

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Compliance and Amendments Committee

Date: September 24, 2019

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Completed by: C. Leger Date 9/17/19

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

Leger, Cheryl (BOS)

From: Google Forms <sfbdsupvrs@gmail.com>
Sent: Wednesday, August 21, 2019 4:08 AM
To: SOTF, (BOS)
Subject: New Response Complaint Form

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Your form has a new entry.

Here are the results.

**Complaint against which
Department or
Commission**

Supervisor of Records (aka City Attorney)

**Name of individual
contacted at Department
or Commission**

Dennis Herrera (City Attorney), Bradley Russi (Deputy City Attorney)

Alleged Violation

Public Records

**Sunshine Ordinance
Section:**

67.21(d)

**Please describe alleged
violation**

If the Task Force has any mechanism to take up this complaint as the SOTF en banc, instead of first via a committee, to avoid months of waiting, I would like to take that path. The Supervisor of Records' violation of the Sunshine Ordinance is especially dangerous to San Francisco's public records regime, since it is he who is responsible (among others) for enforcing the public's access to records.

SF Admin Code 67.21(d) states "...The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. ..."

There are no extensions or exceptions to this 10 day deadline.

I petitioned the Supervisor of Records on May 15th for a determination re: the records at issue in SOTF 19047, Anonymous vs. Mayor (re: electronic calendar records). The deadline was therefore May 25, no later, for a legal opinion from the Supervisor of Records.

On May 21st, Deputy City Attorney Russi said " I hope to have a response to you no later than the end of next week."

On June 7th, Russi said "We are still working through the issues raised by your petition and appreciate your patience."

On July 1st, Russi said they "...won't be able to respond to your petitions until next week. "

On July 24th, Russi said "We are continuing to look into the questions you have raised and hope to be able to provide a response soon."

This is a clear violation of 67.21(d).

[[Please note the Supervisor of Records has similarly delayed a response to a petition re: SOTF 19044, but since the respondent in 19044 is the City Attorney himself (who is in fact the Supervisor of Records), that allegation is being handled in 19044 itself.]]

Name Anonymous

Email 72902-46637773@requests.muckrock.com

If anonymous, please let us know how to contact you. Thank you.

Email 72902-46637773@requests.muckrock.com

Sent via [Google Forms Email](#)



DENNIS J. HERRERA
City Attorney

PEDER J. V. THOREN
Deputy City Attorney

Direct Dial: (415) 554-3846
Email: Peder.Thoren@sfcityattty.org

**MEMORANDUM
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force
FROM: Peder J. V. Thoren
Deputy City Attorney
DATE: September 13, 2019
RE: Complaint No. 19089: Anonymous v. Dennis Herrera and Bradley Russi, Office of
the City Attorney

COMPLAINT

An anonymous complainant ("Complainant") alleges that the Office of the City Attorney, City Attorney Dennis Herrera, and Deputy City Attorney Bradley Russi (collectively, "Respondents"), violated the Sunshine Ordinance by failing to timely respond to Complainant's petition.

COMPLAINANT FILES COMPLAINT

On August 21, 2019, Complainant filed this complaint with the Task Force, alleging that Respondent failed to timely respond to Complainant's petition, in violation of Administrative Code section 67.21(d).

JURISDICTION

The individually named respondents and the City Attorney's office are subject to the provisions of the Sunshine Ordinance. Respondents do not dispute jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21(d) provides that if a custodian of records fails to comply with a public records request, the person making the request may petition the supervisor of records, the City Attorney, for a determination regarding whether the records sought are public.

APPLICABLE CASE LAW

- None

BACKGROUND

On May 8, 2019, Complainant requested that the Office of the Mayor immediately disclose:

an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices,

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exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items, from April 28 to May 4, 2019 (inclusive).

Although as indicated Complainant initially requested the responsive items in their original format, Complainant went on to state: "if you choose to convert calendar items, for example, to PDF or printed format, to easily redact them, you must ensure that you have preserved the full content of the original calendar item record ..., which contains many detailed headers beyond the ones generally printed out."

On May 9, 2019, the Mayor's office provided calendar entries for the dates requested. Those documents were produced in PDF format for "ease of transferability and accessibility, consistent with Cal. Gov. Code 6253.9(a)(1)." The Mayor's office noted that, pursuant to 6253.9(f), they were not required to provide electronic records "in an electronic format that would jeopardize or compromise the security or integrity of the original record," and the Mayor's office contended that using a PDF format furthered those ends.

In Complaint No. 19047, Complainant raised two primary contentions. First, Complainant contended that the response was incomplete because

the original electronic format of the Mayor's calendar may contain substantial additional information (such email addresses, conference call numbers, actual names of attendees instead of group descriptions, the acceptance/rejection of individual attendees to the invite, etc.) than that which was printed out for us.

In Complainant's May 10, 2019, submission to the Task Force, Complainant further explained that Respondents had withheld "headers and metadata." In response, the Mayor's office argued that the documents produced were from a calendar that complied with Proposition G, which, *inter alia*, added to the Sunshine Ordinance the requirement that certain officials maintain calendars with certain, specified information. See Admin. Code 67.29-5. Complainant did not dispute this contention; rather, Complainant contended that Proposition G only sets minimum requirement for calendars and does not provide a basis for withholding whatever other disclosable public records/information may exist.

The primary dispute regarding information withheld with respect to Complaint No. 19047 relates to the metadata associated with the calendar.¹ As an initial matter, the Mayor's office contended that they "do[] not routinely maintain specific types of metadata or index them as records," and that they "and City departments generally do not search for and provide metadata in response to records requests." They contended that they lack staff with expertise in using, maintaining or searching metadata. Further, the Mayor's office contended that producing metadata "can subject the City to security risks and can lead to the inadvertent disclosure of

¹ The Mayor's office contended that certain specific types of metadata, e.g., attachments, exhibits, or inline images, do not exist. The dispute appears limited to headers, metadata, and timestamps, which we will collectively refer to as "metadata."

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privileged information,” and that the “substantial need for confidentiality outweighs any interest the requester may have in accessing this information.”

The present complaint is a follow-up to Complaint No. 19047. San Francisco Administrative Code sec. 67.21(d) provides:

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

In the present complaint, Complainant asserts that it filed a petition with the supervisor of records, *i.e.*, the City Attorney (*see* San Francisco Administrative Code sec. 67.20(c)), regarding Complaint No. 19047 on May 15, 2019. Complainant contends that the response to the petition was untimely. It is undisputed that the City Attorney’s office did not provide a substantive response to Complainant’s petition until August 26, 2019. Respondents contend that the 10-day deadline set forth in the Sunshine Ordinance for responding to a request is not an “absolute deadline.” Rather, they contend that “the 10-day time period referenced in [San Francisco Administrative Code] Section 67.21(d) must be treated as a guideline for the Supervisor of Records to follow, but not as an absolute deadline.” In a September 6, 2019, filing, Complainant points to the language in Section 67.21(d), “*shall* inform the petitioner, as soon as possible and within 10 days” (emphasis added), and contends that this imposes a mandatory, non-discretionary duty.

In Respondents’ August 26 substantive response to the petition, they contend “that the responsive calendar entries include no email addresses, attachments, appendices, exhibits, or inline images, and thus the Mayor’s Office did not improperly withhold this information.” With respect to metadata, Respondents agreed with the Mayor’s office that disclosure of such information may compromise the City’s computer system. Separately, Respondents also contend

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that the Mayor's office does not maintain the relevant data in the formats requested by Complainant.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS

- Is the 10-day deadline set forth in San Francisco Administrative Code sec. 67.21(d) to be strictly applied or is it simply a guideline? Does the "rule of reason" excuse compliance with this deadline?
- What remedies exist if the 10-day deadline has been violated, where the department has later provided a response, even if arguably untimely?
- What is the legal basis for withholding metadata where it is associated with an otherwise disclosable public record? Does producing the metadata requested by Complainant require Respondents to create a record that would not otherwise exist?
- Complainant appears to accept Respondents' contention that some metadata may reflect sensitive information. Could that information be redacted, while producing other metadata?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did Respondents violate the Sunshine Ordinance by failing to render a determination regarding Complainant's petition in a timely manner?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

* * *

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CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)

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

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

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

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

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

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

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

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

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

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

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

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

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

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

**Sunshine Ordinance Task Force
Complaint Summary**

File No. 19089

Anonymous v. Dennis Herrera, Bradley Russi

Date filed with SOTF: 8/21/19

Contacts information (Complainant information listed first):

Anonymous (72902-46637773@requests.muckrock.com) (Complainant)

Dennis Herrera, Bradley Russi (Bradley.Russi@sfcityatty.org) John Cote, Communications
Director (John.Cote@sfcityatty.org), Office of the City Attorney (Respondent)

File No. 19089: Complaint filed by Anonymous against Dennis Herrera, Bradley Russi and the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(d), by failing to respond to a public records request in a timely and/or complete manner.

Administrative Summary if applicable:

Complaint Attached.

Complainant/Petitioners Documents Submission

Leger, Cheryl (BOS)

From: 72902-46637773@requests.muckrock.com
Sent: Tuesday, September 17, 2019 2:00 PM
To: SOTF, (BOS)
Subject: RE: California Public Records Act Request #19089
Attachments: 19089-Analysis-20190917-c.pdf

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

September 17, 2019

This is a follow up to request number 19089:

**** FILE 19089 ****

Submitted before 5pm, Sept 17 for the Sept 24 agenda:

Last evening, the Sup. of Records purported to use the "rule of reason" to avoid its 10 day deadline for complex/numerous petitions in various cases, which also affects one of the petitions in the 19089 series of requests.

Please include in the Sep 24 agenda packet, the attached statistical analysis of 4 years of petition responses that shows Respondent regularly fails to meet its 67.21(d) deadline, and not merely in unusual cases.

Thanks,
Anonymous

Filed via MuckRock.com
E-mail (Preferred): 72902-46637773@requests.muckrock.com
Upload documents directly:
https://accounts.muckrock.com/accounts/login/?next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Foffice-of-the-mayor-3891%252Fapril-28-may-4-2019-calendar-immediate-disclosure-request-72902%252F%253Femail%253Dsotf%252540sfgov.org&url_auth_token=AAAxJlxKbHL78P4hPis99lsuo1Y%3A1iAKZP%3AEqZqy5WJVErtFyJmlQur69iNDL8
Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):
MuckRock News
DEPT MR 72902
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On Sept. 16, 2019:
Subject: RE: California Public Records Act Request #19047
**** FILE 19089 ****

I apologize. I do understand the confusion it may cause, but unfortunately I am unable to edit or control the subject line in the MuckRock email system. I will be certain to put the file number as the first line if there's a conflict. Since both complaints arise out of a single request, the system unfortunately just sticks with the first one.

Thanks,
Anonymous

On Sept. 16, 2019:
Subject: RE: California Public Records Act Request #19047

I am in receipt of and thank you for your email below. Can you please in the future put the correct File No. in the subject line of your emails and in the body? You say in your email that this is a follow up to 19047 and it isn't. Thank you.

Cheryl Leger
Assistant Clerk, Board of Supervisors
Tel: 415-554-7724

[CustomerSatisfactionIcon]<<http://www.sfbos.org/index.aspx?page=104>> Click here<<http://www.sfbos.org/index.aspx?page=104>> to complete a Board of Supervisors Customer Service Satisfaction form.

The Legislative Research Center<<http://www.sfbos.org/index.aspx?page=9681>> provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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.

On Sept. 16, 2019:
Subject: RE: California Public Records Act Request #19047
Dear Anonymous:

I am in receipt of and thank you for your email below. Right now I do not have a call in number for you, but will provide it once I do.

Cheryl Leger
Assistant Clerk, Board of Supervisors
Tel: 415-554-7724

[CustomerSatisfactionIcon]<<http://www.sfbos.org/index.aspx?page=104>> Click here<<http://www.sfbos.org/index.aspx?page=104>> to complete a Board of Supervisors Customer Service Satisfaction form.

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On Sept. 16, 2019:
Subject: RE: California Public Records Act Request #19047
***** FILE 19089 *****

Thank you. My documents for the Sept 24 agenda packet, for #19089, were sent attached on Sept. 11, and I don't have any to add.

I will be present telephonically -- is 415-554-9632 the correct number?

Documents:

https://cdn.muckrock.com/outbound_request_attachments/94383620Anonymous/72902/19089-Committee-20190911.pdf

https://cdn.muckrock.com/outbound_request_attachments/94383620Anonymous/72902/19089-Rebuttal-20190906_sLZ9SVZ.pdf

https://cdn.muckrock.com/outbound_request_attachments/94383620Anonymous/72902/2-SF-Supervisor-Appeal-For-Mayor-72902-ar.pdf

Thanks,
Anonymous

On Sept. 16, 2019:
Subject: RE: California Public Records Act Request #19047
Dear Anonymous:

Here is the DCA Memo; just received it last Friday afternoon.

