's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. 552a, may be denied, if the denial of access under the Privacy Act would meet the requirements of that law.

(v) An individual's access may be denied if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

(3) Reviewable grounds for denial. A covered entity may deny an individual access, provided that the individual is given a right to have such denials reviewed, as required by paragraph (a)(4) of this section, in the following circumstances:

(i) A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;

(ii) The protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or

(iii) The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

(4) Review of a denial of access. If access is denied on a ground permitted under paragraph (a)(3) of this section, the individual has the right to have the denial reviewed by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny. The covered entity must provide or deny access in accordance with the determination of the reviewing official under

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paragraph (d)(4) of this section.

(b) Implementation specifications: requests for access and timely action. (1) Individual's request for access. The covered entity must permit an individual to request access to inspect or to obtain a copy of the protected health information about the individual that is maintained in a designated record set. The covered entity may require individuals to make requests for access in writing, provided that it informs individuals of such a requirement.

(2) Timely action by the covered entity. (i) Except as provided in paragraph (b)(2)(ii) of this section, the covered entity must act on a request for access no later than 30 days after receipt of the request as follows.

(A) If the covered entity grants the request, in whole or in part, it must inform the individual of the acceptance of the request and provide the access requested, in accordance with paragraph (c) of this section.

(B) If the covered entity denies the request, in whole or in part, it must provide the individual with a written denial, in accordance with paragraph (d) of this section.

(ii) If the request for access is for protected health information that is not maintained or accessible to the covered entity on-site, the covered entity must take an action required by paragraph (b)(2)(i) of this section by no later than 60 days from the receipt of such a request.

(iii) If the covered entity is unable to take an action required by paragraph (b)(2)(i)(A) or (B) of this section within the time required by paragraph (b)(2)(i) or (ii) of this section, as applicable, the covered entity may extend the time for such actions by no more than 30 days, provided that:

(A) The covered entity, within the time limit set by paragraph (b)(2)(i) or (ii) of this section, as applicable, provides the individual with a written statement of the reasons for the delay and the date by which the covered entity will complete its action on the request; and

(B) The covered entity may have only one such extension of time for action on a request for access.

(c) Implementation specifications: Provision of access. If the covered entity provides an individual with access, in whole or in part, to protected health information, the covered entity

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must comply with the following requirements.

(1) Providing the access requested. The covered entity must provide the access requested by individuals, including inspection or obtaining a copy, or both, of the protected health information about them in designated record sets. If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the covered entity need only produce the protected health information once in response to a request for access.

(2) Form of access requested. (i) The covered entity must provide the individual with access to the protected health information in the form or format requested by the individual, if it is readily producible in such form or format; or, if not, in a readable hard copy form or such other form or format as agreed to by the covered entity and the individual.

(ii) The covered entity may provide the individual with a summary of the protected health information requested, in lieu of providing access to the protected health information or may provide an explanation of the protected health information to which access has been provided, if:

(A) The individual agrees in advance to such a summary or explanation; and

(B) The individual agrees in advance to the fees imposed, if any, by the covered entity for such summary or explanation.

(3) Time and manner of access. The covered entity must provide the access as requested by the individual in a timely manner as required by paragraph (b)(2) of this section, including arranging with the individual for a convenient time and place to inspect or obtain a copy of the protected health information, or mailing the copy of the protected health information at the individual's request. The covered entity may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate the timely provision of access.

(4) Fees. If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, the covered entity may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

(i) Copying, including the cost of supplies for and labor of copying, the protected health information requested by the individual;

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(ii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and

(iii) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c)(2)(ii) of this section.

(d) Implementation specifications: Denial of access. If the covered entity denies access, in whole or in part, to protected health information, the covered entity must comply with the following requirements.

(1) Making other information accessible. The covered entity must, to the extent possible, give the individual access to any other protected health information requested, after excluding the protected health information as to which the covered entity has a ground to deny access.

