

Date: Jan. 24, 2012

Item No. 22 & 23

File No. 11090

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: Jan. 20, 2012

***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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MEMORANDUM

January 19, 2012:

PATRICK MONETTE-SHAW VS. CONTROLLER'S OFFICE (11090)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Patrick Monette-Shaw alleges that the San Francisco Controller violated the Ordinance by failing to provide records in response to his October 5, 2011 email request for FY 2009-2010 CCSF employee payroll data from Monique Zmuda.

COMPLAINANT FILES COMPLAINT:

On or about October 21, 2011, Complainant filed a complaint with the Task Force alleging a violation of Sections §67.24, 67.26, and 67.34 of the Ordinance. On December 18, 2011, Complainant amended his complaint to add violations of section 67.21(i) of the Ordinance, CPRA §6253.9, and Government Code §34090 (dealing with record retention).

JURISDICTION

The Controller is a charter department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint against the Controller.

While it appears that the Controller has not contested jurisdiction, there is an issue as to whether the Task Force has jurisdiction to hear an allegation regarding a violation of Government Code §34090.

APPLICABLE STATUTORY SECTION(S):

- S.F. Administrative Code Sections 67.21(i), 67.24, 67.26, and 67. 34.
- Cal. Gov't Code Section 6253.9

APPLICABLE CASE LAW:

See case law cited in analysis, below.

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ISSUES TO BE DETERMINED**Uncontested/Contested Facts:****Complainants' Allegations**

Complainant alleges that, on October 3, 2001, he requested that Ms. Zmuda provide him a file containing fiscal year data of employee salaries that the City had apparently already provided to San Francisco Chronicle reporters Matier and Ross for fiscal year ending June 2011. The next day, Ms. Zmuda provided the requested file in MS Excel format. She noted in her e-mail response: "As requested, the fiscal year employee payroll file [is enclosed.]"

Complainant further alleges that, on October 5, he responded to Ms. Zmuda, amending his records request, asking for the same data set for the fiscal year ending June 2010 that had been provided to Matier and Ross for fiscal year ending June 2011. His email notes that he already received a fiscal year 2010 salary report in a previous format. On October 6, Zmuda responded, saying "This is the format and prepared report that we provide on payroll information to all requestors. The report for FY 10 was in the same format. We will not be preparing any specialized report on salaries of City Employees."

Complainant further alleges that, in years past, the results of a completely different database "query" have been provided to him under separate reporting parameters and there is no "specialized" report, other than an alternate report Zmuda has previously reported to the press, but not to him. (Complainant provides no evidentiary support for the allegation that Zmuda previously provided the report in the new format to reporters but not to him.) He further argues that, given on-going public interest in this data, it should be a "stored" or "canned" report easily accessible, without requiring City employees to re-create the parameters to generate the report. He further argues that it is unlikely that editing a stored report to change reporting periods (reporting years) would take a competent database programmer more than 15 minutes to produce, or edit.

He further alleges that data for calendar year ending in December 2010 showed that there were 36,644 names on the list City of employees. In contrast, he alleges, the data Zmuda provided to both Matier and Ross, and subsequently to him, showed there were only 34,756 employees for the fiscal year ending in June 2011. From this contrast, complainant concludes that there are either approximately 2,000 fewer employees, or that there were almost 2,000 employees who were collecting City salaries under two separate job classification codes, or a combination of both.

Complainant further alleges that, on October 6, he responded to Ms. Zmuda, asking "you're kidding, right?" He further alleges that he noted to Zmuda that the format of the data she provided to Matier and Ross was not the format Complainant was provided for data in 2010 (or earlier), or he wouldn't have placed a new records request. He says he indicated to her that he received calendar year data from the Controller's Office in the past, and was now requesting fiscal year data. He allegedly further noted he was not asking for a new specialized report on salaries of City employees, but was simply asking that the parameters of the documents provided to Matier and Ross be changed to a different fiscal year, which he had not received.

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Complainant further alleges that, on October 8, he again communicated with Ms. Zmuda, noting that the data provided to Matier and Ross differed in three ways from data previously provided to him. First, the data provided to Matier and Ross contained 12 fields, rather than the 11 fields of information previously provided to him. Importantly, the new, 12th field reports the "Full Time Equivalent" (FTE) status of each employee, which he had not previously received for earlier reporting periods. Second, the data provided to Matier and Ross aggregated under single entries those employees who worked in two different job classification codes, reporting their total salaries in a single entry. Third, the data provided to Matier and Ross involved a fiscal year ending in June, but complainant had previously requested, and received, payroll data for calendar years ending in December.

Complainant further alleges that, on October 19, Ms. Zmuda responded, indicating "we are not required to produce reports to meet public disclosure requests. We are required to provide information that already exists." Zmuda allegedly further responded that complainant's request was "unique," city-wide." Zmuda allegedly further argued that the Controller's "scarce" resources should provide the "most value to the greatest number of people." Complainant alleges that Zmuda's response did not provide a valid exemption under CPRA, and she offered no exemption to back her refusal to provide the requested data.

Complainant further alleges that, later in the day on October 19, Ms. Zmuda responded again, providing aggregate data for two Laguna Honda Hospital employees — Dr. Denis Bouvier and Madonna Valencia, RN — which complainant alleges he had not requested. Complainant alleges that Zmuda acknowledged in her first e-mail on October 19 that aggregating data for employees who are working in more than one job classification code is important, but she provided data for just two employees, leaving unanswered data about the other 1,998 potential employees working in more than one job code, as well as the FTE (Full-Time Equivalent) status of each and every of the City's 30,000-plus employees for the fiscal year ending in June 2010.

Complainant further alleges that, on December 10, 2011, he e-mailed Zmuda and Ben Rosenfield, the Controller, indicating that if the Controller's Office reconsidered its refusal to provide the records requested on October 3, 2010, he would withdraw his Sunshine complaint.

Complainant further alleges that, on December 12, Ms. Zmuda responded by e-mail, stating that if complainant was requesting an "old report in the old format for the fiscal year ending in June 2010," that she had that report, and would provide it. Complainant also alleges that Zmuda's email apparently said she could run a report using the "old" format previously provided to complainant on a calendar basis but instead using a fiscal year basis ending in June 2010. From this email, complainant concludes that "these queries are relatively easy to modify, and can be done so by Controller staff. [] If the Controller's Office can offer to me that it can modify the "old report's query" to change reporting periods from calendar years to fiscal years, it could just as easily change the underlying query for the "new" report by changing its query from FY 10-11 to FY 09-10, as I initially requested." Finally, complainant alleges that the email stated that the Controller's Office "no longer prepares the report in the old format," and that they "therefore, provide the 'new' report after this date." From this statement, complainant concludes that Zmuda is asserting that the Controller may independently determine when any document's

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“business utility” has ended, and could, therefore, be deleted under City Administrative Code Section 8.1, a bald attempt to assert departmental policies can supersede State laws such as Government Code §34090 and CPRA §5243.9.

Complainant further alleges that, on December 15, 2011, Ms. Zmuda e-mailed him again stating that complainant had not responded to her previous email, and that she therefore didn't know if complainant wanted the “old report” for the prior period.

