

Date: Dec. 1, 2009

Item No. 24

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Supervisor of Records Report**
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Chris Rustom

Date: Nov. 24, 2009

***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

PAULA JESSON
Deputy City Attorney

DIRECT DIAL: (415) 554-6762
E-MAIL: paula.jesson@sfgov.org

MEMORANDUM

TO: Honorable Members
Sunshine Ordinance Task Force

FROM: Paula Jesson *PJ*
Deputy City Attorney

DATE: November 16, 2009

RE: Court Decisions Related to the Sunshine Ordinance
Companion to the Tenth Annual Report of the Supervisor of Records

At the request of the Sunshine Ordinance Task Force, the City Attorney's Office agreed to report on court decisions in litigation to which the City is a party that relate to the San Francisco Sunshine Ordinance for the same time period covered by, and as a companion to, the Annual Report of the Supervisor of Records.

The purpose of the report is to provide information on court decisions that specifically interpret or apply the Sunshine Ordinance. The report does not include court decisions involving both the California Public Records Act (or other state law) and the Sunshine Ordinance unless it is clear that some part of the decision is based on the Sunshine Ordinance.

No such court decisions issued during the reporting period, October 1, 2008 to September 30, 2009.

P.J.

RECEIVED
CITY ATTORNEY'S
OFFICE
2009 NOV 15 PM 3:41
BY *[Signature]*



DENNIS J. HERRERA
City Attorney

PAULA JESSON
Deputy City Attorney

DIRECT DIAL: (415) 554-6762
E-MAIL: paula.jesson@sfgov.org

MEMORANDUM

TO: Honorable Members
Sunshine Ordinance Task Force

FROM: Paula Jesson *PJ*
Deputy City Attorney

DATE: November 12, 2009

RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

The Sunshine Ordinance (S.F. Admin. Code, Chapter 67) requires the Supervisor of Records to prepare a tally and report for the Sunshine Ordinance Task Force at least annually on each petition brought before the Supervisor of Records for access to records or information. (S.F. Admin. Code §67.21(h).) "The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued." (*Id.*)

DESCRIPTION OF PETITIONS AND THEIR RESOLUTION

This is the tenth report of the Supervisor of Records. It covers all petitions brought before the Supervisor of Records between October 1, 2008 and September 30, 2009 (the "reporting period").

No court decisions issued regarding determinations by the Supervisor of Records for the reporting period and the Supervisor of Records had no occasion to issue an order to any City department whose records were the subject of a petition.

For the custodian of records, the report gives the name of the employee who responded to the request.

Attached is an appendix with copies of the determinations of the Supervisor of Records, except where the petition was denied as moot because the department had provided the records. In some cases -- for more complex issues or where appropriate to provide context for the petition or the determination -- the appendix also contains additional communications regarding the petitions.

1. Petitioner: Kimo Crossman
- Department: Department of Technology
- Records sought: Excel version of a spreadsheet
- Custodian of
Records: Barry Fraser

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: November 12, 2009

PAGE: 2

RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

Mr. Crossman asked the Department of Technology for records "which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 present Please provide information . . . in native electronic format or scanned PDF if [it] only exists in paper format."

In response, the Department provided Mr. Crossman with a spreadsheet in PDF.

Mr. Crossman filed a petition with the Supervisor of Records on October 22, 2008, stating that the Department had "unlawfully refused to provide the excel format version of the spreadsheet attached."

The Supervisor of Records discussed the petition with department staff, who informed her that a requester may have several reasons for wanting a spreadsheet in Excel rather than Word format. These reasons include the ability to understand the formulas used in the spreadsheet and the ability to import the text into another program so that the grid-like layout of a spreadsheet is retained. Staff also informed the Supervisor of Records that providing the spreadsheet in "tab delimited format" would allow the requester to import text from the spreadsheet into another program in a manner that retained the grid-like layout. The department informed the Supervisor of Records that it would provide Mr. Crossman with the spreadsheet in "tab delimited format" (so that he could import the text into another program) and would also provide Mr. Crossman with a brief written description of the formula used in the spreadsheet (so that he could understand the formula used in the spreadsheet).

The City Attorney's Office has advised that a City department has discretion under the California Public Records Act and the Sunshine Ordinance to provide an electronic record in response to a public records request in PDF rather than Word format. See the opinion of the City Attorney's Office of September 19, 2006 and a follow-up letter of August 11, 2008. The September 19, 2006 letter is available on the City Attorney's website. In responding to Mr. Crossman's petition regarding his request for a spreadsheet in Excel rather than Word, the Supervisor of Records concluded that the reasoning in those opinions regarding PDF and Word applied to a request for a spreadsheet in Excel format rather than Word. An Excel spreadsheet, like a Word document, may have "metadata" that a department is either permitted or legally required to withhold from public disclosure. Both may also be subject to alteration.

On December, 3, 2008, the Supervisor of Records denied Mr. Crossman's request, based on the reasoning in the opinions described above and in light of the department's offering to provide the spreadsheet in tab delimited format and to describe the formula used in the spreadsheet. (Appendix, Pages 1-2.)

Sunshine Ordinance Task Force Complaint and Order. The Sunshine Ordinance Task Force has also considered the issue raised in Mr. Crossman's petition. In Complaint #08055, Mr. Crossman complained that the Department of Technology should have disclosed the spreadsheet in Excel format. The Task Force agreed with Mr. Crossman and issued an order directing the department to disclose the spreadsheet in Excel format.

2. Petitioner: Kimo Crossman
Department: City Attorney's Office

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: November 12, 2009
PAGE: 3
RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

Records sought: Communications with Chair of the Sunshine
Ordinance Task Force

Custodian of
Records: Matt Dorsey

On October 22, 2008, Mr. Crossman sent an "immediate disclosure request" to the City Attorney's Office asking for records "pertaining to any communications between the City Attorney [sic] office (this includes meetings with Buck Delventhal as well as Dennis Herrera) and Kristen Chu – Chair of the SOTF from 9/1/08 to present . . ." (Appendix, Page 4.)

On October 24, 2008, Mr. Crossman filed a petition with the Supervisor of Records, stating that the City Attorney's Office had not responded to the request. (Appendix, Pages 3-4.)

Thereafter, the City Attorney's Office provided responsive records to Mr. Crossman. In addition, in response to a further request from Mr. Crossman asking for written confirmation that there were no other relevant records, the City Attorney's Office provided the written confirmation.

On November 3, 2008, the Supervisor of Records denied the petition on the ground that the appeal had become moot. (Appendix, Page 3.)

3. Petitioner: Kimo Crossman
Department: Mayor's Office
Records sought: Records relating to 7.5 hours of Newsom on Youtube

Custodian of
Records: Joe Arellano

On December 1, 2008, Mr. Crossman asked the Mayor's Office for "all public records including emails which relate to the planning and implementation of the video recording for the Mayor's recent virtual speech of 7.5 hours" and "any records which document staffing arrangements/costs to capture and edit the video and real-time-captioning/transcriptions (if this occurred)."

Mr. Crossman filed an appeal with the Supervisor of Records on December 3, 2008, stating that there had been no response to his request.

Later that same day, on December 3, 2008, Mr. Crossman wrote again to the Supervisor of Records: "Cancel this Appeal I have a response from MOC."

4. Petitioner: Michael Addario
Department: San Francisco Arts Commission
Records sought: Records relating to the personnel records of two employees

Custodian of
Records: Nancy Gonchar

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: November 12, 2009

PAGE: 4

RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

Mr. Addario made several public records requests to the San Francisco Arts Commission for personnel records for two employees. His first request, made on August 28, 2008, was for "any and all disciplinary records." The Department informed Mr. Addario on September 15, 2008, that it had no responsive documents and that the California Public Records Act permits public agencies to withhold "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy," under Government Code Section 6254(c).

Mr. Addario made a second request, on September 24, 2008, for "any and all personnel records, including any and all disciplinary documentation" for the two employees. In response, on October 9, 2008, the Department provided personnel records regarding background, training, education and job descriptions (redacting certain personal information like social security number and driver's license number), informed Mr. Addario that there were no records of "confirmed misconduct of a public employee," as defined by San Francisco Administrative Code Section 67.24(c)(7), and further informed him that it was withholding certain personnel records not required to be provided under San Francisco Administrative Code Section 67.24(c) on the ground that disclosure would constitute an unwarranted invasion of personal privacy under California Constitution Article I, §1.

Mr. Addario filed a petition with the Supervisor of Records on December 19, 2008, stating that while the department "did provide some personnel records" in response to his second request, it had "again denied me access to any of the disciplinary records that I had requested."

Mr. Addario's petition states that "Furthermore, [he] would also request in addition to any and all disciplinary record [sic] already requested, any and all performance reviews and/or complaints for" the two employees.

Finally, the petition asked for review of a verbal request to review his own file and those of other street artists maintained as part of the San Francisco Street Artist Program.

The Supervisor of Records reviewed the personnel files for the two employees whose records Mr. Addario sought and, on January 13, 2009, made a determination that the Department properly withheld the employees' personnel records, with limited exceptions for certain Civil Service Commission forms unrelated to any disciplinary action, some dating back to the 1970's. The determination also found that performance reviews and complaints were properly withheld. (Appendix, Pages 5-7.)

Finally, the Supervisor of Records found it unnecessary to address Mr. Addario's request for access to files of the San Francisco Street Artist Program because Department staff said that it would make these files available to Mr. Addario except to the extent that they were exempt under public record laws. (Appendix, Page 7.)

5. Petitioner: Christian Holmer

 Department: San Francisco Board of Supervisors

 Records sought: Emails sent and received by former Supervisor Tom Ammiano

 Custodian of
 Records: Frank Darby

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: November 12, 2009
PAGE: 5
RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

Mr. Holmer made several public records requests to the Clerk of the Board of Supervisors for "all e-mails sent and received by former Supervisor Tom Ammiano, his aides and interns" for specified time periods. The Clerk of the Board of Supervisors informed Mr. Holmer that his requests were broad and voluminous. Mr. Holmer asked the Supervisor of Records to confirm that the records that he sought were public. On January 14, 2009, the Supervisor of Records confirmed that the records sought were public to the extent that they contain information "relating to the conduct of the public's business" but also noted that a review of the records may be necessary to determine whether any may be exempt from disclosure under the San Francisco Sunshine Ordinance and the California Public Records Act. (Appendix, Page 8.)

6. Petitioner: Kimo Crossman
Department: City Attorney's Office
Records sought: Claim or other proof of pending litigation regarding IRS settlement of unlitigated tax-related matter

Custodian of
Records: Matt Dorsey

On December 4, 2008, Mr. Crossman asked the City Attorney's Office for a report regarding a closed session of the Board of Supervisors regarding a settlement with the IRS of an unlitigated tax-related matter.

On January 11, 2009, Mr. Crossman sent another message noting that there was no longer a link to the meeting packet for the item and asking for "the Pre-Litigation Claim, Threat Memorandum, or other proof of specific pending litigation (not mere threat) of this matter and explain in what specific ways discussion in open session on this item would unavoidably prejudice the position of the city."