(2) Denial. The covered entity must provide a timely, written denial to the individual, in accordance with paragraph (b)(2) of this section. The denial must be in plain language and contain:

(i) The basis for the denial;

(ii) If applicable, a statement of the individual's review rights under paragraph (a)(4) of this section, including a description of how the individual may exercise such review rights; and

(iii) A description of how the individual may complain to the covered entity pursuant to the complaint procedures in § 164.530(d) or to the Secretary pursuant to the procedures in § 160.306. The description must include the name, or title, and telephone number of the contact person or office designated in § 164.530(a)(1)(ii).

(3) Other responsibility. If the covered entity does not maintain the protected health information that is the subject of the individual's request for access, and the covered entity knows where the requested information is maintained, the covered entity must inform the individual where to direct the request for access.

(4) Review of denial requested. If the individual has requested a review of a denial under paragraph (a)(4) of this section, the covered entity must designate a licensed health care professional, who was not directly involved in the denial to review the decision to deny access. The covered entity must promptly refer a request for review to such designated reviewing official. The designated reviewing official must determine, within a reasonable period of time,

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whether or not to deny the access requested based on the standards in paragraph (a)(3) of this section. The covered entity must promptly provide written notice to the individual of the determination of the designated reviewing official and take other action as required by this section to carry out the designated reviewing official's determination.

(e) Implementation specification: Documentation. A covered entity must document the following and retain the documentation as required by § 164.530(j):

(1) The designated record sets that are subject to access by individuals; and

(2) The titles of the persons or offices responsible for receiving and processing requests for access by individuals.

45 C.F.R. § 164.508: USES AND DISCLOSURES FOR WHICH AN AUTHORIZATION IS REQUIRED.

(a) Standard: authorizations for uses and disclosures. -- (1) Authorization required: general rule. Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.

(2) Authorization required: psychotherapy notes. Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered entity must obtain an authorization for any use or disclosure of psychotherapy notes, except:

(i) To carry out the following treatment, payment, or health care operations:

(A) Use by the originator of the psychotherapy notes for treatment;

(B) Use or disclosure by the covered entity for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or

(C) Use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual; and

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(ii) A use or disclosure that is required by § 164.502(a)(2)(ii) or permitted by § 164.512(a); § 164.512(d) with respect to the oversight of the originator of the psychotherapy notes; § 164.512(g)(1); or § 164.512(j)(1)(i).

(3) Authorization required: Marketing. (i) Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered entity must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of:

(A) A face-to-face communication made by a covered entity to an individual; or

(B) A promotional gift of nominal value provided by the covered entity.

(ii) If the marketing involves direct or indirect remuneration to the covered entity from a third party, the authorization must state that such remuneration is involved.

(b) Implementation specifications: general requirements. -- (1) Valid authorizations. (i) A valid authorization is a document that meets the requirements in paragraphs (a)(3)(ii), (c)(1), and (c)(2) of this section, as applicable.

(ii) A valid authorization may contain elements or information in addition to the elements required by this section, provided that such additional elements or information are not inconsistent with the elements required by this section.

(2) Defective authorizations. An authorization is not valid, if the document submitted has any of the following defects:

(i) The expiration date has passed or the expiration event is known by the covered entity to have occurred;

(ii) The authorization has not been filled out completely, with respect to an element described by paragraph (c) of this section, if applicable;

(iii) The authorization is known by the covered entity to have been revoked;

(iv) The authorization violates paragraph (b)(3) or (4) of this section, if applicable;

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(v) Any material information in the authorization is known by the covered entity to be false.

(3) Compound authorizations. An authorization for use or disclosure of protected health information may not be combined with any other document to create a compound authorization, except as follows:

(i) An authorization for the use or disclosure of protected health information for a research study may be combined with any other type of written permission for the same research study, including another authorization for the use or disclosure of protected health information for such research or a consent to participate in such research;

(ii) An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes;

(iii) An authorization under this section, other than an authorization for a use or disclosure of psychotherapy notes, may be combined with any other such authorization under this section, except when a covered entity has conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits under paragraph (b)(4) of this section on the provision of one of the authorizations.

