SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

SOTF – Complaint Committee Date: May 30, 2017

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Completed by: V. Young Date 05/26/17

*An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.
ORDER OF DETERMINATION
February 27, 2017

DATE ISSUED
February 1, 2017

CASE TITLE – Mike Black v. Animal Care and Control (File No. 16109)

FACTS OF THE CASE

On November 7, 2016, the following complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 16109: Complaint filed by Mike Black against Animal Care and Control for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.24, and 67.26, and Government Code, Sections 6252(e) and 6253(a), by failing to respond to a request for Public records in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On December 20, 2016, the Complaint Committee (Committee) acting in its capacity to hear complaints heard the matter and referred it to the Task Force for hearing.

On February 1, 2017, the SOTF reviewed the recommendation from Committee and held a hearing to review the merits of the complaint.

Mike Black (Petitioner/Complainant) provided an overview of the complaint and requested that the SOTF find violations. Mr. Black stated that he has yet to receive an un-redacted copy of the dog license application, the dog license and communication related to the decision to not enforce lease laws. There were no speakers in support of the Petitioner/Complainant. Diana Christensen, Animal Care and Control (ACC) (Respondent), provided a summary of the department’s position. Ms. Christensen stated that she has recently assumed the duties of the custodian of records and is working on correcting certain public records request procedures. Ms. Christensen stated that due to the voluminous nature of the request, technical issue and misinterpretations by the previous custodian of records, the response to the public records request had been delayed. A question and answer period followed. The Respondent and Complainant were provided the opportunity for rebuttals.
FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that a violation of Administrative Code (Sunshine Ordinance), Sections 67.21(d) and 67.24(i), occurred.

ORDER OF DETERMINATION

Member Tesfai, seconded by Member Baranetsky, moved to find that Animal Care and Control violated Administrative Code (Sunshine Ordinance), Sections 67.21(d), 67.24(i) and 67.26, by failing to respond to a public records request in a timely and complete manner, withholding records and not citing an appropriate provision of the Sunshine Ordinance and inappropriately withholding records in its entirety.

Vice Chair Hyland request that the question regarding violation of Administrative Code (Sunshine Ordinance), Section 67.26, for inappropriately withholding records in its entirety be divided and voted upon separately in regards to the redaction/withholding of the dog license/application.

The motion to find that Animal Care and Control violated Administrative Code (Sunshine Ordinance), Sections 67.21(d) and 67.24(i) PASSED by the following vote:

Ayes: 6 - Baranetsky, Tesfai, Cannata, Hinze, Hyland, B. Wolfe
Noes: 1 - Fischer
Absent: 1 - Chopra
Excused: 3 - Eldon, J. Wolf, Maass

The motion to find that Animal Care and Control violated Administrative Code (Sunshine Ordinance), Section 67.26 FAILED by the following vote:

Ayes: 4 - Baranetsky, Tesfai, Cannata, B. Wolfe
Noes: 3 - Fischer, Hinze, Hyland
Absent: 1 - Chopra
Excused: 3 - Eldon, J. Wolf, Maass

The Task Force referred the matter to the Compliance and Amendments Committee and requested that Animal Care and Control provide records related to the city’s dog lease law from January 1, 2014, through February 1, 2016.

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

c. Mike Black (Petitioner/Complainant)
Diana Christensen, Animal Care and Control (Respondent)
Last year, after months of fighting to obtain such records from Animal Care and Control, I was finally provided copies of emails from residents complaining about dogs off leash. Susie Pewitt emailed ACC on September 25, 2014, and Robert Call on November 4. On February 9, 2015, Chris Sinton complained of dogs being walked off leash in his neighborhood, and Christina Gallardo emailed ACC on October 28 and 29, 2015, bitterly complaining and demanding that ACC do their job. She’d been trying for a year to get the problem addressed. On January 7, 2016, “Helena B” expressed her fear of the dogs off leash in Bernal Park, and Owen Davies emailed his complaint on February 22, 2016.

What I have never received is a single record of any response by ACC to any of these complaints. In the beginning when ACC thought they could mollify me with words instead of actually enforcing the city’s leash law, even I received a written response or two to my emailed complaints. Where are the responses to the emails I’ve just itemized? And where’s the email referenced in ACC record number V14-012784?

Then there are those “Statements of Decision,” letters written on Animal Care and Control letterhead and addressed to ACC personnel, from the hearing officer reporting his official findings from the Vicious and Dangerous Dog Hearings that are scheduled for every Thursday. And yet the set of these formal, official ACC records I’ve been provided is woefully incomplete. The entire first six months of 2014 are missing, and the Custodian of Records claims to have no record of even the September 4, 2014 hearing I showed her an ACC record for.

Whether or not ACC has any other responsive records rests at this point largely on the question of how much one trusts the Custodian of Records. And this gets us to the real crux of the matter. Public access to public records ultimately comes down to the credibility of an agency and its personnel, whose word the public is expected to take as solemn truth with regard to records of the public’s business.

And that’s precisely what no person can reasonably be expected to do in this case. I have already documented to the Task Force in great detail ACC’s malfeasance, including the misrepresentations and false statements of its current Custodian of Records. I draw your attention now to only one item, the way in which she produced email records prior to this hearing. She promised the Task Force she would immediately produce these emails three months ago, and then had to be ordered to do so on February 1, 2017. The very late delivery of the whole lot just two weeks ago is, among other things, in direct violation of section 67.25(d)’s “rolling basis,” which requires that records be provided the same day they’re found. And this act of bad faith was committed with the Task Force breathing down her neck. Such contempt for the law is breathtaking, and makes it impossible to believe anything she says with regard to what records ACC has or does not have.

Thank you.
To the Sunshine Ordinance Task Force:

I feel it’s necessary to append these notes to the record of yesterday’s Compliance Committee hearing on the complaint of mine which is before the Task Force, Complaint No. 16109.

Attached is a complete copy of my 3-minute statement to the Committee last night. I stand by every word of it.

After — and only after — Animal Care and Control’s Custodian of Records Diana Christensen got up to complain that in my remarks I had called her a “liar,” a member of the Committee interjected to formally put on the record a reprimand of me for having been disrespectful to Ms. Christensen. He had worked with her for years and has apparently found her beyond criticism. If the member thought so highly of the respondent that he just had to vouch personally for her unimpeachable character — rather than actually address any of the voluminous and detailed record I have provided to the Task Force as foundation for my distrust and incredulity when it comes to ACC’s Custodian of Records — then he should have recused himself entirely from the hearing.

(I leave aside here my general impression, after attending three meetings of the Task Force, that few members bother to familiarize themselves with the packets of information that the complainants, respondents, and the Task Force Administrator Victor Young go to some effort to prepare.)

Mr. Highland’s personal opinions seem only more gratuitous when one considers that nobody from ACC has ever been nor ever will be reprimanded, much less held accountable in any meaningful way, for ACC’s months and months of no response, incomplete responses, delays, withholding of records, excuses and out and out lies, all in clear violation of various statutes of the Sunshine Ordinance. Nowhere was the double standard more obvious than in the Committee’s non-reaction to Ms. Christensen’s self-congratulation last night for having “voluntarily” provided records to me on January 25, 2017 — records which were plainly, undeniably, screamingly responsive to my original records request and which ACC should have, by law, begun to provide to me by February 15, 2016. (I never even got a response of any kind until March 2016.) No one on the Committee suggested that it was I who deserved an abject apology from Ms. Christensen, not she who deserved to be lauded for producing clearly responsive and yet still incomplete records a year late — almost three months after I’d had to complain to the Task Force and at least a month and a half after she had become Custodian of Records.

No, instead, a Committee member protested that I had no right not to believe every word she says.

Thank you for your attention to this matter.

Mike Black
Ms. Christensen:

I hereby acknowledge receipt of a 12-page PDF of emails responsive to my original public records request. Thank you for providing me these records.

Mike Black

-------- Original Message --------
Subject: Additional Emails- 2nd set
From: "Christensen, Diana (ADM)" <Diana.Christensen@sfgov.org>
Date: Fri, April 21, 2017 3:17 pm
To: "mike@blacksummers.com" <mike@blacksummers.com>

This is the second of two emails and attachments to you.

Diana Christensen
Deputy Director
San Francisco Animal Care and Control
1200 15th Street, San Francisco, CA 94103
415-554-8499
Ms. Christensen:

I hereby acknowledge receipt of a 10-page PDF of emails responsive to my original public records request. Thank you for providing me these records.

Mike Black

-------- Original Message -------
Subject: Additional Email
From: "Christensen, Diana (ADM)" <Diana.Christensen@sfgov.org>
Date: Fri, April 21, 2017 3:17 pm
To: "mike@blacksummers.com" <mike@blacksummers.com>
Cc: "SOTF, (BOS)" <sotf@sfgov.org>

Mr. Black,
I have been working to find ACC responses to the complaints lodged by Susie Pewitt – 9/25/14, Robert Coll-11/4/14, Chris Sinton – 2/9/15, Christina Gallardo - 10/28/15 and 10/29/15, Helena B- 1/7/16, and Owen Davies – 2/22/16. I only found one related record to Christina Gallardo. However, in the process of looking for these records, I came to realize that ACO Sgt. Ellie Sandler was never asked to search her email for responsive records. I recently asked Sgt. Sandler to search her email using the words stray, 1091, stray, leash, and at-large. I found a number of emails that are responsive to your original Sunshine request. In order to manage carrier email size limits, I am sending you two separate emails now, each with an attachment of responsive records. Included is also the one record related to Christina Gallardo.

Given that I unexpectedly found these additional emails, I am now going back and requesting all of the ACO’s to search their systems. This is a work group that spends most of its time in the field and therefore largely does not use email. If however I find additional responsive documents I will send them to you next week.

I also spoke with the General Services Agency IT Director, Norm Goldwyn, this week about issues we have had with our email. The IT Division no longer has any tickets open on the issue of emails missing after our computer conversion. He does not believe any missing email are recoverable unless they were saved on individual computers.
Sincerely,

Diana Christensen

Diana Christensen
Deputy Director
San Francisco Animal Care and Control
1200 15th Street, San Francisco, CA 94103
415-554-8499
Ms. Christensen:

This confirms that I have received your five preceding emails, each containing an attached PDF. Yes, I see that some of the files were bigger than my normal 20MB limit on individual emails and I can't really account for how or why they got through.

Thank you for providing these additional records responsive to my 2/1/2016 public records request.

Mike Black
Young, Victor

From: mike@blacksummers.com
Sent: Monday, May 01, 2017 7:18 PM
To: Christensen, Diana (ADM)
Cc: SOTF, (BOS)
Subject: RE: Note - CORRECTION

Ms. Christensen:

When I looked at my inbox display, several of your five emails with attachments this evening were shown (and are showing) as more than 20MB. But in fact each of the PDF attachments was actually less than 20MB, and so that explains why I was able to receive them.

I should also point out that two of the attachments, the first one I received and the last one I received (both named "MB5 Email 050117.pdf"), appear to be duplicates.

Thank you again for providing these records.

