

File No. 17018

Item No. 6

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

SOTF – Complaint Committee _____ **Date: April 25, 2017** _____

- | | | |
|-------------------------------------|------------------------------------|------------------|
| <input checked="" type="checkbox"/> | Petition/Complaint | Page: <u>360</u> |
| <input checked="" type="checkbox"/> | Memorandum - Deputy City Attorney | Page: <u>365</u> |
| <input checked="" type="checkbox"/> | Complainant's Supporting Documents | Page: <u>372</u> |
| <input type="checkbox"/> | Respondent's Response | Page: _____ |
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| <input type="checkbox"/> | Order of Determination | Page: _____ |
| <input type="checkbox"/> | Minutes | Page: _____ |
| <input type="checkbox"/> | Committee Recommendation/Referral | Page: _____ |
| <input type="checkbox"/> | Administrator's Report | Page: _____ |
| <input type="checkbox"/> | No Attachments | |

OTHER

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Completed by: V. Young Date 04/21/17

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

Young, Victor

From: Google Forms <sfbdsupvrs@gmail.com>
Sent: Friday, March 17, 2017 2:42 PM
To: SOTF, (BOS)
Subject: New Response Complaint Form

Follow Up Flag: Follow up
Flag Status: Flagged

Your form has a new entry.

Here are the results.

**Complaint against
which Department
or Commission**

London Breed

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

Breedstaff@sfgov.org

Alleged Violation

Public Records

**Sunshine Ordinance
Section:**

67.25

**Please describe
alleged violation**

Earlier this week I filed an immediate disclosure request for the list of accounts blocked by @londonbreed on Twitter. In order to ensure the records could be quickly recalled, I included a URL that would generate such a list when logged into Supervisor London Breed's Twitter account; I still haven't heard back from her office.

**Do you want a
public hearing
before the Sunshine
Ordinance Task
Force?**

Yes

Date

March 17, 2017

Name

Josh Wolf

Address

454 Waller st

City

San Francisco

Zip 94117
Telephone 4157942401
Email Web@joshwolf.net

Send recurring emails with [Email Scheduler](#) for Gmail.

This email was sent via the [Google Forms Add-on](#).

Young, Victor

From: Josh Wolf <hi@joshwolf.net>
Sent: Tuesday, March 21, 2017 11:37 AM
To: SOTF, (BOS)
Subject: Sunshine Complaint

On March 14, I filed an IDR with Supervisor Breed as follows:

Dear Supervisor Breed,

This is an Immediate Disclosure Request for public records under San Francisco's Sunshine Ordinance, the California Public Records Act, Proposition 59, and the Brown Act.

I am writing to request a copy of the list of users blocked on the Twitter account @londonbreed. The requested document may be obtained by visiting the following URL while logged into the account referenced above: <https://twitter.com/settings/blocked>

Thank you for your assistance and happy Sunshine Week!

Best,

Josh

I still have not received a response and am looking to file a complaint for violating section 67.25(a) of the San Francisco Government Code. Beyond this, I think the issue of public social media accounts utilizing the block feature is something that the Sunshine Task Force should examine as members of the public are denied direct access to these records when their accounts have been blocked.

Young, Victor

From: Josh Wolf <web@joshwolf.net>
Sent: Friday, March 31, 2017 3:02 PM
To: BreedStaff, (BOS)
Cc: SOTF, (BOS)
Subject: Fwd: Immediate Disclosure Request for Public Records: blocked Users on Twitter Account @LondonBreed

Dear Supervisor Breed,

I'm writing to follow up on the immediate disclosure request I filed on the 14th of March. I realize that my timing on the immediate disclosure request may have been inconvenient with the change of staff during the time I filed my request; hopefully things have settled in with the new staff at this point in time. While it is my belief that my request was well-within the bounds of an immediate disclosure request, it has now been more than ten days and I still have not received the records I requested.

Further, it is also my understanding that you have not yet responded to the inquiry sent to you by the Sunshine Ordinance Task Force pursuant to my complaint. It is my understanding that my complaint filed with the Sunshine Task Force invalidates my records request, and I'm writing to inquire why I still have not yet received a response to what is a simple request.

Additionally, the record requested has potentially changed since my request was filed, and I'm concerned about the integrity of the actual document requested at the time it was requested.

Thank you for your consideration,

Josh

PS - I suppose I should probably disclose that I'm a member of the Sunshine Task Force and would obviously recuse myself from adjudicating my own case.

Begin forwarded message:

From: Josh Wolf <web@joshwolf.net>
Subject: Immediate Disclosure Request for Public Records: blocked Users on Twitter Account @LondonBreed
Date: March 14, 2017 at 7:42:01 PM PDT
To: Breedstaff@sfgov.org

Dear Supervisor Breed,

This is an Immediate Disclosure Request for public records under San Francisco's Sunshine Ordinance, the California Public Records Act, Proposition 59, and the Brown Act.

