

Date: Feb. 22, 2011

Item No. 12

File No. 10069

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- William and Robert Clark v Arts Commission
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Completed by: Chris Rustom

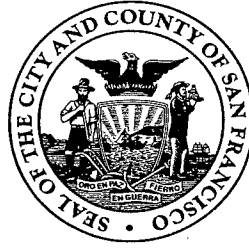
Date: _____

***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.

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
January 28, 2011

DATE THE DECISION ISSUED
January 25, 2011

WILLIAM AND ROBERT CLARK v ARTS COMMISSION (CASE NO.10069)

FACTS OF THE CASE

Complainants William and Robert Clark allege that the San Francisco Arts Commission (the "Commission", or "Respondent") violated the Ordinance by failing to respond adequately to their November 8, 2010, public records request for documents and records that show how much salary and benefits were paid to Howard Lazar, Evelyn Russell and other Commission employees from the \$118, 759 in salaries and \$42, 820 in benefits reported to the Controller (presumably in connection with the Street Artists fee setting process)

COMPLAINT FILED

On December 17, 2010, the complainants filed a complaint alleging a public records violation.

HEARING ON THE COMPLAINT

On January 25, 2011, William Clark presented his case before the Task Force. The Respondent Agency was not represented. Howard Lazar of the Arts Commission was present at the start of the meeting but left a note that said he had to leave by 6:30 p.m. because he was the care-giver to a person in Marin. No one in the audience presented facts and evidence on behalf of the Commission.

Mr. Clark told the Task Force he has been trying to find out the salaries and paid benefits for Street Artists Program employees Howard Lazar and Evelyn Russell for the year 2009/10. He said he has also asked for the information verbally and has not received an answer. He said he specifically asked in a letter to Mr. Lazar on November 8 for a breakdown of the amount reported to the Controller Office as salaries and benefits. Mr. Lazar responded on November 22 with a letter and two printouts that no one understood. Mr. Clark said he wants the breakdown for budgetary reasons. He said Ms. Russell quit or was fired in February 2010 and so he would like to know where her salary and benefits were diverted or used. He also said he was told by Director of Cultural Affairs Luis R. Cancel at the last Arts Commission that he and his brother could not ask questions about the budget during Public Comment session, and if they did, they would be ignored.

ORDER OF DETERMINATION**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Member Snyder said the Clarks' request was really clear and it appears that the agency's response is that to provide a breakdown is to create a record. He said he has researched this issue for another matter and that there is a doctrine that says government agencies are not required to create new records. He said there is a lot of case law, but they are not very clear about what constitutes a new record. In this case, he said, isolating one person's salary could not constitute the creation of a new record. The commission, he believes, has a record somewhere in its offices that says Mr. Lazar's salary for a certain month or year is x amount of dollars. He said if Mr. Lazar were present he could not see Mr. Lazar successfully arguing that such a record does not exist. It is clear, he said, the Commission did not provide the request and the requested information is public.

Member Knoebber said the Task Force could ask Mr. Lazar his salary orally and it would be difficult for him to say that he does not know. Vice Chair Wolfe said there has to be a document that shows how the Commission plans to spend the money the Clarks and other street artists give them. Member Johnson wanted to know if such information is available on the City website. DCA Threet said he is not aware of such a site but the Chronicle newspaper produced a spreadsheet last year that had the salaries and benefits of all City employees. Member Chan said asking Mr. Lazar his Civil Service classification and looking it up the list should produce immediate results.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Sunshine Section(s) 67.21(b) by not responding within the given time frame, 67.21(c) by failing to assist the requestor, and 67.26 by not keeping withholding to a minimum. The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on February 8, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 25, 2011, by the following vote: (Snyder / Knoebber)
 Ayes: Snyder, Manneh, Washburn, Knoebber, Wolfe, Chan, Johnson, Knee
 Excused: Cauthen



Richard A. Knee, Chair
 Sunshine Ordinance Task Force

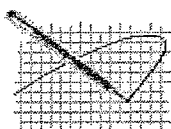


David Snyder, Member, Seat #1*
 Sunshine Ordinance Task Force

ORDER OF DETERMINATION

c: William and Robert Clark, Complainants
Howard Lazar, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.