Mike Black

-------- Original Message -------
Subject: RE: Note
From: <mike@blacksummers.com>
Date: Mon, May 01, 2017 7:02 pm
To: "Christensen, Diana (ADM)" <Diana.Christensen@sfgov.org>
Cc: "(BOS) SOTF" <sotf@sfgov.org>

Ms. Christensen:

This confirms that I have received your five preceding emails, each containing an attached PDF. Yes, I see that some of the files were bigger than my normal 20MB limit on individual emails and I can't really account for how or why they got through.

Thank you for providing these additional records responsive to my 2/1/2016 public records request.

Mike Black

-------- Original Message -------
Subject: Note
From: "Christensen, Diana (ADM)" <Diana.Christensen@sfgov.org>
Date: Mon, May 01, 2017 6:27 pm
To: "mike@blacksummers.com" <mike@blacksummers.com>
Mr. Black,
I just sent you 5 emails with records attached to each. If you don't get them, or any one of them, please let me know and I will sort it out tomorrow. These are a little bigger than some of the others I have sent to you, so I will await your confirmation.

Thanks.

Diana Christensen
Ms. Christensen:

This acknowledges receipt of the email with the PDF attachment labeled "MB1 Email 050117.pdf."

Thank you again for producing these documents responsive to my 2/1/2016 public records request.

Mike Black

-------- Original Message --------
Subject: Additional Email 1
From: "Christensen, Diana (ADM)" <Diana.Christensen@sfgov.org>
Date: Tue, May 02, 2017 5:58 pm
To: "mike@blacksummers.com" <mike@blacksummers.com>

Mr. Black,
They clearly did not hire me for my clerical skills! I have attached the first set of emails that go with the other four sets I sent to you yesterday.

If as you read through the material you have a question about a particular issue or you think we may have failed to provide something related, please do let me know and I will conduct a search for it.

Diana Christensen
Deputy Director
San Francisco Animal Care and Control
1200 15th Street, San Francisco, CA 94103
415-554-8499
To the San Francisco Sunshine Ordinance Task Force:

I am hereby submitting three complaints to the Sunshine Ordinance Task Force (hereinafter, the “Task Force”) with respect to my requests for public records from San Francisco Animal Care and Control (“ACC”) under the California Public Records Act (“CPRA,” Government code §§ 6250, et seq.) and the San Francisco Sunshine Ordinance (Administrative Code, Chapter 67).

There are four parts to this necessarily lengthy set of related complaints: (1) a brief introductory “Background” on the situation that led to my records requests to ACC; (2) my complaint with regard to a very specific public record that ACC has refused to produce; (3) my complaint regarding ACC’s failure to produce emails, letters, and similar written communications responsive to my requests; and (4) my more general complaint about the entire, and unconscionable, manner in which ACC (and to some extent the San Francisco City Attorney’s office — more about that below under Complaint No. 3) has responded to my lawful records requests. There are also four attachments to this email, provided as supporting documentation to my three complaints.

Background

On April 16, 2014, I walked to and from the neighborhood gym I use, which is less than three full blocks from my home at 455 Sanchez Street, and encountered six dogs off leash (with various owners). I complained to ACC by both telephone and email. Although I was at first assured by an ACC officer that my complaint was taken very seriously, I quickly discovered that in fact such complaints about dogs off leash were not taken seriously at all. In fact, it was very soon made clear to me, both explicitly and by virtue of the nonresponse to my by then already accumulating complaints about the dogs regularly seen off leash in my neighborhood, that ACC had absolutely no intention of enforcing San Francisco’s dog leash law (ACC pleaded limited resources, other priorities, etc.).

That a good common-sense law in a densely populated urban area of 850,000 human beings and 120,000 dogs (by ACC’s own estimate) might be a challenge to enforce was one thing. It was quite another thing for ACC — the government agency specifically charged with enforcing animal control laws (“The Department is responsible for . . . enforcement of all state and local Animal Control and Welfare laws,” their website proclaims) — to admit that they simply would do nothing to enforce the law. I began sending ACC periodic emails reporting all the incidents of off-leash dogs I witnessed. (I continue to report such incidents, which now number in the hundreds.) I did this both as a record of ACC’s ongoing refusal to discharge their duty to enforce the city’s leash law and as a kind of “control” (see Complaint No. 2 below) for the day when I would need to look at ACC’s records concerning its activities, if any, with regard to the leash law.
That day came almost two years after my first complaint to ACC, when the persistent problem of off-leash dogs in my neighborhood was made even more troublesome by a local sidewalk café that allowed patrons to have their dogs off leash and by one particularly egregious dog owner who refused to ever leash his dogs (see Complaint No. 1 below). On February 1, 2016, I submitted my first CPRA request to ACC, for all their records related to the leash law from January 1, 2014 to February 1, 2016.

**Complaint No. 1 — ACC’s Refusal to Disclose Dog License Application Information**

On June 23, 2016, I submitted my second CPRA request to ACC seeking any records ACC had with respect to any dog owner(s) at 3743B and 3743 17th Street. This was the house I had seen being entered by the “particularly egregious dog owner” mentioned above, a man who has had up to three dogs with him roaming about freely on the sidewalks of my neighborhood.

The street-level entrance on the side of the building I’ve seen the man use was marked “3743B” at one time. The numerals were later removed from the exterior wall of the building. I did see him once use the front door (up a flight of stairs from the street) marked 3743. To this day, I don’t know what the exact layout of the house’s units is — there is another front door marked 3745, apparently to an upper floor — and I subsequently use in this complaint and its attachments the form “3743(B)” to refer to this man’s presumed residence in the house on 17th Street.

The “response” to my 6/23/2016 CPRA request is summarized in more detail in the attachments hereto. Suffice it to say here that I never received a single record in response to this request, and the records that had been provided to me earlier relevant to the identified address indicate that nobody from ACC ever even made contact with any dog owner at 3743(B) 17th Street — despite my innumerable complaints in writing. Part of the reason for my seeking the dog owner information for this address was precisely so that, in light of ACC’s refusal to do anything to curb this dog owner’s conduct, I could seek a legal remedy in court in the form of a restraining order to keep the man from illegally having his dogs off leash on public sidewalks (or at least from having them anywhere near me). To do that I need a name, and as all dogs in San Francisco are supposed to be licensed by ACC, ACC was obviously the government agency to provide a copy of that dog license/application as a public record.

After not responding at all within the statutorily mandated deadline, ACC finally advised me on August 10, 2016 that I had already been provided all of ACC’s records relevant to that address and that ACC would not be providing me the name of the dog owner, claiming that to do so would violate Government Code §6254(c). Despite my vigorous legal arguments contesting that position (and subsequent to my 9/6/2016 Immediate Disclosure Request pursuant to Administrative Code §67.25(a) for the same information), ACC has persisted in this claim, supported ultimately by a determination by the San Francisco Supervisor of Records.

**Attachment 1** hereto is a PDF of the relevant email thread documenting the exchanges on the issue of the dog license. (Although the existence of such a license/application for that address was always implicit in ACC’s emails, it was not explicitly acknowledged until a 9/22/2016 email from ACC.)

My specific complaint is two-fold:

(1) Under Cal. Government Code §6253(a) and S.F. Administrative Code §67.26, ACC was required to provide a copy of the dog license/application with any information they contended was exempt redacted. No government agency is permitted to simply withhold an entire public record.
(2) Equally dangerous to the concept of public access to public records is the extraordinarily inadequate “argument” that ACC and the City Attorney’s office put forth in refusing to provide the requested information. As I have explained in multiple emails to ACC and the City Attorney — again, I refer the Task Force to Attachment 1 — Government Code § 6254(c) does not support the redaction of a name and address from a license application.

The crux of the issue is this:

Government Code §6254(c) reads: “Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.”

However, the authority of the California Attorney General makes absolutely explicit in its Summary of the California Public Records Act 2004 (the “AG’s Summary”) that “Information submitted by license applicants is not covered by section 6254(c) but is protected under section 6254(n) [irrelevant here] and, under special circumstances, may be withheld under the balancing test in section 6255.” The meaning of this straightforward and clear statement is made even clearer by the case upon which it is based, CBS v. Block. In that case, the California Supreme Court ruled that, indeed, names and addresses on (firearms) license applications are subject to disclosure, unless the “public interest” outweighs such disclosure. (As an example, an exemption for such information provided by certain public officials such as judges, prosecutors and law enforcement employees obtaining firearms was ultimately codified in §6254(u) because of the specific risk that criminals pose to such officials, though such an exemption could always have been invoked under §6255.) The point is that under CBS the presumption is always that such information on a license is a disclosable public record, unless proscribed by statute of course, and it is up to the government agency withholding the information to provide a compelling reason for why the public interest in not disclosing the name and address “clearly outweighs” the public interest in disclosure. (§6255.)

**ACC and the Supervisor of Records quite shockingly twist, torture and utterly pervert the AG’s Summary and CBS to say the complete opposite of what they in fact say:** ACC and the Supervisor of Records claim that a name and address from a license applicant are by their very nature exempt personal information, and that the burden is on anyone seeking that information to provide a reason for why disclosure is in the public interest. The Supervisor of Records asserts in her 10/31/2016 email that because CBS allows that such information may be exempt under certain circumstances, that general idea alone is sufficient to withhold information. That is neither a legal argument nor a fact; it’s not even a logical statement. And, contrary to the AG’s Summary and CBS, ACC presents no reason at all for why the license information I’m seeking is exempt from the principles laid down in both the AG’s Summary and CBS.

But even if ACC/City were correct, and not merely derelict in failing to justify their withholding of a presumptively non-exempt public record, and I do bear the burden to justify disclosure of the name on a license application, the fact is I did provide such an argument, in multiple emails.

Government Code §6255(a) reads:

\[
\text{The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.}
\]

The AG’s Summary gives an example regarding this section:
In another case, a city sought to maintain the confidentiality of names and addresses of water users who violated the city’s water rationing program. The court concluded that the public’s interest in disclosure outweighed the public’s interest in nondisclosure since disclosure would assist in enforcing the water rationing program. The court rejected arguments that the water users’ interests in privacy and maintaining freedom from intimidation justified nondisclosure. [New York Times Co. v. Superior Court (1990) 218 Cal.App.3d 1579.]

The parallels to my own situation are obvious: A man is continually violating the law and impeding my free, safe and secure access to public sidewalks by having his dogs off leash. I provided to ACC the address of the man (who lives scarcely a block away from my residence) and even provided the times of day when he walks his dogs (generally, around midday). I obviously have direct access to him if my intention is to cause him harm. But my only intention is to have him comply with a public safety law, and to that end I have complained relentlessly to ACC — and ACC has done nothing to protect by rights under that law. My only evident legal recourse is to peaceably seek an order in court restraining the man from having his dogs off leash anywhere near me. But ACC has prevented that civil resolution by refusing to disclose a public record with the name of the dog owner at the subject address — while still explicitly refusing to enforce the city’s leash law (not enforcing that law is “in sync with . . . the larger community’s values,” according to a 9/16/2016 email to me from ACC Executive Director Virginia Donohue). Providing that public record is indisputably in the public interest.

More generally, let me just add that I believe that it’s tremendously important for the Task Force to have ACC produce the subject record and affirm the now well-established principle that such information from a license applicant is indeed a matter of public record. ACC/City Attorney’s position that it is exempt seriously undermines an essential part of the public’s access to records that the CPRA and the Sunshine Ordinance are intended to protect.

