

Date: Feb. 23, 2010

Item No. 4 & 5

File No. 10001

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Nick Pasquariello against the Bay Area Video Coalition**
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Completed by: Chris Rustom

Date: Feb. 18, 2010

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

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

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



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

February 18, 2010:

NICK PASQUARIELLO v. BAY AREA VIDEO COALITION (10001)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Nick Pasquariello alleges that the Bay Area Video Coalition ("BAVC") required him to provide a copy of his California driver's license to be scanned as a condition of his receiving a time slot to cablecast his programs. It is unclear how this complaint related to public records or public meeting law requirements.

COMPLAINANT FILES COMPLAINT:

On January 11, 2010, Mr. Pasquariello filed a Complaint against BAVC for its alleged violations.

JURISDICTION

San Francisco Administrative Code § 12-L.3(e) provides that a non-profit agency that receives more than \$250,000 per year in City provided funds may be subject to the requirements of that statute. BAVC is budgeted to receive over \$900K from the City this fiscal year, most of it through the General Services Agency. Thus, the Task Force would have jurisdiction to hear a complaint of violation of Administrative Code Section 12-L. Since it appears, however, that no complaint of such a violation has been made, the Task Force does not appear to have jurisdiction to hear the complaint.

APPLICABLE STATUTORY SECTION(S):

Section 12-L of the San Francisco Administrative Code:

Section 12-L.3 deals with situations where a nonprofit may be subject to the requirements of Section 12-L.

APPLICABLE CASE LAW:

None.

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ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

There appear to be no factual issues to determine, given the lack of alleged violation.

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Does the Task Force have jurisdiction to hear the complaint?
- Were sections of the Sunshine Ordinance, Brown Act, Public Record Act, and/or California Constitution Article I, Section three violated?

SUGGESTED ANALYSIS

Under Section 12-L of the San Francisco Administrative Code:

- Did BAVC allegedly violation the ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

ATTACHED STATUTORY SECTIONS FROM CHAPTER 12 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

Section 12L.1 of the Administrative Code (The San Francisco Non-Profit Public Access Ordinance) provides:

INTENT

a.) The intent of this Chapter is to establish a policy wherein the City ensures that non-profit organizations with which the City chooses to do business operate with the greatest possible openness and maintain the closest possible ties to communities they intend to serve.

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Section 12L.3(e) of the Administrative Code provides:

DEFINITIONS

e.) "Non-profit Organization" shall mean any corporation formed pursuant to California Corporations Code sections 500 et seq. for any public or charitable purpose, and/or any organization described with 26 USC section 501(c), which receives a cumulative total per year of at least \$250,000 in City-provided or City-administered funds.

Section 12L.4 of the Administrative Code (The San Francisco Non-Profit Public Access Ordinance) provides:

PUBLIC ACCESS TO MEETINGS

(a)(1) provides that each nonprofit organization shall designate and hold at least two designated public meetings per year. Issues addressed by the Board of Directors at designated public meetings shall be of approximately the same general nature and significance to the nonprofit organization as issues typically addressed by the Board of Directors at its other regular or special meetings.

SEC. 12L.7. COMPLIANCE.

In the event that a nonprofit organization materially fails to comply with any contract provision required by this Chapter, the City agency or department which is a party to such contract shall consider such failure a material breach of the contract. The City agency or department may, but is not required to, further consider such material breach as grounds for terminating the contract or not renewing the contract, partially or in its entirety.

THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.

Article I Section 3 provides:

a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.

b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.

3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing

MEMORANDUM

discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.

5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Post Office Box 42791
San Francisco, California 94142

December 22, 2009

Mr. Ken Ikeda
Executive Director
Bay Area Video Coalition (aka BAVC)
2727 Mariposa Street
San Francisco, California 94110
(415) 861-3282
(415) 861-4316 FAX

Dear Mr. Ikeda,

On November 30, 2009 I submitted application for a public access (aka public commons) time slot that BAVC manages for CommCast cable company, among others.

I am very much concerned with identity theft and was taken aback when on November 30, 2009, Mr. Josh Kanies, of your staff, insisted that as a condition of cablecasting my programs on the public access channel/public commons/BAVC required me to let Kanies scan my California driver's license into BAVC's computer system.