(4) Prohibition on conditioning of authorizations. A covered entity may not condition the provision to an individual of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization, except:

(i) A covered health care provider may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of protected health information for such research under this section;

(ii) A health plan may condition enrollment in the health plan or eligibility for benefits on provision of an authorization requested by the health plan prior to an individual's enrollment in the health plan, if:

(A) The authorization sought is for the health plan's eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations; and

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(B) The authorization is not for a use or disclosure of psychotherapy notes under paragraph (a)(2) of this section; and

(iii) A covered entity may condition the provision of health care that is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party.

(5) Revocation of authorizations. An individual may revoke an authorization provided under this section at any time, provided that the revocation is in writing, except to the extent that:

(i) The covered entity has taken action in reliance thereon; or

(ii) If the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.

(6) Documentation. A covered entity must document and retain any signed authorization under this section as required by § 164.530(j).

(c) Implementation specifications: Core elements and requirements. -- (1) Core elements. A valid authorization under this section must contain at least the following elements:

(i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.

(ii) The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.

(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.

(iv) A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.

(v) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including for the creation and maintenance of a research database or research

Memorandum

DATE: October 21, 2011
PAGE: 17
RE: Garza v. DPH (11070)

repository.

(vi) Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

(2) Required statements. In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

(i) The individual's right to revoke the authorization in writing, and either:

(A) The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or

(B) To the extent that the information in paragraph (c)(2)(i)(A) of this section is included in the notice required by § 164.520, a reference to the covered entity's notice.

(ii) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:

(A) The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in paragraph (b)(4) of this section applies; or

(B) The consequences to the individual of a refusal to sign the authorization when, in accordance with paragraph (b)(4) of this section, the covered entity can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.

(iii) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this subpart.

(3) Plain language requirement. The authorization must be written in plain language.

(4) Copy to the individual. If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.



<complaints@sfgov.org>
09/26/2011 02:01 PM

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

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Public Health
CONTACTED:Eileen Shields
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:
DESCRIPTION:Not complying with an Immediate Disclosure Request.
HEARING:Yes
PRE-HEARING:No
DATE:9/20/2011
NAME:Jason Grant Garza
ADDRESS:1369 B. Hayes Street
CITY:San Francisco, CA 94117
ZIP:San Francisco, CA 94117
PHONE:
CONTACT_EMAIL;jasongrantgarza@yahoo.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No



Jason Grant Garza
<jasongrantgarza@yahoo.com>
m>

09/20/2011 08:49 AM

Please respond to
Jason Grant Garza
<jasongrantgarza@yahoo.com>
>

To "sotf@sfgov.org" <sotf@sfgov.org>,
"hopeannette@earthlink.net" <hopeannette@earthlink.net>,
"jasongrantgarza@yahoo.com"
cc "Barbara.Garcia@sfdph.org" <Barbara.Garcia@sfdph.org>,
"Eillen.Shields@sfdph.org" <Eillen.Shields@sfdph.org>,
"publicrecords.dph@sfgov.org"
bcc
Subject Fw: "IMMEDIATE DISCLOSURE REQUEST"

9/20/2011 9 am PST Tuesday

To the Sunshine Task Force and Whom It May Concern:

Please process my this as a sunshine complaint for NOT complying with my IMMEDIATE DISCLOSURE REQUEST. Send me IMMEDIATELY the date of the hearing (SUNSHINE TASK FORCE) that this will be scheduled for. Also IMMEDIATELY let me know if there are any more "HOOPS" that I must jump through in order to have this process move forward ASAP.

Please know that this documentation serves as notice for the requested hearing having meet the requirements of notification as denoted in the ordinance. Therefore there should NOT be any delay in scheduling and if there is please notify me ASAP.

