MEMORANDUM

TO: Honorable Members
Sunshine Ordinance Task Force

FROM: Bradley Russi
Deputy City Attorney

DATE: August 26, 2015

RE: Fifteenth Annual Report of the Supervisor of Records
January 1 to December 31, 2014

The City Attorney’s Office submits this report to the Sunshine Ordinance Task Force under Section 67.21(h) of the San Francisco Sunshine Ordinance (S.F. Admin. Code §67.21(h)). That section requires the Supervisor of Records to prepare an annual tally and report for the Sunshine Ordinance Task Force on each petition brought before the Supervisor of Records for access to records. Section 67.21(h) includes the following requirements:

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.

Reporting period: This report covers petitions brought before the Supervisor of Records between January 1 – December 31, 2014 (the “reporting period”).

Custodian of Records: For the custodian of records, the report generally gives the name of the employee who responded to the request.

Court actions: No court decisions issued regarding determinations by the Supervisor of Records for the reporting period.

Orders issued: No order from the Supervisor of Records issued to any City department whose records were the subject of a petition.

Court Decisions Interpreting or Applying the San Francisco Sunshine Ordinance:

At the request of the Task Force, the City Attorney’s Office reports additional information about court decisions when it submits the annual report of the Supervisor of Records. We report on any court decision made during the reporting period in a matter in which the City is a party to the action if the decisions interprets or applies the San Francisco Sunshine Ordinance.
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The only decision interpreting the Sunshine Ordinance in 2014 was John St. Croix v. Superior Court of the City and County of San Francisco (2014) 228 Cal. App. 4th 434, which was discussed in the 14th Annual Report of the Supervisor of Records. In St. Croix, the First District Court of Appeal held that the San Francisco Charter establishes an attorney-client relationship between the City Attorney and City agencies and that the attorney-client privilege is integral to that relationship. Accordingly, the court held that the San Francisco Sunshine Ordinance may not eliminate or limit the Charter-created attorney-client privilege. This decision affirms the authority of City agencies, notwithstanding Section 67.24(b)(1)(iii) of the Sunshine Ordinance, to decline public disclosure of communications with the City Attorney’s Office that fall under the attorney-client privilege, even with respect to advice concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, governmental ethics codes and the Sunshine Ordinance. The court in St. Croix reversed and vacated the Superior Court’s order in Allen Grossman v. John St. Croix, et al, San Francisco Superior Court No. CPF-13-513221.

DESCRIPTION OF PETITIONS AND THEIR DISPOSITION

1. Petitioner: San Francisco Chronicle; Jaxon Van Derbeken
Department: Police Department
Records sought: Investigative file regarding the death of passenger (Asiana crash)
Custodian of Records: Sgt. Danielle Newman
Determination: Records provided – No determination needed
Date of Petition: January 29, 2014
Date of Determination: February 21, 2014

A copy of the decision and petition are included on pages 1-6 of the Appendix.

2. Petitioner: Paula Datesh
Department: Arts Commission
Records sought: Request that Department provide a letter to Board of Appeal on Department letterhead; copy of letter sent by Mark Tetro to the Board of Appeals
Custodian of Records: Howard Lazar
Determination: No determination needed – a request that a department create a record is outside the scope
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of review under Section 67.21(d); as to other record requested, Department provided it

Date of Petition: February 6, 2014
Date of Determination: February 19, 2014

A copy of the decision and petition are included on pages 7-9 of the Appendix.

3. Petitioner: Paula Datesh
Department: Arts Commission
Records sought: Records described in six public records requests to the Department which were not provided with the petition; Department responded to three of the requests (which related to a letter to the Board of Appeal, construction on Stockton Street, and YouTube video)
Custodian of Records: Howard Lazar
Determination: No determination needed – Department responded to three of the six requests; petitioner was asked to but did not provide the remaining three for review
Date of Petition: February 28, 2014
Date of Determination: March 6, 2014

A copy of the decision and petition are included on page 10 of the Appendix.

4. Petitioner: Paula Datesh
Department: Arts Commission
Records sought: Records relating to street inspections for January 2014
Custodian of Records: Howard Lazar
Determination: No determination needed – records provided
Date of Petition: February 28, 2014
Date of Determination: March 5, 2014

A copy of the decision and petition are included on pages 11-12 of the Appendix.
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5. Petitioner: Paula Datesh
Department: Arts Commission
Records sought: Records of meetings between Union Square Business Improvement District and the Department
Custodian of Records: Howard Lazar
Determinations: No determination needed – Department responded to the request informing petitioner that it had no responsive records; to the extent review sought on basis of inadequate search for records, the issue is outside the scope of review under Section 67.21(d)
Date of Petition: March 4, 2014
Date of Determination: March 12, 2014
A copy of the decision and petition are included on pages 13-14 of the Appendix.