Since BAVC/public commons is now in possession of a copy of my driver's license I believe it incumbent upon BAVC to set strict procedures for any and all access to this document.

BAVC must make provision that no one can make a copy of my driver's license from BAVC archive or use my picture from that license in any way.

To prevent unauthorized viewing or copying of my driver's license I am requesting that BAVC set up a software security grid to protect the privacy and confidentiality of that license.

Please advise me when I can review in person the security measures you have put in place to protect the privacy and confidentiality of my driver's license and all information I have given to BAVC in connection with submission and cablecasting of programs on the public access (aka public commons) channels that BAVC manages.

Your prompt response to this letter would be much appreciated. If I do not receive a response within three (3) weeks I may initiate appropriate measures.

Yours truly,

Nick Pasquariello

January 11, 2010

Dear Mr. Rustom,

I wish to add one note to my SOTF complaint vs. BAVC.

Article 12.2, Sunshine Ordinance, of BAVC's August 20, 2009 contract with the City and County of San Francisco mandates that BAVC comply with the City's Sunshine Ordinance by virtue of their contractual arrangements with the City and County of San Francisco, California.

Yours truly,

Nick Pasquariello
(415) 431-2990

Report 1200a
Data As Of :
01/24/2010

City and County of San Francisco
Vendor Payment Summaries Website

Page 1 of 1

Search Results by Vendor and Department

Vendor Names	Non Profit	Departments	Payments				Remaining Balance
			FY 2007-08	FY 2008-09	FY 2009-10	In Process	
BAY AREA VIDEO COALITIO	X						
		ARTS COMMISSION	\$9,000	\$9,600	\$2,400	\$0	\$0
		CHILDREN, YOUTH & THEIR FA	\$57,807	\$57,655	\$41,945	\$0	\$63,595
		ECONOMIC AND WORKFORCE DEV	\$130,366	\$0	\$0	\$0	\$122,108
		GENERAL SERVICES AGENCY -	\$0	\$5,000	\$0	\$0	\$4,200
		GENERAL SERVICES AGENCY -	\$0	\$0	\$873,653	\$0	\$0
		PUBLIC LIBRARY	\$0	\$995	\$0	\$0	\$0
Totals:			\$197,173	\$73,250	\$917,998	\$0	\$189,903

[Return to Search Page](#) [Get Help](#) [Contact a Department](#)

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Barry Fraser/DTIS/SFGOV

02/16/2010 04:54 PM

To Chris Rustom/BOS/SFGOV@SFGOV

cc Ron Vinson/DTIS/SFGOV@SFGOV, Olga
Ryerson/ADMSVC/SFGOV@SFGOV

bcc

Subject Fw: Sunshine Complaint Received: #10001_Nick
Pasquariello vs General Services Agency

History:

 This message has been forwarded.

Mr. Rustom,

Please include the attached letter as supporting document in Complaint # 10001.

Thank you.

Barry Fraser
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City and County of San Francisco
Department of Technology
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San Francisco, CA 94103
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February 16, 2010

Mr. Chris Rustom, Clerk
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

RE: Complaint # 10001_Nick Pasquariello vs. General Services Agency

Dear Mr. Rustom:

The Department of Technology (DT), after review of Complaint # 10001_Nick Pasquariello vs. General Services Agency (GSA), respectfully submits the following statement:

- Complaint # 10001 mistakenly references the GSA as Respondent. Complainant is apparently making a complaint against the Bay Area Video Coalition (BAVC) related to the operation of the City's Public Access Channels. DT provides funding to BAVC for the operation of those channels under a grant agreement between DT and BAVC. GSA is not involved with that agreement.
- BAVC is required under its grant agreement to comply with the City's Sunshine Ordinance.
- DT has received no requests or complaints from any members of the public concerning BAVC's compliance or noncompliance with the Sunshine Ordinance, and therefore has not considered nor made recommendations with respect to any such requests or complaints.
- DT has notified BAVC of SOTF Complaint # 10001, and has requested that BAVC investigate the matter.

Please contact me if you have any questions.

Sincerely,

Ron Vinson

Director of Media



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