Thou I walk thru the VALLEY of SHADOWS,

Jason Grant Garza
jasongrantgarza@yahoo.com

----- Forwarded Message -----

From: Jason Grant Garza <jasongrantgarza@yahoo.com>
To: "Eileen.Shields@sfdph.org" <Eileen.Shields@sfdph.org>; "publicrecords.dph@sfdph.org" <publicrecords.dph@sfdph.org>; "Barbara.Garcia@sfdph.org" <Barbara.Garcia@sfdph.org>; "sotf@sfgov.org" <sotf@sfgov.org>; "jasongrantgarza@yahoo.com" <jasongrantgarza@yahoo.com>
Cc: "Donald.White@oig.hhs.gov" <Donald.White@oig.hhs.gov>; "Kathleen.Sebelius@hhs.gov" <Kathleen.Sebelius@hhs.gov>; "Kathleen.Billingsley@cdph.ca.gov" <Kathleen.Billingsley@cdph.ca.gov>; "DDooley@chhs.ca.gov" <DDooley@chhs.ca.gov>
Sent: Thursday, September 15, 2011 8:02 AM
Subject: "IMMEDIATE DISCLOSURE REQUEST"

.IMMEDIATE DISCLOSURE REQUEST.

Eileen.Shields@sfdph.org
publicrecords.dph@sfdph.org
Barbara Garcia (Director DPH)

9/15/2011 Thursday

IMMEDIATE DISCLOSURE REQUEST

To Whom It May Concern:

Please be sure to forward this to the Custodian of Records, department head or who ever is in charge for compliance per the regulations for correct process.

On August 31, 2011 I went to Tom Waddell seeking medical care (urgent and primary care) and did NOT receive it. Please note for the record that I also went to Tom Waddell in June 2010 and did NOT receive service either as the record indicates.

Therefore:

Pursuant to all relevant provisions of the California Government Codes (Ralph M. Brown Act et al.) and the San Francisco Sunshine Ordinance, California Records Act, and the Federal FOIA Act - I would like to request a copy of the following:

All documents, emails, correspondence, logs, notes of conversation, notes of phone calls regarding: (1) a copy of my medical records for both August 2011 and June 2010 from Tom Waddell regarding these incidents;(2) A copy of my signed HIPPA release for my Tom Waddell healthcare information to have been released thru SF General (under DPH) to HAFCI for which SF General (DPH) was found in violation by California Department of Public Health - Licensing and Certification Complaint # CA00265297 or an ADMISSION of the lawbreaking activity; and (3) Per the MOU between the DPH and Health Clinics (Patient Information and Privacy Agreement) and HIPPA requirements ... please send me the documentation provided to the regulatory agencies on the state and federal level over NOTIFICATION of the HIPPA VIOLATION as required by the HIPPA law and all internal machinations (processes) required under the MOU such as notification to the Dph Data Governance Committee, etc as outlined in the MOU.

This request includes all paperwork sent, received, emailed or any other form of transmittal to all involved. This request includes all paperwork sent, received, emailed or any other form of transmittal from all involved. This request also includes all internal documentation generated by this sunshine request matter also. (From inception to present date) ... for example any documentation, notes, logs, tapes, emails, etc from any individual to any other individual regarding any matter concerning this matter, its handling, deposition, etc.

Please realize that per the sunshine regulations ... you must be helpful in resolving and getting me what I specifically request. You MUST work with the requestor to clearly provide what is required.

Sincerely,

Jason Grant Garza
1369 B. Hayes Street
San Francisco, CA 94117
jasongrantgarza@yahoo.com

email cc:

Kathleen Sebelius – Secretary of Health & Human Services
Donald White – Office of Inspector General



Jason Grant Garza
 <jasongrantgarza@yahoo.com>
 m>

09/20/2011 10:28 AM

Please respond to
 Jason Grant Garza
 <jasongrantgarza@yahoo.com>
 >

To "sotf@sfgov.org" <sotf@sfgov.org>,
 "hopeannette@earthlink.net" <hopeannette@earthlink.net>,
 "Eileen.Shields@sfdph.org" <Eileen.Shields@sfdph.org>,
 cc "Donald.White@oig.hhs.gov" <Donald.White@oig.hhs.gov>,
 "Kathleen.Sebelius@hhs.gov"
 <Kathleen.Sebelius@hhs.gov>,
 bcc
 Subject 9/20/2011 - Followup to SOTF and Shields re: Deflection -
 Fw: "IMMEDIATE DISCLOSURE REQUEST"

History: This message has been replied to.