6. Petitioner: Homeowners Association of the Metropolitan
Department: Department of Building Inspection (“DBI”)
Records sought: Records of private structural engineers hired at the direction of DBI by the project sponsor under DBI Bulletin AB-082
Custodian of Records: William Strawn
Determination: Department provided records – No determination needed
Date of Petition: March 5, 2014
Date of Determination: April 8, 2014
A copy of the decision and petition are included on pages 15-18 of the Appendix.

7. Petitioner: Paula Datesh
Department: Arts Commission
Records sought: Up-to-date map of approved street artists spaces in the downtown area
Custodian of Records: Howard Lazar
TO: Honorable Members  
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Determination: No determination needed – Department provided record; allegation that map provided is not current is outside the scope of review under Section 67.21(d)  
Date of Petition: March 6, 2014  
Date of Determination: March 14, 2014  
A copy of the decision and petition are included on pages 19-22 of the Appendix.

8. Petitioner: Michael Samar  
Department: Police Department  
Records sought: None – complaint of improperly prepared traffic collision report  
Custodian of Records: Not applicable  
Determination: No determination needed – Complaint unrelated to disclosure of records  
Date of Petition: March 11, 2014  
Date of Determination: March 18, 2014  
A copy of the decision and petition are included on pages 23-32 of the Appendix.

9. Petitioner: Paula Datesh  
Department: Arts Commission  
Records sought: Inspection-related and other records relating to street artist stand at Post and Stockton  
Custodian of Records: Howard Lazar  
Determination: No determination needed – records provided  
Date of Petition: March 20, 2014  
Date of Determination: March 28, 2014  
A copy of the decision and petition are included on pages 33-34 of the Appendix.

10. Petitioner: Paula Datesh  
Department: Arts Commission
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11. Petitioner: Emmanuel Kourkoulos
Department: Police Department
Records sought: A copy of a police report
Custodian of Records: Maureen Conefrey
Determination: Denied based on State laws governing records of law enforcement investigations and records protected under the official information privilege

Dates of Petition: March 27, 2014
Date of Determination: May 5, 2014

A copy of the decision and petition are included on pages 38-42, 44 of the Appendix.

12. Petitioner: Emmanuel Kourkoulos
Department: Police Department
Records sought: An unredacted copy of an emergency protective order
Custodian of Records: Maureen Conefrey
Determination: No determination needed - department provided a less-redacted version of the record sought

Dates of Petition: May 8, 2014
Date of Determination: June 19, 2014

A copy of the decision and petition are included on pages 43 & 45 of the Appendix.
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13. Petitioner: Joe Safdie
    Department: Municipal Transportation Agency
    Records sought: Overtime payroll records for certain classifications
    Custodian of Records: Parveen Boparai
    Determinations: No determination needed – petitioner had not yet
                    made a request to the Department for the records
                    sought
    Date of Petition: March 28, 2014
    Date of Determination: March 31, 2014
    A copy of the decision and petition are included on pages 46-48 of the Appendix.

14. Petitioner: Paula Datesh
    Department: Arts Commission
    Records sought: Emails between John Tunui and the Department
    Custodian of Records: Howard Lazar
    Determinations: No determination needed – records provided
    Date of Petition: March 20, 2014
    Date of Determination: March 28, 2014
    A copy of the decision and petition are included on pages 49-50 of the Appendix.

15. Petitioner: Daniel Giles
    Department: Police Department
    Records sought: Oath of office and official bond
    Custodian of Records: Maureen Conefrey
    Determination: No determination needed – Department had no
                   responsive records and provided petitioner with
                   information regarding its search for requested
                   records
    Date of Petition: April 7, 2014
    Date of Determination: April 7, 2014
    A copy of the decision and petition are included on pages 51-53 of the Appendix.
16. Petitioner: Paula Datesh  
Department: Arts Commission  
Records sought: Alleged noncompliance of Street Artist requirements at Post and Stockton stand and the Department’s alleged failure to enforce the requirements; and an incorrectly addressed mailed response to petitioner’s records request  
Custodian of Records: Howard Lazar  
Determinations: No determination needed – issues raised are outside the scope of review under Section 67.21(d)  
Date of Petition: April 11, 2014  
Date of Determination: April 21, 2014  
A copy of the decision and petition are included on pages 54-57 of the Appendix.