Howard
Lazar/ARTSCOM/SFGOV
02/11/2011 10:55 AM

To Bill and Bob Clark <billandbobclark@access4less.net>
cc Luis Cancel/ARTSCOM/SFGOV@SFGOV, Jill
Manton/ARTSCOM/SFGOV@SFGOV, SanSan
Wong/ARTSCOM/SFGOV@SFGOV, Kan
bcc

Subject Documents regarding January 28, 2011 Sunshine Ordinance
Task Force "Decision and Order of Determination"

History:  This message has been forwarded.

Mr. William J. Clark
Mr. Robert J. Clark

Relative to the Sunshine Ordinance Task Force's "Decision and Order of Determination" from its hearing on Complaint #10069, William and Robert Clark v. Arts Commission, please see the attached letter informing you that I have completed the redaction process of confidential personnel information from all of the recently discovered documents of which I informed you on February 4, 2011 and am now mailing in hard copy the redacted copies to you.



Clark021111.doc

Sincerely,

Howard Lazar
Street Artists Program Director
San Francisco Arts Commission
415.252.2583

Website: http://www.sfartscommission.org/street_artists_program/index.html



EDWIN M. LEE
MAYOR

February 11, 2011

LUIS R. CANCEL
DIRECTOR OF
CULTURAL AFFAIRS

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

PROGRAMS

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

ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.554.6080

Re: January 28, 2011 Sunshine Ordinance Task Force Decision and Order of Determination

WWW.SFARTSCOMMISSION.ORG
ARTSCOMMISSION@SFGOV.ORG

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

Relative to the Sunshine Ordinance Task Force hearing on Complaint #10069, William and Robert Clark v. Arts Commission, the Sunshine Ordinance Task Force issued an "Order of Determination" dated January 28, 2011, which the Arts Commission received on February 1, 2011.

On January 4, 2011, I wrote to you that, after furnishing you with documents responsive to this matter on January 3rd, I continued to search for documents that could possibly yield information more specific to your request and that I discovered that the Controller's Office issues a document covering each pay period which shows the amounts of salary and benefits paid for each employee, and the amount of various taxes withheld, during a pay period. I also informed you that I had accumulated all of these documents covering the previous fiscal year (2009-10) and was in the process of redacting certain confidential personnel information from the documents and that it was doubtful that, given the short amount of time actually received from the Task Force, that I would have all of them redacted by the fifth business day allotted by the "Order." I stated that I would be happy to furnish you with the documents on a "rolling basis" as I redacted them.



CITY AND COUNTY OF
SAN FRANCISCO

This is to inform you that, under the guidance of the City Attorney, I have completed the redaction of confidential personnel information from all of the documents and am mailing hard copies of the documents to you today.

For your information, City payments for health and dental care have been redacted as required by the Health Insurance Portability and

Accountability Act (HIPAA) of 1996, 42 U.S.C. Section 1320(d) et seq. The Privacy Rule protects all “individually identifiable health information” held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information “protected health information (PHI)”. “Individually identifiable health information” is information, including demographic data, that relates to (a) the individual’s past, present or future physical or mental health or condition; (b) the provision of health care to the individual, or (c) the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. (45 C.F.R. 160.03)

Additionally the amount of taxes paid by the individual employees was redacted as non-responsive to your request, and this information is private under the California Constitution Article I, Section 1, California Government Code Section 6254(k); and California Government Code Section 6254(c). These provisions guard against disclosure of information that would invade personal privacy. Further, both the California Public Records Act (California Government Code Section 6250) and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Section 67.1(g)) acknowledge the importance of protecting personal privacy when disclosing records in response to a public records request.

Sincerely,

Howard Lazar
Street Artists Program Director

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

Arts Commissioner P. J. Johnston, President
Director of Cultural Affairs Luis R. Cancel
Director of Programs Jill Manton
Chief Financial Officer Kan Htun
Deputy City Attorney Virginia Dario Elizondo
Deputy City Attorney Adine K. Varah