On January 13, 2009, Mr. Crossman informed the City Attorney's Office that he had reviewed the active link on the meeting packet, that it did not address his concerns, and repeated his request for records as described in his January 11, 2009 message.

On January 15, 2009, Mr. Crossman filed a petition with the Supervisor of Records regarding the request, stating that the response was overdue.

On January 23, 2009, the City Attorney's Office responded to Mr. Crossman's request, informing him that there was no claim and that other records relating to the subject were protected by attorney-client privilege. In response, also on January 23, 2009, Mr. Crossman sent a message saying that "[o]bviously communications between the City and the IRS are not attorney-client privilege . . ." The City Attorney's Office informed Mr. Crossman, on February 10, 2009, that the Office had made a further review and located communications responsive to his request, which it provided to Mr. Crossman. Mr. Crossman was also informed in that communication that the office was not producing records protected by the attorney-client privilege or attorney work product doctrine.

On February 18, 2009, the Supervisor of Records informed Mr. Crossman that in light of the City Attorney's responses to his request, his appeal had become moot. (Appendix, Page 9.)

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: November 12, 2009
PAGE: 6
RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

7. Petitioner: Christian Holmer
Department: District Attorney's Office
Records sought: Records Retention and Destruction Schedule

Custodian of
Records: Paul Henderson

On March 2, 2009, Mr. Holmer filed a petition with the Supervisor of Records regarding his request to the District Attorney's Office for a signed copy of the office's Record Retention and Destruction Schedule. Mr. Holmer had requested the document much earlier, in the summer of 2007.

In his petition, Mr. Holmer also noted that he had reviewed the Department of Emergency Management List of Disaster Recovery Plans and that the list did not include a plan from the District Attorney's Office. The petition asked if the District Attorney's Office could provide a copy of its disaster recovery plan. In a later email message, on March 20, 2009, Mr. Holmer noted that City departments are required to have a formal procedure for "backing-up" essential information in the event of a calamity of some type.

After receiving the petition, the Supervisor of Records discussed the matter with the District Attorney's Office. On April 13, 2009, the District Attorney's Office provided Mr. Holmer with the Office's Disaster Recovery Plan and informed Mr. Holmer that the Office was in the process of obtaining final signatures on its most current Record Retention Policy. The District Attorney's Office informed Mr. Holmer that it would forward a copy of the schedule as soon as the signatures were final. Finally, the District Attorney's Office informed Mr. Holmer that the Office's Disaster Recovery Plan includes procedures for the backing up and restoration of electronic records. (Appendix, Page 10.)

8. Petitioner: Kimo Crossman
Department: Mayor's Office
Records sought: Records requested by the San Francisco Chronicle
for an article about the Mayor

Custodian of
Records: Joe Arellano

On March 20, 2009, Mr. Crossman filed a petition with the Supervisor of Records, stating that he had had no response to his public records request to the Mayor's Office for "all records requested by the San Francisco Chronicle which were used for [the San Francisco Chronicle's March 15, 2008 story, entitled 'Frequent-flier SF Mayor Draws Fire on Ground.']." On March 30, 2009, after being informed by the Mayor's Office that it had responded to the request, the Supervisor of Records informed Mr. Crossman that she had received notice that the Mayor's Office had provided Mr. Crossman with responsive records.

9. Petitioner: Kimo Crossman
Department: Municipal Transportation Agency

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: November 12, 2009
PAGE: 7
RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

Records sought: All Email sent/received by CFO
Custodian of
Records: Judson True

On May 18, 2009, Mr. Crossman filed a petition with the Supervisor of Records regarding his public records request to the San Francisco Municipal Transportation Agency [MTA] for "all email sent/received by the [MTA's] CFO on 4/8[09]." Mr. Crossman's petition stated that the MTA had not produced the requested records. In a later email message to the Supervisor of Records, also on May 18, 2009, Mr. Crossman indicated that he had received responsive records but stated that the MTA was "still withholding at least 20 records and [had] performed invalid redactions."

The MTA had redacted an individual's private email address based on the right to privacy, citing California Constitution, Article I, section 1 and California Government Code sections 6254(c) and 6254(k). The MTA had also withheld personnel records based on California Government Code section 6254(c), which protects from disclosure "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."

The Supervisor of Records reviewed the records withheld by the MTA, including redacted material, and informed Mr. Crossman, on May 28, 2009, of her determination that the withholding and redaction were proper based on the right to privacy and the attorney-client privilege. (Appendix, Page 11.)

After receiving the determination, Mr. Crossman asked the Supervisor of Records to address arguments he had raised in support of his petition. (See Appendix, Pages 13-15.) On August 14, 2009, the Supervisor of Records informed Mr. Crossman that, after reviewing the issues and argument that he had raised, she had concluded that the determination sent on May 28, 2009, was correct. (Appendix, Page 12.)

10. Petitioner: Kimo Crossman
Department: Mayor's Office
Records sought: Records collected in response to the public records request of the California First Amendment Coalition
Custodian of
Records: Nathan Ballard and Joe Arellano

On May 18, 2009, the California First Amendment Coalition ("CFAC") submitted a public records request to the Mayor's Office for the following:

"All email, text messages (including so-called "PIN messages" on a Blackberry or similar device) dated January 1, 2009 through April 30, 2009, that:

- (a) Were created or received by Mayor Newsom;
- (b) using email, text messaging, cell phone or other accounts THAT ARE PERSONAL TO THE MAYOR (that is, are not government-owned)

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: November 12, 2009

PAGE: 8

RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

(c) concerning existing or proposed government contracts to which the city of San Francisco is, or may become, a party."

The CFAC request also stated that it was "not requesting any personal or private records from these accounts."

On May 26, 2009, Mr. Crossman submitted a public records request to the Mayor's Office asking for "any communications or records collected by [the Mayor's Office] in response to the recent CFAC records request [of May 18, 2009]."

On June 2, 2009, Mr. Crossman filed a petition with the Supervisor of Records, stating that there was "nothing received" in response to his request to the Mayor's Office.

On June 19, 2009, the Supervisor of Records informed Mr. Crossman that she had received copies of a response that Mr. Ballard had sent to Mr. Crossman on June 3, 2009 (informing him that the Mayor's Office had no documents responsive to his request) and a response that Joe Arellano had sent to Mr. Crossman on June 9, 2009 (sending a pdf of Mr. Ballard's earlier response to Mr. Crossman). The Supervisor of Records also informed Mr. Crossman that the Mayor did not retain any email or text messages from the Mayor's personal cell phone for the period requested and thus had no records to disclose in response to Mr. Crossman's May 26, 2009 request or CFAC's May 18, 2009 request. (Appendix, Pages 16-17.)

11. Petitioner: Kimo Crossman
Department: Controller's Office
Records sought: Records relating to the payment to SFGTV for filming Disaster Council Meetings
Custodian of Records: Barry Fraser

On June 18, 2009, Mr. Crossman filed a petition with the Supervisor of Records regarding his request to the Controller's Office and the Department of Technology for written procedures for processing transactions of "actual payment to SFGTV by the Mayor's Office, BOS [Board of Supervisors] and client department[s] for services provided" by SFGTV for the Disaster Council Meeting of April 17. Mr. Crossman had informed the Department of Technology and the Controller's Office in an e-mail message of May 4, 2009 that his request concerned records which show actual payment, rather than invoices.

On July 8, 2009, the Supervisor of Records informed Mr. Crossman that she had reviewed his request, the correspondence that he had provided, and the records from the Controller's Office and SFGTV and had concluded that neither the Controller's Office nor SFGTV had documents expressly listing a record of "actual payment" to SFGTV by the Mayor's Office, Board of Supervisors, or client departments for filming services for the Disaster Council Meeting of April 17, nor any corresponding written procedures for processing this particular transaction.

The Supervisor of Records then informed Mr. Crossman how SFGTV calculates and records payments to SFGTV from client departments, based on information from Barry Fraser of

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: November 12, 2009
PAGE: 9
RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

the Department of Technology, and noted that Mr. Fraser had provided copies of then available monthly payment statements covering the filming services for April 2009.

Accordingly, the Supervisor of Records determined that the Department of Technology had provided responsive records to Mr. Crossman. (Appendix, Pages 18-19.)

12. Petitioner: Kimo Crossman
Department: Mayor's Office
Records sought: Records of evidence of professional and business-like maintenance of correspondence
Custodian of Records: Joe Arellano

On June 23, 2009, Mr. Crossman filed a petition with the Supervisor of Records regarding his June 19, 2009, request to the Mayor's Office for records of evidence of "Professional and Business-like" maintenance of correspondence. Mr. Crossman's petition stated that he had received no response from the Mayor's Office.

On July 8, 2009, the Supervisor of Records informed Mr. Crossman that she had been informed that Mr. Arellano of the Mayor's Office had provided Mr. Crossman with responsive records and sent Mr. Crossman another copy of the Mayor's Office response and attachment. (Appendix, Page 20.)

13. Petitioner: Kimo Crossman
Department: Mayor's Office
Records sought: Records pertaining to passage of an amendment to California Vehicle Code Section 40240
Custodian of Records: Joe Arellano

On July 27, 2009, Mr. Crossman filed a petition with the Supervisor of Records regarding his request to the Mayor's Office for "any records including correspondence in your office which pertained to passage" of legislation amending California Vehicle Code Section 40240. The Supervisor of Records discussed the petition with the Mayor's Office. Staff informed her that it had sent Mr. Crossman records in response to his request, which Mr. Crossman confirmed on August 4, 2009.

14. Petitioner: Anmarie Mabbutt
Department: Recreation and Park Department
Records sought: Records relating generally to tennis and athletic field permits
Custodian of Records: Olive Gong

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: November 12, 2009

PAGE: 10

RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

Ms. Mabbutt filed a petition with the Supervisor of Records on July 28, 2009. Her petition stated that the Recreation and Park Department had failed "to disclose on a timely and rolling basis, any and all public records that [she had] formally and properly requested over the past seven weeks." The petition further stated that Olive Gong, the Department's Custodian of Records, had "simply stopped fulfilling her duties under the Sunshine Ordinance" to respond to Ms. Mabbutt's immediate disclosure requests on a timely and rolling basis.

The petition set forth in five separate sections the public records requests for which Ms. Mabbutt sought review and stated that there had been a "complete failure to respond."

The determination of the Supervisor of Records addressed three issues.

The first issue was the Department's failure to respond to Ms. Mabbutt's request within the time required for "immediate disclosure requests." Section 67.25(a) of the Sunshine Ordinance provides for a shorter time for departments to respond when certain kinds of requests marked "immediate disclosure request." Ms. Mabbutt had so marked her requests. But the Supervisor of Records determined that marking the request properly is not the only requirement under Section 67.25(a). To constitute an "immediate disclosure request," the request must also be "simple, routine and readily answerable." In creating a special category of requests subject to a faster response deadline, the drafters of the Sunshine Ordinance, and the voters who adopted it, were concerned that a requester would have to wait a full 10 days before receiving a record where a City department was in fact able to quickly locate and produce it. Ms. Mabbutt's requests required substantial research to locate responsive documents. Accordingly, the Supervisor of Records denied the petition with respect to the Section 67.25(a) issue.