I am writing to request a copy of the list of users blocked on the Twitter account @londonbreed. The requested document may be obtained by visiting the following URL while logged into the account referenced above: <https://twitter.com/settings/blocked>

Thank you for your assistance and happy Sunshine Week!

Best,

Josh



DENNIS J. HERRERA
City Attorney

NICHOLAS COLLA
Deputy City Attorney

Direct Dial: (415) 554-3819
Email: nicholas.colla@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Nicholas Colla
Deputy City Attorney
DATE: April 20, 2017
RE: Complaint No. 17018 – Wolf v. Supervisor London Breed

COMPLAINT

Complainant Josh Wolf (“Complainant”) alleges that the Supervisor Londo Breed (“Supe. Breed”) of the San Francisco Board of Supervisors (“BOS”) violated provisions of the Sunshine Ordinance by failing to timely respond to his March 14, 2017 Immediate Disclosure Request (“IDR”).

COMPLAINANT FILES THIS COMPLAINT

On March 17, 2017, Complainant filed this complainant with the Task Force regarding Supe. Breed’s alleged failure to timely respond to Complainant’s IDR.

JURISDICTION

Supe. Breed is a member of a policy body under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Ordinance against the Supe. Breed. Supe Breed has not contested jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs responses to public records requests.
- Section 67.25 governs responses to IDRs.

Section 6250 et seq. of the Cal. Gov’t Code (“CPRA”)

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

APPLICABLE CASE LAW

- *City of San Jose v. Superior Court* (2017) -- Cal.4th – 214 Cal. Rptr.3d 274 (Public business conducted on personal electronic devices or accounts may be subject to disclosure pursuant to PRA requests).

BACKGROUND

On March 14, 2017, Complainant sent an IDR via email to Supe Breed in which he requested following:

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: April 20, 2017
PAGE: 2
RE: Complaint No. 17018 – Wolf v. Supervisor London Breed

This is an Immediate Disclosure Request for public records under San Francisco's Sunshine Ordinance, the California Public Records Act, Proposition 59, and the Brown Act.

I am writing to request a copy of the list of users blocked on the Twitter account @londonbreed. The requested document may be obtained by visiting the following URL while logged into the account referenced above: <https://twitter.com/settings/blocked>

On March 17, after allegedly having yet to receive a response, Complainant filed this complaint with the Task Force.

On March 21, 2017, and again on March 31, 2017, Complainant sent follow up emails to Supe. Breed inquiring about the status of his request. It is unclear whether Complainant ever received a response from Supe. Breed's office.

LEGAL ANALYSIS

In *San Jose*, the City of San Jose received a request for all voicemail messages, email or text messages sent or received on private electronic devices used by the City's Mayor, members of its City Counsel and/or their staff regarding San Jose City matters. In response, the City provided records sent from/received on private electronic devices using City accounts but not records from private devices using private accounts. The requestor, Smith, challenged this decision in an action for declaratory relief.

The State Supreme Court held that communications on personal electronic devices or personal accounts involving the conduct of the public's business may be public records subject to disclosure. Such writings include, but are not limited to, emails on personal computers and text messages on personal cell phones.

The Task Force may want to consider whether the information at issue is a form of conducting public business via a private Twitter account.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS

- Did Complainant ever receive a response from Supe. Breed?
- How does Complainant contend that the records requested should be considered public business being conducted on a personal electronic account?
- How does Supe. Breed contend that the records requested should not be considered public business being conducted on a personal electronic account?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did Supe. Breed violate Administrative Code Sections 67.21 and/or 67.25 by failing to timely respond to Complainant's IDR?
- Did the Department violate CPRA 6253(c) by allegedly failing to comply with Complainant's requests for records?

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: April 20, 2017
PAGE: 3
RE: Complaint No. 17018 – Wolf v. Supervisor London Breed

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: April 20, 2017
PAGE: 4
RE: Complaint No. 17018 – Wolf v. Supervisor London Breed

* * *

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

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: April 20, 2017
PAGE: 5
RE: Complaint No. 17018 – Wolf v. Supervisor London Breed

record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of 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.

SEC. 67.25. IMMEDIACY OF RESPONSE

- (a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, *a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request.* This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.
- (b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.
- (c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.
- (d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: April 20, 2017
PAGE: 6
RE: Complaint No. 17018 – Wolf v. Supervisor London Breed

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

SEC. 6253

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

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

**Sunshine Ordinance Task Force
Complaint Summary**

File No. 17018

Josh Wolf V. President London Breed, Board of Supervisors

Date filed with SOTF: 3/17/17

Contacts information (Complainant information listed first):

web@joshwolf.net (Complainant)

Breedstaff@sfgov.org (Respondent)

File No. 17018: Complaint filed by Josh Wolf against President London Breed, Board of Supervisors, 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.