The Controller's Response

The Controller's December 20, 2011 response to the original complaint states that the fiscal year 2011 report and the previous fiscal year reports were based on different query structures for the underlying employee data. According to Ms. Zmuda, the most recent 2011 report combines all jobs held by an employee during the fiscal year into a single field for salary information and reports the job title listed on their requisition – it therefore combines their information into a single line per employee. This will be the format for such reports going forward. Ms. Zmuda further states that the older reports had a different format that included multiple listings for employees who were paid under multiple employee classifications, which required the reader to aggregate their salary data to obtain a total for each employee. Ms. Zmuda further stated that she offered to provide the FY 2010 salary report to complainant in its original format, but that he never responded to that inquiry. Beyond that, the Controller's response offers no explanations of their failure to provide to complainant the requested data in the requested format.

However, the Controller did offer a response in this regard in its emails to complainant. In her October 19, 2011 email to complainant, Ms. Zmuda states:

I am looking at the resources that it will take to unwind the report that we improved (yes we consider the data that has combined the pay for employees who are working several jobs as a significant improvement because it allows requester to see the entire annual salary of employees, rather than pieces that would need to be manually added together). Please keep in mind that much of the information that you request that we provide DOES take time away from employees' performing their jobs. ***Even though raw data exists, it takes work to create, test, and produce reports. We are not required to produce reports to meet public disclosure requests. We are required to provide information that already exists.*** We do our best in the Controller's Office to create financial, payroll, budget, vendor and other reports that provide useful information to the public. We have tried to be considerate, respectful and reasonable throughout the many immediate requests that we work through.

I will get back to you, but please understand that your request is unique city-wide and I need to use our scarce resources for those reports that provide the most value to the greatest number of people.

[emphasis added.]

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QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- How does Complainant allege that the Controller has violated Section 67.21(i), governing the role of the City Attorney's Office in advising on the Sunshine ordinance?
- How does Complainant allege the Controller violated section 67.24(c), governing the disclosure of "Personnel Information"?
- How does Complainant allege the Controller violated section 67.24(d), governing the disclosure of "Law Enforcement Information"?
- How does Complainant allege the Controller violated the provisions of section 6253.9 of the PRA?
- Did the Controller withhold responsive information that was in its custody and control?
- What evidence does Complainant allege supports his allegation that the Controller has previously provided the report in the format he requested to reporters?
- What more would be required for the Controller to generate the report in the format requested by the Complainant, given that the query appears to already have been developed and tested for fiscal year 2011?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Controller violated section 67.21(i) or the Ordinance?
- Has the Controller complied with the requirement of section 67.21(l) of the Ordinance that data stored electronically be provided in any format requested, so long as it is available or easily generated in that format and does not require reprogramming the computer?
- Did the Controller violate section 6253.9 of the PRA?
- Did the Controller violate section 67.24(c), governing the disclosure of "Personnel Information"?
- Did the Controller violate section 67.24(d), governing the disclosure of "Law Enforcement Information"?
- Did the Controller keep withholding, if any, to a minimum, as required by Section 67.26?
- Did the Controller "willfully fail" to discharge any of its duties under the Sunshine Ordinance, or the PRA, in violation of section 67.34?
- Does the Task Force have jurisdiction to consider and rule on alleged violations of records retention laws outside of the Sunshine Ordinance and PRA?

SUGGESTED ANALYSIS*Jurisdiction*

This suggested analysis is limited to the issue of whether the Task Force has jurisdiction to consider and make a determination on whether respondent has violated laws outside of the Sunshine Ordinance and the PRA related to records retention. There are two sections of the Ordinance that deal with the authority of the Task Force to make determinations on alleged violations of law. Section 67.21(e), included in Article III of the Ordinance dealing with public records, mentions only determinations regarding whether a document is a public record. Section 67.30(c) of the Ordinance provides, among other things, that "[t]he Task Force shall make

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referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated *any provisions* of this ordinance or the Acts." This section provides implied authority for the Task Force to hear complaints and make determinations regarding alleged violations of the Sunshine Ordinance and the CPRA. There is no provision of the Ordinance that provides even implied authority to hear complaints and make determinations regarding alleged violations of other state and local laws governing record retention. The Task Force therefore lacks jurisdiction over these alleged violations.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

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ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

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

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(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.

(c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of

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the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code

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Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(1) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:
[. . .]

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

- (i) Sex, age and ethnic group;
- (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
- (iii) Years of employment in the private and/or public sector;
- (iv) Whether currently employed in the same position for another public agency.
- (v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

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(d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite. This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

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. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations

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of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

CAL. GOV'T CODE §§ 6250 et seq. (Public Records Act)**6253.9. INFORMATION IN AN ELECTRONIC FORMAT; COSTS; APPLICATION; AVAILABILITY**

(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

Patrick Monette-Shaw

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San Francisco, CA 94109
Phone: (415) 292-6969 • e-mail: pmonette-shaw@earthlink.net

October 20, 2011

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

Re: Complaint Regarding Failure to Provide FY 09-10 Payroll Data

Dear Mr. Rustom,

Complaint against which Department or Commission: • City Controller’s Office

Name of individual(s) **responsible** at Department or Commission • Monique Zmuda, Deputy City Controller’s

Alleged Violation: Public Records Access Public Meeting

Sunshine Ordinance Section(s) §67.24, §67.24(c)(7), §67.24(d), 67.26, and 67.34

Do you want a public hearing before the Sunshine Ordinance Task Force? Yes No

Do you want a pre-hearing conference before the Complaint Committee? Yes No

Please describe alleged violation.

1. Summary

I initially requested FY 10-11 City payroll data from Ms. Zmuda, which she supplied (documents not enclosed). I subsequently amended my request to obtain the same data set for FY 09-10, which Ms. Zmuda has emphatically and repeatedly refused to provide.

To date, Zmuda has refused to provide the requested data, and she’s done so without providing any legal citations that permit her to justify withholding of requested data.

Here’s the chronology:

- On October 3, 2001, I requested that Ms. Zmuda provide me a file containing fiscal year data of employee salaries that the City had apparently already provided to *San Francisco Chronicle* reporters Matier and Ross [e-mail request not enclosed] for fiscal year ending June 2011.
- On October 4, Ms. Zmuda replied within 24 hours, providing the requested file in MS Excel format. She noted in her e-mail response: “As requested, the fiscal year employee payroll file [is enclosed.]”
- On October 5, I responded to Ms. Zmuda, **amending** my records request, asking for the same data set for year ending June 2010 that had been provided to Matier and Ross for fiscal year ending June 2011 (see Enclosure 1).
- On October 6, Zmuda responded, saying “This is the [same] format and prepared report that we provide on payroll information to all requestors. The report for FY 10 [previously provided to you] was in the same format. We will not be preparing any specialized report on salaries of City Employees” (see Enclosure 2).