9/20/2011 10:30 am PST Tuesday

To Eileen Shields and SOTF:

To SOTF:

Just because Ms. Shields states that the request is not simple, routine or readily available DOES NOT MAKE IT SO. It also ignores the "ROLLING ASPECT" of IMMEDIATE DISCLOSURE ... therefore I am within my rights to file a complaint regarding procedure so that Ms. Shields can state for the record how a simple signed form that should be computerized and ON file is not simple nor readily available ... the same principle regarding what should have already been sent to DPH Data Governance per the MOU and what should have ALREADY been sent to the state and federal agencies regarding the HIPPA violation.

Thank you and contact ME ASAP regarding the hearing and do not forget I am requesting ADA help and still awaiting response to my matter regarding the SOTF's incorrect portrayal of the HELP I received last time per this department and their ADA Coordinator ... to be more specific ... just how this ADA Coordinator and representation is misleading in order to give the impression that the post is there for the citizen when in fact it is not ... it is JUST THERE for SOTF and BOS but not the citizen as my records indicate and MY rejection of this false premise as is evidenced by the SUNSHINE HEARING tape that I have and my file requesting a hearing over this falsehood and naturally the part and lack of help for me thru the MINISTRY of SUNSHINE. Please note that I am still awaiting response from the Chair and SOTF as my records and emails indicate.

To Ms. Shields:

Thank you for your incorrect assessment and "RISK MANAGEMENT" deflection to SOTF however I am notifying you and SOTF that I challenge your representation ... oh and for the record Ms. Peralta HAS NOT CONTACTED me and my medical records do fall under sunshine ... again thanks for the false attempt at deflection I am sure that this will pose many questions for "REASONABLE" men.

Thou I walk thru the VALLEY of SHADOWS,

Jason Grant Garza

jasongrantgarza@yahoo.com

----- Forwarded Message -----

From: Eileen Shields <Eileen.Shields@sfdph.org>

To: jasongrantgarza@yahoo.com

Cc: SOTF <sotf@sfgov.org>; Chona Peralta <Chona.Peralta@sfdph.org>

Sent: Tuesday, September 20, 2011 9:37 AM

Subject: Fw: "IMMEDIATE DISCLOSURE REQUEST"

Dear Mr. Garza & SOTF:

This is in response to Mr. Jason Grant Garza's e-mail of 9/20/2011 as

pasted below:

9/20/2011 9 am PST Tuesday

To the Sunshine Task Force and Whom It May Concern:

Please process my this as a sunshine complaint for NOT complying with my IMMEDIATE DISCLOSURE REQUEST. Send me IMMEDIATELY the date of the hearing (SUNSHINE TASK FORCE) that this will be scheduled for. Also IMMEDIATELY let me know if there are any more "HOOPS" that I must jump through in order to have this process move forward ASAP.

Please know that this documentation serves as notice for the requested hearing having meet the requirements of notification as denoted in the ordinance. Therefore there should NOT be any delay in scheduling and if there is please notify me ASAP.

Thou I walk thru the VALLEY of SHADOWS,

Jason Grant Garza

jasongrantgarza@yahoo.com

Below is this Department's response to Mr. Garza sent on 9/16/2011, well within the required time limits to respond to his IDR. Because Mr. Garza is asking for medical information, this request has been turned over to Chona Peralta, Compliance Officer. Ms. Peralta will work with Mr. Garza to provide him with the documents he is requesting.

(Embedded image moved to file: pic30269.jpg)

----- Forwarded by Eileen Shields/DPH/SFGOV on 09/20/2011 09:32 AM -----

Eileen
Shields/DPH/SFGOV

To

09/16/2011 02:06
PM

Jason Grant Garza
<jasongrantgarza@yahoo.com>
cc

Subject
Re: "IMMEDIATE DISCLOSURE REQUEST"
(Document link: Eileen Shields)

Dear Mr. Garza:

The purpose of the immediate disclosure request is to expedite the City's response to a simple, routine, or otherwise readily answerable request. For more extensive or demanding requests, the maximum deadlines for responding to a request apply. Admin. Code § 67.25(a). Your request is neither simple, routine nor readily answerable. Thus, your designation of a request as an immediate disclosure request does not automatically make it so. Rather, according to the Sunshine Ordinance, a department may adhere to the time deadlines governing standard requests . an initial 10-day period for response, plus a possible extension of up to 14 additional days . if the extensive or demanding nature of the request would impose an undue burden on the department to respond immediately. Therefore, we will adhere to the deadlines governing standard requests.