Cheryl Leger
Assistant Clerk, Board of Supervisors
Tel: 415-554-7724

[CustomerSatisfactionIcon]<<http://www.sfbos.org/index.aspx?page=104>> Click here<<http://www.sfbos.org/index.aspx?page=104>> to complete a Board of Supervisors Customer Service Satisfaction form.

The Legislative Research Center<<http://www.sfbos.org/index.aspx?page=9681>> provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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On May 8, 2019:

Subject: California Public Records Act Request: April 28-May 4, 2019 Calendar - Immediate Disclosure Request

This is an Immediate Disclosure Request under the San Francisco Sunshine Ordinance, made before close of business May 8, 2019.

** Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the MuckRock.com service used to issue this request (though I am not a MuckRock representative). **

We request under the San Francisco Sunshine Ordinance (Ordinance) and the California Public Records Act (CPRA):

"1. an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items, from April 28 to May 4, 2019 (inclusive)."

We remind you of your obligations to provide electronic records in the original format you hold them in. Therefore, calendars exported in the .ics, iCalendar, or vCard formats with all non-exempt headers, metadata, attachments, etc. are best. Such formats are easily exportable from Google Calendar, Microsoft Outlook, Microsoft Exchange or other common calendaring/email systems.

However, if you choose to convert calendar items, for example, to PDF or printed format, to easily redact them, you must ensure that you have preserved the full content of the original calendar item record (as specified in request "1"), which contains many detailed headers beyond the ones generally printed out. If you instead provide PDFs or printed items with only a few of the headers or lacking attachments/images, and therefore withhold the other headers/attachments without justification, you may be in violation of SF Admin Code 67.26, 67.27, Govt Code 6253(a), 6253.9, and/or 6255, and we may challenge your decision.

Please provide only those copies of records available without any fees. If you determine certain records would require fees, please instead provide the required notice of which of those records are available and non-exempt for inspection in-person if we so choose.

I look forward to your immediate disclosure.

Sincerely,
Anonymous

Filed via MuckRock.com

E-mail (Preferred): 72902-46637773@requests.muckrock.com

Upload documents directly:

https://accounts.muckrock.com/accounts/login/?next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Foffice-of-the-mayor-3891%252Fapril-28-may-4-2019-calendar-immediate-disclosure-request-72902%252F%253Femail%253Dsotf%252540sfgov.org&url_auth_token=AAAxJixKbHL78P4hPis99lsuo1Y%3A1iAKZP%3AEqZqy5WJVErtFyJmlQur69iNDL8

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News

DEPT MR 72902

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.



SUNSHINE ORDINANCE TASK FORCE

Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco CA 94102
sotf@sfgov.org
sent via email to Task Force

Your ref.
#19089

Date
2019-09-17

RE: SF Sunshine Ordinance complaint against City Atty, ref SOTF 19089

To Whom It May Concern:

NOTE: Every response you send or provide (including all responsive records) may be automatically and immediately visible to the general public on the MuckRock.com web service used to issue this request. (I am not a representative of MuckRock)

I have attached my analysis of the 2015, 2016, 2017, and 2018 Supervisor of Records' annual reports summaries in Attachment 1. Out of 51 petitions received in those 4 years:

- Respondent provided a determination in 15 of the 51 cases (29%), in all cases denying the petition and ruling the public agency was in fact correct.
- Out of these 15 determinations, the 10-day deadline was met in only 2 (13% of 15) of the cases. When the 10-day deadline was not met, the response was after 33.5 days on average, with a minimum of 11 and maximum of 70. The response at issue in this case 19089 was after 103 days.
- Respondent appears to have never granted a petition in 4 years.
- Respondent provided "no determination" in 35 cases, because it deemed for various reasons none was "needed," and stated the petition was outside of its scope in 1 case. Out of these 35 cases, many involved the agency disclosing the records eventually (perhaps, but unknown due to a claimed privilege shield, due to intra-city convincing by the Supervisor). However, the Supervisor should still have provided the written determination that was petitioned for, as there is no mootness rule in SFAC 67.21. One might suspect these determinations would be favorable to the petitioner, but sadly are not in the record because the Supervisor believes it is not necessary.

The evidence suggests the failure to meet the 10-day requirement (or even not provide a determination at all) is not unique to my case 19089, and is in fact a regular occurrence.¹ It suggests the non-compliance with a 10-day deadline is in fact not only for complex cases but for other reasons – perhaps a lack of resources, budgeting, or prioritization of the important functions of the Supervisor of Records, an avoidance of requiring itself and its peer city agencies to exactly follow the voters' will in enacting the Ordinance, or some other reason.

¹On Sept. 5, Respondents claimed "However, this Office – which the Sunshine Ordinance entrusts with the Supervisor of Records function – has never viewed the 10 days as an absolute deadline. In some situations, a request may be unusually complex, in terms of legal issues or factual issues or both, or may require the requester or the responding department to follow up in order to make the issue or issues ripe for determination."

Finally, the DCA memo in this case suggests a possible "rule of reason" excuse for noncompliance. The Respondent (Supervisor of Records, in another case), claims that the "rule of reason" may allow it to delay a determination under SFAC 67.21(d) beyond 10 days, due to the complexity and number of my petitions. See their letter in Attachment 2, and my reply in Attachment 3 in which I explain why the rule of reason does not apply to determinations of record exemption, even if it may apply to the *production* of voluminous records.

Sincerely,

Anonymous

Petition	Determination	"Petition closed"	Determination Days Closure Days	Status	Reasons	Sources
2015-Feb-27		2015-Apr-08	40	"No determination needed"	Records provided	[4]
2015-Mar-17	2015-May-26		70	Denied	GC 6254(k), 53087.6(e)(2), SF Charter 4.123	[4]
2015-Apr-01		2015-Apr-17	16	"No determination needed"	Records provided	[4]
2015-Apr-07		2015-Apr-13	6	"No determination needed"	No responsive records	[4]
2015-May-28	2015-Jun-17		20	Denied	GC 6254(a), SFAC 67.24	[4]
2015-May-29		2015-May-29	0	"No determination needed"	Outside of scope	[4]
2015-Jun-22	2015-Jun-30		8	Denied	GC 6254(k), EC 1041, 1040	[4]
2015-Jul-10		2015-Jul-14	4	"No determination needed"	No responsive records	[4]
2015-Jul-21		2015-Jul-21	0	"No determination needed"	Outside of scope	[4]
2015-Nov-19	2015-Dec-07		18	Denied	GC 6254(c,f,k)	[4]
2015-Dec-30	2016-Jan-29		30	Denied	GC 6254(f,k)	[4]
2016-Jan-12		2016-Jan-26	14	"No determination needed"	Dept. produced responsive records	[3]
2016-Jan-20		2016-Feb-02	13	"No determination needed"	Dept. agreed to produce records	[3]
2016-Feb-05		2016-Feb-18	13	"No determination needed"	Dept. agreed to provide "summary"	[3]
2016-Feb-08	2016-Mar-07		28	Denied	GC 6254(c,k), EC 954, dept. produced other records	[3]
2016-Feb-16	2016-Mar-07		20	Denied	GC 6254(c,k), EC 954, 1041, dept. produced other or had no records	[3]
2016-Feb-19		2016-Mar-10	20	"No determination needed"	Department "addressed petitioner's concern"	[3]
2016-Mar-17		2016-Mar-18	1	"No determination needed"	Dept. produced the report	[3]
2016-Mar-22		2016-Mar-23	1	"Outside the scope of review"	Timeliness outside scope of review	[3]
2016-May-12		2016-Jun-30	49	"No determination needed"	Dept. produced responsive records	[3]
2016-May-23		2016-Aug-10	79	"No determination needed"	Dept. produced or had no records	[3]
2016-Jun-01		2016-Jun-02	1	"No determination needed"	Dept posted the report	[3]
2016-Jun-06		2016-Jun-30	24	"No determination needed"	Dept. produced responsive records	[3]
2016-Jul-07	2016-Jul-12		5	Denied	No actual request submitted to dept.	[3]
2016-Aug-12		2016-Aug-19	7	"No determination needed"	Dept. produced or had no records	[3]
2016-Sep-06		2016-Sep-09	3	"No determination needed"	No responsive records	[3]
2016-Sep-07	2016-Oct-31		54	Denied	6254(c); Constitutional privacy; indiscriminate	[3]
2016-Sep-08		2016-Sep-21	13	"No determination needed"	Dept. agreed to produce records	[3]
2016-Nov-21		2016-Nov-30	9	"No determination needed"	Dept. agreed to produce records	[3]
2017-Jan-13	2017-Feb-22		40	Denied	Privacy	[1]
2017-Jan-30	2017-Feb-17		18	Denied	GC 6254(f); SFAC 67.24(d)	[1]
2017-Jan-31		2017-Feb-01	1	"No determination needed"	Dept. produced responsive records	[1]
2017-Apr-27		2017-May-10	13	"No determination needed"	No responsive records	[1]
2017-Jun-12		2017-Jun-20	8	"No determination needed"	Dept. produced responsive records	[1]
2017-Jun-20		2017-Jun-27	7	"No determination needed"	Dept. produced responsive records	[1]
2017-Jun-24		2017-Jun-26	2	"No determination needed"	Dept. produced responsive records	[1]
2017-Jun-29		2017-Jul-06	7	"No determination needed"	No jurisdiction	[1]
2017-Jul-24		2017-Aug-07	14	"No determination needed"	No jurisdiction	[1]
2017-Aug-17		2017-Sep-22	36	"No determination needed"	Dept. produced responsive records	[1]
2017-Nov-10		2017-Nov-13	3	"No determination needed"	No responsive records	[1]
2017-Nov-17		2017-Nov-17	0	"No determination needed"	No responsive records	[1]
2017-Dec-05		2017-Dec-07	2	"No determination needed"	No responsive records; No jurisdiction	[1]
2017-Dec-19		2018-Jan-10	22	"No determination needed"	No responsive records; No jurisdiction	[1]
2018-Apr-06		2018-Apr-17	11	"No determination needed"	Dept. produced responsive records	[2]
2018-Apr-17	2018-Jun-12		56	Denied	No responsive records; Dept. produced records; SFAC 67.24(e)(1), etc.	[2]
2018-Jun-01		2018-Jun-05	4	"No determination needed"	Did not withhold or redact records.	[2]
2018-Aug-20		2018-Aug-22	2	"No determination needed"	No responsive records	[2]
2018-Aug-24	2018-Sep-14		21	Denied	No jurisdiction; outside of scope	[2]
2018-Sep-06		2018-Oct-01	25	"No determination needed"	Dept. produced responsive records	[2]
2018-Nov-02	2018-Dec-03		31	Denied	GC 6254(f)(1), 6254(k)	[2]
2018-Dec-10	2018-Dec-21		11	Denied	SFAC 67.29-5	[2]

Sources

- [1] - <https://www.sfcityattorney.org/wp-content/uploads/2015/08/18th-Annual-SOR-Report-FINAL.pdf>
- [2] - <https://www.sfcityattorney.org/wp-content/uploads/2019/01/19th-Annual-Report-of-SOR-final.pdf>
- [3] - <https://www.sfcityattorney.org/wp-content/uploads/2015/08/17thAnnualReport.pdf>
- [4] - <https://www.sfcityattorney.org/wp-content/uploads/2015/08/Sixteenth-Annual-Report-of-the-Supervisor-of-Records.pdf>

ATTACHMENT 2

Subject: RE: California Public Records Act Request: More Calendars - Immediate Disclosure Request



To Whom it May Concern:

We write to provide an update on the status of our consideration of your petitions. Since September 6, you have submitted five separate petitions to the Supervisor of Records and numerous other email communications concerning prior petitions. We have already responded to four other petitions you submitted in recent months.

Due to the volume of petitions and the complexity of the issues raised, we are invoking the rule of reason and will respond to your petitions within a reasonable time period with the goal of addressing each petition within 30 days of submission. As we recently explained in response to one of your complaints with the Sunshine Ordinance Task Force, we strive to respond to petitions within the 10-day period specified in Section 67.21(d), but we don't view it as an absolute deadline. Particularly here, where the issues raised are novel and you have submitted numerous petitions over a short time period, responding within 10 days is not feasible because doing so would unreasonably impinge on our ability to perform our other responsibilities.

Please let us know if you have a preference in terms of which petition to prioritize. Otherwise, we will likely consider them in the order received. Thank you.

Bradley Russi
Deputy City Attorney
Office of City Attorney Dennis Herrera
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102
www.sfcityattorney.org

Supervisor of Records
City Hall, Rooms 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco CA 94102
supervisor.records@sfcityattty.org
sent via email

Our ref.
#79117-REP

Date
2019-09-16

RE: Various SF Sunshine Ordinance petitions – #79117-REP

To the Supervisor of Records:

NOTE: Every response you send or provide (including all responsive records) may be automatically and immediately visible to the general public on the MuckRock.com web service used to issue this request. (I am not a representative of MuckRock).