She may not be telling the truth. In years past, the results of a completely different database “query” have been provided to me under separate reporting parameters. There is no “specialized” report, other than an *alternate* report Zmuda has previously reported to the press, but not to me. Given on-going public interest in this data, it should be a “stored” or “canned” report easily accessible, without requiring City employees to re-create the parameters to generate the report. It is unlikely that editing a stored report to change reporting periods (reporting years) would take a competent database programmer more than 15 minutes to produce, or edit.

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Data for *calendar year* ending in December 2010 showed that there were 36,644 names on the list City of employees. The data Zmuda provided to both Matier and Ross, and subsequently to me, showed there were only 34,756 employees for the *fiscal year* ending in June 2011. This means that there are either approximately 2,000 fewer employees, or that there were almost 2,000 employees who were collecting City salaries under two separate job classification codes, or a combination of both.

- On October 6, I responded to Ms. Zmuda (see Enclosure 3), asking if she was kidding me. I noted that the format of the data provided to Matier and Ross was not the format I was provided data in 2010 (or earlier), or I wouldn't have placed a new records request. I indicated to her that I had been getting *calendar year* data from the Controller's Office in the past, and was now requesting *fiscal year* data. I noted I was not asking for a new specialized report on salaries of City employees, I was simply asking that the parameters of the documents provided to Matier and Ross be changed to a different fiscal year, which I had not received.
- On October 8, I circled back with Ms. Zmuda (see Enclosure 4), trying to be more diplomatic. I noted that the data provided to Matier and Ross differed in three ways from data previously provided to me:
 - 1) That the data provided to Matier and Ross contained 12 fields, rather than the 11 fields of information previously provided to me. Importantly, the new, 12th field reports the "Full Time Equivalent" (FTE) status of each employee, which I have not previously received for earlier reporting periods.
 - 2) The data provided to Matier and Ross aggregated under single entries those employees who worked in two different job classification codes, reporting their total salaries in a single entry.
 - 3) The data provided to Matier and Ross involved a *fiscal year* ending in June, but I have previously requested, and have received, payroll data for *calendar years* ending in December.
- Eleven days later, at 3:07 p.m. on October 19, Ms. Zmuda responded (see Enclosure 5), indicating "we are not required to produce reports to meet public disclosure requests. We are required to provide information that already exists." Zmuda further claimed my request was "unique," city-wide [sic]. She further claimed the Controller's "scarce" resources should provide the "most value to the greatest number of people."

Zmuda's response did not provide a valid exemption under CPRA, and indeed, Ms. Zmuda offered no exemption to back her refusal to provide the requested data. To my knowledge, there is nothing in either CPRA or San Francisco's Sunshine Ordinance that permits withholding of records based on the "most value to the greatest number of people."

- Also on October 19, Ms. Zmuda responded again at 3:22 p.m. (see Enclosure 6), providing aggregate data for two Laguna Honda Hospital employees — Dr. Denis Bouvier and Madonna Valencia, RN — which I had not requested from Zmuda, and which I had already figured out from calendar year data previously provided.

Although Zmuda acknowledged in her first e-mail on October 19 that aggregating data for employees who are working in more than one job classification code is important, she provided data for just two employees, leaving unanswered data about the other 1,998 potential employees working in more the one job code. And still unanswered, is the FTE (Full-Time Equivalent) status of each and every of the City's 30,000-plus employees, which Zmuda has refused to provide for the *fiscal year* ending in June 2010.

It is inconceivable that the Mayor and the Board of Supervisors are not already receiving the same information that I have requested, even if in a different format. This information must already exist.

In addition, I believe CPRA requires that data stored in a database is **not** information that has not been previously produced in a report; instead, I believe the applicable law is that public agencies that have information stored in a database must make reasonable efforts to provide the requested data.

October 20, 2011

Re: Complaint Regarding Failure to Provide FY 09-10 Payroll Data

Page 3

2. Remedy Sought

Should the Sunshine Ordinance Task Force find that this complaint has merit, I specifically request that the Task Force order the Office of the Controller — and Ms. Zmuda specifically — to immediately produce the requested records.

Sincerely,

[Signed]

Patrick Monette-Shaw

Enclosures (as stated)

Enclosure 1: Monette-Shaw October 5, 2011 Supplemental Records Request to City Controller

Subject: REVISED IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY
Ending June 2011
From: pmonette-shaw@earthlink.net
Reply-To: Pmonette-shaw@earthlink.net
Date: 10/5/2011 6:36 PM
To: Monique.Zmuda@sfgov.org

Thanks for this data for FY ending June 2011, Monique.

Since the format of it differs slightly from the query **than is typically run** and provided to me for the end-of-Calendar-year reports (including aggregating a given employee's total earnings into a single entry, had they worked in two different job classification codes) I have been receiving, I am placing an additional Immediate Disclosure Request.

Please provide, for Fiscal Year ending June 30, 2010, the same data, in the same layout, as the data you provided for FY ending June 30, 2011.

Thanks.

Patrick Monette-Shaw

Enclosure 2: Monique Zmuda's October 5, 2011 Response

Subject: Re: REVISED IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY
Ending June 2011
From: Monique.Zmuda@sfgov.org
Date: 10/6/2011 2:31 PM
To: Pmonette-shaw@earthlink.net

Patrick,

This is the format and prepared report that we provide on payroll information to all requestors. The report for FY 10 was in the same format. We will not be preparing any specialized report on salaries of City Employees.

Monique

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org
Patrick Monette-Shaw

Enclosure 3: Monette-Shaw Response to Monique Zmuda, October 6, 2011

Subject: Re: REVISED IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY
Ending June 2011
From: Pmonette-shaw@earthlink.net
Date: 10/6/2011 10:51 PM
To: Monique.Zmuda@sfgov.org

Dear Ms. Zmuda,

You're kidding, right?

This is not the format I was provided data in 2010, or I wouldn't have placed a new records request. I've requested getting Calendar year data from the Controller's Office in the past; now I've requested Fiscal Year data.

I have not asked for any new specialized report on salaries of City employees, I simply asked that you change the reporting parameters to a different fiscal year, which I have not received. This should be a canned report.

Your response is a canard. Must I file a Sunshine Task Force complaint for non-responsiveness, to get a responsive record?

