

Date: January 3, 2012

Item No. 25 & 26
File No. 11089

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Bobb Birkhead v City Attorney's Office**
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Completed by: Chris Rustom

Date: Dec. 22, 2011

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

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

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



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BOARD OF SUPERVISORS
SAN FRANCISCO

2011 NOV -1 PM 4:55

4k

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 Office of the City Attorney

Name of individual contacted at Department or Commission Steph Thompson and Jack Song

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

Sunshine Ordinance Section _____
(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 Robb Birkhead Address _____

Telephone No. 832-818-5651 E-Mail Address JR Birkhead@gmail.com

Date 11/1/2011 J. Robert Birkhead
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).

November 1, 2011

Dennis J. Herrera, Esq.

San Francisco City Attorney

1 Dr. Carlton B. Goodlett Jr. Place, Room 234

San Francisco, California 94102

Re: Public Records Request

Mr. Herrera:

On October 7, 2011, I filed a written public records request with the City Attorney's Office, care of Steph Thompson. On October 17, 2011, I called the City Attorney's Office to follow up on the request, as California State law dictates that a public entity has 10 days to respond to a written request. I then talked to Jack Song, who said he would look at my request and get back to me via e-mail. Mr. Song then sent me the attached e-mail, stating that he would be taking the full 14 days extra allowed by law to compile the information, making the date for compliance October 31, 2011.

On October 28, 2011, I e-mailed Mr. Song asking about when I could come pick up the information on the following Monday. I did not receive a response until late Monday evening, where Mr. Song told me the disk with the information I requested was available at the City Attorney's Office. However, when I went to pick up the materials, the disk was not ready. As you are aware it was required by law to be ready that day.

The following day, I returned to the City Attorney's Office and successfully obtained the disk. When I opened the disk, it only contained a fraction of the contents which Mr. Song said he would provide – namely one item as follows:

1) five folders labeled "Conflict Waiver Letters" which are responsive to item one of your request; (Correspondence with Jack Song)

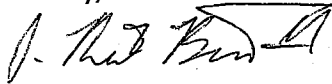
Every other item which Mr. Song said he would release, and is in fact required to be released by law, were missing – namely:

- 2) a folder labeled "Outside Counsel Contracts" which are responsive to item 2 of your request;
- 3) documents 00660669.pdf, Addendum1.pdf, 006982.pdf, and MOU re Allocation of MH Settlement [Executed].pdf are related to *People of the State of California v. Atlantic Richfield*, the lead paint case;
- 4) the document labeled PDF012.pdf is related to *City and County of San Francisco v. Morganite*;
- 5) the nine documents labeled "Farella" are related to *City and County of San Francisco v. Tutor-Saliba*; and
- 6) the documents labeled "Cotchett" and "Executed CMS Settlement Agreement" are related to the *City and County of San Francisco v. Sempra Energy et al.*, which involved price fixing and unfair business practices against natural gas shelters. (Correspondence with Jack Song)

As you are well aware this is a clear violation of San Francisco's Sunshine Ordinance. I was promised materials and waited the maximum amount of time to receive the documents and then came to discover that these items were being withheld in violation of the law.

Please release these documents immediately also know that I am filing a complaint to the Sunshine Ordinance Task Force to help me obtain a resolution.

Sincerely,



Robb Birkhead

IMMEDIATE DISCLOSURE REQUEST

September 20, 2011

Dennis J. Herrera, Esq.
San Francisco City Attorney
1 Dr. Carlton B. Goodlett Jr. Place, Room 234
San Francisco, California 94102

Re: Public Records Act Request

Mr. Herrera:

This letter is a request for immediate disclosure of public records under the California Public Records Act (Cal. Gov. Code §§ 6250 *et seq.*) and the San Francisco Sunshine Ordinance (S.F. Admin. Code Chapter 67).

Throughout this request, the term “records” includes but is not limited to: any paper or electronic information; reports; evaluations; memoranda; correspondence; letters; emails; charts; graphs; meeting agendas and minutes; training materials; diagrams; forms; DVDs; tapes; CDs; requests for proposals or for qualifications and responses thereto; notes; or other similar materials. The period covered in this request is January 8, 2002 through the present. For purposes of these requests “the City” shall refer to the City and County of San Francisco and/or any of its elected officials, officers, employees, departments, divisions, or agencies.