The second issue addressed in the determination was the Department's compliance with the requirement to provide records on a "rolling basis" when requested to do so. Under Section 67.25(d), such a request requires City departments to "produce any and all responsive [non-exempt] 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 further provides that it 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."

The Supervisor of Records determined that her function, when considering this issue, is to determine whether *at the time that the determination is made* the Department has records that it has reviewed and collected and are ready for production but have not yet been produced. Upon determining the then-current status of the Department's record collection and review process, the Supervisor of Records determined that there was no basis for finding that the Department was violating the "rolling basis" requirement.

The third issue addressed in the determination was the Department's failure to respond to Ms. Mabbutt's requests in a timely manner. The Department had changed its normal procedure for responding to Ms. Mabbutt's public records requests because of the large number of requests that she was submitting and the extensive time required to undertake the necessary searches for many of the requests (see Appendix, Pages 22-23). The Department had asked Ms. Mabbutt to prioritize her requests and informed her that they would do one request at a time, except for requests that were simple and could be responded to quickly. Based on discussions with Department staff and a review of the correspondence between the Department and Ms. Mabbutt,

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: November 12, 2009
PAGE: 11
RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

the Supervisor of Records concluded that the circumstances indicated that the Department's decision to process one request at a time was not made unreasonably or in bad faith, but was adopted so that staff would be able to continue performing its regular duties, including the duty to respond to public records requests from other individuals. The Supervisor of Records noted that holding a City department to strict time requirements irrespective of the burdensome nature of an individual's requests would create a situation allowing a single individual to monopolize the resources of a City department.

Accordingly, the Supervisor of Records determined that in view of the circumstances involving Ms. Mabbutt's petition, the Department's procedures for responding to her requests did not violate its duty to provide records on a timely basis. (Appendix, Pages 21-26.)

15. Petitioner: Christian Holmer
Department: Mayor's Office
Records sought: Calendars

Custodian of
Records: Joe Arellano

On July 29, 2009, Mr. Holmer asked the Supervisor of Records for assistance in obtaining responses from the Mayor's Office for the calendars for the Mayor and for several divisions of the Mayor's Office for various periods in June and July. The Supervisor of Records obtained the assistance of the Mayor's Office in providing Mr. Holmer with the requested calendars.

16. Petitioner: Kimo Crossman
Department: Controller's Office
Records sought: Records relating to lobbying for an amendment to California Vehicle Code Section 40240

Custodian of
Records: Monique Zmuda

On September 3, 2009, Mr. Crossman filed a petition with the Supervisor of Records. The petition concerned his August 18, 2009 request to the Controller's Office for "any correspondence, reports and financial documents (invoices etc), minutes, notes and calendars pertaining to lobbying for and passage of AB 101 from the City of San Francisco as a whole, SFMTA, CCSF Accounts Payable, and the lobbyist firm hired by the city for AB 101."

AB 101 amended California Vehicle Code section 40240.

After requesting and obtaining clarification of Mr. Crossman's request, the Controller's Office responded to it.

17. Petitioner: Rita O'Flynn
Department: Mayor's Office of Housing

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: November 12, 2009
PAGE: 12
RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

Records sought: Records relating to Lead Hazard Control Development Grant Program

Custodian of Records: Oliver Hack

On September 14, 2009, Ms. O'Flynn filed a petition with the Supervisor of Records regarding her request for records from the Mayor's Office of Housing ("MOH") regarding the Lead Hazard Control Demonstration Grant Program, which provides funding to qualifying property owners to finance the elimination of lead hazards on the property. Ms. O'Flynn's petition stated as follows:

MOH has inconsistently redacted ages from applications I requested via the Sunshine Ordinance. Their justification for doing so is Admin. Code Section 67.27 and CA State Government Code 6254(k) for Attorney-Client Privilege and Admin. Code Section 67.1(g) and/or CA State Govt. Code 6254(c) for Private Personal Information, however most of the redactions are for alleged children. Documentation of age is required in the documents I am requesting as they relate to a government grant with specific age-related contingencies. Please note that I am not asking for DOB, SS#, or any Attorney-Client Privileged information I simply want to see the [sic] all the ages that were entered onto the applications.

The Supervisor of Records sent Ms. O'Flynn the determination on September 29, 2009. In that response, the Supervisor of Records advised Ms. O'Flynn that MOH had the originals of the applications sent to Ms. O'Flynn in response to her public records request but did not keep a copy of the records in their redacted form. Therefore, the Supervisor of Records responded to the petition without being able to review the redacted records.

The Supervisor of Records also set forth her understanding that Ms. O'Flynn was requesting a determination as to whether the San Francisco Sunshine Ordinance or the California Public Records Act requires MOH to provide her with the requested applications without redacting the ages of children residing in housing units listed in the applications.

MOH's policy for the lead abatement program requires it to give priority to properties on which children under six years of age reside.

In making her determination, the Supervisor of Records noted that it was necessary to consider two principles that, in the context of public records requests, are often in tension with one another. One principle is the right of the people to know what their government and those acting on behalf of their government are doing. To the extent that MOH policies require City officials to take age into account when considering grant applications for the lead abatement program, the public has an interest in knowing whether officials are applying this criterion properly.

The second principle is the right of privacy. Court decisions have found that disclosure of a person's age may constitute an unwarranted invasion of personal privacy. This privacy interest is not an abstraction in the case of children, whose safety and security may be placed at risk by disclosing specific units in which they live or spend time. Moreover, in the context of lead poisoning, there are medical issues to consider. MOH informed the Supervisor of Records

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: November 12, 2009
PAGE: 13
RE: Tenth Annual Report of the Supervisor of Records
October 1, 2008 – September 30, 2009

that children known to have, or perceived as having, lead poisoning can be stigmatized because of symptoms associated with the condition, including damage to the brain and nervous system, behavior and learning problems, and slowed growth.

In light of these circumstances, the Supervisor of Records found it necessary to balance the privacy interests of the children whose ages are listed on the lead abatement program's grant application against the public's interest in monitoring the government's implementation of the lead abatement program.

Disclosure of applications showing both the addresses of households and the presence or absence of children under the age of six at those addresses would provide useful information for monitoring the program (although the usefulness of the information is limited because MOH's policies consider not only children of this age who live in the unit but also those who spend time there). However, to the extent that such disclosure would make public that a child under six years old lives at a particular address, the disclosure would burden the privacy interests of the children and their families and could constitute an unwarranted invasion of privacy.

The Supervisor of Records informed Ms. O'Flynn that MOH would provide information from the applications in a manner that would prevent disclosure of the children's addresses. MOH could assign an arbitrary number or letter for each housing unit listed in the grant applications (omitting the property address) and note, as to each housing unit, whether a child under the age of six is listed on the application. While such a listing would not enable her or the public to know the corresponding address, it would provide general information about the relationship between the number of household units with young children that received, and did not receive, grant funding. The Supervisor of Records found that this disclosure would satisfy MOH's obligations under the San Francisco Sunshine Ordinance and the California Public Records Act.

The Supervisor of Records also noted that MOH prepares publicly available quarterly reports that provide information on children under six years of age (not linked to identified housing units), including, for completed units, the number of children under six years of age that were residing in units when lead hazard control work was initiated. (Appendix, Pages 27-31.)

P.J.

APPENDIX

TO

TENTH ANNUAL REPORT OF THE SUPERVISOR OF RECORDS
OCTOBER 1, 2008 – SEPTEMBER 30, 2009

Paula Jesson/CTYATT
12/03/2008 12:23 PM

To: kimo@webnetic.net
cc: Ron Vinson/DTIS/SFGOV@SFGOV, Barry
Fraser/DTIS/SFGOV@SFGOV, Jack
Chiv/DTIS/SFGOV@SFGOV, SOTF/BOS/SFGOV@SFGOV
bcc:
Subject: Petition to Supervisor of Records - Spreadsheet in Excel
Format

Dear Mr. Crossman,

On October 22, 2008, you submitted a petition to the Supervisor of Records regarding your request to the Department of Technology for records "which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 to present . . . Please provide information . . . in native electronic format or scanned PDF if only [sic] exists in paper format."

In response to your request, the Department of Technology provided you with a spreadsheet in PDF. Your petition to the Supervisor of Records states:

"SFGTV has unlawfully refused to provide the excel format version of the spreadsheet attached. Would you please work to obtain its release? There is no authority provided by the CA to redact formulas in spreadsheets what [sic] happens when conversion to PDF occurs - the CA PDF memo only relates to Word documents."

Your statement that "the CA PDF memo only relates to Word documents" is presumably a reference to an opinion by the City Attorney's Office of September 19, 2008 and a follow-up letter of August 11, 2008 advising that a City department has discretion under the California Public Records Act and the Sunshine Ordinance to provide an electronic record in response to a public records request in PDF rather than Word format. The reasoning of that opinion applies to a spreadsheet in Excel format. An Excel spreadsheet, like a Word document, may have "metadata" that a department is either permitted or legally required to withhold from public disclosure. In addition, like a Word document, the text of an Excel spreadsheet may be subject to alteration. Therefore, the basis for concluding that a department may decline to produce a Word document applies as well to an Excel spreadsheet.

It is my understanding based on information provided by the Department of Technology that a requester may want an Excel spreadsheet other than in PDF in order to understand the formulas that the department uses in the spreadsheet. Formulas in spreadsheets can range from simple addition to complex calculations. As the author inserts numbers (for example, to calculate interest payments due), the Excel program calculates the conclusion based on the formula. The author can insert revised numbers (for the interest rate or number of months paid) and obtain a revised calculation, based on the same formula.

Again, based on information provided by the Department of Technology, I understand that another reason that a requester may want an Excel spreadsheet is to import and place data from the spreadsheet, which is arranged in rows and columns, into another program. A method of allowing text from an Excel spreadsheet to be imported into another program, so that the grid-like layout is retained, is to convert the Excel spreadsheet to "tab delimited format."

I am informed that the Department of Technology has no objection to providing you with a brief written description of the formula used in the spreadsheet or transmitting the spreadsheet to you in tab delimited format.

Please let Barry Fraser of the Department of Technology know if you want either a brief written description of the formula used in the spreadsheet or to obtain the spreadsheet in tab delimited format.

