

Date: Dec. 1, 2009

Item No. 8 & 9
File No. 09069

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Asian Law Caucus v Mayor's Office
- _____
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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.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2009 OCT 15 PM 2:2

BY DR

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Mayor's Office

Name of individual contacted at Department or Commission Mayor Gavin Newsom

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section 67.25
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

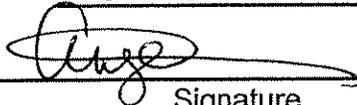
Please see attached.

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
Do you also want a pre-hearing conference before the Complaint Committee? yes no

*(Optional)*¹

Name Angela Chan, Asian Law Caucus Address 55 Columbus Avenue, San Francisco

Telephone No. (415) 848-7719 E-Mail Address angelac@asianlawcaucus.org

Date 10/13/09  Signature

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Asian Law Caucus

55 Columbus Avenue
San Francisco, CA 94111
Phone: (415) 848-7719
Fax: (415) 896-1702
E-mail: angelac@asianlawcaucus.org

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

Re: Sunshine Ordinance Complaint – Description of Alleged Violation

Dear Sunshine Ordinance Taskforce:

The Mayor's Office has refused to comply with a valid request for public records from the Asian Law Caucus, and also has not provided an explanation for why this request has not been complied with. Founded in 1972, the Asian Law Caucus is the nation's oldest nonprofit civil rights organization providing legal services to low-income Asian and Pacific Islander Americans. The mission of the Asian Law Caucus is to promote, defend, and advance the legal and civil rights of Asian and Pacific Islanders, as well as other minority communities.

On September 2, 2009, the following request was faxed and mailed first class by the Asian Law Caucus to the Mayor's Office and the City Attorney's Office:

Unless another date is specified, the requests below extend to documents prepared, transmitted, or in effect on or after June 1, 2009.

1. All DOCUMENTS provided by the SAN FRANCISCO MAYOR'S OFFICE to the San Francisco Chronicle (including any reporter, staff, employee, representative, or agent of the San Francisco Chronicle) that is related to the City of Refuge Ordinance, undocumented youth, immigrant youth, or pending or introduced legislation on the confidentiality of juveniles' immigration status.
2. All DOCUMENTS (including memoranda, letters, reports, data compilations, and statistics) and COMMUNICATIONS that are related to Memorandum from the City Attorney that is related to the City of Refuge Ordinance, undocumented youth, immigrant youth, or pending or introduced legislation on the confidentiality of juveniles' immigration status. Note that any attorney client privileges are waived after a document has been disclosed. In this case, the Memorandum was disclosed to the San Francisco Chronicle on or about August 2009, and is therefore available to the public pursuant to the Sunshine Ordinance and CPRA.

On September 3, 2009, the Mayor's Office complied with the request for item (2) by sending a webpage link to copy of the confidential City Attorney memo that was given to the *San Francisco Chronicle* by the Mayor's Office in or about August 2009.¹ **However, the Mayor's Office refused to comply with the request for item (1), even after I sent two further e-mails reminding them of the request and their duties under the Sunshine Ordinance.** Item (1) is a request for any

¹ On September 3rd, Shirley Chou emailed an electronic link to a PDF file containing the memo. The full email exchange is attached to this complaint.

communication regarding a memorandum from the City Attorney's Office that was disclosed to the *San Francisco Chronicle* by the Mayor's Office in or about August 2009 regarding the City of Refuge Ordinance, undocumented youth, immigrant youth, or pending or introduced legislation on the confidentiality of juveniles' immigration status.

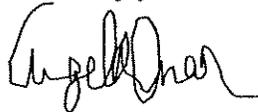
Further, the Mayor's Office refused to provide an explanation for their refusal to comply with my request for item (1). Rather, the Mayor's Office's response was: "My earlier email completes our response to your request. Thank you." The Mayor's Office's "earlier email" only included a webpage link that was responsive to item (2) and any information that was responsive to item (1). When I sent a follow up e-mail asking the Mayor's Office again for documents responsive to item (1), the Mayor's Office did not send a response. Please see **Exhibit B**, which is attached to this complaint, for the full email exchange.