We request the following categories of records:

1. Records relating to requests to the City for a conflict waiver, regardless of whether the conflict was real or perceived, existing or hypothetical, or whether or not the waiver was required by law or ethical rule. For purposes of these requests, “conflict waiver” means the kind of written consent required under Rule 3-310 of the California Rules of Professional Conduct or any similarly-applicable ethical rule.
2. Records relating to the retention of outside legal counsel in contingent- or conditional-fee litigation. For purposes of these requests, “contingent- or conditional-fee litigation” shall mean litigation whether or not brought on behalf of the City, in which some or all of the outside legal counsel’s payment was intended to come from an eventual recovery in the action. For purposes of these requests, “outside legal counsel” means any attorney retained by the City – whether as an individual or through a law firm –

who was not at all times during the pendency of the matter an employee of the City.

3. Records relating to the contingent- or conditional-fees received by outside legal counsel retained by the City.
4. Records relating to the selection, contracting, and use of outside legal counsel by the City on any matter brought on behalf of the People of the State of California.

Should you believe that there is a basis for withholding any records, we request that you state the statutory or other authority upon which you withhold the responsive documents. We also request that you indicate every redaction, along with the basis upon which you have redacted information.

Thank you for your prompt attention to this matter. Please furnish all applicable records to Robb Birkhead. If you have questions, please contact me at 832-818-5651 or at JRBirkhead@gmail.com

Sincerely,

Robb Birkhead



Robb Birkhead <jrbirkhead@gmail.com>

Response to Public Records Request (10/7/2011)

3 messages

Jack Song <Jack.Song@sfgov.org>

Mon, Oct 17, 2011 at 3:41 PM

To: JRBirkhead@gmail.com

Dear Mr. Birkhead:

This is in response to your public records request, dated September 20, 2011, but received by our office on October 7, 2011, for:

1. Records relating to requests to the City for a conflict waiver, regardless of whether the conflict was real or perceived, existing or hypothetical, or whether or not the waiver was required by law or ethical rule. For purposes of these requests, "conflict waiver" means the kind of written consent required under Rule 3-310 of the California Rules of Professional Conduct or any similarly-applicable ethical rule.

2. Records relating to the retention of outside legal counsel in contingent- or conditional-fee litigation. For purposes of these requests, "contingent- or conditional-fee litigation" shall mean litigation whether or not brought on behalf of the City, in which some or all of the outside legal counsel's payment was intended to come from an eventual recovery in the action. For purposes of these requests, "outside legal counsel" means any attorney retained by the City - whether as an individual or through a law firm - who was not at all times during the pendency of the matter an employee of the City.

3. Records relating to the contingent- or conditional-fees received by outside legal counsel retained by the City.

Records relating to the selection, contracting, and use of outside legal counsel by the City on any matter brought on behalf of the People of the State of California.

You request documents from January 8, 2002, through the present. Given the almost 10 years time span, we must invoke an extension of 14 days because your request is voluminous, and we must retrieve records from storage in order to respond to your request (Cal. Gov. Code Sec. 6253(c)). The due date for response is October 31, 2011.

Thank you for your understanding.

Best regards,

JACK SONG
Public Information Officer

OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

[\(415\) 554-4653](tel:(415)554-4653) Direct
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[\(415\) 554-4715](tel:(415)554-4715) Facsimile
[\(415\) 554-6770](tel:(415)554-6770) TTY
www.sfcityattorney.org

Robb Birkhead <jrbirkhead@gmail.com>

Fri, Oct 28, 2011 at 3:27 PM

To: Jack Song <Jack.Song@sfgov.org>

Jack, just wanted to see what time on Monday I can come in to pick this up.

Robb Birkhead
C: 832-818-5651

On Mon, Oct 17, 2011 at 3:41 PM, Jack Song <Jack.Song@sfgov.org> wrote:

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(415) 554-6770 TTY
www.sfcityattomey.org

Jack.Song@sfgov.org <Jack.Song@sfgov.org>

Mon, Oct 31, 2011 at 4:01 PM

To: jrbirkhead@gmail.com

Dear Mr. Robb Birkhead:

This responds to your Immediate Disclosure request for public records dated September 20, 2011, received by our office on October 7, 2011, for:

1. Records relating to requests to the City for a conflict waiver, regardless of whether the conflict was real or perceived, existing or hypothetical, or whether or not the waiver was required by law or ethical rule. For purposes of these requests, "conflict waiver" means the kind of written consent required under Rule 3-310 of the California Rules of Professional Conduct or any similarly-applicable ethical rule.
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3. Records relating to the contingent- or conditional-fees received by outside legal counsel retained by the City.
4. Records relating to the selection, contracting, and use of outside legal counsel by the City on any matter brought on behalf of the People of the State of California.