I urge the Task Force to do the right thing and compel ACC to provide to me a copy of the subject dog license/application.

Complaint No. 2 — ACC’s Refusal to Produce Emails, Letters & Similar Written Communications.

My original 2/1/2016 CPRA request to ACC sought “all public records” related in any manner to the city’s dog leash law from 1/1/2014 to 2/1/2016. This included, but was not limited to, “any reports of an off-leash dog” and “communications regarding the dog leash law,” and the breadth of this request was certainly made crystal clear no later than 3/3/2016 when I quoted the statutory definition of “public records” to ACC: “Public records’ includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (Government Code §6252(e).)

Nevertheless, I never received a single email or similar written communication of any kind responsive to this request until 6/7/2016 — four months after my initial request and only after considerable persistence on my part (and apparently the intercession of the City Attorney’s office) — when ACC finally provided copies of several responsive emails, all from 2015. These were mostly my own emails complaining about dogs off leash, and some related emails (such as from the San Francisco Department of Public Health) on whichACC had been copied in, but the batch also included a few similar emailed complaints from other residents.

These were a glaringly incomplete response to my request — there was nothing from 2014 or January 2016, not a single email authored by ACC, and even the 2015 emails were clearly incomplete — but it did at least establish that ACC did rightly retain such emails as the public records they are, including emails to which ACC
was a “cc.” (As I alluded to above, the ability to verify responsiveness was part of why I created a set of “control” emails to ACC in the first place, to verify that I was receiving all the responsive records I knew existed.)

Because of the woefully inadequate response, and ACC’s 8/10/2016 email indicating that no further records responsive to my 2/1/2016 request would be produced, I submitted on 9/6/2016 an Immediate Disclosure Request for copies of all of ACC’s written communications, not just those related to the leash law, from 1/1/2014 to 8/6/2016 (these dates were later narrowed to 4/16/2014 to 8/11/2016 after the request was initially rejected by ACC). Although it seemed highly improbable (and demonstrably false by my own records of emails), if it were true as claimed that for 25 months an animal control agency had no other such written communications related to a dog leash law, it was reasonable to assume that the response to my new request would not be at all voluminous either.

On 9/6/2016 ACC Operations Manager Vicky Goldbech declined to produce any records responsive to this request, claiming that the discrete subset of records I had asked for amounted to indiscriminately asking for “all of [ACC’s] records.” All the more startling then to receive, within minutes of Ms. Goldbech’s email, an email from ACC Executive Director Virginia Donohue offering to have me come in and review ACC’s entire database and select any additional records I wanted (subject to redaction). I have access, it seems, to literally everything . . . except when I don’t. Or is it that the subset of written communications for a two-year period somehow surpasses in scope the entirety of ACC’s records? In any event, the Supervisor affirmed ACC’s position on 10/31/2016.

Though I still contest the Supervisor’s position, I narrowed the scope of my request in a 10/31/2016 Immediate Disclosure Request to all written communications related to the dog leash law from 4/16/2016 to 8/11/2016 (essentially records I had requested in my original 2/1/2016 request, but for slightly different dates). I emphasized in a follow-up email on 11/3/2016 that this request included any communications related to my requests for records related to the leash law and any advice, opinion or assistance related to responding to those requests, which my 10/31/2016 request had explicitly indicated were not exempt, under Administrative Code §67.24(b)(1)(iii). On 9/4/2016, in ACC’s apparently final production in response to any and all of my requests, ACC failed to produce any emails, letters or similar written communications. To all appearances, ACC is claiming everything responsive to my requests has now been produced. But of course being told that ACC doesn’t have any more such records means absolutely nothing with regard to the truth of the matter — a fact on prominent display in Attachment 3 - Email Summary (the “Email Summary”).

Indeed, as I noted above, not only is ACC’s claim improbable, it is demonstrably false. To date, I have not received a single email, letter, fax, text message or similar communication authored by anyone at ACC. And clearly, copies of all the emails cited in the Email Summary between 2/1/2016 and 8/11/2016 should have been produced. In addition, again as I note above, missing were emails and any similar communications from 2014 and January 2016, and even 2015, for which only some emails had been produced.

Attachment 2 contains copies of various emails responsive to my requests which have not been produced. Their dates are April 26, 2014, October 11, 13 and 19, 2015, January 31, 2016, and August 11, 2016 — this last one including part of a long thread that comprises some of the unproduced emails referenced in the Email Summary. This attachment is just a very small sample from my own records and surely is not the extent of what exists. The suggestion that ACC has retained not just fewer of these public records than I have, but in fact none of them, is ludicrous on its face. Any reasonable person can only conclude that ACC has refused to produce such records, which inevitably only leads to yet more questions and concerns about what ACC has failed to produce.
(I have provided all email threads in a “zoomable” PDF format, which I hope makes them easier and more convenient to access and read — some of the fonts are small — but of course the threads are in the usual and not terribly convenient order of the most recent email first. I can of course forward the actual emails if preferred.)

I urge the Task Force to compel ACC to produce copies of all public records, including all emails, letters and similar “written communications,” responsive to my 10/31/2016 Immediate Disclosure Request.

**Complaint No. 3 — ACC’s Contempt for the CPRA and Sunshine Ordinance**

**Attachment 3** to this email complaint, the Email Summary, is a summary of email correspondence between myself and ACC and the City Attorney’s office with regard to my records requests, from 2/1/2016 to 11/4/2016. I endeavored to be as concise as I could be while maintaining the flow of the substantive information. As noted on the attachment, copies of any and all of the emails are available upon request.

It turns out that complying with the law, like enforcing the law, just isn’t ACC’s thing. To date my requests for records from ACC have comprised two CPRA requests and four Sunshine Ordinance “Immediate Disclosure Requests” over ten months, and the entire experience has been trying, disappointing, and something of an ordeal. I should mention that I had once before resorted to a CPRA request, to obtain some records from the San Francisco Department of Public, and it was a completely different experience. I requested the records, was informed in a timely manner that the copies were ready, went down to give SFDPH a check, and picked up a batch of exactly the kinds of records I had expected. Of course, not all public records are alike, and one can never be sure that one is getting a comprehensive set of responsive records, but there has simply been no excuse for the way in which ACC has responded to my requests.

The Task Force’s alternative form for complaints asks for the name of the agent or official one is complaining about. In this case, I suppose it’s fair enough to say that that person would be ACC’s Operations Manager Vicky Guldbech, who acts as ACC’s custodian of records. She’s certainly the person at ACC with whom I have been dealing as regards ACC’s records. However, I believe there is plenty of blame to go around, and in particular I would single out the City Attorney’s office (the “CA”). The CA started to be copied in early on in the exchange of emails (Deputy City Attorney Brad Russi has been a common cc addressee) and it’s clear the CA has been providing counsel to ACC throughout, as is the CA’s legal responsibility. However, there is something fundamentally flawed and even dishonest about this process of city agencies relying on the CA’s advice to make decisions, which decisions then get appealed to the CA in the guise of the Supervisor of Records (the “Supervisor”), perhaps only to return to the agency in question . . . which is still being advised by the CA. It makes the whole thing look, to employ the word of the year, “rigged.” There really should be an independent entity to offer less “self-protective” advice to unavoidably self-interested government officials. Maybe the Task Force will supply that much needed independence in this case.

For the moment, in this regard, let me just point out the last email I received from the Supervisor, on 10/31/2016, in which she denies my request for a copy of the above-referenced dog license/application and suggests that I offer to ACC some reason for why ACC should provide it. This kind of bureaucractic circularity is utterly maddening (quite apart from the insulting fact that the public interest justification I repeatedly offered remained ignored and unaddressed), and is one of the things I am formally complaining about here.

As for everything else, the Email Summary, to a large extent, speaks for itself, but the gist is easy enough to abstract here in a few sentences: ACC repeatedly failed to respond to my lawful requests in the time limit and manner prescribed by the law, when a response did arrive it was usually outrageously incomplete, evasive, and as I detail in my 5/31/2016 email to the Supervisor, far from the kind of helpful response the law mandates. (See the Email Summary and Government Code §6253.1(a)(1).) Worst of all, I was repeatedly out and out lied
to by Ms. Guldbech when she assured me that she had produced all the records ACC had that were responsive to my requests. This would prove to be a lie again and again when in fact she later produced clearly responsive records that should have been produced in February 2016.

This pattern still continues: There is of course the entire matter of Complaint No. 2 above. Furthermore, a 10/3/2016 ACC response to my 9/22/2016 Immediate Disclosure Request for copies of dog leash citations and related records finally turned up copies of such citations — which in fact had been explicitly requested in my original 2/1/2016 CPRA request. I hesitate to add to an already overloaded email, but in this context it is worth providing the Task Force here, in the form of Attachment 4, the first, belated, insultingly incomplete records provided to me as of 3/3/2016, two separate, single-worksheet Excel spreadsheets — accompanied by Ms. Guldbech’s declaration, “These are the only reports our department has with the data you are requesting.” Followed, of course, by three weeks of silence, when I again had to hound ACC for a fuller response, which was eventually at least commenced by ACC.

Such obstructionism has led to a total loss of trust with respect to ACC. In addition to Executive Director Donohue’s 9/6/2016 ostensible offer for me to review and select anything in ACC’s entire database, on 5/9/2016 — more than three months after my initial 2/1/2016 CPRA request — Ms. Guldbech had for the first invited me to come in to ACC and view documents. I’m afraid such shows of cooperativeness came too late. I explained to Ms. Guldbech at that time that I prefer to get records in a permanent form, as being able to sit down and pore over them was a real necessity (as our exchange of emails up to then had proved). But, of course, I had also come to firmly distrust ACC (and to some extent the CA and the Supervisor, for that matter) and I am now extremely reluctant to have any dealings with anyone from ACC that are not in writing. As this very complaint evidences, it just seems the prudent way to conduct business if one ever expects to have a record of what was actually said and done, and by whom.

I’m not sure what the remedy for all of this is. Unlike with my Complaints No. 1 and No. 2, I can’t just ask the Task Force to take some very specific action to resolve the issue. But at the very least I would like the Task Force to be cognizant of the irresponsibility of ACC and the CA in this case.

I am not a lawyer, have no desire to be one, and have never studied the law — but I have been forced to effectively become one (with no assistance from anybody) because of ACC’s contemptuous responses to lawful requests. This is a very, very important issue, much more important than even the dog leash law I’ve been battling to get enforced for two and a half years. The laws protecting access to public records are good laws, essential laws in a democracy where the government’s business is our business. And because the government is doing your business and mine, it is part of their job to keep good records of that business. Moreover, these laws are for everybody, not just citizens like me who can string complete English sentences together and devote hours to doing online research and constructing a legal argument. Their intent to be inclusive and ensure that “public records remain our records is reflected in the Sunshine Ordinance Task Force’s promise that “all inferences and evidence shall be viewed in the light most favorable to the petitioner.” ACC, with the assistance of the CA, has not just violated the letter of our sunshine laws; it has unconscionably violated their open, honest and democratic spirit.

Thank you for your attention to these complaints.