I am filing this complaint with the Sunshine Ordinance Task Force in order to obtain documents responsive to item (1), to investigate why the Mayor's Office has refused to respond to this request, and to seek any other remedies available for this violation of the Sunshine Ordinance. There is no valid reason for a refusal of my request for item (1); the Mayor's communications with the press are not privileged or confidential.² In the spirit of accountable government and open democracy,³ the people of San Francisco have a right to know how, when and by whom these communications to the press were made.⁴

Attached is the full text of the original Sunshine Request (**Exhibit A**), the email exchange with the Mayor's Office regarding their insufficient compliance with the Sunshine Request (**Exhibit B**), quotes from local newspapers referencing the communication from the Mayor's Office (**Exhibit C**), and a statement from the City Attorney's Office referencing the communication between the Mayor's Office and the *San Francisco Chronicle* about the City Attorney memorandum (**Exhibit D**).

Thank you for investigating this violation of the Sunshine Ordinance. Please do not hesitate to contact me at (415) 848-7719 or angelac@asianlawcaucus.org with any questions. I look forward to your response and hopefully to promptly resolve this matter.

Sincerely yours,



Angela Chan
Staff Attorney
Juvenile Justice and Education Project

² Section 67.29-7 of the Sunshine Ordinance states that "[t]he Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance."

³ Section 67.1(d) of the Sunshine Ordinance states that "[t]he 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 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."

⁴ The definition of "public information" under the Sunshine Ordinance (S.F. Administrative Code § 67.20(b)) and the California Public Records Act (Cal. Gov. Code § 6252(e)) includes "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

Sept. 2, 2009

VIA FACSIMILE TO (415) 554-6160 & FIRST-CLASS MAIL

Mayor Gavin Newsom
City Hall, Rom 200
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: IMMEDIATE DISCLOSURE SUNSHINE REQUEST

Dear Mayor Newsom:

You will find below a formal request under the California Public Records Act (CPRA) and the San Francisco Sunshine Ordinance for access to certain public records in the possession of you and the Mayor's Office.

Pursuant to S.F. Administrative Code § 67.25, please provide the requested information by the close of business tomorrow, or if that is not possible, please provide an explanation in writing stating the reason for the delay.

Definitions Used in this Request

With regard to the following requests, these definitions are provided in an effort to specify as clearly as possible the nature of each request:

DOCUMENT or DOCUMENTS means and includes both paper documents and electronic representations of information, including handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail, facsimile, or cell phone, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

COMMUNICATIONS means and includes every means of transmitting information from one person or organization to another that results in the creation of a DOCUMENT, including but not limited to letters, memoranda, notes, email, cell phone, and facsimile transmissions.

SAN FRANCISCO JUVENILE PROBATION DEPARTMENT means and includes any staff, employee, representative, agent, officer, or official of the San Francisco Juvenile Probation Department or Juvenile Probation Commission.

Separate Requests Requiring Separate Responses

Subject to these definitions the DOCUMENTS we wish to inspect and of which we may require copies are specified below. Please treat each of these numbered paragraphs below as a separate request under the California Public Records Act and Sunshine Ordinance and respond to each separately as to (1) the existence of such documents; (2) whether you intend to make such documents available; (3) if you claim any exemption or privilege; and (4) when documents are produced or made available, the paragraph to which such documents are intended to respond. See S.F. Admin. Code § 67.21. This procedure is intended to obviate the waste of sending separate requests as to each of these categories of documents. Unless we hear promptly from you to the contrary, we will assume that sending separate requests will not be necessary.

Specification of Documents Requested

Unless another date is specified, the requests below extend to documents prepared, transmitted, or in effect on or after June 1, 2009.

1. All DOCUMENTS provided by the SAN FRANCISCO MAYOR'S OFFICE to the San Francisco Chronicle (including any reporter, staff, employee, representative, or agent of the San Francisco Chronicle) that is related to the City of Refuge Ordinance, undocumented youth, immigrant youth, or pending or introduced legislation on the confidentiality of juveniles' immigration status.
2. All DOCUMENTS (including memoranda, letters, reports, data compilations, and statistics) and COMMUNICATIONS that are related to Memorandum from the City Attorney that is related to the City of Refuge Ordinance, undocumented youth, immigrant youth, or pending or introduced legislation on the confidentiality of juveniles' immigration status. Note that any attorney client privileges are waived after a document has been disclosed. In this case, the Memorandum was disclosed to the San Francisco Chronicle on or about August 2009, and is therefore available to the public pursuant to the Sunshine Ordinance and CPRA.

