

Date: January 3, 2012

Item No. 17 & 18

File No. 11082

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Anonymous v Caroline Celaya of the SFMTA**
-
-
-
-
-
-
-
-
-
-

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.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

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

MEMORANDUM

December 13, 2011

ANONYMOUS v. CAROLINE CELAYA (11082)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Anonymous alleges that Caroline Celaya ("Celaya") of the San Francisco Municipal Transportation Agency ("MTA") failed to adequately respond to her September 22, 2011 Immediate Disclosure Request ("IDR") for information about parking citation officers and citations issued.

COMPLAINANT FILES COMPLAINT:

On October 19, 2011, Anonymous filed a complaint against Ms. Celaya.

JURISDICTION

The MTA is a policy body and charter department of the City; therefore the Task Force generally has jurisdiction to determine whether there was a violation, as alleged. Jurisdiction has not been contested by respondent.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.

Section 6250 et seq. of the Cal. Gov't Code

- Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

None.

Memorandum

DATE: December 13, 2011
PAGE: 2
RE: *Complaint 11082: Anonymous v. Celaya*

ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that on September 22, 2011, she made an IDR to the MTA, requesting information about parking citation officers and citations issued. She further alleges that on September 23, 2011, Ms. Celaya responded by invoking a 14-day extension of time until October 7, 2011. Anonymous further alleges that on October 11, 2011, she emailed Ms. Celaya to inquire about the response to the IDR, and that Ms. Celaya responded that day that she was trying "to determine the cause of the delay." Complainant further alleges that she again emailed MTA on October 15, 2011 and requested that the information be provided by the end of the day on October 17, 2011. As of October 19, 2011, Anonymous alleged that she had received no further response to the IDR.

MTA does not appear to dispute the above allegations. Instead, Ms. Celaya alleges that the response was delayed beyond the due date because of miscommunication between two divisions of MTA that were required to work together to compile information in order to request the final information from an MTA vendor. Ms. Celaya alleges that the responsive information was provided to Anonymous on October 19, 2011, although she does not specify in what form it was sent.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did MTA timely respond to the initial IDR?
- Was the follow-up response of MTA timely?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Commission complied with the requirements of the Ordinance and the Public Records Act?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

Memorandum

DATE: December 13, 2011
PAGE: 3
RE: *Complaint 11082: Anonymous v. Celaya*

ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

...

SEC. 67.25. IMMEDIACY OF RESPONSE.

- (a) 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.
- (b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.
- (c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.
- (d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive 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 is intended to prohibit the withholding of public records that are responsive to a records request

Memorandum

DATE: December 13, 2011
PAGE: 4
RE: *Complaint 11082: Anonymous v. Celaya*

until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

Memorandum

DATE: December 13, 2011
PAGE: 5
RE: *Complaint 11082: Anonymous v. Celaya*

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) **Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.** The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.



Sunshine Complaint
complaints

to:
soff
10/19/2011 08:56 AM
Hide Details
From: <complaints@sfgov.org>

To: <soff@sfgov.org>

To:soff@sfgov.org
Email:complaints@sfgov.org
DEPARTMENT:SFMTA
CONTACTED:Caroline Celayra
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:Section 67.25
DESCRIPTION:09/22/11, 11:15am: I requested information about parking citation officers and citations issued. I have been doing this similar request for over a year now. 09/23/11, 2:52pm: SFMTA (through Caroline Celaya) responded invoking the 14-day extension to 10/07/11. 10/11/11, 8:21am: I emailed SFMTA again stating that they have past the deadline and I am requesting for the information. 10/11/11, 3:11pm: SFMTA responded with the following statement "I'm circling back with staff to determine the cause of the delay." 10/15/11, 1:00pm: I emailed SFMTA for the 2nd time letting them know that this is the 2nd time I requesting for the information and that I would like it to be provided by end of business day of 10/17/11. 10/19/11, 9:00am: I have NOT heard anything from SFMTA.
HEARING:Yes
PRE-HEARING:Yes
DATE:10/19/11
NAME: [REDACTED]
ADDRESS: [REDACTED]
CITY:San Francisco
ZIP:CA
PHONE: [REDACTED]
CONTACT_EMAIL:
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:Yes

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oka | Director
Joel Ramos | Director
Edward D. Reiskin | Director of Transportation

November 21, 2011

Mr. Rick Knee
Chairman, Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Complaint against the Municipal Transportation Agency
Complaint No. 11082

Dear Mr. Knee:

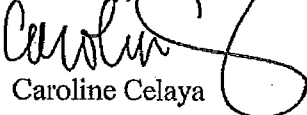
I am writing in response to complaint #11082 filed by Anonymous. Anonymous complains that the San Francisco Municipal Transportation Agency ("SFMTA") failed to respond to their September 22, 2011, request for public records.

As explained below, SFMTA did complete a response to this request, although it was after the due date.

On Thursday, September 22, 2011, the SFMTA received an immediate disclosure request and sent a response on Friday, September 23, 2011 invoking a 14 day extension until October 7, 2011 to respond to the request. The extension was invoked due to "the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request," "the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request," and "the need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein." Cal. Gov't Code §6253(c)(1), (2), and (3).

The response required two divisions within the SFMTA to work together to compile the necessary information in order to obtain the final responsive information from our vender. There was a miscommunication between the two divisions and the agency was late in responding to the request. The agency sent the documents responsive to the request on October 19, 2011.

Sincerely,


Caroline Celaya