17. Petitioner: Paula Datesh  
Department: Arts Commission  
Records sought: Records relating to Howard Lazar’s job skills and training  
Custodian of Records: Howard Lazar  
Determinations: No determination needed – Department informed petitioner it had no responsive records  
Date of Petition: April 21, 2014  
Date of Determination: May 2, 2014  
A copy of the decision and petition are included on pages 58-59 of the Appendix.

18. Petitioner: Paula Datesh  
Department: Arts Commission  
Records sought: Records documenting Sunshine Ordinance training for Arts Commission staff  
Custodian of Records: Kate Patterson-Murphy  
Determination: No determination needed – Department provided records and informed petitioner that it has no additional records
Date of Petition: May 19, 2014
Date of Determination: May 28, 2014

A copy of the decision and petition are included on pages 60-62 of the Appendix.

19. Petitioner: Paula Datesh
Department: Arts Commission
Records sought: Records relating to Executive Meeting minutes
Custodian of Records: Sharon Page Ritchie
Determination: No determination needed – Department provided CD copies of recordings, did not have recordings in digital format as requested, and petitioner had not yet asked staff for rough draft of Executive Meeting minutes.

Date of Petition: June 6, 2014
Date of Determination: June 16, 2014

A copy of the decision and petition are included on pages 63-66 of the Appendix.

20. Petitioner: Paula Datesh
Department: Arts Commission
Records sought: Policies regarding posting of meeting minutes
Custodian of Records: Kate Patterson-Murphy
Determination: No determination needed – petitioner’s records request not correctly addressed and had not been received, so Department had no opportunity to respond.

Date of Petition: June 6, 2014
Date of Determination: June 16, 2014

A copy of the decision and petition are included on pages 67-68 of the Appendix.

21. Petitioner: Paula Datesh
Department: Arts Commission
Records sought: Statement of Incompatible Activities
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Custodian of Records: Howard Lazar
Determination: No determination needed – Department provided
Advance Written Determination form, the
appropriate documents for employees to submit
under Department’s Statement of Incompatible
Activities
Date of Petition: June 11, 2014
Date of Determination: June 20, 2014
A copy of the decision and petition are included on pages 69-73 of the Appendix.

22. Petitioner: Seth Hemmelgarn
Department: Adult Probation Department
Records sought: List of fields in case management system
Custodian of Records: Leah Rothstein
Determination: No determination needed. APD provided the list of
fields in the Department’s case management
system.
Date of Petition: May 29, 2014
Date of Determination: August 29, 2014
A copy of the decision and petition are included on pages 74-78 of the Appendix.

23. Petitioner: Max A. Cherney
Department: San Francisco Police Department
Records sought: Records regarding the policy/procedure for using
Stingray/IMSI catcher, and how it is used in terms
of evidence
Custodian of Records: Sgt. Danielle Newman
Determination: Only responsive records (1) not subject to
disclosure under California Evidence Code §
1040, California Civil Code § 1060, 5 U.S.C. §§
552(b)(4), (b)(6), (b)(7)(c), and (b)(7)(e), 6 U.S.C.
§§ 482(e) and (f)(1), 22 C.F.R. Parts 120-130, 22
C.F.R. 121.1, XI, (b), 22 U.S.C. § 2778 and
Executive Order 13637; (2) not subject to disclosure
under Section 6254(a) of the California Government
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Code and Section 67.27(a) of the San Francisco Administrative Code, and (3) court records filed under seal.

Date of Petition: June 10, 2014
Date of Determination: June 20, 2014

A copy of the decision and petition are included on pages 79-82 of the Appendix.

24. Petitioner: Lindsay Waskey, Esq.; PETA
Department: Animal Care and Control
Records sought: Records regarding the Wonderful Opportunities for Occupants and Fidos program
Custodian of Records: Rebecca Katz
Determination: No determination needed. ACC provided information.
Date of Petition: June 16, 2014
Date of Determination: June 27, 2014

A copy of the decision and petition are included on pages 83-98 of the Appendix.