Specific Requests Regarding Compliance with Sunshine Ordinance & CPRA

As noted, we have tried to be as specific as we can in designating public records without having access to the records themselves. If you find any of these requests insufficiently focused or effective, we request that you provide the assistance required by S.F. Administrative Code Section 67.21(c) and Government Code Section 6253.1.

As you may know, S.F. Administrative Code Section 67.25, requires that the requested information by the close of business tomorrow. If you are unable to fully comply with all of the foregoing requests within two (2) days, or any extension permitted by law, we request that you comply with those requests with which you can comply within 2 days.

If you believe a portion of the information we have requested is exempt from disclosure by express provision of the law, Government Code Section 6253(a) additionally requires segregation of deletion of that material in order that the remainder of the information may be released.

Please make the information requested available for our review before charging us for copies. Where the information is contained in electronic databases, we request that such information be provided in electronic form, pursuant to Government Code Section 6253.9.

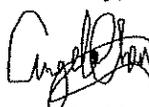
Please mail the requested documents to the following address:

Angela Chan, Staff Attorney
Asian Law Caucus
55 Columbus Avenue
San Francisco, CA 94111

Please email the requested documents available in electronic format to the following email addresses:
angelac@asianlawcaucus.org.

Thank you in advance for your timely attention to this request. Please do not hesitate to contact me with any questions at (415) 848-7719.

Sincerely,



Angela Chan
Staff Attorney
Juvenile Justice and Education Project

CC: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
VIA FACSIMILE TO (415) 554-4745 & FIRST-CLASS MAIL

Exhibit B

E-mail exchange with the Mayor's Office Regarding Asian Law Caucus' Sunshine Request:

—Original Message—

From: Shirley Chou [mailto:Shirley.Chou@sfgov.org]
Sent: Thursday, September 03, 2009 2:02 PM
To: Angela Chan; sarah@sfbg.com
Subject: response to your sunshine request

<http://www.sfgov.org/site/uploadedfiles/mayor/PolicyFinance/SanctuaryMemo.PDF>

Regards,
Shirley Chou
Deputy Communications Director/Advisor on Asian affairs Mayor's Office of Communications
1 Dr. Carlton B. Goodlett Place, Room 291 San Francisco, CA94102

415.554.6131 Main
415.554.4058 Fax
Shirley.Chou@sfgov.org

—ALC Reply Message—

From: Angela Chan
Sent: Thursday, September 03, 2009 3:02 PM
To: 'Shirley Chou'
Subject: RE: response to your sunshine request

Dear Ms. Chou,

Thank you for responding to item (2) in my Immediate Disclosure Request.
Please also complete the Mayor's Office's compliance with my request by sending me documents and correspondence in response to item (1) in my request:

1. All DOCUMENTS provided by the SAN FRANCISCO MAYOR'S OFFICE to the San Francisco Chronicle (including any reporter, staff, employee, representative, or agent of the San Francisco Chronicle) that is related to the City of Refuge Ordinance, undocumented youth, immigrant youth, or pending or introduced legislation on the confidentiality of juveniles' immigration status.

Pursuant to the Sunshine Ordinance, the Mayor's Office has until the close of business day today, Sept. 3rd, to comply with this request or alternatively, to provide in writing an explanation for the delay and when the request will be complied with. Please contact me promptly with any questions. Thank you.

Sincerely,
Angela

-----Mayor's Office Reply Message-----

From: Shirley Chou [mailto:Shirley.Chou@sfgov.org]
Sent: Thursday, September 03, 2009 3:14 PM
To: Angela Chan
Subject: RE: response to your sunshine request

My earlier email completes our response to your request. Thank you.

Regards,
Shirley Chou
Deputy Communications Director/Advisor on Asian affairs Mayor's Office of Communications

-----ALC Reply to Mayor's Reply Message-----

From: Angela Chan
Sent: Thursday, September 03, 2009 3:49 PM
To: 'Shirley Chou'
Subject: RE: response to your sunshine request

Dear Ms. Chou,

As you may know, S.F. Administrative Code Section 67.25 requires that the requested information be provided by the close of business today. Under the City's Sunshine Ordinance, the Mayor's Office must provide me with a reason as to why the Mayor's Office is not complying with my request of item (1). Complying with item (2) does not constitute complying with item (1) of my records request. If the Mayor's Office does not provide me with an adequate and timely response, I will strongly consider filing a complaint against the Mayor's Office with the Sunshine Ordinance Taskforce along with other complaint avenues.