This is a response to your letter of Sept. 16 in which you purport to invoke the so-called “rule of reason” to avoid responding to Supervisor of Records petitions within the 10-day timeline contemplated by SF Admin Code (SFAC) 67.21(d).

Petitions

I have attached in Exhibit A a list of certain of the petitions I have made¹ and their general topics for your convenience. While I do not concede, and dispute below, that it is proper for your office to delay my petitions based on the number you believe I have anonymously made or their complexity, my prioritized order by the exhibit row number is: email/text [19, 13, and 12], calendars [14, 6, and 5 (where no clear determination was apparent)], and non-profits [27]. Your analysis for one petition in each group should probably inform the others and reduce overall response time. Furthermore, I explicitly stated in some petitions that while you may need more time for the complex parts of my petitions (listings of various headers), the other parts still need timely responses.

I am not clear what determination was issued in your prior row 5 response, as there was neither a grant nor a denial explicitly stated.

The more important issue however is that it does not appear the Supervisor of Records has performed a complete analysis on my prior petitions that it has responded to. It is your office’s responsibility to determine if “any part” of a record is public. When my first petitions regarding

¹While I am happy to indicate that the specific petitions in Exhibit A have all been made by me, I have no obligation to state that multiple anonymous petitions do in fact belong to me, nor can I be required in any way to indicate that any other possible past or future petitions were or will be made by me as well. No provision of the SFAC 67.21 petition process requires providing my name or other identity, and records requestors and petitioners may have many reasons to remain completely anonymous, both within and across petitions and requests, including to prevent government retaliation against the exercise of their federal First Amendment or state Art. 1, Sec. 3 constitutional rights.

emails and calendars were initially made, even though your office claimed² that those petitions took an extraordinary amount of time (approx. 3 months each) due to research with its IT staff, it denied the petitions in whole, without even considering in your response the different kinds of metadata withheld, and even though there is some extremely basic metadata (like city employee email addresses in To/From/etc. fields) that are obviously public parts of records. In addition, the issue that non-Prop G calendars should be turned over was not even considered until I made a second petition for them.

Because your office does not appear to have considered these parts of records in my initial petitions, I am forced to write some of my currently pending petitions in a very verbose and, in your estimation, complex way. The Sunshine Ordinance forces the government to account for its claimed exemptions more specifically than the CPRA. Unlike the arguments of some under the CPRA, under the Sunshine Ordinance, even documents that are mostly redacted must still be turned over with whatever small amounts of non-exempt information they contain, and the Supervisor of Records needs to more thoroughly do its duty to identify those parts.

When you do provide your determination, please be clear whether you are granting my petition in any part (i.e. you have determined that any part of the record requested is public). There is no mootness provision in SFAC 67.21 for these determinations, even if an order is no longer needed, and moreover your written determinations of the public parts of records obviates the need for me to continue to file these petitions against each agency and each record request separately.³

Rule of reason

The rule of reason is primarily defined judicially⁴ by the Cal. Supreme Court in *Bruce v. Gregory* (1967) 65 Cal. 2d:

We therefore hold that the rights created by section 1892 of the Code of Civil Procedure and section 1227 of the Government Code, are, by their very nature, not absolute, but are subject to an implied rule of reason. Furthermore, this inherent reasonableness limitation should enable the custodian of public records to formulate regulations necessary to protect the safety of the records against theft, mutilation or accidental damage, to prevent inspection from interfering with the orderly function of his office and its employees, and generally to avoid chaos in the record archives.

and extended to what is now the CPRA in *Rosenthal v. Hansen* (1973) 34 Cal. App. 3d. Note that this rule applies to voluminous *productions*, not the *determinations* that agencies must provide within defined timelines in the CPRA. In that same vein, it would not apply to the Supervisor of Records' determinations under SFAC 67.21(d).

Petitions (or the act of responding to them) for a determination that records are public do not cause theft, mutilation or accidental damage, nor do they create chaos in record archives. The office of

² John Coté, September 5, 2019, Response to SOTF 19089.

³ Note however when you *deny* a petition, that is not the final say on the matter. SFAC 67.21(e) explicitly contemplates that the Task Force can determine a record public even if your office refuses to respond or denies the petition. And courts can make records public regardless.

⁴ Attorney General's opinions on the CPRA are not legal precedent nor binding.

Supervisor of Records exists entirely to make these determinations, and therefore they could not interfere with the orderly functioning of the office, since it is the function. The Supervisor of Records need not produce or search for voluminous records itself, but instead needs to perform a legal and factual analysis – which is of course one of the primary job functions of attorneys.

The CPRA provides that local ordinances may provide “for faster, more efficient, or greater access to records” than the CPRA, and the Sunshine Ordinance is precisely such an ordinance, for example by requiring legal citations for all exemptions, imposing immediate disclosure timelines, requiring agencies to use any requested electronic format that is easily generated, explicitly prohibiting charging fees for the redaction of records, prohibiting the public interest balancing test exemption and all exemptions similar to it, and of course creating the Supervisor of Records and Sunshine Task Force, the latter of which can overrule a determination of exemption by the former.

There is nothing in the Sunshine Ordinance that would indicate that the word “shall” in SFAC 67.21(d) is non-mandatory or discretionary; in fact, interpreting it as such would gut the Ordinance as a whole. It is the same word used to create obligations of the various agencies. The key judicial interpretations of the CPRA as subject to a rule of reason are decades before the Sunshine Ordinance even came into being between 1993 and 1999. And because the office of Supervisor of Records and its duties are created solely by the Ordinance and do not exist in the CPRA, and because the Supervisor of Records does not itself search for or produce records, it is not certain whether the rule of reason even applies to the Supervisor of Records role. I do not believe there is any precedent that it does.

The Supervisor of Records role is not a tertiary responsibility of the City Attorney. The City Attorney is tasked with “protect[ing] and secur[ing] the rights of the people of San Francisco to access public information and public meetings” and a timely response to petitions is a key part of that important responsibility. Until your office responds, of course, a requestor cannot enforce any favorable determination you provide at Superior Court under SFAC 67.21(f), and therefore undue delay interferes with the public’s right of access.

Sincerely,

Anonymous

2019 Public Records Audit - San Francisco				Appeals:		0. SF Supervisor of Records (City Atty) Petition		1. SF Sunshine Ordinance Task Force						2. CA Superior Court					
Row	Respondent Agency	Internal Req. #	Public Records Demanded / Issue / Petition	Status	Petition Sent	Reply Recv. (due 10 days)	Petition Determination	SOTF Case#	Alleged Violations (SFO)	Individual Respondents	Status	Committee Date	Committee Determination	En Banc Date	Task Force Determination	Attorneys Rep.	SF 67.21(f) Order	SF 67.35 Order	CPRA Mandamus Order
3	City Attorney	72056	Disclose Email, in native format, with metadata	Incomplete	2019-05-08	2019-08-26	Denied	19044	67.21, 67.26, 67.27	Herrera, Coolbrith	Pending Full SOTF	2019-08-20	3-0 Records are public						
4	Mayor	72902	Disclose Calendars, in native format, with metadata	Incomplete	2019-05-15	2019-08-26	Denied	19047	67.21, 67.25, 67.27	Breed, Heckel	Pending Full SOTF	2019-08-20	3-0 Records are public						
5	Mayor	72902	Calendar records that exceed the Prop G/67.29-5 requirements are also public records	Incomplete	2019-08-27	2019-09-06	Unclear response in part, pending in part	See 19047											
6	Mayor	72902	GC 6254(f) is not a valid exemption for Mayor's calendar. Calendar recurrence metadata must be disclosed.	Incomplete	2019-09-06			See 19047											
7	City Attorney	72902	Failure to respond within 10 days to Supervisor of Records petition in Req 72902 / SOTF 19047	Completed after Complaint	N/A			19089	67.21(d)	Herrera, Russi	Pending Committee (rebuttal sent)	2019-08-24							
11	Mayor	76434	Use of secret/personal chat apps for public business; Disclose email and chat, in native format, with metadata; incl. personal devices and accounts	Incomplete	2019-08-26	2019-09-05	Denied in part, pending in part	19091	67.21, 67.26, 67.27, 67.29-7	Breed, Heckel, Jue, Eisbernd, Power, Bruss, Philhour, Crelan, Kittler	Pending Committee (rebuttal sent)								
12	Mayor	76434	Public employee email addresses, formatting, time-stamps, attachments, images, and more in emails must be disclosed	Incomplete	2019-09-10			See 19091	See above										
13	Police Department	76436	Use of secret/personal chat apps for public business; Disclose email and chat, in native format, with metadata; incl. personal devices and accounts	Incomplete	2019-09-13			Sent	67.21, 67.26, 67.27										
14	Mayor	79117	Disclose past and future Calendars, in native format, with metadata, incl. personal devices/accounts	Incomplete	2019-09-06			See 19047											
16	Dept of Technology	79182	SB 272 / Enterprise Systems catalog; email and calendar system inappropriately excluded as 'enterprise system'; failure to immediately disclose	Incomplete				19094	67.21(k) (GC 6270.5), 67.21, 67.25, 67.26, 67.27	Gerull	Pending Reply								
17	City Attorney	79182	SB 272 / Enterprise Systems catalog; email and calendar system inappropriately excluded as 'enterprise system'	Incomplete				19095	67.21(k) (GC 6270.5), 67.21, 67.26, 67.27	Herrera, Coolbrith	Pending Committee (rebuttal sent)								
18	Public Works	79194	Disclose Email and meeting minutes/agendas of Custodians of Records Working Group in native format, with metadata; City employee lobbying of the SOTF	Completed without Complaints					None - Provided .msg, .docx, and .xlsx native files with metadata										
19	Public Works	79356	Disclose Email, in native format, with metadata, incl. personal devices/accounts	Incomplete	2019-09-06			19097	67.21, 67.26, 67.27	Nuru, Spritz	Pending Reply								
20	City Attorney	80172	Sup. of Records does not act as legal counsel; and its directions to City agencies are not attorney-client privileged and must be disclosed	Incomplete				To Do	67.21, 67.25, 67.27	Herrera, Coolbrith									
27	Fine Arts Museums of San Francisco	75999	FAMSF/FAM/COFAM relationship - City electronic Public Records stored on or re; non-profits' private property must be disclosed	Incomplete	2019-09-12			To Do	67.21, 67.29-5, 67.29-7										

P643

Leger, Cheryl (BOS)

From: 72902-46637773@requests.muckrock.com
Sent: Monday, September 16, 2019 9:32 AM
To: SOTF, (BOS)
Subject: RE: California Public Records Act Request #19047

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

September 16, 2019

This is a follow up to request number 19047:

***** FILE 19089 *****

Thank you. My documents for the Sept 24 agenda packet, for #19089, were sent attached on Sept. 11, and I don't have any to add.

I will be present telephonically -- is 415-554-9632 the correct number?

Documents:

https://cdn.muckrock.com/outbound_request_attachments/94383620Anonymous/72902/19089-Committee-20190911.pdf

https://cdn.muckrock.com/outbound_request_attachments/94383620Anonymous/72902/19089-Rebuttal-20190906_sLZ9SVZ.pdf

https://cdn.muckrock.com/outbound_request_attachments/94383620Anonymous/72902/2-SF-Supervisor-Appeal-For-Mayor-72902-ar.pdf

Thanks,
Anonymous

Filed via MuckRock.com

E-mail (Preferred): 72902-46637773@requests.muckrock.com

Upload documents directly:

https://accounts.muckrock.com/accounts/login/?url_auth_token=AAxJlxKbHL78P4hPis99lsuo1Y%3A1i9tub%3A62BzvNGrOR4lvALIBk6URtORUWg&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Foffice-of-the-mayor-3891%252Fapril-28-may-4-2019-calendar-immediate-disclosure-request-72902%252F%253Femail%253Dsotf%252540sfgov.org

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News

DEPT MR 72902

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the

requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On Sept. 16, 2019:
Subject: RE: California Public Records Act Request #19047
Dear Anonymous:

Here is the DCA Memo; just received it last Friday afternoon.

Cheryl Leger
Assistant Clerk, Board of Supervisors
Tel: 415-554-7724

[CustomerSatisfactionIcon]<<http://www.sfbos.org/index.aspx?page=104>> Click here<<http://www.sfbos.org/index.aspx?page=104>> to complete a Board of Supervisors Customer Service Satisfaction form.

The Legislative Research Center<<http://www.sfbos.org/index.aspx?page=9681>> provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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.

On Sept. 16, 2019:
Subject: RE: California Public Records Act Request #19047
** Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the MuckRock.com service used to issue this request (though I am not a MuckRock representative). **

Ms. Leger,

Any chance you have the DCA memo for 19089? I'd like to answer any questions posed by the Sept. 17 agenda deadline.