Patrick Monette-Shaw

Enclosure 4: Monette-Shaw More Diplomatic Response to Monique Zmuda, October 8, 2011

Subject: Let Me Try Again, More Diplomatically -- Re: REVISED IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll
From: Pmonette-shaw@earthlink.net
Date: 10/8/2011 8:06 PM
To: Monique.Zmuda@sfgov.org
cc: Debbie.Toy@sfgov.org

Dear Ms. Zmuda,

Let me try again, more diplomatically --

1. You indicated in your response, below, that the new data I requested is in the same format you provide to all requestors. This is untrue, because:

a. The City Controller's Excel payroll data files I received on February 3, 17, 2010 and February 3, 2010, for ****calendar**** years 2009 and 2010, respectively, contained just 11 "fields" of information:

DEPARTMENT NAME
DEPT
LAST-NAME
FIRST-NAME
M-INIT
JOB-CLASS
JOB CLASS DESCRIPTION
REG PAY
OVERTIME
OTHER PAY
TOTAL PAY

But the data you provided Matier and Ross, contained 12 fields, not 11, adding a new field titled ****FY10-11 FTE****, reporting each employee's FTE status, which has not previously been provided to me for earlier Fiscal or Calendar Years.

b. I have previously requested ****calendar year**** data, but what you reported to Matier and Ross is ****fiscal year**** data. I am only seeking a similar fiscal-year data report for 2009-2010 as your office provided to Matier and Ross for FY 10-11, which I have not previously received.

c. The new file provided to Matier and Ross appears to "aggregate" a single employee's multiple job classification code earnings into a single line per employee. For instance, Dr. Denis Bouvier was reported in the 2009 and 2010 files provided to me by the Controller's Office as having earned wages on two separate entries: Once as a 2230 Physician Specialist, and separately as a 2232, Senior Physician Specialist. Similarly, Madonna Valencia is listed twice, in 2009 and 2010 data first as a 2322 Nurse Manager and also as a 2324 Nursing Supervisor, reporting two separate salaries.

But in the file provided to Matier and Ross, both Dr. Bouvier and nurse Madonna Valencia are reported just once, each, at their higher job classification codes, suggesting that the data provided to Matier and Ross is a different underlying query, not previously reported to me, by aggregating a single employee's multiple jobs with the City into a single-line entry, and reporting their combined job classification codes salaries into a single entry.

2. You indicated in your response, below, you would not provide a "specialized" report. It does not appear that the data the Controller's Office provided to Matier and Ross is specialized, other than to report the additional FTE status. As such, it is not a "specialized" report, and simply amends what should be a stored query, to include a different reporting time period that includes the FTE status of each employee, which you have provided to Matier and Ross.

Having to utilize a different reporting period should not be misconstrued as "specialized" reporting, and shouldn't place an undue burden on the Controller's well-paid, and bloated, staff to run.

Let me know whether you're going to reconsider. I'd prefer not going down this Sunshine Ordinance lane, but am prepared to.

Patrick

Enclosure 5: Monique Zmuda's First October 19, 2011 Response

Subject: Re: Final Immediate Disclosure Request: Re: Let Me Try Again, More Diplomatically -- Re: REVISED IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: City Payroll Data for FY Ending June 2011
From: Monique.Zmuda@sfgov.org
Date: 10/19/2011 3:07 PM
To: Pmonette-shaw@earthlink.net

Patrick,

I am looking at the resources that it will take to unwind the report that we improved (yes we consider the data that has combined the pay for employees who are working several jobs as a significant improvement because it allows requester to see the entire annual salary of employees, rather than pieces that would need to be manually added together). Please keep in mind that much of the information that you request that we provide DOES take time away from employees' performing their jobs. Even though raw data exists, it takes work to create, test, and produce reports. We are not required to produce reports to meet public disclosure requests. We are required to provide information that already exists. We do our best in the Controller's Office to create financial, payroll, budget, vendor and other reports that provide useful information to the public. We have tried to be considerate, respectful and reasonable throughout the many immediate requests that we work through.

I will get back to you, but please understand that your request is unique city-wide and I need to use our scarce resources for those reports that provide the most value to the greatest number of people.

MZ

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

Enclosure 6: Monique Zmuda's Second October 19, 2011 Response

Subject: data on specific employees
From: Monique.Zmuda@sfgov.org
Date: 10/19/2011 3:22 PM
To: Pmonette-shaw@earthlink.net

Patrick,

In order to respond to your question about specific employees, here are the FY10-11 salary amounts broken out by job class for Denis Bouvier and Madonna Valencia taken from our Pay_2011 database. The total amounts tie to the original figures provided to you in the FY2010-11 All Employee Payroll file. I show the amounts by job class in a snapshot below.


FY 2010-11 Payroll Information from Pay 2011 Database

| Dept | Dept Title | Last Name | First Name | MI | Job Class | Job Class Title | FY10-11 Regular Pay | FY10-11 Overtime Pay | FY |
|------|---------------|-----------|------------|----|-----------|-----------------------------|---------------------|----------------------|----|
| DPH | PUBLIC HEALTH | BOUVIER | DENIS | P | 2230 | PHYSICIAN SPECIALIST | \$ 237,353 | \$ - | \$ |
| DPH | PUBLIC HEALTH | BOUVIER | DENIS | P | 2232 | SENIOR PHYSICIAN SPECIALIST | \$ 92,514 | \$ - | \$ |
| DPH | PUBLIC HEALTH | VALENCIA | MADONNA | P | 2322 | NURSE MANAGER | \$ 157,158 | \$ 7,214 | \$ |
| DPH | PUBLIC HEALTH | VALENCIA | MADONNA | P | 2324 | NURSING SUPERVISOR | \$ 20,821 | \$ - | \$ |

I cannot spend any more of my time and my staff's time on this request. Thanks.

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org



Re: Sunshine Complaint Received: 11090_Patrick Monette-Shaw v
Controller's Office 
Monique Zmuda to: SOTF
Cc: monique.zmuda, Debbie Toy

12/16/2011 04:33 PM

Mr. Rustom

Attached is a letter explaining the Controller's procedure for developing the Employee Payroll Report, which is subject to Mr. Monetter-Shaw's complaint. I have also attached a copy of the format of the older report that is requested for the committee's information.

Please note that I have asked Mr. Monette-Shaw if he wished the older report in the format in which it exists, and he has not responded to me.

As stated in my earlier email, I will be out of town on January 3, 2012 and cannot attend the hearing. Please let me know when this item will be heard. I will continue to attempt to settle this issue with Mr. Monette-Shaw until that time.

Thank you.



SOTEmployeeesalaryreport_20111216162342.PDF



Payroll Data showing 2 records and 1 record for employee.xls

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller
Monique Zmuda
Deputy Controller

December 16, 2011

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

Dear Mr. Rustom,

Re: Complaint 110-90

This letter is to respond to the complaint made to the Sunshine Ordinance Task Force by Mr. Patrick Monette-Shaw regarding the Controller's Employee Payroll Report.

The Controller's Office provided the Employee Payroll Report to Mr. Monette-Shaw as originally requested for fiscal year ending June 30, 2011. He subsequently asked for the report in the same format for FY 2010. For the FY 10-11 report, the Controller made an improvement to the file to combine salary earned by each employee who worked in multiple jobs during the annual period. The older file separated salary information for employees who worked in each job class during the year. The new file is based on a query design that includes only one record per employee based on the job class listed on their requisition. This newer report summarizes pay for all job classes that the employee worked in that time period. See the attached sample.

I offered to provide to Mr. Monette-Shaw the older report in its original format, which is available. He has not yet responded whether he wishes to receive this report. I also advised Mr. Monette-Shaw that the Controller's Office runs these reports on a regular basis but we do not have the report in the original format going forward.

I have enclosed a copy of each of the two reports for your information. Thank you.