Mike Black
455 Sanchez Street
San Francisco, CA 94114
mike@blacksummers.com
Ms. Christensen,

I have quickly reviewed the emails just to make sure what I have received: ten emails, with a total of twelve PDF attachments, though one of those appears to be a duplicate ("Jul,Aug,Sep2015") sent in both your fourth and sixth emails.

These will, needless to say, take time to review, but they definitely do seem responsive to my original February 1, 2016 public records request of almost exactly one year ago. And while I do very much appreciate the effort you have gone to in providing these records, I must admit that it is more than a little disappointing that they have come so very late -- with, as you know, the Sunshine Ordinance Task Force hearing on my complaint against ACC just a week away and 5:00 p.m. today being the deadline for any submissions to be added to the packet. It gives me no time to digest what is actually there and form any kind of sensible response for the Task Force, and, quite frankly, does nothing to ease the great stress and distress ACC's actions have already caused me.

But I'm not sure it's fair to hold you responsible for all that, so I will leave any further comment for February 1, 2017.

Most respectfully,
Mike Black

-------- Original Message --------
Subject: Records, V & D, July Aug Sept 2014
From: "Christensen, Diana (ADM)" <Diana.Christensen@sfgov.org>
Date: Wed, January 25, 2017 2:17 pm
To: "mike@blacksummers.com" <mike@blacksummers.com>

Mr. Black,

I am the newly appointed custodian of records for San Francisco Animal Care and Control. Upon receiving a copy of your SOTF complaint, I began thinking anew about the types of records ACC may have that would be responsive to your various 2016 requests. I believe that the attached decisions from the Vicious and Dangerous Dog hearing process may be responsive to your request in that some of them discuss dog attacks by unleashed dogs. Unfortunately, I don’t have
anyone to actually go through and separate out the ones that identify unleashed dogs. Thus, I am sending you all of the decisions from our contract hearing officer for July 2014 – December 2016. Please note, I have been unable to locate the records from prior to July 2014. I will continue to look for those records and when I find them will forward them to you.

Because of email size limitations, I am sending these in segmented batches.

Sincerely,

Diana Christensen

Diana Christensen
Deputy Director
San Francisco Animal Care and Control
1200 15th Street, San Francisco, CA 94103
415-554-8499
On this 12th day of December, 2016, I submit to the Complaint Committee of the Sunshine Ordinance Task Force this Addendum to my original November 7, 2016 complaint.

I offer these notes to supplement — and with respect to my Complaint No. 1, amend — the arguments set forth in my original submission to the Task Force regarding my three complaints against Animal Care and Control (“ACC”).

**Complaint No. 1 — ACC’s Refusal to Disclose Dog License Application Information**

Much of my argument that a dog license application is a non-exempt public record rests on the California Attorney General’s finding that Government Code section 6254(c) does not exempt information from a license applicant and on the case this finding relies upon, *CBS v. Block.* But both the Attorney General and *CBS* acknowledged that an agency could, under Government Code §6255, take up the burden of showing that the public interest in withholding the public record outweighed the public interest in disclosure. And this weighing of the public interest is precisely what ACC and the Supervisor of Records/City Attorney invoked in withholding the dog license application — though they never actually provided a reason for why withholding the name and address on a dog license application served the public interest. Instead, they merely circled back and kept repeating the very general reference to “privacy” in 6254(c) that, given *CBS* and the Attorney General’s finding, had sent them running for the cover of §6255 and “weighing” in the first place.

However, Government Code §6253(e) allows local governments to provide for freer access to public records and, indeed, San Francisco’s Sunshine Ordinance (Administrative Code §67.24, subparagraphs (g), (h) and (i)) does exactly that by precluding any invocation of §6255 and a weighing of “the public interest.” Most forcefully, subparagraphs (g) and (i) state in their entirety:

\[
(g) \quad \text{Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.}
\]

\[
(i) \quad \text{Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.}
\]
(Emphasis added.) All of this renders CBS and the Attorney General’s summary of the CPRA pertinent only insofar as they stand for the explicit principle that §6254(c) does not constitute “an express and specific exemption” for names and addresses on license applications. Nor is there any “express provision” exempting from disclosure “the specific type of information” that would be on a dog license application. Plainly, justly, the Sunshine Ordinance shuns broad concepts like “privacy” that might be used to “outweigh” disclosure of any public record.

Moreover, while ACC’s custodian of record might be excused for being unfamiliar with this part of the Sunshine Ordinance (as obviously I was), there is absolutely no excuse for the Supervisor of Records/City Attorney to be ignorant of it. This issue of “the public interest” must come up all the time in public records requests. All the more reason to conclude that the Supervisor of Records/City Attorney, upon whom ACC relied, has acted in an outrageously obstructive manner in denying the release of the public record in question.

The law is clear and irrefutable in this instance, and mandates that a copy of the dog license application at issue here be produced immediately, without redactions.

**Complaint No. 2 — ACC’s Refusal to Produce Emails, Letters & Similar Written Communications.**

On June 7, 2016, more than four months after my original CPRA request, ACC finally provided to me a 56-page PDF containing copies of about 40 emails. As I noted in my complaint, the majority of these were emails from me to ACC reporting off-leash dogs. There were also some emails from other residents reporting the same complaint. The rest of the emails were either my emails to the Department of Public Health, the City Administrator and the mayor regarding the problem or email responses from those entities, all of which ACC was copied in on. There was not a single email from anybody at ACC.

These are all the emails or similar written communications ACC has ever provided me. ACC claims these are the only written communications (such as “emails, letters, telephone texts, faxes,” etc.) that it possesses responsive to my 2/1/2016 and 10/31/2016 requests for “all public records,” including written communications, relating to the city’s dog leash law, which requests span the period from January 1, 2014 to August 11, 2016. The earliest email in the batch ACC provided is dated January 11, 2015, and the latest is dated December 29, 2015.

ACC has offered absolutely no reason for withholding any additional written communications responsive to my requests for such public records. ACC has simply stated that it has no other such records, even though the documentation clearly shows that ACC received and created such responsive, unproduced emails (and retained emails for at least as long as a year and a half).

Both the CPRA and Sunshine Ordinance forbid simply withholding records without offering the basis for such withholding. (Gov’t Code §6253(c); Admin. Code §§ 67.24(b), 67.26, 67.27.) Therefore, if and when the Task Force compels additional responsive written communications to be produced by ACC, ACC’s violations of the law in both withholding the records and failing to
identify either their existence or a legal reason for withholding them should not be rewarded by allowing ACC recourse to any exemptions under the CPRA or Sunshine Ordinance. As the California Supreme Court explained in *CBS v. Block*, “These exemptions are permissive, not mandatory” — and ACC’s willful withholding of public records should be construed as a waiver of any such claim to exemption, including attorney-client privilege. (Compare Gov’t Code §6254.5’s establishment of a waiver.)

**Complaint No. 3 — ACC’s Contempt for the CPRA and Sunshine Ordinance**

Related to the above, but just as pointedly related to Complaint No. 3, is an issue I raised in my original complaint — the role of the Supervisor of Records/City Attorney in this case. It feels a little unfair to be blaming ACC for taking the advice of its counsel in the matter of public records requests. It is also unfair that ACC’s counsel is at the same time supposed to represent my interests as a member of the public seeking to access public records under laws and rights that the City Attorney has a role in upholding (Administrative Code §67.21(i)). It’s like having the judge in a trial also serve as the lawyer for one of the litigants — as well as the jury. San Francisco’s Supervisor of Records/City Attorney has proven itself incapable of protecting both self-interested city agencies and employees on the one hand and the rights of the public on the other, and it is a situation rife with unconscionable conflicts of interests.

Attached as Exhibit A is a short analysis of this situation which I submit for the Task Force’s consideration. It is written by Robert Weschler of the public interest non-profit organization City Ethics, and more specifically critiques the appellate court’s decision in *St. Croix v. Superior Court* (2014), in which San Francisco’s City Attorney successfully withheld documents related to its role as counsel to a city agency resisting a public records request. Weschler’s piece (printed from the Internet) takes to task the appallingly compromised decision-making of the City Attorney in playing both arbiter and advocate, which I believe is on full display in my own particular complaints before the Task Force as well.

Mike Black
455 Sanchez Street
San Francisco, CA 94114
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CA Appellate Court Protects EC Legal Advice on the Basis of Privilege
Thursday, July 31st, 2014  Robert Wechsler

The logic of a California appellate decision on Monday, in the case of St. Croix v. Superior Court (A140308, July 28, 2014) (attached; see below), doesn't seem right to me. It skips steps. St. Croix is the executive director of the San Francisco Ethics Commission, and this matter involves a public records request for documents relating to the commission's regulations governing ethics complaints. Here's how the court's logic goes:

1. State Evidence Code section 954, confers an attorney-client privilege on the client "to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer . . . ."

2. The state Public Records Act (CPRA) provides an exception to public records requirements for documents that fall within the attorney-client privilege.

3. The court in Roberts v. City of Palmdale, 5 Cal.4th 363, 370 (1993) said, "By its reference to the privileges contained in the Evidence Code, . . . the [CPRA] has made the attorney-client privilege applicable to public records."

4. Because the San Francisco charter designates that the city attorney "[u]pon request, provide advice or written opinion to any officer, department head or board, commission or other unit of government of" the city, an attorney-client relationship is created with any agency that seeks such advice, and this relationship "incorporates" the attorney-client privilege.

5. Because the charter creates this relationship and incorporates this privilege, no city ordinance can remove this privilege.

6. This is true even though the CPRA §6253(e) permits localities to provide greater access to records than the CPRA itself requires: "Except as otherwise prohibited by law, a . . . local agency may adopt requirements for itself that allow for . . . greater access to records than prescribed by the minimum standards set forth in [the CPRA]." The court's argument is that this provision "does not purport to authorize a locality to enact an ordinance about records access that conflicts with the locality's governing city charter. To change local law in this circumstance, a charter amendment is necessary."

The court's logic is problematic in three ways. First, the court's logical progression begins with the state evidence code, which has nothing to do with the matter under consideration by the court. Evidence involves litigation. No one is questioning whether the attorney-client privilege applies in matters involving litigation. An EC's consideration of regulations is as far from litigation as one can get. It involves policies and procedures, which are not exceptions to public records acts.
In any event, the Evidence Code provision itself only provides a privilege for "confidential communication." However, SF law states that an agency's communications with its attorney, at least where another exception is not met (such as relation to litigation), are not confidential, and the charter says nothing to override this lack of confidentiality. Therefore, the Evidence Code, even if it applied to the situation, would not apply in SF, where such communications are not considered confidential. The court in this case did not speak to this. It skipped it altogether.

It is true that the Roberts decision did apply the Evidence Code's attorney-client privilege provision to a public records situation. But that case involved the appeal of a city planning commission's approval of a parcel map application to a city council, and the city attorney's legal opinion letter about the validity of the appeal and how the council should deal with it. In other words, the council was acting in a quasi-judicial role in a litigation matter.

The state Evidence Code was relevant to the Roberts situation and, therefore, its attorney-client privilege provision could be applied to that public records request. But this does not make the Evidence Code relevant to the situation before the court. The court did nothing to explain this logical step. Therefore, this step is questionable.