Thanks,
Anonymous

On Sept. 11, 2019:
Subject: RE: California Public Records Act Request #19047
RE: Follow-up to August 27 and Sept 6 Petition/Followup from this email address re: SOTF 19047

In this petition I discussed among many other issues the improper withholding of recurrence metadata hinted at by circles with arrows in the print-outs.

Attached to this email is a new Exhibit D; it is further proof that the Mayor's Office is still withholding a public part of a record. Exhibit D is a record provided by the Mayor's Office in a completely different CPRA request. It is what a print out of a calendar item looks like when it preserves much (but still not all) of the non-exempt metadata. Recall that my original request included "...all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items,..." The recurrence, organizer, free time, status, and importance information shown in Exhibit D is exactly that type of still improperly withheld information in this petition. It has absolutely nothing to do with information security. For some reason instead of actually printing out each of calendar item (as your office for example has done in the past), the Mayor only printed out the summary view of the calendar which excludes a lot of information.

I also maintain the other requests for determination in the remainder of the Aug. 27 and Sept. 6 petition.

Please remember that even if the Mayor's Office provides, voluntarily or perhaps by your intra-City prodding, a supplemental disclosure after my petition, and without you ordering them to do so, your office still owes a written determination under SFAC 67.21(d) whether any part of the records requested are public. There is no mootness rule in the Sunshine Ordinance.

You were very clear when you denied my petition from May 15. But your response to my Aug. 27 petition (https://cdn.muckrock.com/foia_files/2019/09/06/2019-09-06_Ltr_to_Muckrock.pdf) has no such clear grant or denial.

While the Good Government Guide you discuss in your response is advice by your office (in its attorney role) to the City agencies, it has no force of law, and it is not a determination in response to my petition.

In contrast your determinations can actually be enforced by the public in court against the City departments. Perhaps that is why you are unwilling to give positive determinations; but it is nevertheless your duty as Supervisor of Records, one which Mr. Coté has argued your office takes very seriously.

Please issue the clear granting of my Aug. 27 and Sept. 6 petitions, even in part, regardless of events occurring after the petition. Your determinations help build the "case law" that other members of the public can rely on without going through this drawn-out appeals process.

Thanks,
Anonymous

On Sept. 11, 2019:
Subject: RE: California Public Records Act Request #19047
Attached is my further reply re: the SOTF's alleged lack of jurisdiction for SOTF 19089.

Thanks,
Anonymous

On Sept. 11, 2019:
Subject: RE: California Public Records Act Request #19047
**** FILE 19089 ****

For the Sept. 24th committee hearing for 19089, I would like all of the following 3 documents entered into the record for the Complainant's side (in addition to whatever emails I have sent previously). One of these is a new document, so please add all of them in.

Thanks,
Anonymous

On May 8, 2019:

Subject: California Public Records Act Request: April 28-May 4, 2019 Calendar - Immediate Disclosure Request

This is an Immediate Disclosure Request under the San Francisco Sunshine Ordinance, made before close of business May 8, 2019.

** Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the MuckRock.com service used to issue this request (though I am not a MuckRock representative). **

We request under the San Francisco Sunshine Ordinance (Ordinance) and the California Public Records Act (CPRA):

"1. an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items, from April 28 to May 4, 2019 (inclusive)."

We remind you of your obligations to provide electronic records in the original format you hold them in. Therefore, calendars exported in the .ics, iCalendar, or vCard formats with all non-exempt headers, metadata, attachments, etc. are best. Such formats are easily exportable from Google Calendar, Microsoft Outlook, Microsoft Exchange or other common calendaring/email systems.

However, if you choose to convert calendar items, for example, to PDF or printed format, to easily redact them, you must ensure that you have preserved the full content of the original calendar item record (as specified in request "1"), which contains many detailed headers beyond the ones generally printed out. If you instead provide PDFs or printed items with only a few of the headers or lacking attachments/images, and therefore withhold the other headers/attachments without justification, you may be in violation of SF Admin Code 67.26, 67.27, Govt Code 6253(a), 6253.9, and/or 6255, and we may challenge your decision.

Please provide only those copies of records available without any fees. If you determine certain records would require fees, please instead provide the required notice of which of those records are available and non-exempt for inspection in-person if we so choose.

I look forward to your immediate disclosure.

Sincerely,
Anonymous

Filed via MuckRock.com

E-mail (Preferred): 72902-46637773@requests.muckrock.com

Upload documents directly:

https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAxJlxKbHL78P4hPis99lsuo1Y%3A1i9tub%3A62BzvNGrOR4lvALIBk6URtORUWg&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Facounts%252Fagency_login%252Foffice-of-the-mayor-3891%252Fapril-28-may-4-2019-calendar-immediate-disclosure-request-72902%252F%253Femail%253Dsotf%252540sfgov.org

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News

DEPT MR 72902

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.



SUNSHINE ORDINANCE TASK FORCE

Room 244

1 Dr. Carlton B. Goodlett Place

San Francisco CA 94102

sotf@sfgov.org

sent via email to Task Force

Your ref.

#19089

Date

2019-09-11

RE: SF Sunshine Ordinance complaint against City Atty, ref SOTF 19089

To Whom It May Concern:

NOTE: Every response you send or provide (including all responsive records) may be automatically and immediately visible to the general public on the MuckRock.com web service used to issue this request. (I am not a representative of MuckRock)

The Respondent in this case appears to imply your Task Force does not have jurisdiction over the Supervisor of Records' failure to perform his duty under SFAC 67.21(d). This is not true.

The Task Force generally operates under SFAC 67.21(e) – where requestors “may petition the Sunshine Task Force for a determination whether the record requested is public.” In 19089, I am indeed not asking for such a determination.

However, your Task Force also has this authority under SFAC 67.30(c): “The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever *it concludes that any person has violated any provisions of this ordinance or the Acts.*” (emphasis mine).

I ask that your Task Force “conclude” that the Supervisor of Records (a “person,” whether Dennis Herrera, acting through his employee Brad Russi, and/or Brad Russi himself) has violated SFAC 67.21(d) by taking over 3 months (instead of 10 or fewer days) to respond to the petition of May 15, 2019 regarding SOTF case 19047.

Sincerely,

Anonymous

SUNSHINE ORDINANCE TASK FORCE

Room 244

1 Dr. Carlton B. Goodlett Place

San Francisco CA 94102

sotf@sfgov.org

sent via email to Supervisor of Records

Your ref.
#19089

Date
2019-09-06

RE: SF Sunshine Ordinance complaint against City Atty, ref SOTF 19089

To the Supervisor of Records of the City and County of San Francisco:

NOTE: Every response you send or provide (including all responsive records) may be automatically and immediately visible to the general public on the MuckRock.com web service used to issue this request. (I am not a representative of MuckRock)

On September 6, I received Respondents' September 5 response to my 19089 complaint. I reply below.

As a cursory matter, I object to their captioning of the complaint as "Anonymous (MuckRock News) v. Office of the City Attorney." I have a muckrock.org email address no different than you may have a gmail.com or msn.com email address; you would not be a representative of Google or Microsoft merely by being their customer, and in the same vein I am not a representative of MuckRock.

Primarily, the ordinance (SFAC 67.21(d)) says in relevant part (emphasis mine): "The supervisor of records shall inform the petitioner, as soon as possible and *within 10 days*, of its determination whether the record requested, or any part of the record requested, is public." This is a non-discretionary duty¹ of the Supervisor of Records. Not only does the Respondent have to "inform" the petitioner in 10 days, but if it is "possible" to reply earlier, they must also do that. I don't allege that a shorter than 10-day response was possible

¹The Court of Appeal instructs: "'Shall' is construed as mandatory where failure to follow the statutory command has a result of substantial consequence. (Thomas v. Driscoll, supra, 42 Cal. App. 2d 23, 25-26; County of San Diego v. Milotz, 119 Cal. App. 2d Supp. 871, 881 [260 P.2d 282]; Ward v. Fremont Unified Sch. Dist., 276 Cal. App. 2d 313, 322 [80 Cal. Rptr. 815]; Karbach v. Board of Education, 39 Cal. App. 3d 355 [114 Cal. Rptr. 84].)" (Palos Verdes Peninsula Unified School District v Felt (1976) [55 Cal. App. 3d 162]). Because an order from the Supervisor of Records may be enforced at Superior Court (SFAC 67.21(f)), the Supervisor's failure to provide a timely determination has substantial consequences, since petitioners are deprived of their right to enforce such an order until the Supervisor actually makes it.

here. Interpreting 'shall' as non-mandatory in the context of the Sunshine Ordinance completely nullifies the voters' demand of government transparency as local agencies may run rough-shod over deadlines, exemption limitations, and more.

Finally, all of this would be forgivable if in fact the Respondent has actually done some more in depth analysis of the various kinds of metadata involved. The Sunshine Ordinance and the CPRA require that withholding be limited solely to the exempt portions of the record. Sadly, as you can see in Respondents' Exhibit A, the final analysis is nothing more than the short, generic argument that has been given repeatedly in these metadata cases.

I was hoping that given their discussion of consulting with IT staff and the enormous time it took to respond to the petition that the Respondent would actually consider the full universe of metadata in these records, analyze each such item with IT/legal staff, and determine in good faith that *some* non-empty subset of this metadata was in fact public, as it obviously is. Respondent is required to identify "any part of the record" that is public, SFAC 67.21(d) above. Respondents did not do so, either here (re: 19047) nor in their similarly long-delayed response to 19044 re: email metadata.

Sincerely,

Anonymous

US mail to: MuckRock News, DEPT MR 72902, 411A Highland Ave, Somerville, MA 02144-2516
Please use email only. I am an anonymous user of MuckRock.com, not a MuckRock representative.

Supervisor of Records
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco CA 94102
cityattorney@SFCITYATTY.ORG
sent via email to Supervisor of Records

Our ref.
#72902

Date
2019-05-15

RE: SF Sunshine Ordinance petition against Mayor, ref 72902

To the Supervisor of Records of the City and County of San Francisco:

NOTE: Every response you send or provide (including all responsive records) may be automatically and immediately visible to the general public on the MuckRock.com web service used to issue this request. (I am not a representative of MuckRock)

This petition is addressed to you in your capacity as Supervisor of Records, with regards to the actions of the Office of Mayor with regards to a Sunshine Ordinance / California Public Records Act request.

On May 8, 2019, I made an anonymous, Immediate Disclosure, request (see Attachment 1) for public records to Office of Mayor.

Unsatisfied with the Mayor's response, I filed an anonymous complaint with the SF Sunshine Ordinance Task Force (see Attachment 2) regarding my experience, which has been captioned by the Task Force as File 19047, *Anonymous v. Mayor London Breed and Hank Heckel, Office of the Mayor*. Included in the attachment are exhibits detailing the request, the Mayor's responses, and my reasoning that the response of the Mayor was inadequate under the Sunshine Ordinance and the California Public Records Act, all of which I incorporate into this petition.

As the complaint describes, the rights under the Sunshine Ordinance that I wish to vindicate are similar, but not identical (calendar vs. email content, and other minor differences), to those of my pending complaint against your office in its capacity as City Attorney in Task Force File 19044, *Anonymous v. Dennis Herrera, Elizabeth Coolbrith* and the related petition I filed with your office

as Supervisor of Records. Please however note the distinct email addresses used for each of these proceedings and keep communications separate.

While there is a City Attorney opinion¹ entitled "Providing Electronic Records In PDF Rather Than Word Format When Responding To A Public Records Request," I believe that the opinion does not apply to the Mayor's request for two reasons because the calendar data I have requested, unlike Word documents, do not contain 'track changes' metadata that includes prior revisions. Furthermore, if you do believe the opinion is applicable, I believe, though I am not an attorney, the opinion's interpretation of Govt Code 6253.9(f) in section "Protecting The Text Of The Electronic Record" is wrong for the reasons detailed in my Attachment 2, Section D.2. Regardless, none of that justifies a public agency not providing a justification for withholding the portions of the records I requested, but were not withheld. I also ask that you consider any potential conflict of interest in these various cases.

In parallel with Task Force complaint 19047, I am anonymously petitioning you under SF Admin Code Sec 67.21(d)² to, within 10 days, direct the Mayor to: (1) provide us with the full public records requested as specified in Attachment 1, (2) provide in writing any justifications for withholding specific parts of the responsive records, and (3) provide us all other relief requested of the Task Force in Section E of Attachment 2, to the extent compatible with your powers as Supervisor of Records.

encl: Attachment 1 – May 8, 2019 request

encl: Attachment 2 – Complaint Filed with SF Sunshine Ordinance Task Force, including Exhibits A and B

¹<https://www.sfcityattorney.org/wp-content/uploads/2015/07/Providing-Electronic-Records-in-PDF-Rather-than-Word-Format-When-Responding-to-a-Public-Records-Request.pdf>

²"(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petitioner, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance."