In light of the reasoning of the prior opinion of the City Attorney's Office, and in light of the Department of Technology's having provided you with the spreadsheet that you requested in PDF, and its willingness to

provide the additional information described above, the Supervisor of Records denies your petition.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4899
email: paula.jesson@sfgov.org

Paula Jesson/CTYATT
11/03/2008 11:56 AM

To <kimo@webnetic.net>
cc
bcc
Subject Re: Petition to Supervisor of Records - Meetings with SOTF Chair

Dear Mr. Crossman,

On 10/24/2008, you filed a petition with the Supervisor of Records regarding your request for records "pertaining to any communications between the City Attorney office (this includes meetings with Buck Delventhal as well as Dennis Herrera) and Kristen Chu - Chair of the SOTF from 9/1/08 to present [including] calendars, minutes, voicemails, faxes or notes from meetings, timesheet entries and any other document related in anyway and on both public email and private email accounts to discussions with the chair directly or indirectly or produced as an outcome of or anticipation of such meetings" Your petition stated that there had been no response to your request.

The Supervisor of Records has been provided with a copy of a response to your request by Matt Dorsey of the City Attorney's Office sent on October 28, 2008, providing records.

On 10/29/2008, you sent an email asking "Will you confirm that there are no other relevant records?" Mr. Dorsey has provided a copy of his response, in which he sent additional records and informed you that "there are no other relevant records."

In light of these responses, the Supervisor of Records finds your appeal moot and denies the petition on that basis.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

Kimo Crossman This is an appeal for the records described below... 10/24/2008 07:25:12 PM



Kimo Crossman
<kimocrossman@dslextreme.com>

To <Paula.Jesson@sfgov.org>

cc

10/24/2008 07:24 PM

Please respond to
<kimo@webnetic.net>

Subject APPEAL OVERDUE: Immediate Disclosure Request - meetings with SOTF Chair

This is an appeal for the records described below - no response from CAO

From: kimocrossman@gmail.com [mailto:kimocrossman@gmail.com] On Behalf Of kimo

Sent: Friday, October 24, 2008 4:41 PM
To: buck.delventhal@sfgov.org; Matt Dorsey; Cityattorney; Kimo Crossman
Subject: OVERDUE: Immediate Disclosure Request - meetings with SOTF Chair

On Wed, Oct 22, 2008 at 9:07 PM, Kimo Crossman <kimo@webnetic.net> wrote:

Immediate Disclosure Request

City Attorney:

Please provide all public records pertaining to any communications between the City Attorney office (this includes meetings with Buck Delventhal as well as Dennis Herrera) and Kristen Chu - Chair of SOTF from 9/1/08 to present. This includes but is not limited to calendars, minutes, voicemails, faxes or notes from meetings, timesheet entries and any other document related in anyway and on both public email and private email accounts to discussions with the chair directly or indirectly or produced as an outcome of or anticipation of such meetings. You may exclude any standard advice letters from Ernest Llorente and SOTF in anticipation of SOTF hearings. Presently deleted records which exist on backup systems that are relevant should also be provided.

Please provide information on a daily incremental basis. Please provide electronic records in their native file format or as scanned PDF if in paper form only.

Please do not disclose this request to any party outside of your office:

In anticipation of a possible whistleblower complaint or ethics complaint, I am making this request confidentially to your office under the Official Information 6254 (k) & Evidence Code 1040 and Ordinance No. 205-08, Section 4.123 to the San Francisco Campaign and Governmental Conduct Code, requiring City employees to keep confidential the identity of complainant, as well as complaints and reports related to the investigator

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON
Deputy City Attorney

DIRECT DIAL: (415) 554-6762
E-MAIL: paula.jesson@sfgav.org

January 13, 2009

Michael Addario
Addario Photography
180 Los Alivos Avenue
Daly City, CA 94014

Re: Petition to the Supervisor of Records

Dear Mr. Addario:

You submitted a petition to the Supervisor of Records asking for review of the denial of records by the San Francisco Arts Commission in response to your public records requests. Your petition concerns several requests for records relating to the San Francisco Street Artist Program.

Your petition states that you initially requested "any and all disciplinary records" for two employees, Howard Lazar and Evelyn Russell. You received a response from the Deputy Director of the Arts Commission stating that the department had no documents responsive to your request and noting that the California Public Records Act permits public agencies to withhold "personnel, medical, or other similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Government Code §6254(c) ("Section 6254(c)")

You state further that you made a second public records request for "any and all personnel records, including any and all disciplinary documentation (2nd request) for: a.) Mr. Howard Lazar [and] b.) Ms. Evelyn Russell." You note that in response to the second request, the department provided some personnel records but "again denied me access to any of the disciplinary records that I had requested."

The personnel records that the department provided to you contained information regarding background, training, education, and job descriptions for the two employees, but redacted personal addresses, telephone numbers, driver's license numbers, social security numbers, ethnicity, age and marital status information. The department informed you that there were no records of "confirmed misconduct of a public employee," as defined by Section 67.24(c)(7) of the Sunshine Ordinance (San Francisco Administrative Code §67.24(c)(7)) and thus there were no records responsive to that portion of your request. The department also informed you that it was withholding certain personnel records not required to be provided under Section 67.24(c) of the Sunshine Ordinance on the ground that disclosure would constitute an unwarranted invasion of personal privacy under California Constitution Article I, §1; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 345-347; *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35; *Teamsters Local 856 v. Priceless, LLC* (2003) 112 Cal.App. 4th 1500, 1512; California Government Code §6254(c), and Section 67.1(g) of the San Francisco Sunshine Ordinance (San Francisco Administrative Code §67.1(g)).

Your petition states that "as a member of the public, in accordance with the Sunshine Ordinance, and further clarified in *Bakersfield City School District v. Superior Court*, 118 Cal.App.4th 1041 (2004), I have a right to review the public records I have requested." You also cite Section 67.24(c)(7) of the Sunshine Ordinance (making public certain records of "confirmed misconduct of a public employee") and *AFSCME v. Regents*, 80 Cal.App.3d 913 (1978).

CITY HALL • 1 DR. CARLTON B. GOODLETT PLACE, ROOM 234 • SAN FRANCISCO, CALIFORNIA 94102
RECEPTION: (415) 554-4700 FACSIMILE: (415) 554-4699

n:\govern\pjesson\supervisorofrecords\maddario.doc

Letter to Michael Addario
Addario Photography
Page 2
January 13, 2009

Your petition states that you "request in addition to any and all disciplinary record [sic] already requested, any and all performance reviews and/or complaints for" Mr. Lazar and Ms. Russell.

Finally, your petition asks for review of a verbal request that you made to Mr. Lazar for "my own and additional member's SFSA files," which you say Mr. Lazar denied.

We now respond to the issues raised in your petition.

Personnel Records

The Supervisor of Records has reviewed the personnel files for the two employees whose records were sought and finds that, with certain limited exceptions described below, the department has properly withheld the records. This determination has been made in light of the court decisions and statutory provisions cited in your petition.

The exceptions consist of Civil Service Commission forms unrelated to any disciplinary action, some dating back to the early 1970's, including an acknowledgement and agreement to conditions of employment, notice of limited tenure appointment, request for certification to temporary position, certification to limited tenure appointment, an eligibility response form, and an interdepartmental transmittal of personnel records. If you wish a copy of these Civil Service Commission forms, please contact Nancy Gonchar at 252-2584.

Request for "any and all performance reviews and/or complaints"

Your petition includes a request for "any and all performance reviews and/or complaints." Section 67.21(d) of the Sunshine Ordinance provides that if the custodian of a department "refuses, failed to comply, or incompletely complies" with a public records request, the Supervisor of Records determines whether the record requested is public. Thus, the Supervisor of Records is not responsible for producing records in response to public records requests, but rather for reviewing a department's decision to deny or withhold records. In this case, your request to the Arts Commission for "any and all personnel records" necessarily included records of performance reviews and complaints. Therefore, the Supervisor of Records considers this part of your petition to constitute not a request for records but a request for a review of the decision by the Arts Commission to withhold records.

As noted, the Supervisor of Records finds that the department lawfully withheld records from the employees' personnel files. With respect to performance reviews and complaints, the courts have found that this information constitutes the type of personnel record protected by the employee's right to privacy.

In *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, the court held that the performance goals for a college district superintendent were exempt from disclosure as personnel records under the California Public Records Act (Section 6254(c)). In reaching this conclusion, the court construed the exemption for "personnel" records under California law in light of the "personnel" exemption under the federal Freedom of Information Act, 5 U.S.C., §552 *et seq.* ("FOIA"), which "serve[s] to illuminate the interpretation of its California counterpart." *Versaci*, 127 Cal.App.4th at 818. The *Versaci* court concluded that it was "undisputed" that employee performance evaluations are exempt "personnel" records under FOIA. *Versaci, supra*, 127 Cal.App.4th at 819. The personnel records exemption protects both derogatory and favorable information. *Versaci, supra*, 127 Cal.App.4th at 820. Indeed, the plaintiff in *Versaci* in effect agreed with the court, conceding that the superintendent's evaluations were not subject to disclosure and arguing only for release of the performance goals, an argument that did not prevail.

Letter to Michael Addario
Addario Photography
Page 3
January 13, 2009

Nor is this information required to be produced under Section 67.24(c) of the Sunshine Ordinance. This Section provides that certain information is "not exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden." None of the information listed applies to performance reviews or complaints. Accordingly, the Supervisor of Records finds the Arts Commission properly withheld this information.

Request for Files of Members of the Street Artist Program

Your petition states that you made a verbal request to Mr. Lazar for files of street artists, including your own file, and that Mr. Lazar had denied your request.

According to Mr. Lazar, your request for these files occurred in the context of a discussion of the department's proposed project to create electronic, rather than paper, files for the licensing of street artists. Mr. Lazar has informed the Supervisor of Records that in the course of discussing how long it would take to transfer files from paper to electronic form, you had offered to volunteer your time to help expedite the project. As I understand it, Mr. Lazar informed you that he would need to discuss with the City Attorney's Office whether the City could legally provide a non-City employee access to these files, which contain home addresses and telephone numbers and other personal information. Mr. Lazar did not understand your remarks to constitute a public records request.

It is possible that you and Mr. Lazar disagree about the substance of your conversation, or that you are referring to a different conversation. It is unnecessary for the Supervisor of Records to resolve that issue because Mr. Lazar has informed the Supervisor of Records that, if you are still interested in these records, the department will make records of street artist files available to you, except for any records subject to an exemption under public record laws, including any personal information protected under the artists' right to privacy. Please contact the department if you wish to make this request.

Concluding Remarks

As noted above, the Supervisor of Records has determined that although certain Civil Service Commission forms from the personnel files of the two employees in question are public records subject to disclosure, the remaining records in the personnel files were properly withheld. In addition, if you wish to obtain access to or copies of the records of street artist files, please submit your request to Mr. Lazar.

Very truly yours,

DENNIS J. HERRERA
City Attorney


Paula Jesson
Deputy City Attorney

cc: Nancy Gonchar
Howard Lazar

Paula Jesson/CTYATT
01/14/2009 03:13 PM

To mail@csrsf.com
cc Frank Darby/BOS/SFGOV@SFGOV
bcc
Subject Petition to Supervisor of Records - Supervisor Ammiano's Office email

Dear Mr. Holmer,

You filed a petition with the Supervisor of Record regarding your request to the Clerk of the Board of Supervisors for "all e-mails sent and received by former Supervisor Tom Ammiano, his aides and interns during the last three months ending December 5, 2008." The three month period was shorter than your initial request, which was for 6 months. The Clerk's office informed you that, even with this shorter time frame, it was unable to respond because the request was broad and voluminous. The Clerk's office suggested that you narrow the request by identifying the records sought by category or subject.