25. Petitioner: Rajiv Bhatia
Department: Department of Public Health
Records sought: Data analysis methodology and normalized geographic data for a mobile application developed by contractor
Custodian of Records: Department of Public Health
Determination: The department properly withheld the records as a trade secret of the contractor under Section 6254(k) of the Government Code and Section 1060 of the Evidence Code
Date of Petition: June 27, 2014
Date of Determination: June 12, 2015

A copy of the decision and petition are included on pages 99-115 of the Appendix.
26. Petitioner: Paula Datesh  
Department: Arts Commission  
Records sought: Written inventory of all audio recordings of the SFAC from 1932 to 2014, including where the audio records are housed, the environment they are placed in and all written documentation as to the procedures for the care and upkeep of the audio recordings; all documents relative to the process and procedures for a member of the general public to inspect and listen to the original audio recordings; and all documents regarding the procedure the SFAC has in place for audio recording and reproduction of these recordings.

Custodian of Records: Howard Lazar  
Determination: No determination needed. SFAC provided information.  
Date of Petition: July 22, 2014  
Date of Determination: July 31, 2014

A copy of the decision and petition are included on pages 116-119 of the Appendix.

27. Petitioner: Paula Datesh  
Department: Arts Commission  
Records sought: Information regarding why the July 2014 Street Artist meeting was cancelled.

Custodian of Records: Howard Lazar  
Determination: No determination needed. SFAC provided information.  
Date of Petition: July 24, 2014  
Date of Determination: August 1, 2014

A copy of the decision and petition are included on pages 120-123 of the Appendix.

28. Petitioner: Paula Datesh  
Department: Arts Commission
CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF THE CITY ATTORNEY

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TO: Honorable Members  
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Records Sought: All documents regarding the street artist budget for 2015-2016, the fee increase for the same time period, the number of permit holders, the name of the person who prepared the budget and the “notice of incomparable activities” filed by Howard Lazar for years 2013 and 2014.

Custodian of Records: Howard Lazar

Determination: No determination needed. SFAC provided the records.

Date of Petition: July 24, 2014
Date of Determination: August 4, 2014

A copy of the decision and petition are included on pages 124-128 of the Appendix.

29. Petitioner: Paula Datesh
Department: Arts Commission

Records Sought: The names and job title of the nine designated employees of the SFAC who must file both the Statement of Economic Interest and the Statement of Incomparable (sic) Activities; the location where the forms are filed; a copy of each of the above forms with the nine filers noted in the SF Campaign and Government Conduct Code Sec. 3-1-140; a copy of each yearly Form 700 Mr. Lazar is required to file for the 22 years he has had an outside job at the South End Rowing Club; and a copy of each yearly Statement of Incompatible Activities Mr. Lazar filed for the years he has had an outside job at the South End Rowing Club.

Custodian of Records: Howard Lazar

Determination: No determination needed. SFAC provided the records.

Date of Petition: July 28, 2014
Date of Determination: August 4, 2014

A copy of the decision and petition are included on pages 129-132 of the Appendix.
30. Petitioner: Paula Datesh  
Department: City Attorney’s Office  
Records sought: All email, written and photographic correspondence between the Arts Commission and the City Attorney’s Office regarding Street Artist John Tunui’s three year “campaign of harassment” against Ms. Datesh; an explanation as to why Ms. Datesh’s public comments about Mr. Tunui’s “ongoing harassment does not post a full Commission meetings and Street Artist meetings;” an explanation as to why the full Commission has done nothing about this issue; an explanation as to why Adine Varah does not appear before the Sunshine Ordinance Task Force when requested; an explanation as to why the San Francisco Arts Commission does not comply with Orders issued by the SOTF.  
Custodian of Records: Adine Varah  
Determination: No determination needed, no responsive records  
Date of Petition: August 1, 2014  
Date of Determination: August 1, 2014  
A copy of the decision and petition are included on pages 133-139 of the Appendix.

Department: Department of Public Works  
Records sought: 1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect; 2) legal claims against the City involving DPW in any aspect that in the past 12 months have been adjudicated, closed, settled or otherwise concluded; 3) police reports from the past 12 months involving construction sites under DPW auspices or involving DPW in any aspect; 4) reports and other documentation regarding accidents during the past 12 months that involved workers, members of the public or other persons at sites under DPW jurisdiction.  
Custodian of Records: Frank W. Lee
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Determination: No determination needed; DPW agreed to provide responsive records
Date of Petition: August 29, 2014
Date of Determination: September 16, 2014
Reopened: October 9, 2014
Second Determination: November 4, 2014
A copy of the decision and petition are included on pages 140-167 of the Appendix.

32. Petitioner: Mark Miller
    Department: Municipal Transportation Agency
    Records sought: Records regarding residential parking
    Custodian of Records: Caroline Celaya
    Determination: No determination required; SFMTA provided the requested records
    Date of Petition: September 3, 2014
    Date of Determination: September 5, 2014
    A copy of the decision and petition are included on pages 168-170 of the Appendix.