Attachment 1 - request sent to mayorsunshinerequests@sfgov.org

May 8, 2019

This is an Immediate Disclosure Request under the San Francisco Sunshine Ordinance, made before close of business May 8, 2019.

** Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the MuckRock.com service used to issue this request (though I am not a MuckRock representative). **

We request under the San Francisco Sunshine Ordinance (Ordinance) and the California Public Records Act (CPRA):

"1. an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items, from April 28 to May 4, 2019 (inclusive)."

We remind you of your obligations to provide electronic records in the original format you hold them in. Therefore, calendars exported in the .ics, iCalendar, or vCard formats with all non-exempt headers, metadata, attachments, etc. are best. Such formats are easily exportable from Google Calendar, Microsoft Outlook, Microsoft Exchange or other common calendaring/email systems.

However, if you choose to convert calendar items, for example, to PDF or printed format, to easily redact them, you must ensure that you have preserved the full content of the original calendar item record (as specified in request "1"), which contains many detailed headers beyond the ones generally printed out. If you instead provide PDFs or printed items with only a few of the headers or lacking attachments/images, and therefore withhold the other headers/attachments without justification, you may be in violation of SF Admin Code 67.26, 67.27, Govt Code 6253(a), 6253.9, and/or 6255, and we may challenge your decision.

Please provide only those copies of records available without any fees. If you determine certain records would require fees, please instead provide the required notice of which of those records are available and non-exempt for inspection in-person if we so choose.

I look forward to your immediate disclosure.

Sincerely,
Anonymous

Attachment 2 - Task Force complaint

US mail to: MuckRock News, DEPT MR 72902, 411A Highland Ave, Somerville, MA 02144-2516
Please use email only. I am an anonymous user of MuckRock.com, not a MuckRock representative.

SUNSHINE ORDINANCE TASK FORCE

Room 244 - Tel. (415) 554-7724; Fax (415) 554-7854

1 Dr. Carlton B. Goodlett Place

San Francisco CA 94102

cc: Office of the Mayor (mayorsunshinerequests@sfgov.org)

sent via email and web-form to Task Force, email to Office of Mayor

Our ref.
#72902

Date
2019-05-10

RE: SF Sunshine Ordinance Complaint against Office of Mayor, ref 72902

To Whom It May Concern:

NOTE: Every response you send or provide (including all responsive records) may be automatically and immediately visible to the general public on the MuckRock.com web service used to issue this request. (I am not a representative of MuckRock)

A. METADATA:

Complainant Name: (Anonymous - use email 72902-46637773@requests.muckrock.com)

Date of Request: May 8, 2019

Complaint Against Employees: London N. Breed (Breed) in her official capacity as Mayor, Hank Heckel (Heckel) in his official capacity as Compliance Officer for Office of Mayor

Complaint Against Agency: Office of Mayor

Yes - Alleged violation of public records access

Yes - Alleged failure to provide information in a timely manner in accordance with the provisions of the Sunshine Ordinance

No - Alleged violation of a public meeting

B. NARRATIVE:

On May 8, 2019 we sent a San Francisco Sunshine Ordinance (Ordinance) and California Public Records Act (CPRA) request to the Office of Mayor. (enclosed herein as Exhibit A, which also includes the communication back and forth with the Mayor's office and Heckel) for, *inter alia*:

"1. an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items, from April 28 to May 4, 2019 (inclusive)."

We remind you of your obligations to provide electronic records in the original format you hold them in. Therefore, calendars exported in the .ics, iCalendar, or vCard formats with all non-exempt headers, metadata, attachments, etc. are best. Such formats are easily exportable from Google Calendar, Microsoft Outlook, Microsoft Exchange or other common calendaring/email systems.

However, if you choose to convert calendar items, for example, to PDF or printed format, to easily redact them, you must ensure that you have preserved the full content of the original calendar item record (as specified in request "1"), which contains many detailed headers beyond the ones generally printed out. If you instead provide PDFs or printed items with only a few of the headers or lacking attachments/images, and therefore withhold the other headers/attachments without justification, you may be in violation of SF Admin Code 67.26, 67.27, Govt Code 6253(a), 6253.9, and/or 6255, and we may challenge your decision.

On May 8, 2019 Heckel acknowledged the request and on May 9, 2019 Heckel replied on behalf of Breed with records responsive to the request in relevant part:

Re: Public Records Request received May 8, 2019

To whom it may concern:

This responds to your Immediate Disclosure Request below.

Response Dated April 24, 2019 *[sic]*

Thank you for your inquiry. Please see attached the requested information.

This information has been provided in a PDF format for its ease of transferability and accessibility, consistent with Cal. Gov. Code 6253.9(a)(1). Moreover, pursuant to Cal. Gov. Code 6253.9 (f), an agency is not required to provide an electronic record in an electronic format that would jeopardize or compromise the security or integrity of the original record. The PDF format ensures the security and integrity of the original record.

and attached a PDF form (Exhibit B – the PDF file itself can also be downloaded at https://cdn.muckrock.com/foia_files/2019/05/09/MuckRock_Calendar_Request_4-27_-_5-4.pdf) of the requested calendar including only: times, physical locations, and titles of events and names or descriptions of some attendees, to which I replied on the same day in relevant part:

We do not believe your arguments re: the acceptability of PDF format are valid and intend to contest them at the Sunshine Task Force. First, 6253.9(f) protects the integrity and security of the *original* record, not the copy of the record you provide to the public. Regardless, PDFs which are not digitally signed can be quite easily edited by anyone, no differently than editing say the .ics calendar file you could have provided to us. Second, 6253.9(a)(1) plainly requires provision of the *[sic]* in "any electronic format in which it holds the information" and we asked for the original format. Our understanding of computer systems indicates that format is not PDF.

In the mean time, I will point out that the original electronic format of the Mayor's calendar may contain substantial additional information (such as email addresses, conference call numbers, actual names of attendees instead of group descriptions, the acceptance/rejection of individual attendees to the invite, etc.) than that which was printed out for us. In addition to, and separately from, not being in the original format, by converting to PDF, you may have withheld such portions of the record from us, without pointing out to us that the portions were in fact withheld nor providing statutory justification for exemption (required by CPRA and the Sunshine Ordinance) nor providing the name and title of the official responsible for such withholding. Please provide all such information, if any information was withheld in the PDF you released to us, as compared to the original format.

Since I had previously requested the entire calendar items in their original electronic format, I proceeded to file this complaint.

C. COMPLAINTS:

I make the following allegations. I am not an attorney, so my understanding is associated with proper sections of the law to the best of my (lay) ability.

1. Violations of SF Admin Code Sec. 67.27. Justification Of Withholding

On May 9, 2019, Heckel's response did not justify withholding portions of the responsive calendar records (namely the headers and metadata, which we had specifically requested in our original request). No statutory nor case law authority was provided. Note Heckel provided an argument (which we believe to be wrong, see below) for why he had not provided the original format. He did not provide any justification for withholding the header and metadata information, even in PDF format. Our original request did indicate that if the Mayor were to convert the calendar to PDF format, we still wanted the entire record with all headers, metadata, etc.

We specifically asked for calendars in the original electronic format. Calendars are not stored in PDF format by calendaring systems. From the City's SB 272 enterprise systems list, it appears the

City¹ uses Microsoft Exchange/Outlook as its email and calendaring system. Such a system should be able to export a full copy of calendar items in iCalendar/.ics format, which preserves most if not all of the item's content. This could be done by simply printing out the .ics/iCalendar exported file and redacting as needed.

2. Violations of SF Admin Code Sec. 67.26. Withholding Kept To A Minimum

On May 9, 2019, responsive records as provided in an attachment to Heckel's response (Exhibit B) did not withhold the minimum necessary portions of the calendars requested. While it may be argued that some of the headers of a calendar item could be withheld for privacy reasons (though we do not concede such point), that does not mean the Mayor can withhold all portions of the calendar items other than Time, Title, Physical Location, and (sometimes) Attendee Names/Descriptions.

3. Violations of SF Admin Code Sec. 67.21. Process For Gaining Access To Public Records; Administrative Appeals.

67.21(b) ("...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....") was violated by Heckel's May 9, 2019 response wherein he did not indicate that the Mayor was withholding the remaining portions of the full calendar item records, with headers and metadata.

67.21(l) ("Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department...") was violated on May 9, 2019 since Heckel provided the calendars requested in PDF format and not the raw/original format stored by the email servers. This original format (which we specifically requested) contains those additional headers we requested. As described in Complaint 1, paragraph 2, we believe exporting of calendar items in iCalendar/.ics format should be easy given the City's systems.

4. Violations of CA Govt Code 6253.9

6253.9(a)(1) ("...The agency shall make the information available in any electronic format in which it holds the information....") was violated for reasons stated under the second paragraph of complaint #3.

5. Violations of CA Govt Code 6253

6253(a) ("Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.") was violated for reasons stated under complaint #2. Portions of the responsive email records (headers, metadata) that are not exempt under the law were deleted by using the PDF print-out formats that the Mayor chose.

¹For some reason, it appears only SF Public Health has listed its email system, not the Mayor, so this is an extrapolation.

6. Violations of CA Govt Code 6255

6255(a) was violated for reasons stated under complaint #1.

D. REBUTTALS:

1. CA Govt Code 6253.9(a)(1) does not permit use of formats for “transferability and accessibility”

In Heckel’s May 9 response, the Office of the Mayor argued “This information has been provided in a PDF format for its ease of transferability and accessibility, consistent with Cal. Gov. Code 6253.9(a)(1).”

By its plain language, that is not what 6253.9(a)(1) requires. CA Govt Code 6253.9(a) reads:

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

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

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

Since there is no ambiguity in the statute’s language, 6253.9(a)(1) should be given its plain meaning. Nothing in this clause refers to conversion of files for transferability and accessibility.

2. CA Govt Code 6253.9(f) protects the security and integrity of originals, not copies

In Heckel’s May 9 response, the Office of the Mayor argued “pursuant to Cal. Gov. Code 6253.9 (f), an agency is not required to provide an electronic record in an electronic format that would jeopardize or compromise the security or integrity of the original record. The PDF format ensures the security and integrity of the original record.”

This argument fails for two reasons.

Most importantly, 6253.9(f) states (emphasis mine) “Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the *original record* or of any proprietary software in which it is maintained.” The Mayor appears to believe that the PDF format makes it harder for someone to modify the file. However that would be (if it was true) a protection of the integrity of *the copy*. That is not what the statute requires.

Otherwise, physical copies could not be provided under the CPRA, as they can be easily altered in writing/printed, and recopied, and passed off as the originals.

Secondarily, the PDF format, in the form that the Mayor has used it to provide the responsive record on May 9, does not even protect the security and integrity of *the copy*. Anyone can modify a PDF file with, among many other products, Apple's Preview app (a free default app that comes with Mac OS X computers), Adobe's Acrobat or Photoshop. Persons could also of course modify the iCalendar/.ics exported file copies just as easily. If the Mayor wants to use the PDF format to protect the copies (even though that is not what the statute requires), they would need to be, for example, digitally signed, which is an information technology solution that uses cryptography to make it extremely difficult to pass off an altered version of the copy as identical to the original. My examination of the PDF file provided by Heckel (https://cdn.muckrock.com/foia_files/2019/05/09/MuckRock_Calendar_Request_4-27_-_5-4.pdf) shows no indication of a standard PDF digital signature.

E. RELIEF REQUESTED

I have a parallel pending complaint (*Anonymous v. Dennis Herrera, Elizabeth Coolbrith*, SOTF File No. 19044) against the Office of the City Attorney for similar (but not identical) claims regarding alleged failure to disclose emails (not calendars) in their full, original electronic format. I ask the Task Force to keep in mind the possible conflicts of interest apparent in an attorney from the Office of City Attorney assisting the Task Force on this complaint, for which a ruling in my favor would tend to also favor finding against the City Attorney in case 19044 as well.

I ask the Task Force to find that the Office of the Mayor violated the Sunshine Ordinance (including any requirements of the CPRA incorporated by reference in SF Admin Code) on May 9, 2019.

I ask the Task Force to direct the Mayor or her delegate to produce the full calendars we originally requested, with redaction of only those headers or metadata (if any) that can be justified legally and explicitly.

I ask the Task Force to direct that calendars be produced by San Francisco agencies subject to the Sunshine Ordinance in their original format, preserving headers and metadata, except those that can be withheld with explicit justification.

I ask for a hearing, to the extent possible given my desire to remain anonymous.

I reserve my right to petition the Supervisor of Records and/or any judicial remedies that may be available.


encl: Exhibit A – Original Request and Communications with Mayor’s Office


encl: Exhibit B – Responsive record titled “MuckRock Calendar Request 4-27 - 5-4.pdf”

Exhibit A

Correspondence with Office of Mayor
The MuckRock system censors the email address
as 'requests@muckrock.com' in certain locations.