Your petition states that you ask only for confirmation that the records that you seek are public records.

This response confirms that the records that you seek are public records to the extent that they contain information "relating to the conduct of the public's business" (Cal. Gov't Code Sec. 6252(e)). Please note, however, that the records may nonetheless be exempt from disclosure or contain information that is subject to exceptions from the disclosure requirements of the San Francisco Sunshine Ordinance and the California Public Records Act, thus requiring a review of the records so that exempt information can be withheld or redacted. These potential exceptions include, among others, the right to privacy (Calif. Const. Art. 1, Sec. 1; Cal. Gov't Code Sec. 6254(c); S.F. Admin. Code Sec. 67.1(g)).

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

Paula Jesson/CTYATT
02/18/2009 10:36 AM

To kimo@webnetic.net
cc Pro-SF <home@prosf.org>, kimocrossman@gmail.com
bcc
Subject Re: APPEAL: OVERDUE: Immediate Disclosure Request
Re: Regarding Unlitgated IRS at Rules on 1/15 Item
13

Dear Mr. Crossman,

On January 15, 2009, you filed this petition regarding your request for records from the City Attorney's Office for "the Pre-Litigation Claim, Threat Memorandum, or other proof of specific pending litigation (not mere threat) of this matter [Settlement of Unlitigated Tax-Related Matter with the IRS]" Your petition said that the response was overdue.

On January 23, 2009, the City Attorney's Office responded, informing you that there is no claim relating to the matter and that other records relating to it are protected by the attorney-client privilege.

You responded to that message, also on January 23, 2009, stating that "[o]bviously communications between the City and the IRS are not attorney-client privilege"

On February 10, 2009, the City Attorney's Office informed you that the Office had made a further review and located communications responsive to the request, which were provided to you. This further response also informed you that the Office was not producing records protected by the attorney-client privilege or the attorney work product doctrine.

In light of the responses from the City Attorney's Office, the Supervisor of Records finds your appeal moot and denies the petition on that basis.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

kimo Ms: Jesson This is an appeal to the Supervisor of Records
01/15/2009 09:26:30 PM



kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

To SF Supervisor of Records Paula Jesson
<Paula.Jesson@sfgov.org>, Pro-SF <home@prosf.org>
cc
Subject APPEAL: OVERDUE: Immediate Disclosure Request Re:
Regarding Unlitgated IRS at Rules on 1/15 Item 13

01/15/2009 09:26 PM

Please respond to
kimo@webnetic.net

Ms. Jesson

This is an appeal to the Supervisor of Records for the documents requested from Ms. Adams -

Paul
Henderson/DA/SFGOV@SFG
OV
Sent by: Katherine
Miller@SFGOV

04/13/2009 02:33 PM

To <mail@csrfsf.com>

cc Adine Varah/CTYATT@CTYATT, Katherine
Miller/DA/SFGOV@SFGOV

bcc

Subject Re: DA IT Disaster Recovery Plan: DA Record
Retention/Destruction Schedule: DA Control, Backup,
Maintain & Restore Procedures

Dear Mr. Holmer,

I am writing in response to your document request. You have requested the following documents:

1. DA Disaster Recovery Plan
2. DA Record Retention and Destruction Schedule
3. Control Backup Maintain and Restore Procedures For Electronic Records.

Let me address your requests in order.

Request No. 1. DA Disaster Recovery Plan:

The DA's current Disaster Recovery Plan is attached to this email.



Disaster Recovery Plan for the San Francisco District Attorney.doc

Request No. 2. DA Record Retention and Destruction Schedule:

As Deputy City Attorney Adine Varah has told you, our office is in the process of obtaining the last couple of signatures on our most current Record Retention Policy. I will forward a copy to you as soon as we have obtained the final signatures.

Request No. 3. Control Backup Maintain and Restore Procedures for Electronic Records

As you can see, this policy is included in the DA's Disaster Recovery Plan, attached to this email.

Sincerely,

Paul Henderson
Chief of Administration
San Francisco District Attorney's Office
850 Bryant Street
San Francisco, CA 94103
paul.henderson@sfgov.org

The information contained in this electronic message may be confidential and may be subject to the attorney-client privilege and/or the attorney work product doctrine. It is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any use, dissemination or copying of this communication is strictly prohibited. If you have received this electronic message in error, please delete the original message from your e-mail system. Thank you.
"Christian Holmer" <mail@csrfsf.com>



"Christian Holmer"
<mail@csrfsf.com>

04/13/2009 08:01 AM

To <mail@csrfsf.com>. "CA Supervisor of Records Adine
Varah" <Adine.Varah@sfgov.org>, "CA Supervisor of
Records Paula Jesson" <Paula.Jesson@sfgov.org>.

Adine Varah/CTYATT
05/28/2009 06:08 PM

To kimo@webnetic.net, kimocrossman@gmail.com
cc Judson.True@sfmta.com
bcc Julia Friedlander/CTYATT@CTYATT
Subject Re: OVERDUE: VARAH: Outstanding Appeal for all SFMTA requested records to Supervisor of Records still outstanding. [1]

Dear Mr. Crossman,

I am writing in response to your May 18, 2009 appeal to the Supervisor of Records based on the San Francisco Municipal Transportation Agency's [MTA's] Response to your April 9, 2009 request for "all emails sent/received by the [MTA's] CFO [Sonali Bose] on 4/8/09."

Specifically, you claimed that MTA, based on its May 14, 2009 follow-up response, is "still withholding at least 20 records [based, according to the MTA, on Attorney-Client Privilege] and [has] performed invalid redactions."

We have reviewed this matter, including the records withheld by the MTA, and have concluded that the MTA properly redacted/withheld records on the following grounds:

PRIVACY

1. The MTA disclosed an e-mail message from an individual named Derek Reibert. The MTA properly redacted Mr. Reibert's private e-mail address in order to protect this individual's right to privacy. See (California Constitution, Article I, Section I; California Government Code Sections 6254(c) and 6254(k)).
2. The MTA properly withheld personnel records under California Government Code Section 6254(c), which protects from disclosure "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."

ATTORNEY-CLIENT COMMUNICATION /ATTORNEY WORK-PRODUCT

The MTA properly withheld the remainder of the documents based on their protection under the attorney-client and work product privilege. See Cal. Evid. Code Section 954; Cal. Gov't Code §6254(k). The Public Records Act recognizes and includes within its exemptions documents falling within the attorney-client and work product privileges. Cal. Gov't Code §6254(k).

We hope this information is helpful.

Sincerely,

Adine Varah
Deputy City Attorney
City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

(415) 554-4670 (tel)
(415) 554-4747 (fax)
Adine.Varah@sfgov.org



kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

08/14/2009 04:21 PM

Please respond to
kimo@webnetic.net

To Adine Varah <Adine.Varah@sfgov.org>
cc Paula Jesson <Paula.Jesson@sfgov.org>, Allen Grossman
[REDACTED]
bcc
Subject Re: VARAH: Outstanding Appeal for all SFMTA requested records to Supervisor of Records still outstanding.

Please apply with specific facts the balancing test you can't just say "Oh I thought about it and here is my answer"

On Fri, Aug 14, 2009 at 4:18 PM, Adine Varah <Adine.Varah@sfgov.org> wrote:
Dear Mr. Crossman,

I am writing in response to your message of July 2, 2009, where you attach your earlier messages repeating your request from May 28, 2009 for the Supervisor of Records to review its response to your appeal by reviewing "the case law [you] provided regarding the definition of personal privacy and CPRA" and "the requirement for minimally redacted emails i.e... TO FROM and DATE on attorney communications."

After reviewing the issues and arguments that you raised in your messages below, the Supervisor of Records has concluded that the determination sent to you on May 28, 2009 is correct.
The Supervisor of Records now considers this matter closed.

Sincerely,

Adine Varah
Deputy City Attorney
City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

(415) 554-4670 (tel)
(415) 554-4747 (fax)
Adine.Varah@sfgov.org

kimo
<kimo@webnetic.net>
t> To
Sent by: Adine Varah <Adine.Varah@sfgov.org>

kimocrossman@gmail.com

cc

Paula Jesson
<Paula.Jesson@sfgov.org>

Subject

07/02/2009 11:39 AM Re: VARAH: Outstanding Appeal for all SFMTA requested records to Supervisor of Records still outstanding.

Please respond to
kimo@webnetic.net

On Tue, Jun 30, 2009 at 3:39 PM, kimo <kimo@webnetic.net> wrote:

On Mon, Jun 29, 2009 at 12:03 PM, kimo <kimo@webnetic.net> wrote:

On Tue, Jun 23, 2009 at 5:44 PM, kimo <kimo@webnetic.net> wrote:

On Tue, Jun 2, 2009 at 12:36 PM, kimo <kimo@webnetic.net> wrote:
please address the Relevant case law i provided regarding the definition of

personal privacy and CPRA,

please address the requirement for minimally redacted emails i.e. i asked for TO FROM and DATE on attorney communications

On Tue, Jun 2, 2009 at 8:59 AM, kimo <kimo@webnetic.net> wrote:

On Thu, May 28, 2009 at 6:26 PM, kimo <kimo@webnetic.net> wrote:
please address the case law i provided regarding the definition of

personal privacy and CPRA,

please address the requirement for minimally redacted emails i.e.

asked for TO FROM and DATE on attorney communications

On Thursday, May 28, 2009, Adine Varah <Adine.Varah@sfgov.org> wrote:

> Dear Mr. Crossman,

>

> I am writing in response to your May 18, 2009 appeal to the Supervisor of

> Records based on the San Francisco Municipal Transportation Agency's

> [MTA's] Response to your April 9, 2009 request for "all emails sent/received by the [MTA's] CFO [Sonali Bose] on 4/8[/09]."

>

> Specifically, you claimed that MTA, based on its May 14, 2009 follow-up

> response, is "still withholding at least 20 records [based, according to

> the MTA, on Attorney-Client Privilege] and [has] performed invalid

> redactions."

>

> We have reviewed this matter, including the records withheld by the MTA,

> and have concluded that the MTA properly redacted/withheld records on the

> following grounds:

>

> PRIVACY

>

> 1. The MTA disclosed an e-mail message from an individual named Derek

> Reibert.

> The MTA properly redacted Mr. Reibert's private e-mail address in order to

> protect this individual's right to privacy. See (California Constitution,

> Article I, Section I; California Government Code Sections 6254 (c) and 6254

> (k)).