33. Petitioner: Derek Kerr, MD & Maria Rivero, MD
    Department: Department of Public Health
    Records sought: Email records of Mike Llewellyn
    Custodian of Records: Nancy Sarieh
    Determination: Petition denied, because department was not withholding any documents
    Date of Petition: September 8, 2014
    Date of Determination: June 12, 2015
    A copy of the decision and petition are included on pages 171-176 of the Appendix.

34. Petitioner: Derek Kerr, MD & Maria Rivero, MD
    Department: City Attorney’s Office
    Records sought: Draft Investigation Report
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Custodian of Records: Matt Dorsey  
Determination: Petition denied based on current administrative proceeding & anticipated litigation addressing disclosure status of record (among other things).  
Date of Petition: October 30, 2014  
Date of Determination: November 25, 2014  
A copy of the decision and petition are included on pages 177-184 of the Appendix.

35. Petitioner: Charles Curtis Grisham, Jr.  
Department: Department of Public Works  
Records sought: Hiring and compensation data for a specific list of employees  
Custodian of Records: Frank W. Lee  
Determination: No determination required; DPW provided information.  
Date of Petition: November 7, 2014  
Date of Determination: December 1, 2014  
A copy of the decision and petition are included on pages 185-195 of the Appendix.

36. Petitioner: Duwayne A. Carr  
Department: City Attorney’s Office  
Records sought: SFERS Board decision granting the Industrial Disability Retirement Application of former SFPD Officer Matt Tonsing.  
Custodian of Records: Matt Dorsey  
Determination: Petition denied based on Penal Code Sec. 832.7, Article I, Sec. 1California Constitution, Government Code Secs. 6250, 6254(c), 6254(k) and San Francisco Administrative Code Sec. 67.1(g).  
Date of Petition: November 14, 2014  
Date of Determination: November 24, 2014  
A copy of the decision and petition are included on pages 196-200 of the Appendix.
# APPENDIX

FIFTEENTH ANNUAL REPORT OF THE SUPERVISOR OF RECORDS

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Re: Petition to Supervisor of Records – San Francisco Police Department

Dear Mr. Ibargüen:

This letter responds to the petition to the Supervisor of Records that you submitted on behalf of the San Francisco Chronicle and Jaxon Van Derbeke.

The petition asked this office to review the response by the San Francisco Police Department ("Department") to your clients’ request for records of “hit-run investigative file re the death of Ye Meng Yuan on July 6, 2013.”

The Department denied the request, asserting that the records were exempt from disclosure under California Vehicle Code section 20012 as an accident report and California Government Code sections 6254(b) (pending litigation) and 6254(f) (relating to, among others, records of investigation of a local policy agency). We understand that the Department is no longer asserting Government Code sections 6254(b) or 6254(f) as a basis for withholding records in response to the request at issue here.

The Department has informed us that it will produce records responsive to the request consistent with California Vehicle Code Section 20012. The disclosure will include reports made by investigating officers but will exclude reports that Vehicle Code 20012 requires from participants in an accident leading to injuries or death. The Police Department will redact from the documents information that falls under the definition of required reports.

We further understand that Department staff are currently reviewing the records to determine what records or parts of records need to be withheld or redacted under Vehicle Code section 20012 or other applicable law. Staff anticipate being able to start producing records on a rolling basis, as they finish the review, on Wednesday, February 26, 2014.

Please contact Sgt. Danielle Newman ((415) 553-1651) to discuss the status of the Department’s disclosure schedule.

In light of the Department’s decision to provide responsive records, we find no issue requiring determination at this time. If, after reviewing the records provided by the Department, you disagree with its reliance on an exemption (whether based on Vehicle Code section 20012 or another law), you may file another petition seeking review.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Paula Jesson
Deputy City Attorney
VIA OVERNIGHT COURIER

Office of the City Attorney
Attention: Supervisor of Records
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Petition for Determination under § 67.21(d) San Francisco Sunshine Ordinance regarding Public Records Request of San Francisco Chronicle

Dear City Attorney Herrera:

I represent the San Francisco Chronicle and its reporter Jaxon Van Derbekken (collectively, the “Chronicle”). I write pursuant to the San Francisco Sunshine Ordinance § 67.21(d) to request that you review the San Francisco Police Department’s (the “SFPD”) denial of the Chronicle’s January 13, 2014 public records request (the Request”), and that you make a written determination that the records sought in the Request are public.