Best wishes,
Angela

Exhibit C

Excerpts from *The San Francisco Chronicle* that reference the communication with the Mayor's Office:

Heather Knight and Jaxon Van Derbeken, "Sanctuary policy at risk, city attorney warns," *San Francisco Chronicle*, August 20, 2009.

Excerpt:

"The legal ramifications of the legislation, introduced Tuesday and sponsored by a veto-proof majority of the board, are spelled out in a confidential memorandum prepared by the city attorney's office at the request of Mayor Gavin Newsom and obtained by The Chronicle."

Available at: [http://www.sfgate.com/cgi-](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/08/20/MN3S19ATB2.DTL#ixzz0QjMqtJWZ)

[bin/article.cgi?f=/c/a/2009/08/20/MN3S19ATB2.DTL#ixzz0QjMqtJWZ](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/08/20/MN3S19ATB2.DTL#ixzz0QjMqtJWZ)

Excerpts from *The Bay Guardian* that references the leak from the Mayor's Office:

Sarah Phelan, "Did you get the (leaked Campos) memo?" *San Francisco Bay Guardian*, August 22, 2009.

Excerpt:

"After today's swearing-in ceremony for SFPD Chief George Gascón, (which former chief Heather Fong attended in pants and a pink cardigan,) I asked Mayor Gavin Newsom if he was concerned that someone in his office had leaked a confidential memo about Sup. David Campos' proposal to extend due process to immigrant youth.

(The City Attorney's office prepared the attorney-client privileged memo at Newsom's request. Newsom's office then leaked the memo to the Chronicle, which cited the memo in an article that was critical of Campos's legislation.)

The Mayor responded tersely to my question, noting that clients, in an attorney-client privileged arrangement, can release memos, if they so choose.

"So, you did leak the memo to the Chronicle?" I said.

"I handed it," Newsom said, pausing to look directly at his spokesperson Nathan Ballard, "to some of my people."

Available at: http://www.sfbg.com/blogs/politics/2009/08/post_10.html

Sarah Phelan, "Restoring the sanctuary" *San Francisco Bay Guardian*, August 26, 2009.

Excerpt:

"But the next day, the mood in the immigrant community soured as they learned that the Mayor's Office had leaked to the *Chronicle* a confidential memo from the City Attorney's Office about the legal vulnerabilities ..."

Available at:

http://www.sfbg.com/entry.php?entry_id=9058&catid=&volume_id=398&issue_id=446&volume_num=43&issue_num=48

Exhibit D

Relevant Statements from the City Attorney's Office:

SAN FRANCISCO (Aug. 20, 2009) –

City Attorney Dennis Herrera today issued legal guidance to elected City policymakers and their staffs following the **disclosure to the San Francisco Chronicle of a privileged and confidential City Attorney memorandum on a proposed amendment by Supervisor David Campos to San Francisco's Sanctuary Ordinance**. The Chronicle did not reveal its source in obtaining the document in its news report this morning, and the City Attorney's Office is not aware of a City official or employee who has acknowledged responsibility for the disclosure. Thus, the disclosure may have been unauthorized.

Herrera's written legal guidance has been published to the City Attorney's Web site at <http://www.sfcityattorney.org/index.aspx?page=185>.

In addition, Herrera offered the following statement:

"The integrity of the attorney-client relationship is essential to my ability to do my job effectively, and, by extension, to the ability of all City officials to be fully apprised of legal issues that may accompany their proposals. Attorney-client confidentiality intends to enable my office to provide legal counsel to City officials, candidly and completely, unfettered by risk of disclosure to potentially adverse parties. It also intends to assure a level playing field to the interests of San Francisco taxpayers in civil litigation.

"Confidential legal advice is not intended to be fodder in political disputes. Principles of comity in the legislative process dictate that confidential legal advice should not be used in this fashion. Disclosure of such advice can ultimately undermine our City's ability to govern responsibly and defend itself effectively."

Available at: <http://www.sfcityattorney.org/index.aspx?page=185>