>

> 2. The MTA properly withheld personnel records under
California Government
> Code Section 6254(c), which protects from disclosure
"[p]ersonnel, medical,
> or similar files, the disclosure of which would constitute an
unwarranted
> invasion of personal privacy."
>
>
> ATTORNEY-CLIENT COMMUNICATION /ATTORNEY WORK-PRODUCT
> The MTA properly withheld the remainder of the documents based
on their
> protection under the attorney-client and work product
privilege. See Cal.
> Evid. Code Section 954; Cal. Gov't Code §6254(k). The Public
Records Act
> recognizes and includes within its exemptions documents falling
within the
> attorney-client and work product privileges. Cal. Gov't Code
§6254(k).
>
> We hope this information is helpful.
>
>
> Sincerely,
>
> Adine Varah
> Deputy City Attorney
> City and County of San Francisco
> City Hall, Room 234
> 1 Dr. Carlton B. Goodlett Place
> San Francisco, CA 94102-4689
>
> (415) 554-4670 (tel)
> (415) 554-4747 (fax)
> Adine.Varah@sfgov.org
>
>
>
> Adine
> Varah/CTYATT
>
> To
> 05/22/2009 11:32

Adine Varah/CTYATT
06/19/2009 02:02 PM

To kimo@webnetc.net, kimocrossman@gmail.com
cc Christian Holmer <mail@csrsf.com>
bcc Linda Ross/CTYATT@CTYATT; Matt
Dorsey/CTYATT@CTYATT
Subject Supervisor of Records - Response to Appeal Re: Mayor
Newsom's "communications on personal devices"

Dear Mr. Crossman,

I am writing to with a final response to your appeal to the Supervisor of Records dated June 2, 2009. After my investigation, I have determined that the Mayor's Office did not have any responsive documents.

In your appeal, you stated that "nothing [was] received" in response to your May 26, 2009 request to the Mayor's Office for "any communications or records collected by [the Mayor's Office] in response to the recent [California First Amendment Coalition] CFAC records request on this matter." You explained in your message of June 4, 2009 that "this matter" referred to the "original CFAC request" of May 18, 2009.

The May 18, 2009 CFAC request asked for the following records (copy of request attached):

"All email, text messages (including so-called "PIN messages" on a Blackberry or similar device) dated January 1, 2009 through April 30, 2009, that:

- a) Were created or received by Mayor Newsom;
- b) using email, text messaging, cell phone or other accounts THAT ARE PERSONAL TO THE MAYOR (that is, are not government-owned)
- c) concerning existing or proposed government contracts to which the city of San Francisco is, or may become, a party."

That request also clarified that "[w]e are not requesting any personal or private records from these accounts."

On June 3, 2009, Mr. Nathan Ballard, Communications Director of the Mayor's Office, sent you a letter, as he did to the CFAC, indicating that the Mayor's office "does not have any documents responsive to your request." I have attached both the June 3, 2009 letter to you as well as the June 3, 2009 letter to the CFAC. I also learned that on June 9, 2009, Joe Arellano, Chief Deputy Communications Director/Sub-Director de Prensa of the Mayor's Office, sent you a pdf of the same letter. On Tuesday, June 19, 2009, you sent a message to the Mayor's Office stating that your "request was for any communications with CFAC regarding their similar request."

The Mayor did not retain any e-mail or text messages from the Mayor's personal cell phone - including any direct messages sent to the Mayor's twitter account - from that period (January 1, 2009 - April 30, 2009) and thus did not have records to disclose in response to your May 26, 2009 request or the CFAC's May 18, 2009 request.



G Newsom PRA 051609.PDF Peter Scheer Sunshine Request Response pdf.pdf



Kimo Crossman Sunshine Request Response pdf.pdf

Sincerely,

Adine Varah
Deputy City Attorney
City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

(415) 554-4670 (tel)
(415) 554-4747 (fax)
Adine.Varah@sfgov.org

Adine Varah Dear Mr. Crossman, We are still looking into this... 06/12/2009 05:42:54 PM

Adine Varah/CTYATT
06/12/2009 05:42 PM

To kimo@webnetic.net
cc
Subject Re: APPEAL (2): idr newsom communications on personal devices

Dear Mr. Crossman,

We are still looking into this matter and will get back to you.

Thank you.

Sincerely,

Adine Varah
Deputy City Attorney
City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

(415) 554-4670 (tel)
(415) 554-4747 (fax)
Adine.Varah@sfgov.org

kimo

Please check your inbox for emails from me yest...

06/04/2009 12:43:49 PM



kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

To Adine Varah <Adine.Varah@sfgov.org>
cc kimo@webnetic.net, Christian Holmer <mail@csrsf.com>
Subject Re: APPEAL (2): idr newsom communications on personal devices

06/04/2009 12:43 PM

Please respond to
kimo@webnetic.net

Please check your inbox for emails from me yesterday there was one with the original cfac request attached or you could contact ballard or moc for current details

Adine Varah/CTYATT
07/08/2009 02:52 PM

To kimo@webnetic.net
cc Ben Rosenfield <Ben.Rosenfield@sfgov.org>, controller@sfgov.org, kimocrossman@gmail.com, Monique Zmuda <Monique.Zmuda@sfgov.org>
bcc Mariam Morley/CTYATT@CTYATT
Subject Response to 6/18/09 Appeal to Supervisor of Records (re: Record of Payment to SFGTV for Filming 4/17/09 Disaster Council Meeting)

Dear Mr. Crossman,

Thank you for your message.

Just to clarify, neither the Controller's office nor SFGTV had any "written procedures" for processing these particular types of transactions (i.e., payments to SFGTV for filming meetings). I understood that you weren't asking for procedures for a single transaction. Accordingly, they had no responsive records. I hope this clarification is helpful.

Sincerely,

Adine Varah
Deputy City Attorney
City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

(415) 554-4670 (tel)
(415) 554-4747 (fax)
Adine.Varah@sfgov.org

kimo Correction: my request to the Controller was for 07/08/2009 02:26:58 PM



kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

07/08/2009 02:26 PM

Please respond to
kimo@webnetic.net

To Adine Varah <Adine.Varah@sfgov.org>, controller@sfgov.org, Monique Zmuda <Monique.Zmuda@sfgov.org>, Ben Rosenfield <Ben.Rosenfield@sfgov.org>

cc

Subject on controller appeal

Correction, my request to the Controller was for their general written procedures for processing transfers from any department to another as exemplified by transfers to SFGTV

"How are these transactions created and processed? Please provide any written procedures for processing these forms of transactions - who may request them, who processes them?"

Those written procedures have not been provided. Nor has the department indicated that they did not exist. They only said they had no records for one particular transaction.

On Wed, Jul 8, 2009 at 2:17 PM, Adine Varah <Adine.Varah@sfgov.org> wrote:

>
> Dear Mr. Crossman
>
> I am writing with a final response to your June 18, 2009 appeal to the
> Supervisor of Records regarding your requests (contained in e-mail
> correspondence from April 24 - May 20) to the Controller's Office and the
> Department of Technology for "written procedures for processing these forms
> of transactions [specifically, transactions consisting of 'actual payment
> to SFGTV by the Mayor's Office, BOS and client department for services
> provided' by SFGTV for a 'Disaster Council Meeting of April 17']". Your May
> 4, 2009 message notes that your request concerns records which "show actual
> payment" rather than "invoices."
>
> I have reviewed your request, the correspondence you provided, and the
> records from the Controller's Office and SFGTV. Based on this review, I
> have concluded that neither the Controller, nor SFGTV, have documents
> expressly listing a record of "actual payment to SFGTV by the Mayor's
> Office, BOS [or any other] client department for services provided" by
> SFGTV for a "Disaster Council Meeting of April 17" nor do they have
> corresponding "written procedures" for processing this particular
> transaction.
>
> Instead, as Barry Fraser of the Department of Technology explained, because
> the Controller calculates and records payments to SFGTV from client
> departments, such as the Department of Emergency Management (the department
> that paid for the filming of that 4/17 meeting), as part of larger
> *monthly* payments, such payments are not listed as individual line items
> or individual records. Accordingly, the type of record that would reflect
> (but doesn't expressly list) the payment for SFGTV's filming is the print
> out of the monthly statement.
>
> On May 20, 2009, Mr. Fraser provided you with copies of the then available
> April monthly statements (also referred to by the Department of Technology
> as "journal entries"). I have attached copies of Mr. Fraser's
> correspondence and the attachments for your reference. As Mr. Fraser
> explained, the nature of the specific services or date of the meetings are
> not described in the record and the monthly statements may cover several
> filming services other than filming for a particular meeting.
>
> Based on the above, I have concluded that the Department of Technology
> provided the responsive records and this concludes the review of your
> appeal on this matter.
>
> Sincerely,
>
> Adine Varah
> Deputy City Attorney
> City and County of San Francisco
> City Hall, Room 234
> 1 Dr. Carlton B. Goodlett Place
> San Francisco, CA 94102-4689
>
> (415) 554-4670 (tel)
> (415) 554-4747 (fax)
> Adine.Varah@sfgov.org
>
>
>
> Adine

Adine Varah /CTYATT
07/08/2009 01:18 PM

To kimo@webnetic.net, kimocrossman@gmail.com
cc
bcc Linda Ross/CTYATT@CTYATT; Joe Arellano/MAYOR/SFGOV@SFGOV; Paula Jesson/CTYATT@CTYATT
Subject Supervisor of Records Response to "APPEAL : Immediate Disclosure Request (Mayor's Office) - evidence of "Professional and Business-like" maintenance of correspondence"

Dear Mr. Crossman,

I am writing in response to your June 23, 2009 appeal to the Supervisor of Records regarding your June 19, 2009 request to the Mayor's Office for records of evidence of "Professional and Business-like" maintenance of correspondence. You indicated that you had received "[n]o response" from the Mayor's Office.

I understand that on June 24, 2009 Mr. Arellano of the Mayor's Office provided you with a copy of the Mayor's Office Records and Document Retention and Disposal Schedule that the Mayor's Office adopted in accordance with Chapter 8 of the San Francisco Administrative Code. This policy covers "the records and documents, regardless of physical form or characteristics, which have been made or received by the Mayor's Office in connection with the transaction of public business." (Copy attached).



Mayor's Office Records and Document Retention and Disposal Schedule.pdf

Please see messages and attachments included above the copy of your inquiry to the Supervisor of Records.

Thank you.