From: Anonymous Person

05/08/2019 

Subject: California Public Records Act Request: April 28-May 4, 2019 Calendar - Immediate Disclosure ... 

This is an Immediate Disclosure Request under the San Francisco Sunshine Ordinance, made before close of business May 8, 2019.

** Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the MuckRock.com service used to issue this request (though I am not a MuckRock representative). **

We request under the San Francisco Sunshine Ordinance (Ordinance) and the California Public Records Act (CPRA):

"1. an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items, from April 28 to May 4, 2019 (inclusive)."

We remind you of your obligations to provide electronic records in the original format you hold them in. Therefore, calendars exported in the .ics, iCalendar, or vCard formats with all non-exempt headers, metadata, attachments, etc. are best. Such formats are easily exportable from Google Calendar, Microsoft Outlook, Microsoft Exchange or other common calendaring/email systems.


However, if you choose to convert calendar items, for example, to PDF or printed format, to easily redact them, you must ensure that you have preserved the full content of the original calendar item record (as specified in request "1"), which contains many detailed headers beyond the ones generally printed out. If you instead provide PDFs or printed items with only a few of the headers or lacking attachments/images, and therefore withhold the other headers/attachments without justification, you may be in violation of SF Admin Code 67.26, 67.27, Govt Code 6253(a), 6253.9, and/or 6255, and we may challenge your decision.


Please provide only those copies of records available without any fees. If you determine certain records would require fees, please instead provide the required notice of which of those records are available and non-exempt for inspection in-person if we so choose.

I look forward to your immediate disclosure.

Sincerely,
Anonymous

From: Anonymous Person

05/08/2019 

Subject: RE: California Public Records Act Request: April 28-May 4, 2019 Calendar - Immediate Disclos... 

We remind you of your obligation under City of San Jose v Superior Court (2017) to search personal accounts/devices for calendar items regarding the public's business, as appropriate.


** Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the MuckRock.com service used to issue this request (though I am not a MuckRock representative). **

P664

#SFSOTF-72902-000009

From: Office of the Mayor

05/08/2019

Subject: RE: California Public Records Act Request: April 28-May 4, 2019 Calendar - Immediate Disclos... 


Received. We are processing our response.

Thank you,

Hank Heckel
Compliance Officer
Office of Mayor London N. Breed
City and County of San Francisco
(415) 554-4796

From: Office of the Mayor

05/09/2019

Subject: RE: California Public Records Act Request: April 28-May 4, 2019 Calendar - Immediate Disclos... 

VIA ELECTRONIC MAIL
Requestor: Anonymous

Email: requests@muckrock.com

May 9, 2019

Re: Public Records Request received May 8, 2019

To whom it may concern:

This responds to your Immediate Disclosure Request below.

Response Dated April 24, 2019

Thank you for your inquiry. Please see attached the requested information.

This information has been provided in a PDF format for its ease of transferability and accessibility, consistent with Cal. Gov. Code 6253.9(a)(1). Moreover, pursuant to Cal. Gov. Code 6253.9 (f), an agency is not required to provide an electronic record in an electronic format that would jeopardize or compromise the security or integrity of the original record. The PDF format ensures the security and integrity of the original record.

Please also note that we are responding on behalf of the Mayor's Office only, and not on behalf of other city departments.

If you have any questions about your request or would like to submit another public records request, please feel free to contact us

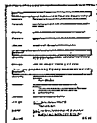
at mayorsunshinerequests@sfgov.org<<mailto:mayorsunshinerequests@sfgov.org>>.

Best Regards,

Hank Heckel
Compliance Officer
Office of Mayor London N. Breed
City and County of San Francisco

P665

#SFSOTF-72902-000010



MuckRock Calendar Request 4-27 - 5-4

View Embed Download

From: Anonymous Person

05/09/2019

Subject: RE: California Public Records Act Request: April 28-May 4, 2019 Calendar - Immediate Disclos...

We do not believe your arguments re: the acceptability of PDF format are valid and intend to contest them at the Sunshine Task Force. First, 6253.9(f) protects the integrity and security of the *original* record, not the copy of the record you provide to the public. Regardless, PDFs which are not digitally signed can be quite easily edited by anyone, no differently than editing say the .ics calendar file you could have provided to us. Second, 6253.9(a)(1) plainly requires provision of the in "any electronic format in which it holds the information" and we asked for the original format. Our understanding of computer systems indicates that format is not PDF.

In the mean time, I will point out that the original electronic format of the Mayor's calendar may contain substantial additional information (such as email addresses, conference call numbers, actual names of attendees instead of group descriptions, the acceptance/rejection of individual attendees to the invite, etc.) than that which was printed out for us. In addition to, and separately from, not being in the original format, by converting to PDF, you may have withheld such portions of the record from us, without pointing out to us that the portions were in fact withheld nor providing statutory justification for exemption (required by CPRA and the Sunshine Ordinance) nor providing the name and title of the official responsible for such withholding. Please provide all such information, if any information was withheld in the PDF you released to us, as compared to the original format.

** Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the MuckRock.com service used to issue this request (though I am not a MuckRock representative). **

Thank you.

Exhibit B

Responsive record produced by Heckel
on May 9, 2019

Page 4 of the calendar contained fonts missing on my computer - they appear to be merely
bullet points.

PDF file available at:

https://cdn.muckrock.com/foia_files/2019/05/09/MuckRock_Calendar_Request_4-27_-_5-4.pdf

April 27, 2019

Saturday

- 8:45 AM - 9:15 AM North Beach Farmers Market 2019 Season Open -- 699 Columbus Avenue, San Francisco, CA 94133
- 11:55 AM - 1:25 PM 12th Annual McKinley Elementary School Dogfest -- Duboce Park, Noe Street at Duboce Avenue, San Francisco, CA 94114
- 7:05 PM - 7:20 PM A Banner of Love Gala: A Night in Venice -- St. Mary's Cathedral, 1111 Gough St., San Francisco
- 7:35 PM - 8:00 PM San Francisco Gay Men's Chorus Crescendo Gala -- The Fairmont San Francisco, 950 Mason Street, Main Ballroom
- 8:40 PM - 9:00 PM Beyond Differences Gala -- Terra Gallery, 511 Harrison Street, San Francisco

April 28, 2019

Sunday

- 12:30 PM - 1:00 PM St. Francis Wood Women's League Annual Luncheon -- The Olympic Club Lakeside, Garden Court, 599 Skyline Blvd, San Francisco, CA 94132
- 7:00 PM - 7:30 PM North Beach Citizens' Spring Dinner -- 666 Filbert Street, San Francisco CA 94133

April 29, 2019

Monday

- 9:00 AM - 9:30 AM Meeting Re: Staff Check In -- Remote Conference Call
Attendees:
- Mayor's Office Staff
- 1:05 PM - 1:30 PM Meeting with President Yee Re: District 7 -- City Hall, Room 200, Mayor's Office
Attendees:
- President Yee, Supervisor for District 7, Board of Supervisors
- Jen Lowe, Legislative Aide, Board of Supervisors
- Mayor's Office Staff
- 1:39 PM - 1:46 PM Press availability re: MTA Director -- City Hall, Room 200
- 1:51 PM - 2:10 PM Meeting Re: Scheduling -- City Hall, Room 200, Mayor's Office
Attendees:
- Mayor's Office Staff
- 2:34 PM - 2:45 PM Swearing In Ceremony for Sophie Maxwell and Tim Paulson -- City Hall, International Room
Attendees:
- Sophie Maxwell, Public Utilities Commission Appointee
- Tim Paulson, Public Utilities Commission Appointee

April 29, 2019 Continued

Monday

- Harlan Kelly Jr., General Manager, San Francisco Public Utilities Commission
- Larry Mazzola Jr., President (Plumbers & Pipe Fitters Local 38), Recreation and Park Commissioner
- Sandra Duarte, Executive Assistant San Francisco Building and Construction Trades Council
- Kim Tavaglione, Campaign Director San Francisco Labor Council
- Willie Adams, Port Commissioner
- Mayor's Office Staff

3:01 PM - 3:29 PM

Meeting Re: Government Affairs -- City Hall, Room 200, Mayor's Office

Attendees:

- Mayor's Office Staff

3:31 PM - 4:03 PM

Meeting Re: City Operations and Government Affairs -- City Hall, Room 200, Mayor's Office

Attendees:

- Mayor's Office Staff

4:10 PM - 4:55 PM

Meeting Re: Housing Bond with Supervisor Yee and Members of Housing Bond Working Group -- City Hall, Room 201

6:00 PM - 6:30 PM

Grace Cathedral Paris Sister City Event for Notre-Dame, Sri Lanka, Louisiana Churches, and Poway Synagogue -- Grace Cathedral, 1100 California Street

6:45 PM - 8:00 PM

Recode Decode Podcast Live Recording -- Manny's 3092 16th Street

April 30, 2019

Tuesday

9:00 AM - 9:30 AM

Meeting Re: Staff Check In -- Remote Conference Call

Attendees:

- Mayor's Office Staff

10:35 AM - 10:50 AM

Public Works Week Awards and Pins Ceremony -- Moscone Center South, Third Floor, 747 Howard St.

12:00 PM - 12:30 PM

Telephone Interview with LA Times Reporter Heidi Chang -- Remote Conference Call

Attendees:

- Heidi Chang, Reporter, Los Angeles Times
- Mayor's Office Staff

12:35 PM - 1:15 PM

Meeting Re: Budget -- City Hall, Room 200, Mayor's Office

Attendees:

- Mayor's Office Staff

April 30, 2019 Continued

Tuesday

1:34 PM - 1:50 PM

Meeting Re: Town Hall Event -- City Hall, Room 200, Mayor's Office

Attendees:

- Mayor's Office Staff

2:09 PM - 2:45 PM

Meeting with San Francisco Latino Parity and Equity Coalition -- City Hall, Room 201

2:46 PM - 3:10 PM

Meeting Re: Scheduling -- City Hall, Room 200, Mayor's Office

Attendees:

- Mayor's Office Staff

3:10 PM - 3:33 PM

Meeting Re: Government Affairs -- City Hall, Room 200, Mayor's Office

Attendees:

- Mayor's Office Staff

May 1, 2019

Wednesday

9:00 AM - 9:30 AM

Meeting Re: Staff Check In -- Remote Conference Call

Attendees:

- Mayor's Office Staff

10:00 AM - 10:30 AM

Live Phone Interview with KIQI -- Remote Conference Call

Attendees:

- Isabel Gutierrez, KIQI radio host
- Marcos Gutierrez, KIQI radio host
- Mayor's Office Staff

11:00 AM - 11:30 AM

Fire Station 5 Ribbon Cutting -- Fire Station No. 5, 1301 Turk St

12:00 PM - 12:15 PM

Jewish Vocational Service Strictly Business Luncheon -- San Francisco Marriott Marquis Hotel, 780 Mission Street

2:04 PM - 2:43 PM

Meeting Re: City Services and Operations -- City Hall, Room 200, Mayor's Office

Attendees:

- Naomi Kelly, City Administrator, City and County of San Francisco
- Heather Green, Capital Planning Director, City and County of San Francisco
- Mayor's Office Staff

2:43 PM - 2:46 PM

Swearing In Ceremony for Frank Fung -- City Hall, Room 200, Mayor's Office

Attendees:

- Frank Fung, Planning Commissioner
- Aimee Fung, Daughter of Frank Fung
- Mayor's Office Staff

May 1, 2019 Continued

Wednesday

2:46 PM - 3:13 PM

Meeting Re: City Services and Operations -- City Hall, Room 200, Mayor's Office

Attendees:

- Naomi Kelly, City Administrator, City and County of San Francisco
- Heather Green, Capital Planning Director, City and County of San Francisco
- Mayor's Office Staff

3:20 PM - 3:46 PM

Meet and Greet with Jamestown Community Center Youth -- City Hall, International Room

4:03 PM - 4:35 PM

Meeting Re: Public Safety -- City Hall, Room 200 Mayor's Office

Attendees:

- Chief William Scott, SFPD
- Deirdre Hussey, Director of Policy and Public Affairs, SFPD
- Mayor's Office Staff

5:00 PM - 5:20 PM

Neighborhood Preference Program Tour and SFGovTV Interview -- 150 Van Ness

Attendees:

- Mario Watts, resident
- Josiah Watts, resident
- Kim Dubin, Mayor's Office of Community Housing and Development
- Max Barnes, Mayor's Office of Community Housing and Development
- Mayor's Office Staff

5:30 PM - 6:00 PM

Asian Pacific American Heritage Month Awards and Reception Celebration -- Herbst Theater, War Memorial Building, 401 Van Ness Avenue

May 2, 2019

Thursday

9:00 AM - 9:30 AM

Meeting Re: Staff Check In -- Remote Conference Call

Attendees:

- Mayor's Office Staff

12:04 PM - 12:25 PM

Lest We Forget Photo Exhibit for Holocaust Remembrance Day -- City Hall, Room 200, Mayor's Office