You requested documents from January 8, 2002, to the present.

On October 17, 2011, we notified you that given the voluminous nature of your request, and the need to retrieve closed files, we needed to invoke an extension of 14 days.

As I informed you on October 17-, because of the large volume of documents you requested, they could not be emailed, so we prepared a disk of the responsive documents. The disk is available for pickup at the office, Room 234 in San Francisco City Hall, City Attorney's Office

On the disk you will find: 1) five folders labeled "Conflict Waiver Letters" which are responsive to item one of your request; 2) a folder labeled "Outside Counsel Contracts" which are responsive to item 2 of your request; 3) documents 00660669.pdf, Addendum1.pdf, 006982.pdf, and MOU re Allocation of MH Settlement [Executed].pdf are related to *People of the State of California v. Atlantic Richfield*, the lead paint case; 4) the document labeled PDF012.pdf is related to *City and County of San Francisco v. Morganite*; 5) the nine documents labeled "Farella" are related to *City and County of San Francisco v. Tutor-Saliba*; and 6) the documents labeled "Cotchett" and "Executed CMS Settlement Agreement" are related to the *City and County of San Francisco v. Sempra Energy et al.*, which involved price fixing and unfair business practices against natural gas shelters.

We are continuing to gather additional information responsive to your request for fees received by outside counsel, and will forward this information as soon as it is finally compiled. In the *Sempra* case, the City did not pay fees to the Cotchett firm, rather the City received a portion of the settlement funds, this information is in the Cotchett parts 1 and 2 documents.

Certain documents have been withheld, and certain portions of documents redacted, because they are exempt from disclosure under the attorney-client and attorney work product privileges. The Public Records Act does not require an agency to provide "records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." (California Government Code Section 6254(k).) California Evidence Code Section 954 protects from disclosure communications between attorneys and their clients. Disclosure of communications between this office and our client departments would chill the ability of both attorney and client to discuss candidly with each other issues on which legal advice is sought. Further, California Business and Professions Code Section 6068(e) requires attorneys to keep inviolate the confidential communications of clients. Therefore, we decline to disclose any records reflecting those communications. Additionally, certain documents have been withheld as exempt from disclosure under the attorney work product privilege. See California Government Code Section 6254(k) (public agencies not required to disclose documents where disclosure is exempted or prohibited by federal or state law) and California Code of Civil Procedure Section 2018.030 (protecting as work product writings that reflect an attorney's impressions, conclusions, opinions or legal research or theories). See also California Government Code Section 6276.04 (recognizing as exempt from disclosure under Section 6254(k) of the Public Records Act materials covered by the attorney-client and attorney work product privileges).

Best regards,

JACK SONG
Public Information Officer

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From: Robb Birkhead <rbirkhead@gmail.com>
To: Jack Song <Jack.Song@sfgov.org>
Date: 10/28/2011 03:27 PM
Subject: Re: Response to Public Records Request (10/7/2011)

Jack, just wanted to see what time on Monday I can come in to pick this up.

Robb Birkhead
C: [832-818-5651](tel:832-818-5651)

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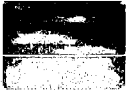
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Re: Complaint #11089 Robb Birkhead v. City Attorney's Office

Jack Song to: SOTF

11/22/2011 04:23 PM

History:

This message has been forwarded.

Re: Complaint #11089 Robb Birkhead v. City Attorney's Office

Dear Sunshine Ordinance Task Force,

This is in response to Mr. Birkhead's complaint, dated November 1, 2011, that he received an incomplete disk of the documents that were responsive to his request. As soon as Mr. Birkhead informed our office that not all of the documents listed in the cover letter were on the disk, we made him a new disk, which we provided on November 2, 2011. We informed him that it was a simple oversight. The response to Mr. Birkhead's request was 321 documents in PDF format, with a combined total of 1,429 pages. Because of the extensive nature of his request, the responsive documents could not be sent electronically, they had to be loaded on to a disk. The documents were gathered from several sections of our office, and at least a dozen staff members worked on reviewing, compiling and copying these documents. They were saved to a shared drive from which the disk was made. Due to a simple misunderstanding, not all of the documents on the shared drive were copied to the disk. As soon as we became aware of the problem, we apologized and corrected it.

Best regards,

JACK SONG
Public Information Officer

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