Sincerely,

Adine Varah
Deputy City Attorney
City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

(415) 554-4670 (tel)
(415) 554-4747 (fax)
Adine.Varah@sfgov.org

kimo

Mr. Arellano and Mr. Ballard

06/24/2009 05:31:14 PM



kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

06/24/2009 05:31 PM

Please respond to
kimo@webnetic.net

To Joe Arellano <Joe.Arellano@sfgov.org>, Pro-SF
<home@prosf.org>, Peter Scheer <ps@cfac.org>, SF City
Attorney Supervisor of Records Adine Varah
<Adine.Varah@sfgov.org>, Paula Jesson
<Paula.Jesson@sfgov.org>, James Chaffee
<[REDACTED]>, Allen Grossman
<[REDACTED]>, Nathan Ballard
<Nathan.Ballard@sfgov.org>, Gavin Newsom
<gavin.newsom@sfgov.org>, Linda Ross <linda.ross@sfgov.org>, Erica
Craven-Green <[REDACTED]>, Richard Knee

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON
Deputy City Attorney

DIRECT DIAL: (415) 554-6762
E-MAIL: paula.jesson@sfgov.org

August 6, 2009

Anmarie Mabbutt

Re: Petition to Supervisor of Records Concerning Public Records Requests Submitted to the Recreation and Park Department

Dear Ms. Mabbutt:

You hand-delivered your petition to the Supervisor of Records on July 28, 2009. Your petition states that the Recreation and Park Department ("the Department") has failed "to disclose on a timely and rolling basis, any and all public records that [you] have formally and properly requested over the past seven weeks." You further state that Olive Gong, the Department's Custodian of Records, "has simply stopped fulfilling her duties under the Sunshine Ordinance to respond to my IMMEDIATE DISCLOSURE REQUESTS on a timely and rolling basis."

The Records Requests Addressed by the Petition

Your petition lists in five separate sections the "immediate disclosure" public records requests for which you seek review. You state that there has been a "complete failure to respond." We summarize these requests below.

1. A request, submitted on July 17 (which you indicate was originally made on July 12) for all permits issued in response to a request that was submitted on the official Recreation and Park Online Field Request form for Summer 2009 for Youth Summer Camps. (As we note below, the Department produced records in response to this request after you filed your petition.)
2. A request submitted on July 17 for communications between Ms. Gong and any other employee of the Department and/or any other City employee regarding advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning Sunshine laws and certain laws governing ethics.
3. Requests submitted on July 23 for (i) drafts of the Online Field Request form for Summer 2009, including initial and revised versions, final and/or amended versions that appear in any communications of any Department employee or any other person who may have been acting as a representative of the Department but was not yet on the payroll, (ii) records of approval of the Online Field Request form for Summer 2009, and (iii) documents, notes, memos, emails or any other written form of confirmation of any postings of any version of the form.
4. A request submitted on July 19 for records of every transaction between every permittee that received a Summer Athletic Field Permit for \$25/hour for up to 25 kids to conduct for-profit summer camp/program activities on the public athletic fields of San Francisco "AND any citizen of San Francisco" regarding enrollment and/or payment for any Summer 2009 camps/programs that they attended and/or paid for.

CITY HALL • 1 DR. CARLTON B. GOODLETT PLACE, ROOM 234 • SAN FRANCISCO, CALIFORNIA 94102
RECEPTION: (415) 554-4700 FACSIMILE (415) 554-4699

n:\govern\pjesson\supervisorofrecords\mabbutt.doc

Letter to Anmarie Mabbutt
Page 2
August 6, 2009

5. A request submitted on July 19 for correspondence of any kind between five specified City employees "and/or any other Recreation & Park Department employee(s), City Attorney's Office employee(s) or Mayor's Office employee(s)" regarding the "origin, creation, solicitation, implementation of or drafting of descriptions of the new classification of Fees for For-Profit Youth Programs and Camps, youth summer camp fees or however else this new Fee is described" in any City record.

Background of Your Requests to the Department

I have discussed your petition with Department staff and on July 31 reviewed email messages regarding all your requests to the Department, including those not included in your petition. Members of staff indicate that they have had problems responding to the many requests that you have been submitting since mid-June. These problems stem from the large number of requests and, for many of the requests, the large number of records sought and the need to conduct extensive searches in order to respond.

As to the number of your public records requests, Ms. Gong has provided me with a list of 47 requests that were pending on the date that you filed your petition to this office, all of which you submitted since mid-June. This list does not include all of the requests that the Department had responded to before you filed your petition, nor does it include the requests that you have made to Department staff other than Ms. Gong. In addition, you have submitted additional requests since you filed your petition.

As to the number of records sought, some requests have been simple to fulfill, such as the request for the minutes of a Commission meeting. Others have been more extensive, such as the request for "any and all permits issued for summer tennis camps or programs on the public courts of San Francisco from January 1, 1984 - June 16, 2009." Extensive requests require staff to expend considerable time determining which division of the Department may have the records and directing that a search be done, conducting the search (which may include hard copy and electronic files), and reviewing the compiled records to insure that all are properly disclosable and contain no private or other confidential information that the law authorizes or mandates the Department to withhold.

Ms. Gong received 46 email messages from you regarding your requests and sent you 39 responses. My review of these messages shows that almost all are substantive in nature, not simply communications regarding procedures such as updated contact information. Moreover, as you continued submitting additional requests, staff needed to determine to what extent the new requests overlapped with those already sent and how they should allocate their time between the old requests and those made more recently.

Ms. Gong informs me that between mid-June and the date of your petition the Department has provided you with approximately 277 hard copy pages and emailed approximately 121 pages of electronic records. In addition, Ms. Gong informs me that after you filed your petition, the Department responded to the public records request that you describe the section marked No. 1 of your petition, providing you with approximately 156 additional pages of records.

At one point, staff determined that they needed some better way to manage the large number of your requests and the process for responding. They found that they did not have time to complete the old requests before getting to the newer ones and that some of the requests required time to respond beyond not only the shorter time requirement for immediate disclosure requests but also the 10-day requirement normally applicable to public records requests. Ms. Gong asked that you prioritize your requests and informed you that the Department would respond to one request at a time, handling first the request at the top of your list. Ms. Gong

Letter to Anmarie Mabbutt
Page 3
August 6, 2009

informs me that this is the Department's current procedure for handling your requests, unless the request is simple and can be responded to quickly.

Role of the Supervisor of Records

Section §67.21(d) of the Sunshine Ordinance (San Francisco Administrative Code Section 67.21(d))¹ sets forth the duties of the Supervisor of Records as follows:

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance. [Added emphasis underlined.]

DETERMINATION OF THE SUPERVISOR OF RECORDS

Your petition raises three issues: Has the Department (1) failed to respond to your requests as "immediate disclosure requests," (2) failed to provide records "on a rolling basis," and (3) failed to respond within any otherwise applicable time limits?

Before considering these issues, we note that circumstances have changed regarding the request described in the section marked No. 1 of your petition. Ms. Gong has informed me that after you filed your petition, the Department produced approximately 156 pages of records in response to that request. Therefore, your petition is moot as to Request No. 1. If you believe that the Department's response was inadequate, you are not precluded from filing another petition seeking review of the response.

(1) Requests Styled "Immediate Disclosure Requests"

You designated all the requests under review as "Immediate Disclosure Requests." Your petition states that the Department failed to provide responses within the time required for "immediate disclosure requests" under Section 67.25(a), which provides as follows:

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. [Added emphasis underlined.]

¹ Unless otherwise noted, all statutory references in this memorandum are to the San Francisco Sunshine Ordinance, set forth in Chapter 67 of the San Francisco Administrative Code.

Letter to Anmarie Mabbutt
Page 4
August 6, 2009

I understand that Ms. Gong had informed you that the Department considered a large number of your requests complex and therefore not the type of "simple, routine and readily answerable" request that is subject to Section 67.25(a).

For a request to be subject to the requirements of Section 67.25(a), it must contain the words "immediate disclosure request" at the top of the request and on the envelope, subject line, or cover sheet. Your requests contain the required wording.

But a request must also be "simple, routine and readily answerable" to qualify as an immediate disclosure request. Labeling a request as an immediate disclosure request does not automatically make it so. In creating a special category of requests subject to a faster response deadline, the drafters of the Sunshine Ordinance and the voters who adopted it were concerned that a requester would have to wait a full 10 days before receiving a record where a City department was in fact able to quickly locate and produce it. For example, a department might have a fee schedule for a service often used by members of the public. Such a record is known by many department staff and can easily be located and provided to a requester.

A review of the requests set forth in Nos. 2 through 5 of your petition, which are those not yet responded to, shows that they require substantial research to locate responsive documents. Request No. 2 seeks communications between Ms. Gong and any other employee of any City department regarding Sunshine laws and certain laws governing ethics, without any limit on time or further narrowing of the subject. Request No. 3 seeks not only a final record of a departmental form, but also initial versions and any amendments, and also seeks all records of approval of the form and records related to all postings of any version of the form. No. 4 seeks records of "every transaction" of "every permittee" within a certain category of summer athletic field permittees and any citizen of San Francisco regarding enrollment and/or payment for Summer 2009 camps/programs. No. 5 seeks any correspondence between five City employees and any employee of three specified City departments regarding a new classification of certain fees. These are not "simple" or "routine" requests, and thus are not immediate disclosure requests.

Accordingly, the Department is not required to respond to Request Nos. 2 through 5 under the time limits applicable in Section 67.25(a) to immediate disclosure requests.

(2) Providing Records on a Rolling Basis

Section 67.25(d) requires City departments, when requested, to "produce any and all responsive [non-exempt] 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 further provides that it 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."

Your petition states that the Department failed to respond to your request that it produce records on an incremental or rolling basis as required by Section 67.25(d).

In evaluating this aspect of your petition, we consider whether the Department has reviewed and collected records responsive to your requests but has not provided the records to you on a rolling basis when it is reasonably possible to do so. The role of the Supervisor of Records does not include making historical determinations as to whether a department has failed to comply with the "rolling basis" requirement in the past in response to a request. Rather, the Sunshine Ordinance authorizes the Supervisor of Records, upon determining that a department is withholding records that should be provided, to order that the records be produced. Thus, in the context of your claim that the Department has not provided records on a rolling basis, the function of the Supervisor of Records is simply to determine whether the Department has

Letter to Anmarie Mabbutt
Page 5
August 6, 2009

reviewed and collected records that it should have produced on a rolling basis but has not yet produced.

I have discussed the current status of the Department's work on your requests. She informs me that the Department does not currently have records that have been collected and reviewed in response to your requests. Therefore, the Supervisor of Records denies your petition as to this issue. In doing so, the Supervisor of Records neither reaches nor implies a conclusion, one way or the other, as to whether the Department has in the past complied with the "rolling basis" requirement.

(3) Failure to Respond to the Requests Within Otherwise Applicable Time Limits

We turn now to your complaint that the Department has failed to respond to the requests covered by the petition. As noted above, we have determined that the shorter "immediate disclosure" time requirement does not apply. We therefore consider the non-response by the Department to the requests within the 10-day requirement that generally applies to public records requests. The Supervisor of Records has determined that there is no violation at this time, for the following reasons.

City departments may limit the time spent responding to public records requests where a requester has made numerous requests that take significant time to respond to and where compliance within otherwise applicable time requirements would interfere with the ability of the department's staff to perform their other duties. The rights of the public under public record laws are subject to "an implied rule of reason." *Bruce v. Gregory* (1967) 65 Cal.2d 666, 673 (laws governing public access to records are not absolute, but are subject to an implied rule of reason); *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 761 (construing the California Public Records Act under the rule of reason set forth in *Bruce v. Gregory*). To hold a City department to strict time requirements irrespective of the burdensome nature of an individual's requests would create a situation allowing a single individual to monopolize the resources of a City department. Such a construction of the Sunshine Ordinance would violate the "rule of reason" that applies to laws governing the public's access to public records.