12:31 PM - 12:48 PM

Meeting re: Street Conditions -- City Hall, Room 200, Mayor's Office

Attendees:

- Chief William Scott, Chief of Police, San Francisco Police Department
- Dr. Grant Colfax, Director, Department of Public Health
- Mohammed Nuru, Director, Department of Public Works
- Jeff Kositky, Director, Department of Homelessness and Supportive Housing
- Mary Ellen Carrol, Director, Department of Emergency Management
- Mayor's Office Staff

May 2, 2019 Continued

Thursday

1:31 PM - 2:11 PM

Meeting Re: Budget -- City Hall, Room 200, Mayor's Office

Attendees:

- Mayor's Office Staff

2:14 PM - 2:34 PM

Meeting Re: Communications -- City Hall, Room 200, Mayor's Office

Attendees:

- Mayor's Office Staff

2:34 PM - 3:07 PM

Meeting Re: Commissions -- City Hall, Room 200, MO

Attendees:

- Mayor's Office Staff

3:10 PM - 3:41 PM

Meeting with Civil Grand Jury -- City Hall, Room 201

3:42 PM - 3:49 PM

Meeting Re: Government Affairs -- City Hall, Room 200, Mayor's Office

Attendees:

- Kylecia Broom, Community Development Assistant, Mayor's Office of Housing and Community Development
- Steven Gallardo, Displaced Tenant Housing Preference Program Coordinator, Mayor's Office of Housing and Community Development
- Mayor's Office Staff

5:30 PM - 6:00 PM

Alliance of Black School Educators Scholarship and Salute Banquet -- African American Art and Culture Complex, 762 Fulton Street, 3rd Floor

May 3, 2019

Friday

9:00 AM - 9:30 AM

Meeting Re: Staff Check In -- Remote Conference Call

Attendees:

- Mayor's Office Staff

1:00 PM - 1:30 PM

Downtown Streets Team Mission Ribbon Cutting -- 3100 17th Street, San Francisco

May 4, 2019

Saturday

3:30 PM - 4:30 PM

San Francisco Lowrider Council Cinco De Mayo John O'Connell High School Car Show and Cruise -- John O'Connell High School Parking Lot, 2300 Block of Harrison Street

May 4, 2019 Continued

Saturday

6:10 PM - 6:40 PM

The Association of Chinese Teachers 50th Anniversary Gala -- Scottish Rite Masonic Center, 2850 19th Avenue

Respondents Document Submission

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JOHN COTÉ
Press Secretary,
Communications Director

Direct Dial: (415) 554-4662
Email: john.cote@sfcityatt.org

September 5, 2019

VIA ELECTRONIC MAIL

Honorable Members of the Sunshine Ordinance Task Force
c/o: Clerk of the Board of Supervisors
Attn: Victor Young, Administrator
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco CA 94102
victor.young@sfgov.org

Re: Sunshine Ordinance Task Force Complaint No. 19089
Anonymous (MuckRock News) v. Office of the City Attorney

Dear Honorable Task Force Members:

We write in response to the complaint filed by an anonymous person affiliated with MuckRock News, alleging that the Supervisor of Records failed to respond to a petition in a timely and/or complete manner.

The complaint arises out of the requester's efforts to obtain electronic metadata from various City departments. At issue here is a request submitted to the Mayor's Office on May 8, 2019. The Mayor's Office declined to produce portions of the metadata, chiefly on the basis that those portions were exempt from disclosure under California Government Code section 6254.19, which allows a department to withhold information that, if disclosed, could expose security vulnerabilities or otherwise increase the potential for attack on the City's computer systems. The requester disagreed with the Mayor's Office's response, and filed a petition with the Supervisor of Records on May 15, 2019. The complaint alleges that the Supervisor of Records violated the Sunshine Ordinance by not sending the requester a final determination on the May 15 petition within 10 days of receipt (by May 25).

The Sunshine Ordinance contemplates that the Supervisor of Records will respond to petitions within 10 days. Admin. Code § 67.21(d). However, this Office – which the Sunshine Ordinance entrusts with the Supervisor of Records function – has never viewed the 10 days as an absolute deadline. In some situations, a request may be unusually complex, in terms of legal issues or factual issues or both, or may require the requester or the responding department to follow up in order to make the issue or issues ripe for determination. This was just such a case. Evaluating whether disclosure of metadata could result in a security risk is a highly technical and specialized effort. To the best of our knowledge, this is the first time that the Mayor's Office has ever received a request that raised these specific issues, and also the first time that the Supervisor of Records has received a petition dealing with these specific issues. Understandably, it has taken time for both the Mayor's Office and the Supervisor of Records to evaluate the request and security risks. Rather than respond at the 10-day mark with incomplete information and poorly informed analysis, the Supervisor of Records wrote to the requester on May 21, 2019 (within 10

Letter to Sunshine Ordinance Task Force, Page 2
September 5, 2019

days of receipt of the petition) to confirm that the petition was received and under review. The Supervisor of Records also sent the requester status updates on June 7, July 1, and July 24. After completing a thorough review of the petition and underlying requests and responses related to the petition, the Supervisor of Records issued its final determination on August 26, 2019. (See Exhibit A.)

It would be within the discretion of the Supervisor of Records to take a different approach. The Supervisor of Records could treat the 10-day provision as an absolute deadline, and then, where a determination is not feasible within that time frame, the Supervisor of Records could announce that it had been unable to reach a determination, or could defer to the judgment of the department if the department's decision seemed reasonable on its face. But this Office has not taken this approach precisely because we take our responsibilities as Supervisor of Records seriously.

The Supervisor of Records serves a valuable public function, and that function can be performed only if the Supervisor of Records can take the time to diligently and carefully review the issues presented by a petition, and thereby reach a reasoned determination. Accordingly, the 10-day time period referenced in Section 67.21(d) must be treated as a guideline for the Supervisor of Records to follow, but not as an absolute deadline.

Finally, we recognize that the Task Force may have a different view from that of this Office as to how the Supervisor of Records function should be performed. But the voters deliberately assigned that role to the City Attorney's Office, not to the Task Force or any other City body or office. The Task Force has no authority to dictate to the Supervisor of Records how it must perform the role, though of course the Task Force is free to offer its opinion on that subject.

For these reasons, we respectfully request that this complaint be dismissed.

Very truly yours,

DENNIS J. HERRERA
City Attorney

John Coté
Communications Director

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

BRADLEY A. RUSSI
DEPUTY CITY ATTORNEY

Direct Dial: (415) 554-4645
Email: brad.russi@sfcityattfy.org

August 26, 2019

Sent via email (72902-46637773@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records concerning your May 8, 2019 request to the Mayor's Office for the following:

an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items, from April 28 to May 4, 2019 (inclusive).

In response to this request, the Mayor's Office produced the Mayor's calendar entries in PDF format from the time period at issue. The Mayor's Office explained that it provided the records in PDF format for ease of transferability and to protect the security of the original record, citing Government Code Section 6253.9.

Under the Sunshine Ordinance (Section 67.21(d) of the Administrative Code), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so – for determining “whether the record requested, or any part of the record requested, is public.” You contend that the Mayor's Office improperly withheld headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images from its response to your request.

We understand that the responsive calendar entries include no email addresses, attachments, appendices, exhibits, or inline images, and thus the Mayor's Office did not improperly withhold this information.

With regard to metadata, which we understand would include headers and timestamps, we conclude that the Mayor's Office properly withheld this information.

First, you contend that the Mayor's Office should provide this information by producing the calendar entries in the “original electronic format.” But you also request that the calendar entries be exported to “.ics, iCalendar, or vCard formats.” The Public Records Act does not require the Mayor's Office to produce records in a format that it does not store them unless the Mayor's Office has used the records in the requested format or provided them in the requested format to another agency. Gov't Code § 6253.9. We understand that the Mayor's Office does not hold the records in any of these formats, and it has not used any of these formats or provided

Letter to Anonymous
August 26, 2019
Page 2


the records in these formats to any agency. By contrast, the Mayor's Office does store calendar entries in PDF format, and it has used that format to provide the records in the past.

Second, the Mayor's Office has determined that disclosure of the metadata associated with the original electronic files – whether by producing it in native format or disclosing the metadata in some other format – may jeopardize or compromise the security of the City's computer system. Thus the Mayor's Office may decline to produce the metadata under Government Code Section 6253.9(f). Also, the Mayor's Office has determined that metadata contained in original electronic files may include unique identifiers for individual computer terminals and computer servers and associated security certificates and similar information. This information is highly sensitive, as disclosing it could allow a hacker to penetrate the City's computer system, "spoof" emails and insert themselves into confidential and/or privileged discussions, or send unauthorized emails on behalf of city officials. Therefore the information may be withheld under Government Code section 6254.19. Given this security risk, the information may also be withheld because there is a substantial need for confidentiality that outweighs any interest the public may have in accessing this information. *See* Cal. Evid. Code § 1040; Gov't Code § 6254(k).

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

UNFINISHED BUSINESS

Bill No: SB 272
Author: Hertzberg (D)
Amended: 9/2/15
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 7-0, 4/15/15
AYES: Hertzberg, Nguyen, Bates, Beall, Hernandez, Lara, Pavley

SENATE JUDICIARY COMMITTEE: 7-0, 4/21/15
AYES: Jackson, Moorlach, Anderson, Hertzberg, Leno, Monning, Wieckowski

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/4/15
AYES: Lara, Bates, Beall, Hill, Leyva, Mendoza, Nielsen

SENATE FLOOR: 37-0, 5/7/15
AYES: Allen, Anderson, Bates, Beall, Berryhill, Block, Cannella, De León,
Gaines, Galgiani, Hall, Hancock, Hernandez, Hertzberg, Hill, Hueso, Huff,
Jackson, Lara, Leno, Leyva, McGuire, Mendoza, Mitchell, Monning, Moorlach,
Morrell, Nguyen, Nielsen, Pan, Pavley, Roth, Runner, Stone, Vidak,
Wieckowski, Wolk
NO VOTE RECORDED: Fuller, Liu

ASSEMBLY FLOOR: 79-0, 9/4/15 - See last page for vote

SUBJECT: The California Public Records Act: local agencies: inventory

SOURCE: Author

DIGEST: This bill requires local governments, with specified exceptions, to catalog, and make publicly available, information about their data systems

Assembly Amendments exclude local education agencies from this bill's requirements, modify this bill's definition of "enterprise system," specify a schedule by which local agencies must complete and update catalogues of their data systems, and provide local agencies with an alternative to publicly disclosing

specified information in cases when public disclosure would not serve the public interest.

ANALYSIS:

Existing law, the California Public Records Act (CPRA), requires public records to be open to inspection during office hours and gives every person a right to inspect public records, with specific exceptions. The CPRA also specifies procedures for requesting copies of public records.

This bill:

- 1) Requires local agencies, except local education agencies, in implementing the CPRA, to create a catalog of enterprise systems.
- 2) Defines “enterprise system” as a software application or computer system that collects, stores, exchanges, and analyzes information that the agency uses that is both:
 - a) A multi-departmental system or a system that contains information collected about the public.
 - b) A system of record.
- 3) Defines “system of record” as a system that serves as an original source of data within an agency.
- 4) Directs that an enterprise system must not include any of the following:
 - a) Information technology security systems, including firewalls and other cybersecurity systems.
 - b) Physical access control systems, employee identification management systems, video monitoring, and other physical control systems.
 - c) Infrastructure and mechanical control systems, including those that control or manage street lights, electrical, natural gas, or water or sewer functions.
 - d) Systems related to 911 dispatch and operation or emergency services.

- e) Systems that would be restricted from disclosure pursuant to Section 6254.19.
 - f) The specific records that the information technology system collects, stores, exchanges, or analyzes.
- 5) Requires that the catalog prepared by each local agency must:
- a) Be completed and posted by July 1, 2016, and updated annually.
 - b) List the enterprise systems utilized by the agency.
 - c) Disclose, for each enterprise system, all of the following:
 - i) Current system vendor.
 - ii) Current system product.
 - iii) A brief statement of the system's purpose.
 - iv) A general description of categories or types of data.
 - v) The department that serves as the system's primary custodian.
 - vi) How frequently system data is collected.
 - vii) How frequently system data is updated.
 - viii) Be made publicly available in a specified manner.
 - d) Allows a local agency to provide alternative information if, on the facts of the particular case, the public interest served by not disclosing the current system vendor and current system product clearly outweighs the public interest served by disclosure.
- 6) Directs that its provisions must not be construed to permit public access to records held by an agency to which access is otherwise restricted by statute or to alter the process for requesting public records, as specified.
- 7) States that its provisions must not be interpreted to limit a person's right to inspect public records pursuant to the provision of the CPRA.
- 8) Contains legislative findings and declarations that:

- a) Identify the potential benefits of expanded public access to electronic data gather and maintained by local agencies.
- b) Demonstrate the interest protected by a specified provision of this bill which limits the public's right of access to public documents.
- c) Disclaim the need to reimburse costs that may be incurred by a local agency or school district under this act.