Second, everything else rests on the charter's "incorporation" of the attorney-client privilege. This "incorporation" derives solely from the fact that the charter says that one of the city attorney's roles is to provide advice to city agencies. The court took a long step between the city attorney's role (which is the same in every city in the United States and included in just about every charter, and not something special to the San Francisco charter) and the attorney-client privilege.

What is it about designating a city attorney's role that so clearly provides a privilege that cannot be changed by ordinance? If a charter said such a privilege existed, I would agree. But San Francisco's does not say this. Therefore, its non-statement of this does not take precedence over an ordinance.

Also, the court's logic ignores the important question, Does a public agency have an attorney-client privilege when both the agency and the city attorney represent the very same client, the public. Public records rules are there to protect and enhance the access to information of their client. Even if there were such a privilege, who would be able to decide whether to waive it or not? And wouldn't any such decision be based on the city and state's public records laws, which have, effectively, already made the decision for them?

The court should have gone through this logical progression. But it did not. It did not consider who the client is that holds the attorney-client privilege in San Francisco. It simply assumed that the EC held this privilege. It did not consider whether the client should be guided by an ordinance that speaks directly to the issue at hand: whether the privilege applies to public records requests. These failures place the decision in question.

Third, the court does not consider the fact that the state legislature, when it allowed local governments to provide greater access to public records than the CPRA allows, recognized that this referred to the exceptions (where else would greater access come from but dropping exceptions?). It could have excepted the attorney-client privilege from the greater access provision in recognition of the fact (as the court presents it) that defining a city attorney's role in a charter prevents this exception from being dropped. But since every city in the state most likely gives its city attorney this role, the legislature either recognized this
role definition was irrelevant to the attorney-client privilege exception or did not feel that it
gave rise to a privilege that would prevent cities from passing laws that provide access to
communications between its city attorney and its agencies. The court should have at least
considered these possibilities. Instead, it skipped a logical step and made another
assumption.

Additionally, since transparency is central to government ethics, outside a situation where
making records public could jeopardize an ongoing proceeding or make personal
information public, an EC should not withhold records. When I administered the New
Haven Democracy Fund, which ran the city’s public campaign financing program, I was the
one who provided advice on legal matters, and I handed out my memos to the press at
meetings of the fund’s board. The board’s members unanimously wanted this transparency,
because they recognized how important it was to be transparent as possible when you are
handing out public funds to candidates.

Even if the court’s logic were solid, I still don’t think the EC should have withheld legal
advice relating to the promulgation of regulations just because it came from the city
attorney (the implication is that if it had come from the executive director or an outside
attorney, the advice would have been public, even if exactly the same, which makes no sense
from a public policy point of view). And I don’t think the city council should have let the EC
do this or allowed this litigation — and certainly not this appeal — to have proceeded.

Finally, the city attorney has too great a role in the city’s transparency program. He oversees
the program as "supervisor of records," while at the same time creating numerous
documents and being required to advocate for those who do not want to make records
public, even for the reason that a document was drafted by the city attorney. Wearing all
these hats does not belong anywhere in government, especially in a government ethics
program.

Robert Wechsler
Director of Research, City Ethics
rwechsler@cityethics.org
203-230-2548
Story Topics:
City Related, Disclosure, Ethics Commissions/Administration, Local Government

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Robert Wechsler’s blog Log in or register to post comments Printer-friendly version
MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Nicholas Colla
Deputy City Attorney
DATE: December 16, 2016
RE: Complaint No. 16109 –Black v. Animal Care and Control

COMPLAINT

Complainant Mike Black ("Complainant") alleges that the San Francisco Animal Care and Control ("ACC") violated public records laws by failing to timely/adequately respond to his February 1, 2016 and June 23, 2016 immediate disclosure request ("IDRs").

COMPLAINANT FILES COMPLAINT

On November 7, 2016, Complainant filed this complaint with the Task Force alleging that ACC failed to timely respond to his IDRs.

JURISDICTION

ACC is a City department subject to the provisions of the Sunshine Ordinance governing public records. ACC does not contest jurisdiction to hear this complaint.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:
- Section 67.21 governs responses to a public records request.
- Section 67.25 governs responses to IDRs.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.
- Section 67.34 governs willful violations.

Section 6250 et. seq. of the Cal Gov’t. Code:
- Section 6254 governs exemptions to disclosure.

APPLICABLE CASE LAW
- none

BACKGROUND

This complaint is based on two separate IDRs to ACC, the first of which was sent on February 1, 2016 and the second was sent on June 23, 2016.
February 1, 2016 IDR

On February 1, 2016, Complainant emailed ACC requesting copies of public records regarding enforcement of the City's “dog lease” law, including policy, enforcement, reports, and communications.

Complainant alleges that he didn't receive a response to this request until March 1, 2016 when ACC employee Vicky Guldebech (“Ms. Guldebech”) provided Complainant with a spreadsheet that he found to be inadequate because, in his opinion, the data from the spreadsheet must have come from records in ACC's possession and he would like copies of those records as well. From March 29, 2016 to April 14, 2016, Ms. Guldebech allegedly sent Complainant records that were responsive to this request, on a rolling basis.

However, Complainant alleges that it wasn't until June 6, 2016 that email correspondence from ACC, which he considered to be part of his request, was disclosed to him.

On December 8, 2016, Diana Christensen (“Ms. Christensen”), Deputy Director of ACC, in response to the filing of this complaint, sent a letter to the Task Force. Ms. Christensen’s letter addresses Complainant's allegations about the February 1, 2016 by stating that it was unclear to the ACC Custodian of Records that email correspondence amongst ACC employees was part of the Complainant’s IDR request.

June 23, 2016 IDR

On June 23, 2016, Complainant allegedly sent an IDR to ACC in which he requested “any records ACC had with respect to any dog owner(s) at 3743B and 3743 17th Street.” Complainant alleges that he didn't receive a response to this IDR until August 10, 2016 when it informed Complainant that it would withhold information about dog owners at the addresses at issue pursuant to Government Code Section 6254(c). Complainant further alleges that, when the Supervisor of Records reviewed ACC’s withholding of information, the Supervisor of Records determined that the records at issue were properly withheld.

Ms. Christensen’s December 8, 2016 letter to the Task Force addresses this portion of the complaint as follows:

ACC acknowledges and apologizes for its lack of adherence to time deadlines required by Sunshine. ACC continues to assert its right to redact the names of the license holders at specific addresses based on privacy concerns.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS

- Is Complainant satisfied with the response that he eventually received to the February 1, 2016 IDR?
- Is Complainant satisfied with the response that he eventually received to the June 23, 2016 IDR?
- What was the reason for the delay in ACC’s response to Complainant’s IDRs?
- Is there any other means of obtaining the desired dog owner information that Complainant may pursue?
MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: December 16, 2016
PAGE: 3
RE: Complaint No. 16109 – Black v. Animal Care and Control

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did ACC violate Sunshine Ordinance Section 67.21(b) and/or 67.25(a) by failing to provide Complainant with records responsive to his IDRs in a timely manner?
- Did ACC violate Sunshine Ordinance Sections 67.26 and 67.27 by failing to disclose that responsive records were withheld and failing to provide Complainant with the applicable exemption to disclosure?
- Did ACC properly assert an exemption to disclosure under Government Code Section 6254(c)?
- Does ACC’s conduct in handling Complainant’s IDRs amount to willful violations of the Sunshine Ordinance?
TO: Sunshine Ordinance Task Force
DATE: December 16, 2016
PAGE: 4
RE: Complaint No. 16109 –Black v. Animal Care and Control

CONCLUSION
THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

***
CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDNANCE)

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.

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
MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: December 16, 2016
PAGE: 6
RE: Complaint No. 16109 – Black v. Animal Care and Control

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 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 OF RECORDS

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.

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
MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: December 16, 2016
PAGE: 7
RE: Complaint No. 16109 - Black v. Animal Care and Control

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. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)

SEC. 6254

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
This means there is one more. My apologies. I will send it tomorrow.

Diana Christensen

Sent from Diana's iPhone

On May 1, 2017, at 7:18 PM, "mike@blacksummers.com" <mike@blacksummers.com> wrote:

Ms. Christensen:

When I looked at my inbox display, several of your five emails with attachments this evening were shown (and are showing) as more than 20MB. But in fact each of the PDF attachments was actually less than 20MB, and so that explains why I was able to receive them.

I should also point out that two of the attachments, the first one I received and the last one I received (both named "MB5 Email 050117.pdf"), appear to be duplicates.

Thank you again for providing these records.

Mike Black
Thank you for providing these additional records responsive to my 2/1/2016 public records request.

Mike Black

-------- Original Message --------
Subject: Note
From: "Christensen, Diana (ADM)" <Diana.Christensen@sfgov.org>
Date: Mon, May 01, 2017 6:27 pm
To: "mike@blacksummers.com" <mike@blacksummers.com>

Mr. Black,
I just sent you 5 emails with records attached to each. If you don’t get them, or any one of them, please let me know and I will sort it out tomorrow. These are a little bigger than some of the others I have sent to you, so I will await your confirmation.

Thanks.

Diana Christensen

Diana Christensen
Deputy Director
San Francisco Animal Care and Control
1200 15th Street, San Francisco, CA 94103
415-554-8499
Mr. Black,
I have been working to find ACC responses to the complaints lodged by Susie Pewitt – 9/25/14, Robert Coll-11/4/14, Chris Sinton – 2/9/15, Christina Gallardo - 10/28/15 and 10/29/15, Helena B- 1/7/16, and Owen Davies – 2/22/16. I only found one related record to Christina Gallardo. However, in the process of looking for these records, I came to realize that ACO Sgt. Ellie Sandler was never asked to search her email for responsive records. I recently asked Sgt. Sandler to search her email using the words stray, 1091, stray, leash, and at-large. I found a number of emails that are responsive to your original Sunshine request. In order to manage carrier email size limits, I am sending you two separate emails now, each with an attachment of responsive records. Included is also the one record related to Christina Gallardo.

Given that I unexpectedly found these additional emails, I am now going back and requesting all of the ACO’s to search their systems. This is a work group that spends most of its time in the field and therefore largely does not use email. If however I find additional responsive documents I will send them to you next week.

I also spoke with the General Services Agency IT Director, Norm Goldwyn, this week about issues we have had with our email. The IT Division no longer has any tickets open on the issue of emails missing after our computer conversion. He does not believe any missing email are recoverable unless they were saved on individual computers.

Sincerely,

Diana Christensen

Diana Christensen
Deputy Director
San Francisco Animal Care and Control
1200 15th Street, San Francisco, CA 94103
415-554-8499
Not sure if we know this person, but she appears a bit off.