Administrative Summary if applicable:

Complaint Attached.

Young, Victor

From: SOTF, (BOS)
Sent: Wednesday, April 19, 2017 9:07 AM
To: Lloyd, Kayleigh (BOS)
Cc: BreedStaff, (BOS); Calvillo, Angela (BOS)
Subject: SOTF - REMINDER - Notice of Hearing - Complaint Committee: April 25, 2017, 5:30 p.m. (Complaint No. 17018 - J. Wolf v. President London Breed)
Attachments: SOTF Complaint 17018.pdf

Good Morning:

I am following up on a complaint filed a by Josh Wolf against President London Breed (File No. 17018 attached). The Sunshine Ordinance Task Force has not yet received a response to the complaint from President Breed's office regarding the complaint. In addition, please note that that matter is scheduled for a hearing before the Complaint Committee on April 25, 2017, at 5:30 p.m. (details listed below)

Please contact me if there are any questions regarding the matter. Thank you.

File No. 17018: Complaint filed by Josh Wolf against President London Breed, Board of Supervisors, 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.

Victor Young 415-554-7724
Administrator, Sunshine Ordinance Task Force

From: SOTF, (BOS)
Sent: Friday, April 07, 2017 4:03 PM
To: 'dratler@sonic.net' <dratler@sonic.net>; Lediju, Tonia (CON) <tonia.lediju@sfgov.org>; CON, Controller (CON) <controller.con@sfgov.org>; Rosenfield, Ben (CON) <ben.rosenfield@sfgov.org>; 'kjmmbm@gmail.com' <kjmmbm@gmail.com>; Quezada, Randolph (HOM) <randolph.quezada@sfgov.org>; HSHSunshine <HSHSunshine@sfgov.org>; 'Josh Wolf' <web@joshwolf.net>; BreedStaff, (BOS) <breedstaff@sfgov.org>; Baumgartner, Margaret (CAT) <margaret.baumgartner@sfgov.org>; Guzman, Andrea (CAT) <Andrea.Guzman@sfgov.org>; 'Ann Treboux' <atreboux7@aol.com>; Cote, John (CAT) <john.cote@sfgov.org>; 'gb@atalawgroup.com' <gb@atalawgroup.com>; Lew, Debra (TTX) <debra.lew@sfgov.org>; 'Allen Grossman' <sfufc@mac.com>; Eng, Michael (CPC) <Michael.Eng@sfgov.org>; Ionin, Jonas (CPC) <jonas.ionin@sfgov.org>; Silva, Christine (CPC) <christine.l.silva@sfgov.org>
Cc: Ng, Wilson (BOS) <wilson.l.ng@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>
Subject: SOTF - Notice of Hearing - Complaint Committee: April 25, 2017, 5:30 p.m.

Good Afternoon:

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

Date: April 25, 2017

Location: City Hall, Room 408

Time: 5:30 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:

File No. 17016: Complaint filed by Jerry Dratler against Ben Rosenfield and the Office of the Controller for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a request for public records in a timely and/or complete manner.

File No. 17017: Complaint filed by Dolores Clean against Randy Quezada and the Department of Homelessness and Supporting Housing for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a request for public records in a timely and/or complete manner.

File No. 17018: Complaint filed by Josh Wolf against President London Breed, Board of Supervisors, 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. 17023: Complaint filed by Ann Treboux against Margaret Baumgartner and the Office of the City Attorney, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a complete and/or timely manner.

File No. 17024: Complaint filed by Gregory Berlin against the Office of the Treasurer and Tax Collector, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, for failure to respond to a request for public records in a timely and/or complete manner.

File No. 17025: Complaint filed by the SF Urban Forest Coalition against Michael Eng, Jonas Ionin, and Christine Silva, Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.24(c), 67.25, and 67.34, for failure to respond to an Immediate Disclosure Request in a timely and/or complete manner.


The Task Force, upon receipt of the report and/or recommendation from the Committee, shall schedule and conduct a hearing on the merits of the complaint. Notice of hearing will be provided once the hearing date has been confirmed.

Documentation (evidence supporting/disputing complaint)

For a document to be considered, it must be received at least five (5) working days before the hearing. For inclusion into the agenda packet, supplemental/supporting documents must be received by 5:00 pm, **April 18, 2017**.

Victor Young
Administrator
Sunshine Ordinance Task Force

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

 Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) 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.