Please note that because your request contains requests for your medical records, our Compliance Office will be in touch with you to assist you in fulfilling as well as clarifying this request. The Public Information Officer cannot provide you with your medical records.

We will do our best to provide you with the records you are requesting in a timely manner.

(Embedded image moved to file: pic32409.jpg)

Jason Grant Garza
<jasongrantgarza@
yahoo.com>

09/15/2011 08:02
AM

Please respond to
Jason Grant Garza
<jasongrantgarza@
yahoo.com>

To

"Eileen.Shields@sfdph.org"
<Eileen.Shields@sfdph.org>,
"publicrecords.dph@sfdph.org"
<publicrecords.dph@sfdph.org>,
"Barbara.Garcia@sfdph.org"
<Barbara.Garcia@sfdph.org>,
"soft@sfgov.org" <soft@sfgov.org>,
"jasongrantgarza@yahoo.com"
<jasongrantgarza@yahoo.com>

cc

"Donald.White@oig.hhs.gov"
<Donald.White@oig.hhs.gov>,
"Kathleen.Sebelius@hhs.gov"
<Kathleen.Sebelius@hhs.gov>,
"Kathleen.Billingsley@cdph.ca.gov"
<Kathleen.Billingsley@cdph.ca.gov>,
"DDooley@chhs.ca.gov"
<DDooley@chhs.ca.gov>

Subject

"IMMEDIATE DISCLOSURE REQUEST"

IMMEDIATE DISCLOSURE REQUEST.

Eileen.Shields@sfdph.org
publicrecords.dph@sfdph.org
Barbara Garcia (Director DPH)

9/15/2011 Thursday

IMMEDIATE DISCLOSURE REQUEST

To Whom It May Concern:

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Please realize that per the sunshine regulations ... you must be helpful in resolving and getting me what I specifically request. You MUST work with the requestor to clearly provide what is required.

Sincerely,

Jason Grant Garza
1369 B. Hayes Street
San Francisco, CA 94117
jasongrantgarza@yahoo.com

email cc:

Kathleen Sebelius – Secretary of Health & Human Services
Donald White – Office of Inspector General



Sunshine Complaints: #11081 and #11070 and accommodations 

Eileen Shields to: SOTF

11/16/2011 02:54 PM

Cc: Barbara.Garcia, Chona Peralta, Joseph.Pace

History: This message has been replied to and forwarded.

Dear Sunshine Task Force:

I note with interest Mr. Jason Grant Garza's most recent complaint against the Department of Public Health. I refer you to complaints 11081 and 11070.

If you read through Mr. Garza's complaints, you will note that they are identical, except for the dates of his submitting the complaints. The only difference I can surmise is his inclusion of Dr. Joseph Pace in the complaint.

Complaint 11070 has already been scheduled and staff already attended a hearing on October 25th. The item was continued and has yet to be heard.

Since October 25th, Mr. Garza's activity and behavior towards individuals in this department has escalated from telephone harassment to personal visitations and demands (e.g., he called 911 on 11/14 asking that the Police arrest DPH staff), we are asking for the following accommodations:

1. That the SOTF combine complaints 11081 and 11070 into a single agenda item
2. That the SOTF provide security to any DPH staff that must attend these meetings that are scheduled until 11 p.m. Please contact me for details.
3. That the SOTF provide DPH staff with remote audio capability to monitor the hearings so that we can remain in our offices until the item is ready for hearing

Finally, it is the position of this Department, that we have provided Mr. Garza with all of the documents he has requested, including his medical records that are not subject to Sunshine but have made available to him and are ready for pick up. The records still await his attention.