Deb Campbell
Animal Care & Control
Rescue Row
1200 15th St.
San Francisco, CA. 94103
415-554-9427 (Office)
415-554-9400 (Animal Emergencies)
415-554-6364 (ACC Front Desk)

Deb.campbell@sfgov.org

http://sfgov.org/acc

-----Original Message-----
From: Christina Gallardo [mailto:gallardoc2231@yahoo.com]
Sent: Tuesday, May 17, 2016 2:08 PM
To: gobmx@funcionpublica.gob.mx; media@opcw.org; ACC, (ADM) <acc@sfgov.org>; accredit@gov.ru; correo@presidencia.gob.bo; contact@teaparty.org; Judicialwatch Info <info@judicialwatch.org>; Donald J. Trump <info@donaldtrump.com>; Klaaskids Info <info@klaaskids.org>; Fairgirls Info <info@fairgirls.org>; investorrelations@wellsfargo.com; writers@infowars.com; Ordinance, Pit Bull (ADM) <pitbull.ordinance@sfgov.org>
Subject: San Francisco Animal Care and Control conspiring to SEIZE MY DOG WITH my hate, stalking and rape NINTH CIRCLE HATE GROUP

Hello,

Clearly, the San Francisco Animal Care and Control did not give my 6months notice to have my dog vaccinated and licensed renewed because they want to seize and illegally detain MY DOG!

I MUST BE MOVED. Please cease and desist the San Francisco Animal Care and Control for conspiracy and stalking.

The Animal Care and Control sent Sherriff Vicki Hennessy to bang on my door and ABDUCT ME!!!!!!!!!!
The FEMA NAZI Sherriff Vicki Hennessy was driving a San Francisco Animal Care and Control Van.

What should I do? The Animal Care and Control are NAZIs and tried to take me and my dogs during a FEMA NAZI GENOCIDE round-up!!!!!!!

Cease and desist the San Francisco Animal Care and Control NAZIs who are all NINTH CIRCLE MILITARY POLICE at 1200 15th street at (Harrison street) in San Francisco, California 94103.


http://sfgov.org/acc/

Regards,
Christina Gallardo
I don't have any great news, we've been unable to make contact with either party so far. The café has been closed and I left a message for Mr. Black. We'll keep trying.

Ellie

Sergeant Eleanor Sadler #20
San Francisco Animal Care and Control
1200 15th St.
San Francisco
CA 94103
415-554-9400

Can you update me on when we talked with the café owner and Mr. Black and any new info so I can write the response? Thanks,

Virginia Donohue
Executive Director
San Francisco Animal Care and Control
1200 15th Street
San Francisco, CA 94103
(415)554-9411
(415)557-9980 (fax)

Virginia,

I know you said that ACOs went by the café on three occasions after this complaint without seeing any off leash dogs. Please draft a brief response to the below email which Naomi can send within the next couple days in response to Mr. Black's complaint. The specific request to Naomi was —

To you, Ms. Kelly: I ask what my recourse is supposed to be, when the agency that has identified itself to me as the agency responsible for enforcing San Francisco’s leash law fails to do any such thing?

The response will go out from the City Administrator email under Naomi’s signature, so write it in that way.

Thanks,

Ken Bukowski
Deputy City Administrator – Chief Financial Officer
Office of the City Administrator
1 Dr. Carlton B. Goodlett Place, Room 362
(415) 554-6172
Kenneth.Bukowski@sfgov.org

From: Bukowski, Kenneth (ADM)
Sent: Monday, November 16, 2015 8:10 AM
To: Donohue, Virginia (ADM)  
Cc: Kelly, Naomi (ADM); Barnes, Bill (bill.barnes@sfgov.org)  
Subject: FW: Dogs off leash in food establishments

Virginia,

Please see the below email which you can discuss internally at ACC to gather any additional relevant information and then reconnect with Bill or me to discuss a response.

Thanks,

Ken Bukowski  
Deputy City Administrator – Chief Financial Officer  
Office of the City Administrator  
1 Dr. Carlton B. Goodlett Place, Room 362  
(415) 554-6172  
Kenneth.Bukowski@sfgov.org

From: Administrator, City (ADM)  
Sent: Monday, November 16, 2015 7:49 AM  
To: Kelly, Naomi (ADM); Bukowski, Kenneth (ADM)  
Cc: Barnes, Bill (ADM)  
Subject: FW: Dogs off leash in food establishments

Fyi.

From: mike@blacksummers.com [mailto:mike@blacksummers.com]  
Sent: Saturday, November 14, 2015 3:08 PM  
To: Senator Leno@senate.ca.gov; Lee, Richard (DPH); Administrator, City (ADM)  
Cc: ACC, (ADM); CityAttorney, (CAFS); Lee, Mayor (MVR); DPH, EnvHealth (DPH)  
Subject: FW: Dogs off leash in food establishments

To State Senator Mark Leno, Director of Environmental Health Richard Lee, and City Administrator Naomi Kelly:

I am writing to the three of you as the most appropriate officials to respond to a persistent problem in my neighborhood (to you, Ms. Kelly, as the administrator who oversees Animal Care and Control in San Francisco).

In 2014, Senator Leno, I wrote to you concerned about a proposed change in the California Health and Safety Code that was going to permit dogs in the outdoor areas of food establishments. You responded on July 2, 2014, assuring me that the law would permit pet dogs into such areas only ‘if specified conditions are satisfied.’ The proposal did in fact become law (with your support, I believe) and did contain certain specified conditions, among them the requirement that any dog be on leash or in a pet carrier. (Health and Safety Code §114259.5(d).)

The H Cafe at 3801 17th Street in San Francisco sits on the corner of 17th and Sanchez Streets. It uses part of the sidewalk just outside its front entrance as part of the cafe, with a few tables and chairs being set up there when the business is open (and weather permits). For months now I have been complaining that the cafe customers are allowed to have their dogs off leash in this public sidewalk area, first with emails to Animal Care and Control (‘ACC’), and then, in the past month or so, with emails to the Environmental Health Section of San Francisco’s Department of Public Health (‘DPH’), most recently just last weekend, November 8, 2015. All to absolutely no avail. Today, November 14, 2015, at about 12:15 p.m. — and still an hour later at 1:15 p.m. — there were several dogs off leash running around in this public sidewalk area of the cafe. Needless to say, I hope, in addition to being a violation of the above state law, this is a violation of San Francisco’s ‘leash law,’ San Francisco Health Code sections 41.12(a) and 41(a), with which food establishments must also comply.

I have made many, many, many relentlessly specific complaints in writing to ACC about this problem, and today I actually phoned ACC to inform them of the off-leash dogs. I was informed by an “Officer Kent” that there was an ongoing “patrol” of the area that had apparently found no violations to date. I asked if anybody had spoken to the owner of the cafe. Apparently, the answer was no, as Officer Kent only replied that he would “add that.”

This kind of “no response” response, and a similar failure to act on the part of ACC with regard to the more general problem of off-leash dogs in my neighborhood, is what made me finally appeal to DPH. As you know, Director Lee, keeping dogs out of food establishments can be somewhat complicated because of the issue of “service dogs” — but with the new law, this is not an issue at all. All dogs in an outdoor area of any food establishment must be on leash or in a carrier. Period, end of story. Moreover, the new law explicitly makes compliance with sidewalk ordinances the responsibility of the owner. (California Health and Safety Code §114259.5(d)(8).)

So I ask you now, Director Lee, as I asked in my last email to your agency, why is H Cafe being permitted to continue to operate in violation of the law?

To you, Ms. Kelly, I ask what my recourse is supposed to be, when the agency that has identified itself to me as the agency responsible for enforcing San Francisco’s leash law fails to do any such thing?

And to you, Senator Leno, I merely suggest that you have to take some responsibility for the enforcement of a law passed by the legislature.

Thank you for your attention.

Mike Black  
455 Sanchez Street

https://outlook.office365.com/owa/?realm=sfgov.org&path=/mail/search
To: "mike@blacksummers.com" <mike@blacksummers.com>
Cc: "cityattorney,sfgov.org", "DPH, EnvHealth (DPH)" <EnvHealth.DPH@sfdph.org>, "Donohue, Virginia (ADM)"
"virginia.donohue@sfgov.org>, "Administrator, City (ADM)"
<city.administrator@sfgov.org>, "Lee, Richard (DPH)"
<richard.lee@sfdph.org>, "Senator Leno (senate.ca.gov)"
<Senator.Leno@senate.ca.gov>, "ACC, (ADM)" <acc@sfgov.org>

Dear Mr. Black,

This is in response to your email below regarding off-leashed dogs on the sidewalk in front of the H Cafe at 380 - 17th Street in San Francisco. Your concern was about dogs being off leash in the seating area of a food establishment.

Upon checking with the Director of Animal Care and Control (ACC), I was informed that the ACC officers had patrolled the area three times at the end of last month in response to your phone call. The officers reported that there were not leash law violations when they were on site.

I've asked the officer to contact you and the cafe's owner directly so that this issue can be resolved.

Sincerely,

Naomi M. Kelly
City Administrator

From: mike@blacksummers.com <mike@blacksummers.com>
Sent: Saturday, November 14, 2015 3:08 PM
To: Senator Leno (senate.ca.gov), Lee, Richard (DPH) <richard.lee@sfdph.org>; Administrator, City (ADM) <city.administrator@sfgov.org>
Cc: ACC, (ADM) <acc@sfgov.org>; City Attorney, (CAT) <cityattorney@sfgov.org>, Mr. Mayor, (MAYR) <mayor@mayor@sfgov.org>; DPH, EnvHealth (DPH)
Subject: Dogs off leash in food establishments

To State Senator Mark Leno, Director of Environmental Health Richard Lee, and City Administrator Naomi Kelly:

I am writing to the three of you as the most appropriate officials to respond to a persistent problem in my neighborhood (to you, Ms. Kelly, as the administrator who oversees Animal Care and Control in San Francisco).

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The H Cafe at 3801 17th Street in San Francisco sits on the corner of 17th and Sanchez Streets. It uses part of the sidewalk just outside its front entrance as part of the cafe, with a few tables and chairs being set up there when the business is open (and weather permits). For months now I have been complaining that the cafe customers are allowed to have their dogs off leash in this public sidewalk area, first with emails to Animal Care and Control ("ACC"), and then, in the past month or so, with emails to the Environmental Health Section of San Francisco's Department of Public Health ("DPH"), most recently just last weekend, November 8, 2015. All to absolutely no avail. Today, November 14, 2015, at about 12:15 p.m. — and still an hour later at 1:15 p.m. — there were several dogs off leash running around in this public sidewalk area of the cafe. Needless to say, I hope, in addition to being a violation of the above state law, this is a violation of San Francisco's "leash law," San Francisco Health Code sections 41.12(a) and 41(a), with which food establishments must also comply.

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This kind of "no response" response, and a similar failure to act on the part of ACC with regard to the more general problem of off-leash dogs in my neighborhood, is what made me finally appeal to DPH. As you know, Director Lee, keeping dogs out of food establishments can be somewhat complicated because of the issue of "service dogs" — but with the new law, this is not an issue at all. All dogs in an outdoor area of any food establishment must be on leash or in a carrier. Period, end of story. Moreover, the new law explicitly makes compliance with sidewalk ordinances the responsibility of the owner. (California Health and Safety Code §114259.5(d)(8).)
So I ask you now, Director Lee, as I asked in my last email to your agency, why is H Cafe being permitted to continue to operate in violation of the law?

To you, Ms. Kelly, I ask what my recourse is supposed to be, when the agency that has identified itself to me as the agency responsible for enforcing San Francisco's leash law fails to do any such thing?

And to you, Senator Leno, I merely suggest that you have to take some responsibility for the enforcement of a law passed by the legislature.

Thank you for your attention.