Specifically, the Request sought access to the “hit-run investigative file re the death of Ye Meng Yuan on July 6, 2013.” Officer Albie Esparza, public information officer of the SFPD responded on January 14, 2013, denying the request, referencing three code sections in purported support. For the reasons explained below, the grounds asserted by SFPD do not protect the requested information from disclosure.

First, SFPD asserts that the requested information is exempt from disclosure under California Vehicle Code §20012 as an accident report, though SFPD fails to identify a provision of the Public Records Act that exempts documents under the Vehicle Code. Even if, for example, the SFPD had asserted that VCS §20012 applied to public records requests by operation of California

---

1 A copy of an email exchange containing the Request and SFPD’s denial of the Request is attached as Exhibit 1.
Government Code §6254(k), the provision would, at most, apply only to a "required report," i.e., a mandatory report made under Vehicle Code §20008 by the driver of a vehicle involved in the incident, but would not apply to reports made by investigating officers. See, Collins v. Navistar, Inc., 214 Cal.App.4th 1486, 1517 (3d Dist. 2013); People v. Ansbro, 153 Cal.App.3d 273, 277 (1st Dist. 1984). Thus, even if it were applicable to a portion of materials responsive to the Request, Vehicle Code §20012 cannot provide a blanket exemption of the materials requested.

SFPD further asserts that the requested documents are exempt under Government Code §6254(f). This bare assertion is insufficient to support a blanket exemption of the requested materials. See, Williams v. Superior Court, 5 Cal.4th 337, 356 (1993). Even so, §6254(f) does not exempt all files, as SFPD suggests. Rather, by the terms of that provision, significant and detailed information is required to be disclosed SFPD. Government Code §6254(f); Williams, 5 Cal.4th at 360-61. As with SFPD’s reliance on the Vehicle Code, even if SFPD’s assertion of exemption under §6254(f) were applicable to some portion of the requested materials, SFPD has not provide any basis supporting an exclusion of everything sought in the Request.

SFPD also asserts that the Request seeks documents exempt under Government Code §6254(b), relating to pending litigation. That provision has been interpreted as applying to "documents created by a public entity for its own use in anticipation of litigation.” Fairley v. Superior Court, 66 Cal.App.4th 1414, 1421-22 (2d Dist. 1998) (emphasis added). It is unclear how SFPD can assert that the documents sought by the Request, which relate to standard police work in the investigation of an incident, are in any way covered by the limited pending litigation exemption, which applies to documents created specifically in anticipation of litigation. Upon information and belief, the records sought were not created for the use of the SFPD in anticipation of any litigation, and are thus, not exempt under the cited provision.

Accordingly, because SFPD has failed to demonstrate that any of the documents sought in the Request are exempt from disclosure, the Chronicle requests that you issue a determination, in writing, that the records sought in the Request are public, and ordering the SFPD to release the records to the Chronicle within five days of your order. Under the terms of Sunshine Ordinance §67.21(d), I look forward to your response within 10 days.

Sincerely,

Diego Ibarra

Encl.

2
From: Van Derbeken, Jaxon
Sent: Tuesday, January 14, 2014 8:58 AM
To: Byrne, Trapper
Subject: Fwd: urgent records request to public affairs, SFPD

Sent from my iPhone

Begin forwarded message:

From: Albie.Esparza@sfgov.org
Date: January 14, 2014 at 8:56:27 AM PST
To: "Van Derbeken, Jaxon" <jVanDerbeken@sfchronicle.com>
Subject: Re: urgent records request to public affairs, SFPD

Jaxon,

I am writing to acknowledge your request for Police Department public records, received at the Media Relations Unit via email on Monday, January 13, 2014 pursuant to California Government Code Section 6253(c).

Your request for investigative files of the traffic collision involving Ye Meng Yuan on July 6, 2013 is denied. California Vehicle Code section 20012 protects accidents reports and are not releasable to non involved parties and 6254(f) of the Government Code protects investigative files. In addition, the exemption for investigatory files does not terminate with the conclusion of the investigation.

Furthermore 6254(b) protects records pertaining to pending litigation.