Sincerely,


Monique Zmuda
Deputy Controller

CITY AND COUNTY OF SAN FRANCISCO
 CONTROLLER'S PAYROLL PUBLIC INFORMATION
 FISCAL YEAR 2008-2009
 DATA SET OF DEPARTMENT OF PUBLIC HEALTH SALARIES

OLD FORMAT SHOWING 2 RECORDS FOR AN EMPLOYEE

| DEPT | LAST-NAME | FIRST-NAME | MI-INIT | JOB-CLASS | JOB CLASS DESCRIPTION | 08-09 REG PAY | 08-09 OVERTIME | 08-09 OTHER PAY | 08-09-TOTAL PAY |
|--------|---------------|------------|---------|-----------|--|----------------|----------------|-----------------|-----------------|
| 81 | BOLIVIER | DENIS | P | 2230 | PHYSICIAN SPECIALIST | \$91,138.23 | \$0.00 | \$0.00 | \$91,138.23 |
| 81 | BOLIVIER | DENIS | P | 2232 | PHYSICIAN SPECIALIST | \$137,693.72 | \$0.00 | \$0.00 | \$137,693.72 |
| 81 | BOWMER | ANITA | E | 2302 | NURSING ASSISTANT | \$7,925.65 | \$17,621.54 | \$5,695.72 | \$31,242.91 |
| 81 | BOWMAN | SARAH | L | 2277 | POST M.D. III | \$10,571.52 | \$0.00 | \$0.00 | \$10,571.52 |
| 81 | BOWSER | LORRAINE | A | 2606 | SENIOR FOOD SERVICE WORKER | \$6,549.07 | \$0.00 | \$39.82 | \$6,588.89 |
| 81 | BOYLE | KAREN | A | P103 | SPECIAL NURSE | \$7,506.87 | \$0.00 | \$73.12 | \$7,580.00 |
| 81 | BOYLE | KAREN | A | 2320 | REGISTERED NURSE | \$67,483.88 | \$1,640.17 | \$2,689.10 | \$71,813.15 |
| 81 | BOYLE | WILLIAM | F | 2332 | SENIOR PHYSICIAN SPECIALIST | \$17,011.60 | \$0.00 | \$1,701.16 | \$18,712.76 |
| 81 | BRACE | BIBI | F | 2302 | NURSING ASSISTANT | \$4,154.13 | \$489.54 | \$1,325.59 | \$5,969.26 |
| 81 | BRACEROS | REMILDA | M | P103 | SPECIAL NURSE | \$69,273.63 | \$0.00 | \$65,874.22 | \$135,147.85 |
| 81 | BRACEROS | REMLDA | M | 2320 | REGISTERED NURSE | \$93,866.18 | \$8,274.16 | \$5,238.46 | \$107,378.84 |
| 81 | BRADEN | SEAN | P | P103 | SPECIAL NURSE | \$40,156.20 | \$4,260.59 | \$4,227.53 | \$48,644.32 |
| 81 | BRADFORD | CATHARINE | H | 2273 | POST M.D. I | \$21,791.71 | \$0.00 | \$0.00 | \$21,791.71 |
| 81 | BRADFORD | PRESTON | L | 2366 | HEALTH WORKER I | \$41,918.89 | \$2,689.78 | \$50.75 | \$44,609.42 |
| 81 | BRADLEY | RYAN | L | 2279 | POST M.D. IV | \$4,396.84 | \$0.00 | \$0.00 | \$4,396.84 |
| 81 | BRADLEY-MOORI | MARIA | L | 2275 | POST M.D. II | \$13,160.58 | \$0.00 | \$0.00 | \$13,160.58 |
| 81 | BRAGG | STEVEN | L | 1842 | MANAGEMENT ASSISTANT | \$25,483.85 | \$0.00 | \$0.00 | \$25,483.85 |
| 81 | BRAHMAN | ALEXANDER | M | 2586 | HEALTH WORKER II | \$52,739.05 | \$0.00 | \$2,144.01 | \$54,883.06 |
| 81 | BRANDMAN | DANIELLE | L | 2279 | POST M.D. IV | \$16,275.71 | \$0.00 | \$0.00 | \$16,275.71 |
| 81 | BRANDT | BRIAN | M | 2604 | FOOD SERVICE WORKER | \$2,800.66 | \$0.00 | \$167.25 | \$2,967.91 |
| 81 | BRANDT | MARILYN | R | 2548 | PHYSICAL THERAPIST | \$80,589.94 | \$0.00 | \$100.00 | \$80,689.94 |
| 81 | BRANDT | DENISE | R | 2548 | OCCUPATIONAL THERAPIST | \$101,655.38 | \$0.00 | \$3,021.85 | \$104,677.23 |
| 81 | BRANCHY | ELENA | R | 2430 | MEDICAL EVALUATIONS ASSISTANT | \$23,825.21 | \$0.00 | \$72.00 | \$23,897.21 |
| 81 | BRAXTON JR | KENNETH | A | 2305 | REGISTERED NURSE | \$57,305.70 | \$1,355.00 | \$5,528.87 | \$64,190.57 |
| 81 | BRAY | JEANNE | E | 2365 | PSYCHIATRIC TECHNICIAN | \$40,365.25 | \$470.85 | \$3,109.20 | \$44,055.30 |
| 81 | BRAYTON | KIMBERLY | D | 2387 | HEALTH WORKER III | \$56,631.11 | \$0.00 | \$1,076.06 | \$57,707.17 |
| 81 | BREZ | AUDREY | M | 2275 | POST M.D. II | \$12,260.36 | \$0.00 | \$12,260.36 | \$24,520.72 |
| 81 | BRENNAN | ANN | M | 2302 | NURSING ASSISTANT | \$10,693.10 | \$39.08 | \$928.55 | \$11,660.73 |
| 81 | BRENNAN | ANN | M | 2322 | NURSE PRACTITIONER | \$3,693.22 | \$0.00 | \$1,760.55 | \$5,453.77 |
| 81 | BRENNAN | ANNA | M | 2332 | NURSE MANAGER | \$131,472.44 | \$1,917.90 | \$47,825.89 | \$181,216.20 |
| 81 | BRENNER | STACY | R | 2333 | CLINICAL NURSE SPECIALIST | \$116,052.91 | \$351.35 | \$2,568.20 | \$118,972.47 |
| 81 | BRESS | JOSHUA | N | 2273 | POST M.D. I | \$17,193.46 | \$0.00 | \$0.00 | \$17,193.46 |
| 81 | BREYER | BENJAMIN | N | 2275 | POST M.D. II | \$12,338.04 | \$0.00 | \$0.00 | \$12,338.04 |
| 81 | BRIGHT | FREDERICK | A | 2283 | POST M.D. VI | \$20,163.53 | \$0.00 | \$0.00 | \$20,163.53 |
| 81 | BRIGHT | MISCHA | D | 6924 | PORTER | \$42,055.00 | \$2,547.53 | \$2,218.22 | \$46,820.75 |
| 81 | BRIM | SUSAN | D | 2273 | PUBLIC SERVICE AIDE-HEALTH SERVICES | \$15,139.74 | \$0.00 | \$0.00 | \$15,139.74 |
| 81 | BRINAS | EDWINA | V | 2273 | POST M.D. I | \$20,792.09 | \$0.00 | \$0.00 | \$20,792.09 |
| 81 | BRINAS | EDWINA | V | P103 | SPECIAL NURSE | \$51,505.35 | \$0.00 | \$0.00 | \$51,505.35 |
| 81 | BRISOS | DARNEL | S | 2320 | REGISTERED NURSE | \$100,988.92 | \$6,192.47 | \$2,795.80 | \$110,177.19 |
| 81 | BRISCOE | HEATHER | L | 2275 | CENTRAL PROCESSING AND DISTRIBUTION TECHNICIAN | \$62,966.82 | \$3,603.84 | \$8,276.52 | \$74,847.16 |
| 81 | BRISTER | GWEN | L | 2736 | POST M.D. II | \$10,281.70 | \$0.00 | \$180.00 | \$10,461.70 |
| 81 | BRIZZOLARA | MEGAN | D | P103 | SPECIAL NURSE | \$49,528.00 | \$1,692.60 | \$624.00 | \$51,844.60 |
| 81 | BRODY | DAVID | A | 2320 | REGISTERED NURSE | \$11,841.90 | \$0.00 | \$1,250.13 | \$13,102.03 |
| 81 | BROGONIA | CONCEPCION | C | 2273 | POST M.D. I | \$53,776.09 | \$4,701.09 | \$8,254.19 | \$66,731.37 |
| 81 | BROOKS | JOHNNIE | M | 2618 | FOOD SERVICE SUPERVISOR | \$27,389.58 | \$0.00 | \$0.00 | \$27,389.58 |
| 81 | BROOKS | VICTORIA | A | 1464 | MEDICAL CLERK STENOGRAPHER | \$54,459.42 | \$1,051.66 | \$1,419.27 | \$56,930.35 |
| 81 | BROSAN | MILAGROS | M | 1404 | CLERK | \$13,519.90 | \$0.00 | \$0.00 | \$13,519.90 |
| 81 | BROSAN | JOAN | T | 2320 | REGISTERED NURSE | \$46,453.00 | \$535.71 | \$624.00 | \$47,612.71 |
| 81 | BROWN | CYNTHIA | M | 2320 | REGISTERED NURSE | \$105,394.00 | \$0.00 | \$250.00 | \$105,644.00 |
| 81 | BROWN | CYNTHIA | M | P103 | SPECIAL NURSE | \$185,28 | \$81.94 | \$3,440.73 | \$188,809.67 |
| 81 | BROWN | DEBBIE | L | 2303 | REGISTERED NURSE | \$87,128.60 | \$3,185.28 | \$0.00 | \$90,313.88 |
| 81 | BROWN | DEBORAH | L | 2303 | MENTAL HEALTH REHABILITATION WORKER | \$42,344.74 | \$15,763.54 | \$536.55 | \$58,644.83 |
| 81 | BROWN | DEBORAH | L | 2330 | PHYSICIAN SPECIALIST | \$136,405.50 | \$0.00 | \$15,143.23 | \$151,548.73 |
| 81 | BROWN | DEBORAH | L | 2330 | PHYSICIAN SPECIALIST | \$47,454.27 | \$3,811.50 | \$3,683.49 | \$54,949.26 |
| 81 | BROWN | DORIS | A | 2314 | PUBLIC HEALTH TEAM LEADER | \$64,849.01 | \$83,371.64 | \$720.21 | \$148,940.86 |
| 81 | BROWN | ELIZABETH | J | 2312 | LICENSED VOCATIONAL NURSE | \$21,591.79 | \$0.00 | \$0.00 | \$21,591.79 |
| 81 | BROWN | ELIZABETH | J | 2273 | POST M.D. I | \$14,570.05 | \$0.00 | \$0.00 | \$14,570.05 |
| 81 | BROWN | ELIZABETH | J | 2275 | POST M.D. II | \$14,570.05 | \$0.00 | \$0.00 | \$14,570.05 |
| TOTALS | | | | | | \$2,662,666.85 | \$89,196.48 | \$158,666.36 | \$2,910,529.69 |