In the situation under review, the Department has since mid-June engaged in a process of ongoing communication with you, responded on a regular basis to many of your questions and requests, engaged in record searches that required extensive staff time, and reviewed and produced hundreds of pages of records. The circumstances indicate that the Department's decision to handle one request at a time was made so that staff would be able to continue performing its regular duties, including the duty to respond to public records requests from other individuals. Nothing suggests that the Department has acted in bad faith or unreasonably. Under the circumstances, the Supervisor of Records concludes that the Department's current procedures governing its response to your requests do not violate its duty to provide records on a timely basis.

Letter to Anmarie Mabbutt
Page 6
August 6, 2009

Conclusion

For the reasons stated above, the Supervisor of Records has determined that your petition should be denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Paula Jesson
Deputy City Attorney



DENNIS J. HERRERA
City Attorney

PAULA JESSON
Deputy City Attorney

DIRECT DIAL: (415) 554-6762
E-MAIL: poula.jesson@sfgov.org

MEMORANDUM

TO: Rita O'Flynn
FROM: Paula Jesson
Deputy City Attorney
DATE: September 29, 2009
RE: Petition to Supervisor of Records – MOH (Lead Abatement Program)

You have filed a petition with the Supervisor of Records concerning your request for records from the Mayor's Office of Housing ("MOH"). MOH operates the Lead Hazard Control Demonstration Grant Program, which provides funding to qualifying property owners to finance the elimination of lead hazards on the property. The City receives funding from HUD for this program. You requested copies of grant applications submitted to MOH under this program.

Your petition states as follows:

MOH has inconsistently redacted ages from applications I requested via the Sunshine Ordinance. Their justification for doing so is Admin. Code Section 67.27 and CA State Government Code 6254(k) for Attorney-Client Privilege and Admin. Code Section 67.1(g) and/or CA State Govt. Code 6254(c) for Private Personal Information, however most of the redactions are for alleged children. Documentation of age is required in the documents I am requesting as they relate to a government grant with specific age-related contingencies. Please note that I am not asking for DOB, SS#, or any Attorney-Client Privileged information I simply want to see the all the ages that were entered onto the applications.

The Supervisor of Records understands from your petition that you are requesting a determination as to whether the San Francisco Sunshine Ordinance or the California Public Records Act requires MOH to provide you the applications that you requested without redacting the ages of children residing in housing units listed in the applications.

MOH has the originals of the applications sent to you in response to your public records request but did not keep a copy of the records in their redacted form. Therefore, we respond to this petition without being able to review the redacted records.

Relevance of Age to Funding of the Lead Abatement Program

As you note, MOH takes into account the age of persons who reside in units for which funding is sought under the lead abatement program.

MOH has provided the Supervisor of Records with the information set forth in this part of this memorandum regarding the requirements governing the lead abatement program.

MOH program policies state in part:

The Lead Program will prioritize units in an effort to have the greatest impact on the problem of lead poisoning in children in San Francisco. To that end priority ranking for the units that will be remediated as soon as possible is as follows:

Memorandum

TO: Rita O'Flynn
 DATE: September 29, 2009
 PAGE: 2
 RE: Petition to Supervisor of Records – MOH (Lead Abatement Program)

1. Units where children under 6 with lead poisoning live or spend time
2. Units where children under 6 with elevated blood lead levels (under 10 µg/ Dl) live or spend time
3. Units where children under 6 live or spend time, and lead hazards are present, as documented by DBI or DPH, or MOH
4. Pre-1978 owner or rental occupied units with children under 6
5. Vacant rental units built before 1976; where the landlord agrees to give priority in renting to families with children under 6
6. Rental units not currently housing children under 6, in buildings where there are families with children under 6 in other units, or vacant apartments.

Where the policy refers to units where children live or "spend time," the phrase "spend time" means that a child spends a significant amount of time visiting the unit.

The policy requires MOH to grant priority to properties with children under six years of age in processing applications for funds and in determining the time within which the remediation work is done.¹ MOH takes age into consideration only when the property has a child of this age.

A property owner seeking grant funding for lead abatement remediation must file a grant application. If the property has rental units, the tenants fill out the application. The property owner, or (for rental units) the tenant, must provide information of various types, including the names and ages of household members for each unit for which funding is requested.

Analysis

Your petition requires consideration of two principles that, in the context of public records requests, are often in tension with one another. The first principle is the right of privacy, which the San Francisco Sunshine Ordinance addresses in its "Findings and Purpose" section:

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

San Francisco Administrative Code §67.1.

The California Constitution and the California Public Records Act also recognize the right of privacy. California Constitution Article I, section 1; California Government Code sections 6254(c) (allowing public agencies to decline to disclose personnel, medical and similar records the disclosure of which would constitute an unwarranted invasion of privacy) and 6250 (in adopting the Public Records Act, the Legislature is "mindful of the right of individuals to privacy").

The second principle, the strong interest of the public in monitoring government operations, is also addressed in the San Francisco Sunshine Ordinance:

d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few

¹ MOH has also informed the Supervisor of Records that HUD has approved its program policies.

Memorandum

TO: Rita O'Flynn
 DATE: September 29, 2009
 PAGE: 3
 RE: Petition to Supervisor of Records – MOH (Lead Abatement Program)

exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

San Francisco Administrative Code §67.1; California Government Code section 6250 (in adopting the Public Records Act, the Legislature "finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.")

To the extent that MOH policies require City officials to take age into account when considering grant applications for the lead abatement program, the public has an interest in knowing whether officials are applying this criterion properly.

But a person's age is protected by the right of privacy. *Sakamoto v. U.S. Environmental Protection Agency*, 443 F.Supp.2d 1182, 1195 (N.D. Cal. 2006) (finding that disclosure of information in files in response to a public records request under FOIA, including complainants' age, would constitute an unwarranted invasion of personal privacy").² This privacy interest is not an abstraction in the case of children, whose safety and security may be placed at risk by disclosing specific units in which they live or spend time.

Moreover, in the context of lead poisoning, there is an additional issue to consider because of the connection between lead exposure and medical problems. As noted in MOH's "Fact Sheet" on the lead abatement program, children with high levels of lead in their bodies can suffer from various symptoms, including damage to the brain and nervous system, behavior and learning problems, and slowed growth. MOH has informed the Supervisor of Records that it is not uncommon for children known to have, or perceived as having, lead poisoning to be stigmatized because of the symptoms associated with the condition.

Because disclosure of age in this context could lead to the disclosure of a child's medical condition, or to information from which third parties could infer a medical condition, we consider precedents dealing with public records requests for records containing medical information.

As already noted, the California Public Records Act excludes from disclosure medical records where disclosure would constitute an unwarranted invasion of privacy. Cal. Gov't Code §6254(c). As also noted, the California Constitution protects the right to privacy. As noted in *Bearman v. Superior Court*, 117 Cal.App.4th 463 (2004), at 474:

A person's medical history undoubtedly falls within the recognized zones of privacy. [Citations omitted.] *Jones v. Superior Court* (1981) 119 Cal.App.3d 534, 549-550 [174 Cal.Rptr. 148]; *Board of Medical Quality Assurance v. Gherardini* (1979) 93 Cal.App.3d 669, 678 [156 Cal.Rptr. 55]; 1069 *Pettus v. Cole* (1996) 49 Cal.App.4th 402, 440-441 [57 Cal.Rptr.2d 46] ["it is well settled that the zone of privacy created by [the California Constitution] extend[s] to the details of a patient's medical and psychiatric history".] In

² The California Public Records Act is modeled on the federal Freedom of Information Act (FOIA) and the construction of FOIA is useful in construing California's statute. *BRV, Inc. v. Superior Court*, 143 Cal.App.4th 742, 756 (2006).

Memorandum

TO: Rita O'Flynn
 DATE: September 29, 2009
 PAGE: 4
 RE: Petition to Supervisor of Records – MOH (Lead Abatement Program)

Gherardini, the court held that “[a] person's medical profile is an area of privacy infinitely more intimate, more personal in quality and nature than many areas already judicially recognized and protected.” (93 Cal.App.3d at p. 678.)

See, also, *Johnson v. Superior Court*, 80 Cal.App.4th 1050 (2000), at 1068-9 (by showing park rangers a doctor's letter supporting his need for marijuana for personal medical purposes, defendant does not forgo or waive any right, “much less the ‘inalienable’ right of privacy expressly guaranteed by the California Constitution (Cal. Const., art. I, § 1).”

Under the circumstances of your request, the California Constitution, the California Public Records Act and the San Francisco Sunshine Ordinance require the City to balance the privacy interests of those persons whose ages are listed on the lead abatement program's grant application against the public's interest in monitoring the government's implementation of the lead abatement program. See, *Schrecker v. U.S. Dept. of Justice*, 349 F.3d 657 (C.A.D.C. 2003), at 666 (court must decide under right to privacy if the government did all it should have done to balance the privacy interests versus public interests in disclosure of records requested under FOIA); *Trentadue v. Integrity Committee* 501 F.3d 1215, 1233 (C.A.10 2007) (court must consider whether release of private information in response to public records request under FOIA would “shed light” on the government's performance of the prevailing wage laws).

Disclosure of applications showing both the addresses of households and the presence or absence of children under the age of six at those addresses would provide useful information for monitoring the program (although the usefulness of the information is limited because MOH's policies consider not only young children who live in the unit but also those who spend time there). However, to the extent that such disclosure would make public that a child under six years old lives at a particular address, the disclosure would burden the privacy interests of the children and their families and could constitute an unwarranted invasion of privacy.

The Supervisor of Records has conferred with MOH regarding vehicles for disclosing information that would enable citizens to monitor the effectiveness of the program without invading the privacy of the children whose families seek lead abatement remediation. MOH has informed the Supervisor of Records that it can disclose information from the applications in a manner that prevents disclosure of the corresponding address. MOH could assign an arbitrary number or letter for each housing unit listed in the grant applications (omitting the property address) and note, as to each housing unit, whether a child under the age of six is listed on the application. While such a listing would not enable the public to know the corresponding address, it would provide general information about the relationship between the numbers of household units with young children that received, and did not receive, grant funding.³

³ The Supervisor of Records also notes that MOH prepares publicly available HUD quarterly reports that provide information on children under six years of age (the information is not linked to identified housing units). The form is entitled “Office of Healthy Homes and Lead Hazard Control Grantee Quarterly Progress Report” and requires MOH to state for completed units the number of children under six years of age that were residing in units when lead hazard control work was initiated.

Memorandum

TO: Rita O'Flynn
DATE: September 29, 2009
PAGE: 5
RE: Petition to Supervisor of Records – MOH (Lead Abatement Program)

The Supervisor of Records finds that such disclosure would satisfy MOH's obligations under the San Francisco Sunshine Ordinance and the California Public Records Act.

If you wish to obtain information from MOH provided in this type of format, please contact Oliver Hack at MOH (701-5500).

P.J.