Regards,

Officer Albie Esparza #4150
Public Information Officer
San Francisco Police Department
Office of the Chief of Police
Media Relations Unit
850 Bryant Street #553
San Francisco, CA, 94103
(415)553-1513 Desk
(415)553-9229 Fax
www.san franciscopolice.org

CONFIDENTIALITY NOTICE: This communication and its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws, including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

-----"Van Derbeken, Jaxon" <jVanDerbeken@sfchronicle.com> wrote: -----
To: <Albie.Esparza@sfgov.org>
From: "Van Derbeken, Jaxon" <jVanDerbeken@sfchronicle.com>
Date: 01/13/2014 03:56PM
Subject: urgent records request to public affairs, SFPD

San Francisco Chronicle
Urgent to SFPD records request as of Jan. 13, 2014,
4 p.m.

Re Public Records Act Request on Hit and Run probe related to Asiana crash

Dear Public Affairs:

The Chronicle's previous request for the investigative file related to the Asiana crash was denied because of NTSB request placing such documents as protected from release. NTSB has recently lifted that hold, however.

Per your verbal instructions, please consider this a request under the California Public Records Act -- and an urgent request under the city Sunshine Ordinance -- for the hit-run investigative file re the death Ye Meng Yuan on July 6, 2013.

Please provide a response within the urgency guidelines of the city's Sunshine Ordinance.

Thank you,

Jaxon Van Derbeken
Reporter, Chronicle/ Sfgate.com  415-777-7139

This e-mail message is intended only for the personal use of the recipient(s) named above. If you are not an intended recipient, you may not review, copy or distribute this message.

If you have received this communication in error, please notify the sender immediately by e-mail and delete the original message.
Sent via Email

Paula Datesh

Re: Petition to Supervisor of Records

Dear Ms. Datesh:

You filed a petition with the Supervisor of Records relating to two requests for records and information that you made to the San Francisco Arts Commission (hereafter sometimes referred to as the "Department" or "SFAC").

One request is an email that you sent August 18, 2013, in which you asked if staff "could send a letter on the SFAC letterhead stating the Commission's position on a recent Appeal 13033-1 . . . ." We understand that the Board of Appeal in that matter had directed issuance of a Street Artist Certificate to you. You filed a complaint with the Sunshine Ordinance Task Force (SOTF) (Complaint 13051) relating to the Department's response to your request for the letter.

The second request is an email you sent August 28, 2013 for records regarding "an alleged letter from Marc Tetro submitted to the Board of Permits and Appeals DATESH v. SFAC heard on July 15, 2013." This request also included the request for the letter discussed in the previous paragraph. You also filed a complaint with the SOTF (Complaint 13052) relating to this second request.

Your petition to the Supervisor of Records seeks review of the matters at issue in both of those SOTF complaints.

Regarding Complaint 13051, your petition states that "Howard Lazar claimed he sent a letter twice but got the zip code wrong, it was a letter on the letterhead of the SFAC with their position on how long an appeals decision valid. I have been asking for it since July 25, 013."

Regarding Complaint 13052, your petition states "I did not receive documents about a letter sent by Marc Tetro to the Board of Permits and Appeals; emails and phone logs. There was no response to the IDR [Immediate Disclosure Request] from the SFAC . . . ."

Determination

Letter on Department Letterhead at issue in Complaint 13051. Your request to the Department for a letter on its letterhead relating to the Department's position on the Board of Appeals matter is not a request for records, but rather a request that the Department create a record. It is our understanding that at the time of your request, no such letter on the Department's letterhead existed. Therefore, your petition to the Supervisor of Records does not fall within the jurisdiction of the Supervisor of Records, which is limited to determining whether a City department is improperly withholding a public record in response to a public records request.
Letter to Paula Datesh  
Page 2  
February 19, 2014

In any event, the Department complied with your request and prepared the letter on its letterhead, which letter is publicly available in the SOTF file relating to Complaint 13051. The Department provided a copy of the letter when it submitted its response to your complaint. Thus, even if the Department had not provided the letter to you before you filed your complaint (which the Department argued to the SOTF that it had done), the Department provided it when it responded to your complaint. Now that the record is public, no pending issue remains for determination by the Supervisor of Records.

Records at issue in Complaint 13052. Regarding your request for “an alleged letter from Marc Tetro submitted to the Board of Appeals DATESH v. SFAC heard on July 15, 2013,” the SOTF file in this matter contains records responsive to your request. When we spoke by phone about the fact that the SOTF complaint file contained those records, you told me that you were concerned that the Department may have additional records that it has not provided to you.

The role of the Supervisor of Records under San Francisco Administrative Code section 67.21(d) is limited. This Office’s obligation to determine whether a record is public assumes that a City department has located a record but is withholding it based on an exception from disclosure set forth in the Sunshine Ordinance or other applicable law. The role of the Supervisor of Records is to determine whether the City department is lawfully relying on the claimed exemption.