CITY AND COUNTY OF SAN FRANCISCO
 CONTROLLER'S PAYROLL PUBLIC INFORMATION
 FISCAL YEAR 2010-2011
 DATA SET OF DEPARTMENT OF PUBLIC HEALTH SALARIES

NEW FORMAT SHOWING 1 RECORD FOR AN EMPLOYEE

| Dept | Dept Title | Last Name | First Name | MI | Job Class | Job Class Title | FY10-11 Regular Pay | FY10-11 Overtime Pay | FY10-11 Other Pay | FY10-11 Total Pay |
|--------|---------------|-------------------|------------|----|-----------|--|---------------------|----------------------|-------------------|-------------------|
| DPH | PUBLIC HEALTH | BOUMIER | DENIS | P | 2322 | Senior Physician Specialist | \$ 329,867 | \$ - | \$ - | \$ 329,867 |
| DPH | PUBLIC HEALTH | BOWDEN | DARLENE | C | 1622 | Administrative Analyst | \$ 67,994 | \$ - | \$ 2,465 | \$ 70,459 |
| DPH | PUBLIC HEALTH | BOWE | CORRIE | L | 2603 | Eligibility Worker | \$ 35,033 | \$ - | \$ 4,853 | \$ 39,886 |
| DPH | PUBLIC HEALTH | BOWMAN | ANITA | E | 2603 | Patient Care Assistant | \$ 58,170 | \$ 16,907 | \$ 7,752 | \$ 82,829 |
| DPH | PUBLIC HEALTH | BOX | CANDY | A | 2606 | Disease Control Investigator | \$ 65,955 | \$ - | \$ - | \$ 65,955 |
| DPH | PUBLIC HEALTH | BOYLE | KAREN | A | 2320 | Registered Nurse | \$ 105,879 | \$ - | \$ 6,228 | \$ 112,107 |
| DPH | PUBLIC HEALTH | BRACEROS | REMILDA | M | 2320 | Registered Nurse | \$ 134,744 | \$ - | \$ 14,251 | \$ 148,995 |
| DPH | PUBLIC HEALTH | BRADEN | SEAN | P | P103 | Special Nurse | \$ 11,621 | \$ - | \$ 2,006 | \$ 13,627 |
| DPH | PUBLIC HEALTH | BRADFORD | PRESTON | L | 2685 | Health Worker I | \$ 45,207 | \$ - | \$ 2,093 | \$ 47,300 |
| DPH | PUBLIC HEALTH | BRADFORD | JANE | L | 2322 | Nurse Manager | \$ 166,701 | \$ - | \$ - | \$ 166,701 |
| DPH | PUBLIC HEALTH | BRADLEY | JOHN | D | 7342 | Locksmith | \$ 77,837 | \$ 8,147 | \$ 4,279 | \$ 90,263 |
| DPH | PUBLIC HEALTH | BRAMMAN | STEVEN | | 1842 | Management Assistant | \$ 30,513 | \$ - | \$ - | \$ 30,513 |
| DPH | PUBLIC HEALTH | BRANNIN-RODRIGUEZ | ALEXANDER | | 2686 | Health Worker II | \$ 27,072 | \$ - | \$ 1,209 | \$ 28,281 |
| DPH | PUBLIC HEALTH | BRANDON | LAURA | M | 2846 | Nutritionist | \$ 84,407 | \$ - | \$ 1,120 | \$ 85,527 |
| DPH | PUBLIC HEALTH | BRANDON | KELLY | M | 2320 | Registered Nurse | \$ 80,314 | \$ - | \$ 12,073 | \$ 92,387 |
| DPH | PUBLIC HEALTH | BRANDT | BRIAN | M | 2604 | Food Service Worker | \$ 14,615 | \$ - | \$ 1,938 | \$ 16,553 |
| DPH | PUBLIC HEALTH | BRANDT | DAVID | R | 2558 | Physical Therapist | \$ 81,689 | \$ - | \$ 100 | \$ 81,789 |
| DPH | PUBLIC HEALTH | BRANDT | MARILYN | E | 2548 | Occupational Therapist | \$ 82,692 | \$ - | \$ 894 | \$ 83,586 |
| DPH | PUBLIC HEALTH | BRANT | DENISE | R | 2430 | Medical Evaluations Assistant | \$ 23,880 | \$ - | \$ 7 | \$ 23,887 |
| DPH | PUBLIC HEALTH | BRANZUELA | ANNA | E | 2603 | Disease Control Investigator | \$ 65,955 | \$ - | \$ - | \$ 65,955 |
| DPH | PUBLIC HEALTH | BRAXTON JR | KENNETH | E | 2305 | Psychiatric Technician | \$ 2,621 | \$ - | \$ - | \$ 2,621 |
| DPH | PUBLIC HEALTH | BRAY | JEANINE | D | 2587 | Health Worker II | \$ 31,046 | \$ - | \$ 520 | \$ 31,567 |
| DPH | PUBLIC HEALTH | BREEDY | CHRISTINE | A | 2305 | Psychiatric Technician | \$ 41,615 | \$ - | \$ - | \$ 41,615 |
| DPH | PUBLIC HEALTH | BREHMER | STEPHANIE | L | 1054 | IS Business Analyst-Principal | \$ 78,001 | \$ - | \$ - | \$ 78,001 |
| DPH | PUBLIC HEALTH | BRENNAN | AUDREY | E | 1164 | Marriage, Family And Child Counselor | \$ 116,458 | \$ - | \$ 6,336 | \$ 122,794 |
| DPH | PUBLIC HEALTH | BRENNAN | ALICIA | M | 2003 | Health Worker II | \$ 2,003 | \$ - | \$ 56 | \$ 2,059 |
| DPH | PUBLIC HEALTH | BRENNAN | NORA | M | 2611 | Marriage, Family And Child Counselor | \$ 261 | \$ - | \$ - | \$ 261 |