Comments

Purpose of the bill. Government agencies are rapidly expanding their use of computer technologies to conduct the public's business, including budgeting, mapping, and issuing permits. Much of the electronic data that local governments throughout California possess can be a powerful tool for improving the lives of Californians. Harnessing the power of local data will help to make government more transparent and accountable to the public, foster collaboration among agencies to deliver public services more efficiently and effectively, and support policies that generate economic growth and improve California communities. However, members of the public too often are not aware of what data local governments collect, the format the data is in, or the location where the data is stored. Similarly, a lack of information about local agencies' data systems may impede efforts among local agencies to collaborate on projects to standardize and share public data sets. By requiring local governments to share information about their enterprise data systems, SB 272 takes a significant step towards making California local government data more accessible to the public.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, because this bill furthers the purpose of the CPRA, local agencies' costs to create catalogues of their respective enterprise systems would be nonreimbursable.

SUPPORT: (Verified 9/4/15)

American Civil Liberties Union of California
 American Federation of State, County and Municipal Employees, AFL-CIO
 Associated Builders and Contractors of California
 Building Owners and Managers Association of California
 California Asian Pacific Chamber of Commerce
 California Broadcasters Association
 California Business Properties Association
 California Business Roundtable

California Forward Action Fund
California League of Food Processors
California Manufacturers & Technology Association
California Retailers Association
Commercial Real Estate Development Association
Data Transparency Coalition
Family Business Association
Firearms Policy Coalition
International Council of Shopping Centers
Los Angeles County Business Federation
National Federation of Independent Businesses
San Diego Regional Data Library
San Francisco Technology Democrats
Sunlight Foundation
Urban Strategies Council

OPPOSITION: (Verified 9/4/15)

Cites of Fountain Valley and Palo Alto

ASSEMBLY FLOOR: 79-0, 9/04/15

AYES: Achadjian, Alejo, Travis Allen, Baker, Bigelow, Bloom, Bonilla, Bonta, Brough, Brown, Burke, Calderon, Campos, Chang, Chau, Chávez, Chiu, Chu, Cooley, Cooper, Dababneh, Dahle, Daly, Dodd, Eggman, Frazier, Beth Gaines, Gallagher, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Grove, Hadley, Harper, Roger Hernández, Holden, Irwin, Jones, Jones-Sawyer, Kim, Lackey, Levine, Linder, Lopez, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Nazarian, Obernolte, O'Donnell, Olsen, Patterson, Perea, Quirk, Rendon, Rodriguez, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Wagner, Waldron, Weber, Wilk, Williams, Wood, Atkins

NO VOTE RECORDED: Ridley-Thomas

Prepared by: Brian Weinberger / GOV. & F. / (916) 651-4119
9/4/15 19:10:21

**** END ****

Leger, Cheryl (BOS)

From: 72902-46637773@requests.muckrock.com
Sent: Wednesday, September 4, 2019 10:05 AM
To: SOTF, (BOS)
Subject: RE: California Public Records Act Request #19047

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

September 4, 2019

This is a follow up to request number 19047:

Ms. Leger,

Can you please provide the respondents' reply and also the DCA's analysis memo re: 19089?

Thank you.

****Note this is a public mailbox, and that all of your responses (including disclosed records) may be automatically and instantly available to the public on the MuckRock.com service used to issue this request (though I am not a MuckRock representative).****

Filed via MuckRock.com

E-mail (Preferred): 72902-46637773@requests.muckrock.com

Upload documents directly:

https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAxJlxKbHL78P4hPis99lsuo1Y%3A1i5Yil%3A1iT3-iTvC7wNggh6f4DUR8MQ8YI&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Foffice-of-the-mayor-3891%252Fapril-28-may-4-2019-calendar-immediate-disclosure-request-72902%252F%253Femail%253Dsof%252540sfgov.org

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For mailed responses, please address (see note):

MuckRock News

DEPT MR 72902

411A Highland Ave

Somerville, MA 02144-2516

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On Sept. 4, 2019:

Subject: SOTF - Notice of Appearance - Compliance and Amendments Committee; September 24, 2019 4:30 p.m.

Good Morning:

You are receiving this notice because you are named as a Complainant or Respondent in one of the following complaints scheduled before the Compliance and Amendments Committee to: 1) hear the merits of the complaint; 2) issue a determination; and/or 3) consider referrals from a Task Force Committee.

Date: September 24, 2019

Location: City Hall, Room 408

Time: 4:30 p.m.

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.

Complaints:

Documentation (evidence supporting/disputing complaint)

File No. 19048: Hearing on the Status of the Order of Determination: Complaint filed by Justin Barker against the San Francisco Zoo for violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner.

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 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.

File No. 19017: Hearing on the Status of the Order of Determination: Complaint filed by Elica Vafaie, Asian Americans Advancing Justice, Asian law Caucus, Jeffrey Wang, Council on American-Islamic Relations, San Francisco Bay Area, Alan Schlosser No. CA American Civil Liberties Union of Northern California against Lt. Kathryn Waaland and the Police Department for violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner.

File No. 19083: Complaint filed by Tyler Breisacher against the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner.

File No. 19080: Complaint filed by Paul A. Vander Waerdts against the Dept. of Homelessness and Supportive Housing for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25 for failing to respond to an Immediate Disclosure Request in a timely manner.

File No. 19087: Complaint filed by Peter Dolan against the San Francisco Port for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

File No. 19089: Complaint filed by Anonymous against Dennis Herrera, Bradley Russi and the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(d), by failing to respond to a public records request in a timely and/or complete manner.

For a document to be considered, it must be received at least five (5) working days before the hearing (see attached Public Complaint Procedure). For inclusion into the agenda packet, supplemental/supporting documents must be received by 5:00 pm, September 17, 2019.

Cheryl Leger

Assistant Clerk, Board of Supervisors

Tel: 415-554-7724

<<http://www.sfbos.org/index.aspx?page=104>> Click here<<http://www.sfbos.org/index.aspx?page=104>> to complete a Board of Supervisors Customer Service Satisfaction form.

The Legislative Research Center<<http://www.sfbos.org/index.aspx?page=9681>> provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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On Aug. 27, 2019:
Subject: RE: California Public Records Act Request #19047
Good morning Supervisor of Records,

Attached is a new SFAC 67.21(d) petition. I look forward to your response in 10 days.

Sincerely,
Anonymous

On Aug. 27, 2019:
Subject: RE: California Public Records Act Request #19047
Dear SOTF,
Your copy of the Sunshine Ordinance (<https://sfgov.org/sunshine/provisions-sunshine-ordinance-section-67>) is out of date (vis:
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter67thesanfranciscosunshineordinanc?f=templates\\$fn=default.htm\\$3.0](http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter67thesanfranciscosunshineordinanc?f=templates$fn=default.htm$3.0)) . At least 67.29-5 is out of date for example.

On Aug. 27, 2019:
Subject: RE: California Public Records Act Request #19047
SOTF,

RE: Case 19089, Anonymous v Supervisor of Records (City Attorney)

We have now received a response (a denial, attached) from the Supervisor of Records; please add it to your 19089 File. The attached response bears a date of August 26, 2019, and the attached petition bears a date of May 15, 2019. Since Aug 26 is clearly more than 10 days after May 15, a violation by respondent of SFAC 67.21(d) is clear, which is the sole issue in the case.

If permitted by your bylaws or procedures and acceptable to Respondent, I am happy to waive a public hearing with oral argument in the interest of reducing the cost to both the City and myself, and instead submit case 19089 for your Task Force's consideration on the basis of my written complaint, the attached evidence, and any response by the Respondent, with the requested relief being a finding that the Supervisor of Records violated SFAC 67.21(d) and an associated Order of Determination.

Thanks,
Anonymous

On Aug. 27, 2019:

Subject: RE: California Public Records Act Request #19047

Thank you for your response, Supervisor of Records. We will continue to pursue SOTF 19047 v the Mayor re: the calendar data and SOTF 19089 v your office re: your prior violation of SFAC 67.21(d).

Sincerely,
Anonymous

On May 8, 2019:

Subject: California Public Records Act Request: April 28-May 4, 2019 Calendar - Immediate Disclosure Request

This is an Immediate Disclosure Request under the San Francisco Sunshine Ordinance, made before close of business May 8, 2019.

** Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the MuckRock.com service used to issue this request (though I am not a MuckRock representative). **

We request under the San Francisco Sunshine Ordinance (Ordinance) and the California Public Records Act (CPRA):

"1. an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items, from April 28 to May 4, 2019 (inclusive)."

We remind you of your obligations to provide electronic records in the original format you hold them in. Therefore, calendars exported in the .ics, iCalendar, or vCard formats with all non-exempt headers, metadata, attachments, etc. are best. Such formats are easily exportable from Google Calendar, Microsoft Outlook, Microsoft Exchange or other common calendaring/email systems.

However, if you choose to convert calendar items, for example, to PDF or printed format, to easily redact them, you must ensure that you have preserved the full content of the original calendar item record (as specified in request "1"), which contains many detailed headers beyond the ones generally printed out. If you instead provide PDFs or printed items with only a few of the headers or lacking attachments/images, and therefore withhold the other

headers/attachments without justification, you may be in violation of SF Admin Code 67.26, 67.27, Govt Code 6253(a), 6253.9, and/or 6255, and we may challenge your decision.

Please provide only those copies of records available without any fees. If you determine certain records would require fees, please instead provide the required notice of which of those records are available and non-exempt for inspection in-person if we so choose.

I look forward to your immediate disclosure.

Sincerely,
Anonymous

Filed via MuckRock.com

E-mail (Preferred): 72902-46637773@requests.muckrock.com

Upload documents directly:

https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAxJlxKbHL78P4hPis99lsuo1Y%3A1i5Yil%3A1iT3-iTvC7wNggh6f4DUR8MQ8YI&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Foffice-of-the-mayor-3891%252Fapril-28-may-4-2019-calendar-immediate-disclosure-request-72902%252F%253Femail%253Dsotf%252540sfgov.org

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MuckRock News

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411A Highland Ave

Somerville, MA 02144-2516

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Leger, Cheryl (BOS)

From: SOTF, (BOS)
Sent: Wednesday, September 4, 2019 9:23 AM
To: 'Justin Barker'; 'vitusl@sfzoo.org'; 'tanyap@sfzoo.org'; 'Ray Hartz Jr'; Blackman, Sue (LIB); 'javeriaj@advancingjustice-alc.org'; Waaland, Kathryn (POL); 'matrixfrog@gmail.com'; 'paulavanderwaerdt@gmail.com'; Kositsky, Jeff (HOM); 'peter dolan'; Quezada, Randolph (PRT); '72902-46637773@requests.muckrock.com'; COTE, JOHN (CAT); RUSSI, BRAD (CAT)
Subject: SOTF - Notice of Appearance - Compliance and Amendments Committee; September 24, 2019 4:30 p.m.

Good Morning:

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Date: September 24, 2019

Location: City Hall, Room 408

Time: 4:30 p.m.

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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.

Complaints:

Documentation (evidence supporting/disputing complaint)

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Cheryl Leger
Assistant Clerk, Board of Supervisors
Tel: 415-554-7724

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Leger, Cheryl (BOS)

From: SOTF, (BOS)
Sent: Friday, August 23, 2019 3:06 PM
To: RUSSI, BRAD (CAT); 'Cote, John (CAT)'
Cc: '72902-46637773@requests.muckrock.com'
Subject: SOTF - Complaint Filed with the Sunshine Ordinance Task Force - File No. 19089
Attachments: SOTF - Complaint Procedure 2018-12-05 FINAL.pdf; 19089 Complaint.pdf

Good Afternoon:

Bradley Russi and the City Attorney's Office have been named as Respondents in the attached complaint filed with the Sunshine Ordinance Task Force. Please respond to the following complaint/request within five business days.

The Respondent is required to submit a written response to the allegations including any and all supporting documents, recordings, electronic media, etc., to the Task Force within five (5) business days of receipt of this notice. This is your opportunity to provide a full explanation to allow the Task Force to be fully informed in considering your response prior its meeting.

Please include the following information in your response if applicable:

1. List all relevant records with descriptions that have been provided pursuant to the Complainant request.
2. Date the relevant records were provided to the Complainant.
3. Description of the method used, along with any relevant search terms used, to search for the relevant records.
4. Statement/declaration that all relevant documents have been provided, does not exist, or has been excluded.
5. Copy of the original request for records (if applicable).

Please refer to the File Number when submitting any new information and/or supporting documents pertaining to this complaint.

The Complainant alleges:
Complaint Attached.

Cheryl Leger
Assistant Clerk, Board of Supervisors
Tel: 415-554-7724



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