Mike Black
455 Sanchez Street
San Francisco, CA  94114
mike@blacksummers.com
FW: Off leash animal

ACC, (ADM)

Wed 12/2/2015 3:18 PM

From: Ann Marie Porter [mailto:portcrssf@gmail.com]
Sent: Wednesday, December 02, 2015 3:02 PM
To: ACC, (ADM) <acc@sfgov.org>
Subject: Off leash animal

To whom it may concern,

I am emailing again regarding my neighbor at 514 Vicente. Their Doberman is still being left off leash on the street. Being they are on a busy street, my concern is my children jumping into the street to get away from their dog. Which they have in the past. Their fear is real of large dogs. They still continuously walk their dog around the neighborhood off leash. They say he is nice but unfortunately I do not know him or them to be reassured. Nice dogs can turn too. And for children with fears, it's not fair. Especially when there are laws in place protecting them.

Ann Marie Porter
Independent Beachbody Coach
Cell 650-878-7450
RE: Mr Black

BonGiovanni, Denise (ADM)

Wed, 12 Dec 2015 23:37 PM

Cc: Sadler, Ellie (ADM) <ellie.sadler@sfgov.org>

Thank you so much for meeting with Mr. Black. I'm sure you did your best. If we had the kind of staffing needed to position a full time officer in his neighborhood to enforce leash law, we would.

Denise

From: Sadler, Ellie (ADM)
Sent: Tuesday, December 29, 2015 5:29 PM
To: BonGiovanni, Denise (ADM)
Subject: Mr Black

I met with him today and I updated his memo. I explained what we could do and he said he would keep complaining anyway. I'm not sure I achieved anything at all, we'll see.

Sergeant Eleanor Sadler #20
San Francisco Animal Care and Control
1200 15th St.
San Francisco
CA 94103
415-554-9400
Hi team,

Now that winter seems to be settled in, the field is slowing down and most of 2015’s complaints have been handled (nicely done kids). We still need to keep busy and it’s a good time to work on various projects that have been waiting for action. Some things for you to do so we can maintain our stats are: stray patrols, mc with off leash walkers and educate (kindly), check in with homeless people and make sure they and their pets are doing OK. If you have an in-house project in mind: washing vans, closing complaints, sorting the cage, cleaning out our section of the warehouse etc, let me know what you’re up to so I can explain any gaps in the stat reports. We all worked super hard last year so it’s nice to take a break but think of this as active rest, the swim after the long run, if you will.

Thanks everyone,

Ellie

Sergeant Eleanor Sadler #20
San Francisco Animal Care and Control
1200 15th St,
San Francisco
CA 94103
415-554-9400
Hi guys,

We have one r/p who is relentlessly calling in 1091 patrols on Sanchez x 17th and has been emailing everyone at City Hall about our inability to enforce the leash law. I have made activity A16-250770 as a reusable activity. Please call this In as you are passing the area and educ (and cite as you see fit) anyone seen with dogs off leash. Per DB19 please log as many patrols as possible so that we can show that we are responding, a lot.

Thanks.

E

Sergeant Eleanor Sadler #20
San Francisco Animal Care and Control
1200 15th St,
San Francisco
CA 94103
415-554-9400
Mr. Black:

Per my email to you on 4/21/17, I recently came to learn that ACC’s animal control officers had never been asked to search their emails for records responsive to your 2016 public information requests. I asked them to search for the key words stray, 1091, leash, and at-large. They found numerous emails that we have previously not sent to you. I am sending you a series of 5 emails (so as to manage the email carriers’ size limits) with the responsive documents attached. On behalf of ACC, I sincerely apologize that we are sending you these responsive records so far after your request.

Please note that several duplicates have snuck their way into the attachments. I tried to cull out most of them, but a few got through. Additionally, in a handful of the emails, I have redacted out the personal information (addresses, email addresses, and phone numbers) of complainants per Government Code Section 6254(f).

If you have questions about the emails, please do feel free to contact me.

Sincerely,

Diana Christensen

Diana Christensen
Deputy Director
San Francisco Animal Care and Control
1200 15th Street, San Francisco, CA 94103
415-554-8499
FW: Activities Spay Neuter

Donohue, Virginia (ADM)
Tue 12/1/2015 8:35 AM

To: Guldbech, Vicky (ADM) <vicky.guldbech@sfgov.org>; BonGiovanni, Denise (ADM) <denise.bongiovanni@sfgov.org>; Sadler, Ellie (ADM) <ellie.sadler@sfgov.org>; Kent, Jason (ADM) <jason.kent@sfgov.org>
Cc: Donohue, Virginia (ADM) (ADM) <vicky.guldbech@sfgov.org>; BonGiovanni, Denise (ADM) <denise.bongiovanni@sfgov.org>; Sadler, Ellie (ADM) <ellie.sadler@sfgov.org>; Kent, Jason (ADM) <jason.kent@sfgov.org>

I attachments (1 MB)

ACC Activities by district FY14-15.xlsx

I’m really curious about the story behind these numbers. Let’s review when you get a chance.

Virginia Donohue
Executive Director
San Francisco Animal Care and Control
1200 15th Street
San Francisco, CA 94103
(415)554-9411
(415)557-9950 (fax)

From: Nguyen, Adam (ADM)
Sent: Monday, November 30, 2015 7:54 PM
To: Donohue, Virginia (ADM)
Cc: McMahon, Trisha; Bukowski, Kenneth (ADM); Johnston, Jennifer (ADM)
Subject: RE: Activities Spay Neuter

Listed below is the summary of ACC activities by supervisorial district for FY14-15. The data is probably useful to understand general trends. However, there are strong caveats: about a third of the records were duplicates and thus dropped from the analysis. Of the remaining records, about a quarter could not be matched to an address, thus the distribution by district may be skewed. With those caveats, Districts 10 (Southeast) and 6 (Tenderloin) appear to have the most activity. Strays, wild animals, investigations, and dead animal pick up are the largest categories. There is also a large number of transports associated with District 2. Data file attached.
Subject: RE: Activities Spay Neuter

Hi Virginia – The table below provides a breakdown of licensed dogs by supervisorial district. At 837 dogs (or 4% of the total licensed), District 3 has the fewest registered dogs. The highest concentration of dogs appears to be in the Castro (District 8). About 3% of the addresses listed could not be mapped (e.g. PO box listed), which is a very high match rate. The map attached shows the distribution of licensed dogs, but what it essentially shows is that 18,000 dots are spread over any area with homes. Further inspection of the data suggests that there are some areas with relatively lighter concentrations of licensed dogs, such as the Tenderloin, Pacific Heights, North Beach, Bayview/Hunters Point, and parts of the Mission, though mostly the less dense areas indicate parks/open space and hills.

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Source: Chameleon

Adam Nguyen  
Budget and Planning Director  
Office of the City Administrator  
1 Dr. Carlton B. Goodlett Place, Rm 356  
San Francisco, CA 94102  
(415) 554-4563  
adam.nguyen@sfgov.org
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Source: Chameleon

Unmatched | 577 | 3%
Hey Denise when I was on dispatch the other day a mother was following up on a bite report that happened in the Presidio. There was limited info on the report. Park Police did a simple bite report instead of a full report. The mom got additional info and faxed it over. Long story short her daughter got chased by two dogs, one scratched and the other bit (French Bulldog). The owners of the dogs explicitly told the dog walker to keep them on leash which she did not. The bite report also had the wrong dog as biting and no age. I managed to track down the dog walker with her name and # and made a 42 complaint. The question is should there also be a complaint made for the dog owners as well even though they told the walker not to let them off leash? I could see maybe if it was a med or large dog but it was a Frenchie.

Officer J. Kent #5
Animal Control Officer
Department of Animal Care and Control
City & County of San Francisco
415-554-9431 Ex 2
Fw: OFF LEASH DOGS BEING WALKED ON OTSEGO AVENUE (PITBULL-DAISY AND CHOW-ROSY)

Trinh, Alexander (ADM)
Wed 12/23/2015 4:07 PM
To: Kent, Jason (ADM) <jason.kent@sfgov.org>

From: ACC, (ADM)
Sent: Thursday, October 29, 2015 11:13 AM
To: Trinh, Alexander (ADM)
Subject: Fw: OFF LEASH DOGS BEING WALKED ON OTSEGO AVENUE (PITBULL-DAISY AND CHOW-ROSY)

San Francisco Animal Care and Control
Phone: 415-554-6364  Fax: 415-864-2863
1200 15th Street at Harrison Street
San Francisco, CA  94103

From: Christina Gallardo <gallardoc2231@yahoo.com>
Sent: Wednesday, October 28, 2015 7:16 PM
To: Ordinance, Pit Bull (ADM); ACC, (ADM)
Subject: Re: OFF LEASH DOGS BEING WALKED ON OTSEGO AVENUE (PITBULL-DAISY AND CHOW-ROSY)

IMG_0337.MOV
Christina Gallardo shared from Dropbox

https://outlook.office365.com/owa/?realm=sfgov.org;4/27/2017
On Wednesday, October 28, 2015 6:53 PM, Christina Gallardo <gallardoc2231@yahoo.com> wrote:

Dear ACC,

My neighbors are continuing to walk their big dogs off leash whenever I am walking my dogs. Today Wednesday, 10.28.2015 my neighbor from 185 Otsego was walking his CHOW off leash at 5:15pm. He was following me with his cellphone. I told him "You need to walk your dog on a leash sir." Then he went behind my house into my alley. (I have previously seen Daisy the Pitbull from 148 Otsego defecating in the alley off leash.) I have a video of the Chow Rosy from 185 Otsego Avenue, SF, 94112. It was too large to attach but I will send it in another email.

Additionally, someone is also throwing dog feces in my backyard from my alley which has given my 3 dogs worms. It is the same stalking group of my neighbors who work with a man named Thomas Yagoda who has stalked me, burglarized me and raped me since 2009. Thomas Yagoda sends his gang members and associates to stalk me, take videos of me on their camera phones, yell profanities at me and send their off leash dogs to attack me and my dogs.

Stalking is illegal. Throwing dog feces into my yard is illegal. Letting your dog defecate in alleys and sidewalks is illegal.

WALKING YOUR DOG OFFLEASH IS ILLEGAL!!!!!!!!!!!!

The ACC must enforce the law especially the most basic leash laws for dogs. Off leash dogs are a public nuisance and are dangerous and vicious because dogs can attack other dogs depending on their interaction. For example, the SFSPCA told me not to let my poodle play with or interact with female dogs because female dogs attack him. But today a female Chow was off leash as I went to walk my poodle.

IF DISGUSTING LOWLIFE OWNERS WANT TO STALK ME AND HARASS ME BY WALKING THEIR DOGS OFFLEASH THEN THEY SHOULD NOT HAVE A DOG.