| DPH | PUBLIC HEALTH | BRENNAN | ANGELA | K | 1368 | Special Nurse | \$ 136,822 | \$ 500 | \$ 250 | \$ 137,573 |
| DPH | PUBLIC HEALTH | BRENNAN | VITALINE | R | 6150 | Special Nurse | \$ 18,537 | \$ - | \$ 12 | \$ 18,549 |
| DPH | PUBLIC HEALTH | BRENNAN | FREDERICK | A | 18,637 | Porter | \$ 18,637 | \$ - | \$ 1,104 | \$ 19,741 |
| DPH | PUBLIC HEALTH | BRENNAN | TANGERINE | M | 46,446 | Deputy Director V | \$ 46,446 | \$ - | \$ 247 | \$ 46,693 |
| DPH | PUBLIC HEALTH | BROOKS | EDMUNA | V | 186,615 | Registered Nurse | \$ 186,615 | \$ - | \$ 3,994 | \$ 190,609 |
| DPH | PUBLIC HEALTH | BROOKS | LEILA | C | 138,759 | Registered Nurse | \$ 138,759 | \$ - | \$ 14,537 | \$ 153,296 |
| DPH | PUBLIC HEALTH | BROOKS | DARNEL | S | 86,018 | Registered Nurse | \$ 86,018 | \$ - | \$ - | \$ 86,018 |
| DPH | PUBLIC HEALTH | BROOKS | LILY | D | 61,274 | Registered Nurse | \$ 61,274 | \$ 6,636 | \$ 5,665 | \$ 73,575 |
| DPH | PUBLIC HEALTH | BROOKS | GWEN | D | 2,836 | Central Processing And Distribution Tech | \$ 2,836 | \$ - | \$ - | \$ 2,836 |
| DPH | PUBLIC HEALTH | BROOKS | MEGAN | A | 2320 | Registered Nurse | \$ 65,149 | \$ - | \$ - | \$ 65,149 |
| DPH | PUBLIC HEALTH | BROBERG | LILY | O | 6924 | Public Service Aide - Health Services | \$ 56,769 | \$ - | \$ 12,568 | \$ 69,337 |
| DPH | PUBLIC HEALTH | BROCHER | MARK | A | 170,497 | Special Nurse | \$ 170,497 | \$ - | \$ 2,440 | \$ 172,937 |
| DPH | PUBLIC HEALTH | BRODIT | MARIA LUZ | B | 168 | Clerk | \$ 168 | \$ - | \$ - | \$ 168 |
| DPH | PUBLIC HEALTH | BROOKS | VICTORIA | A | 62,358 | Registered Nurse | \$ 62,358 | \$ 65 | \$ 585 | \$ 63,008 |
| DPH | PUBLIC HEALTH | BROOKS | MEGAN | V | 99,457 | Registered Nurse | \$ 99,457 | \$ - | \$ 16,980 | \$ 116,437 |
| DPH | PUBLIC HEALTH | BROSNAN | MILAGROS | T | 119,583 | Registered Nurse | \$ 119,583 | \$ - | \$ 334 | \$ 120,917 |
| DPH | PUBLIC HEALTH | BROSNAN | JOAN | M | 116,143 | Registered Nurse | \$ 116,143 | \$ - | \$ 2,481 | \$ 118,624 |
| DPH | PUBLIC HEALTH | BROWN | RUSSELL | A | 76,643 | Registered Nurse | \$ 76,643 | \$ 6,321 | \$ 4,955 | \$ 83,919 |
| DPH | PUBLIC HEALTH | BROWN | MEGHAN | N | 42,859 | Registered Nurse | \$ 42,859 | \$ - | \$ 1,208 | \$ 44,067 |
| DPH | PUBLIC HEALTH | BROWN | BETHANY | E | 76,925 | Psychiatric Social Worker | \$ 76,925 | \$ - | \$ 317 | \$ 77,242 |
| DPH | PUBLIC HEALTH | BROWN | JESSICA | M | 67,666 | Medical Social Worker | \$ 67,666 | \$ - | \$ 250 | \$ 67,916 |
| DPH | PUBLIC HEALTH | BROWN | TWILA | M | 86,915 | Nursing Supervisor | \$ 86,915 | \$ - | \$ - | \$ 86,915 |
| DPH | PUBLIC HEALTH | BROWN | CYNTHIA | M | 94,164 | Registered Nurse | \$ 94,164 | \$ - | \$ 45 | \$ 94,209 |
| DPH | PUBLIC HEALTH | BROWN | DENISE | A | 66,372 | Public Health Team Leader | \$ 66,372 | \$ - | \$ 9,068 | \$ 75,440 |
| DPH | PUBLIC HEALTH | BROWN | DORIS | J | 53,362 | Licensed Vocational Nurse | \$ 53,362 | \$ 2,805 | \$ 3,582 | \$ 59,749 |
| DPH | PUBLIC HEALTH | BROWN | LORRAINE | L | 53,980 | Surgical Procedures Technician | \$ 53,980 | \$ 2,453 | \$ 3,401 | \$ 59,834 |
| DPH | PUBLIC HEALTH | BROWN | MAMIE | L | 50,499 | Patient Care Assistant | \$ 50,499 | \$ 46 | \$ 6,579 | \$ 57,124 |
| DPH | PUBLIC HEALTH | BROWN | DEBBIE | L | 24,311 | Patient Care Assistant | \$ 24,311 | \$ 1,866 | \$ 3,662 | \$ 29,839 |
| DPH | PUBLIC HEALTH | BROWN | DEBORAH | A | 140,735 | Patient Care Assistant | \$ 140,735 | \$ - | \$ 10,444 | \$ 151,179 |
| DPH | PUBLIC HEALTH | BROWN | PATRICIA | A | 1708 | Physician Specialist | \$ 48,452 | \$ - | \$ - | \$ 48,452 |
| DPH | PUBLIC HEALTH | BROWN | TONY | L | 1022 | IS Administrator II | \$ 78,172 | \$ 2,103 | \$ 5,915 | \$ 86,190 |
| Totals | | | | | | | \$ 4,291,363 | \$ 61,227 | \$ 205,794 | \$ 4,558,384 |