I NEVER SAW ANY DOGS BEING WALKED OFFLEASH IN 2008-2009 WHEN I FIRST ADOPTED A DOG. I NEVER EVEN SAW MY NEIGHBORS OR THEIR DOGS. AFTER I WAS RAPED AND STALKED BY MY NEIGHBOR'S FRIEND/CO-CONSPIRATOR NAMED THOMAS YAGODA MY NEIGHBORS ARE CONTINUING TO STALK ME WITH THOMAS YAGODA(WHO IS NSA-FBI-DIA). THOMAS YAGODA, DAVID STROETHER AND 3 OTHER NEIGHBORS ARE ALL "FRIENDS" AND STALKERS. I AM STICK OF THIS ORGANIZED STALKING.
FIRST, DAVID STROETHER BEGAN STALKING ME WITH HIS OFFLEASH DOG. MY DOG WAS EVEN ATTACKED BY DAVID'S PITBULL PER THOMAS YAGODA'S STALKING AND ATTACK ORDERS. DAVID STROETHER AS THE RING LEADER WITH THOMAS YAGODA HAVE SINCE ASSAULTED ME, STOLEN MY DOGS, BURGLARIZED ME AND GOTTEN OTHER NEIGHBORS TO STALK ME WITH THEIR OFFLEASH DOGS.

PLEASE DO YOUR JOB. THESE GROWN MEN AND SCUMBAGS SHOULD NOT HAVE DOGS OR EVEN BE ABLE TO STALK ME. THESE MEN AND THEIR DOGS ARE RAPE AND STALKING ACCESSORIES AND SHOULD BE INPRISON.

HOWEVER, FOR THE TIME BEING MAKE SURE THEY STAY AWAY FROM ME AND MAKE SURE THEY PUT THEIR DOGS ON LEASHES IF THEY MUST HAVE DOGS AT ALL. SHOULD I GET STAY AWAY AND RESTRAINING ORDERS ON MY NEIGHBORS AND THOMAS YAGODA?

REGARDS,
CHRISTINA GALLARDO
Re: Dogs off leash in food establishments

Sadler, Ellie (ADM)
Mon 11/16/2015 10:48 AM

To: Donohue, Virginia (ADM) <virginia.donohue@sfgov.org>; Kent, Jason (ADM) <jason.kent@sfgov.org>; Campbell, Deb (ADM) <deb.campbell@sfgov.org>;

Yes,
We've received a stream of emails from Mr. Black about the off leash dogs at H café. We do have a patrol complaint open to handle when Officers are able to. We've done 3 patrols and each time there have been no dogs. We would normally only do 3 patrols for such a complaint but as Mr. Black is so insistent, we will do a few more. I will make sure that the next time we actually make contact with the Café owner too. I'm open to any other suggestions on how to resolve this issue.

Ellie

Sergeant Eleanor Sadler #20
San Francisco Animal Care and Control
1200 15th St,
San Francisco
CA 94103
415-554-9400

From: Donohue, Virginia (ADM)
Sent: Monday, November 16, 2015 10:22 AM
To: Campbell, Deb (ADM); Sadler, Ellie (ADM); Kent, Jason (ADM)
Subject: FW: Dogs off leash in food establishments

Can you give me background on this?

Virginia Donohue, Animal Care and Control

From: Bukowski, Kenneth (ADM)
Sent: 11/16/2015 8:10 AM
To: Donohue, Virginia (ADM)
Cc: Kelly, Naomi (ADM); Barnes, Bill (ADM)
Subject: FW: Dogs off leash in food establishments

Virginia,

Please see the below email which you can discuss internally at ACC to gather any additional relevant information and then reconnect with Bill or me to discuss a response.

https://outlook.office365.com/owa/?realm=sfgov.org&url=1&ll-cc=1033&modurl=0...
FW: Dogs inside and outside H Café, 3801 17th Street, at Sanchez

BonGiovanni, Denise (ADM)

Tue 10/13/2015 3:51 PM

To Kent, Jason (ADM) <jason.kent@sfgov.org>:

Hi Jason – please write up a patrol (x 3) complaint.

Much thanks!!

Denise

Captain Denise BonGiovanni #19
San Francisco Animal Care and Control
1200 15th Street
San Francisco, CA 94103
(415) 554-9416

From ACC, (ADM)
Sent: Sunday, October 11, 2015 3:12 PM
To: mike@blacksummers.com; DPH, EnvHealth (DPH)
Cc: Cityattorney, (CAT); Lee, Mayor (MYR)
Subject: Re: Dogs inside and outside H Café, 3801 17th Street, at Sanchez

Greetings Mr. Black and thank you for your message which we have now forwarded to our San Francisco Animal Care & Control Officers Division for review and response.

It may also prove helpful to note that you may call our Emergency Dispatch at 415-554-9400 to relay & receive a more immediate response from one of our San Francisco Animal Care & Control Officer's.

Many thanks again Mr. Black,

Katheryne

https://outlook.office365.com/owa/?realm=sfgov.org&locale=en-us&url=1&l-cc=1033&modurl=0... 4/27/2017
From: mike@blacksummers.com <mike@blacksummers.com>  
Sent: Sunday, October 11, 2015 1:57 PM  
To: DPH, EnvHealth (DPH)  
Cc: ACC, (ADM); Cityattorney, (CAT); Lee, Mayor (MYR)  
Subject: Dogs inside and outside H Café, 3801 17th Street, at Sanchez

To the San Francisco Department of Public Health, Environmental Health section:

I have complained several times to Animal Care and Control about the fact that customers are allowed to have dogs off leash on the sidewalk outside the H Café where a few tables and chairs are set up. Maybe the San Francisco Department of Public Health will prove more effective in enforcing the law at this food facility than ACC has been. Specifically:

1. The recently revised California Health and Safety Code section 114259.5 does permit dogs in an independently accessible outdoor area of a restaurant or café, but requires that any such dog be on leash. Customers of the H Café are continually allowed to have their dogs off leash at this busy corner. Indeed, as far as I can tell, it appears to be a daily occurrence. This also happens to be a violation of San Francisco’s leash law, Health Code sections 41.12(a) and 41(a). Just today, October 11, 2015, at about 12:15 p.m., there were two dogs off leash outside the café, one actually having been left unattended while its owner went into the café.

2. At the same time that those dogs were off leash outside the café, a man was allowed to enter the café with two dogs (on leash). This has happened many times before at this café, but not as regularly as the off-leash dogs outside.

Please advise the owner of the laws and make some effort to have him comply with them. Neither I nor anybody else should ever have to think twice about how to navigate a public sidewalk because of off-leash dogs.

Mike Black  
455 Sanchez Street  
San Francisco, CA 94114  
mike@blacksummers.com
Coyote Update: Proactive Action Items

Campbell, Deb (ADM)

Mon 10/5/2015 2:30 PM
Deleted Items

Hello and Happy Monday,

The coyote issues seem to be decreasing - good news for everyone. Below are the proactive action items put in place after the latest incidents at Stern Grove. If you get calls from the public, feel free to share what has been done by ACC, R&P and Project Coyote. Note the upcoming coyote hazing workshop listed below - it’s only two days away.

- SFACC and RPD acted quickly and decisively; called in a coyote expert from Project Coyote to assess and advise. Project Coyote is a national coalition of canid scientists and environmental educators
- put barriers in place immediately after first dog incident to reduce dog-coyote interaction
- posted educational materials and warning signs, including Be Coyote Aware and Feeding Wildlife co-branded with Project Coyote, RPD, ACC, and SF Audubon
- distributed public education materials provided by Project Coyote
- called a Coyote Summit meeting hosted by SFACC and attended by landholders RPD, GGNRA, Presidio Trust, with Project Coyote
- ordered wildlife proof trash cans
- trained on the ground citizen leaders; daily reports received and evaluated
- closed trail around Pine Lake to dogs after small dog off leash in an on leash area, chased coyote; the dog has not been found

We can also report zero conflicts since barriers were put in place and the trail was temporarily closed to dogs. Community education efforts continue with two public events scheduled:

Coyote Hazing Field Training presented by Gina Farr, Project Coyote’s national coyote educator, at 5:30pm this Wednesday, October 7th, Stern Grove dog park

Community Meeting, “Coyotes in San Francisco” attended by SFACC, SF Rec & Parks, GGNRA, Presidio Trust, with key presentation by Camilla Fox, Project Coyote’s executive director, at 4pm October 22, Stern Grove clubhouse

Deb

Deb Campbell
Animal Care & Control
Rescue Row
1200 15th St.
San Francisco, CA, 94103
415-554-9427 (Office)
415-554-9400 (Animal Emergencies)
415-554-6364 (ACC Front Desk)

[www.sfgov.org/ACC]
Good Afternoon:

Notice is hereby given that the Compliance and Amendments Committee (Committee) of the Sunshine Ordinance Task Force (Task Force) shall hold hearings on complaints listed below to: 1) review the status of the Order of Determination; 2) determine if the Task Force has jurisdiction; 3) review the merits of the complaints; and/or 4) issue a report and/or recommendation to the Task Force.

Date: May 30, 2017
Location: City Hall, Room 408
Time: 4:30 p.m.

Complaints:

**File No. 16092: Hearing on the Status of the Order of Determination** – Complaint filed by Anonymous against Dr. Lydia Leung, Department of Public Health, for violating Administrative Code (Sunshine Ordinance), Section 67.25(a), by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

(On February 1, 2017, the Sunshine Ordinance Task Force (SOTF) heard the matter, found violations of the Sunshine Ordinance, requested that the Respondent provide all communications and documents related to the Family Health Center Patient Advisory Committee for the period of January 1, 2014, through September 18, 2016, and/or provide justification for any redactions/withholdings, and referred the matter to the Compliance and Amendments Committee.)

**File No. 16109: Hearing on the Status of the Order of Determination** – Complaint filed by Mike Black against Animal Care and Control for violating Administrative Code (Sunshine Ordinance), Section(s) 67.21(d) and 67.24(i), by failing to respond to a public records request in a timely and complete manner and withholding records and not citing an appropriate provision of the Sunshine Ordinance.

(On February 1, 2017, the Sunshine Ordinance Task Force (SOTF) heard the matter, found violations of the Sunshine Ordinance, requested that the Respondent provided records related to the City’s dog lease laws for the period of January 1, 2014, through February 1, 2016, and referred the matter to the Compliance and Amendments Committee.)

**File No. 16117: Hearing on the Status of the Order of Determination** – Complaint filed by Ray Hartz against City Librarian Luis Herrera and the Public Library for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.29-6, by failing to disclose the amount and source of all outside funds.
or services worth more than one hundred dollars in aggregate, accepted by the Public Library for the purpose of carrying out or assisting any City function, on their website.

(On March 1, 2017, the Sunshine Ordinance Task Force (SOTF) heard the matter, found violations of the Sunshine Ordinance referred the matter to the Compliance and Amendments Committee to review the draft memorandum of Understanding between the Public Library and the Friends of the Public Library to ensure that Administrative Code (Sunshine Ordinance), Section 67.29-6, has been addressed.)

File No. 17047: Complaint filed by Angela Greben against President London Breed, Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to request for public records in a timely and/or complete manner.

Complainants: Your attendance is required for this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Documentation (evidence supporting/disputing complaint)

For a document to be considered, it must be received at least five (5) working days before the hearing. For inclusion into the agenda packet, supplemental/supporting documents must be received by 5:00 pm, May 23, 2017.

Victor Young
Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, City Hall., Room 244
San Francisco CA 94102
phone 415-554-7724 | fax 415-554-5163
victor.young@sfgov.org | www.sfbos.org

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Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk’s Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk’s Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.