Supplementary Information #2 to Sunshine Complaint 11090, Patrick
Monette-Shaw v Controller's Office

pmonette-shaw to: soft
Cc: Monique Zmuda, Debbie.Toy
Please respond to Pmonette-shaw

12/20/2011 04:36 PM

Dear Mr. Rustom,

Attached is a second supporting document, which addresses Ms. Zmuda's December 16 "response" to the SOTF regarding Sunshine Complaint 11090.

This second supporting document meets the December 27 deadline that you advised was applicable when you e-mailed notice on December 8 assigning #11090 to this case, indicating that supporting materials must be submitted by December 27 for the January 3 hearing.

Of note, the Supporting Document #2 attached shows that the "new format" of the payroll data Ms. Zmuda provided to the Task Force on December 16 is NOT the same format of data she provided to me on October 4, suggesting that there may be multiple versions of the report format.

The crux of my complaint is that Enclosure 11 in the enclosed document clearly shows that the Controller's Office has a "new format" that included the FTE status of each City employee, which she neglected to include in the sample "new format" in her response to the SOTF on December 16. From my perspective, I can only conclude that the sample "new format" Ms. Zmuda sent to the SOTF on December 16 is deliberate disinformation.

As I indicate in the attached document, I prefer that this hearing be retained on schedule on January 3, and that Ms. Zmuda send a knowledgeable designee to the hearing.

Thanks.



Patrick Monette-Shaw attqpn4s.pdf

Patrick Monette-Shaw

975 Sutter Street, Apt. 6
San Francisco, CA 94109
Phone: (415) 292-6969 • e-mail: pmonette-shaw@earthlink.net

December 20, 2011

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

**Re: Supplementary Information #2 Regarding Sunshine Complaint 11090:
*Patrick Monette-Shaw v Controller's Office***

Dear Mr. Rustom,

Complaint against which Department or Commission: • City Controller's Office
Name of individual(s) responsible at Department or Commission • Monique Zmuda, Deputy City Controller

Alleged Violation: Public Records Access Public Meeting
Sunshine Ordinance Section(s) **§67.21(i), §67.24, §67.24(c)(7), §67.24(d), §67.26, and §67.34, CPRA §6253.9, and Government Code §34090**

Do you want a public hearing before the Sunshine Ordinance Task Force? Yes No
Do you want a pre-hearing conference before the Complaint Committee? Yes No

Supplementary Information — Part 2 — Regarding Sunshine Complaint 11090

1. Summary (Continued)

On Tuesday, December 20, I received the City Controller's Response to my Sunshine complaint #11090 that Ms. Zmuda wrote on Friday, December 16.

I don't know if she is trying purposefully to be disingenuous, but the sample "new format" of the payroll information is not the "new format" that she supplied to me on October 4. A screen capture of the data she provided as the "new report" on October 4 is at Enclosure 11.

The sample she sent to SOTF on December 16 appears to have deliberately deleted the "FTE status" column shown in Enclosure 11. Had Ms. Zmuda bothered to review the Excel file she e-mailed me on October 4, she would have seen that the "new format" sample she provided to the SOTF on December 16 is not the same format she provided me on October 4.

As I indicated in my first Supplementary Information dated December 18, maintaining the underlying queries to payroll information in both the "old format" and the "new format" is of interest to the general public, and perhaps City officials. The "old format" that lists multiple, separate rows of payroll data for each position in which a given employee works in more than one capacity is of interest to the public to show in which capacities these employees are working in. The "new format" is also of interest to the public to show a given employee's total FTE status. Since PeopleSoft, TESS and other City databases have the capability of storing and modifying various queries for various purposes, the Controller's Office should be required to maintain both the "old format" and "new format" underlying queries in order to provide the public with the option of reviewing the two data subsets which may be of interest to them. The Sunshine Ordinance's provision of providing greater access to records, rather than restricting access to records, should prevail.

I specifically ask the SOTF not to reschedule my hearing on January 3, given the inordinate amount of time it has taken the SOTF to schedule this hearing. I would prefer it if Ms. Zmuda can send an alternate employee knowledgeable about this matter instead of rescheduling the hearing around her availability.

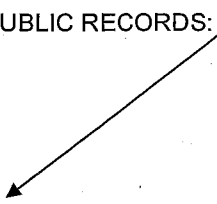
Sincerely,

Patrick Monette-Shaw

Enclosures (as stated)

Enclosure 10¹: Deputy City Controller Zmuda October 4, 2011 E-mail Monette-Shaw

Subject: Re: IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS:
City Payroll Data for FY Ending June 2011
From: Monique.Zmuda@sfgov.org
Date: 10/4/2011 12:56 PM
To: pmonette-shaw@earthlink.net
cc: Debbie.Toy@sfgov.org
Attachment: FY 2010-11 All Employees Payroll-1.xlsx



Patrick,

As requested, the fiscal year employee payroll file.

mz

Monique Zmuda
Deputy Controller
City and County San Francisco
554-7579
Monique.Zmuda@sfgov.org

¹ I have continued numbering of enclosures from the initial October 20, 2011 complaint by incrementing the enclosure numbers to prevent confusion in referring to enclosures across documents submitted to SOTF.