We necessarily rely on the department to search its files for responsive records and to provide records to this Office so that it can conduct the necessary review. The function of the Supervisor of Records is not to rule on the adequacy of the department’s search. (See, for example, the Ninth and Eleventh Annual Reports of the Supervisor of Records to the Sunshine Ordinance Task Force dated, respectively December 18, 2008 (Appendix page 44) and March 31, 2011 (Appendix pages 6 and 27).) We therefore find no basis for proceeding further regarding this matter.

Nevertheless, I have discussed the concern that you expressed to me in this matter with Howard Lazar. He has informed me that the Department has provided you with all records responsive to this request.

For the reasons discussed above, the Supervisor of Records denies your petition.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

[Signature]

Paula Jessen  
Deputy City Attorney

15th Annual SOR Report  
APPENDIX - Page 8
Re: Petition to the Supervisor of Records - San Francisco Arts Commission

Paula Jesson to: pdatesh
Cc: Howard.Lazar

02/19/2014 05:23 PM

Dear Ms. Datesh,

Attached is a response to your petition to the Supervisor of Records submitted in the email message below.

paula datesh.pdf

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

From: pdatesh Re: SOTF #13051. Datesh v San Francisco Arts... 02/06/2014 07:30:47 AM
To: "paula_jesson@sfgov.org" <paula_jesson@sfgov.org>,
Date: 02/06/2014 07:30 AM
Subject: Petition to the Supervisor of Records

Re: SOTF #13051. Datesh v San Francisco Arts Commission

Lazar claimed he sent a letter twice but got the zip code wrong, it was a letter on the letterhead of the SFAC with their position on how long an appeals decision valid.
I have been asking for it since July 25, 2013.

Re: SOTF #14052 Datesh v San Francisco Arts Commission
Order issued

I did not receive documents about a letter sent by Marc Tetro to the Board of Permits and Appeals; emails and phone logs. There was no response to the IDR from the SFAC.

I would appreciate it if you could get these documents as I do not the patience to deal with Lazar.

Paula Datesh
Re: Petition to the Supervisor of Records - 6 IDR email requests of February 6, 2014

Paula Jesson to: pdatesh
Cc: Howard.Lazar

03/06/2014 05:57 PM

Dear Ms. Datesh,

I have reviewed your petition, set forth below, which states that you made "6 IDR email requests" to Howard Lazar on Feb. 6, 2014.

Mr. Lazar has forwarded to me the following three requests from you dated February 6, 2014, with responses from the Arts Commission:

7:05 AM (letter stating the position of the SFAC regarding an appeal held July 13, 2013)
7:21 AM (construction on Stockton St.)
7:11 AM (records re: YouTube Video).

As to these three requests, your petition is denied because the Arts Commission has responded to them.

We are unable to review any other requests at issue because you have not provided a copy of them with your petition. If you will send copies of the three remaining requests, we will review them.

Thank you.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
e-mail: paula.jesson@sfgov.org

pdatesh I made 6 IDR email requests to Howard Lazar o... 02/28/2014 05:21:12 PM

From: "paula_jesson@sfgov.org"<paula_jesson@sfgov.org>,
To: 02/28/2014 05:21 PM
Subject: Petition to the Supervisor of Records

I made 6 IDR email requests to Howard Lazar on Feb. 6, 2014. The 4 responses I received were late and did not answer the IDR's. 2 were unanswered. As the responses came in bits and pieces and did not include the IDR-I can not find much but verbal garbage. If you want to try to get these answered-I wish you good luck.
Petition to the Supervisor of Records - Arts Commission - January inspection reports, etc.
Paula Jesson  to: pdatesh
Cc: Howard.Lazar

Dear Ms. Datesh,

Mr. Lazar included me on an email message sent to you today responding to the public records request which is the subject of the petition you submitted on February 28, 2014.

In light of Mr. Lazar's response to your request, there remains no issue for determination by the Supervisor of Records and we consider this matter closed.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

----- Forwarded by Paula Jesson/CTYATT on 03/05/2014 02:14 PM -----

From: Paula Jesson/CTYATT
To: [Redacted]
Date: 03/03/2014 05:31 PM
Subject: Re: Petition to the Supervisor of Records

This acknowledges receipt of your petition.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

pdatesh  This IDR was never answered. > From: pdatesh...  02/28/2014 06:30:07 PM

From: [Redacted]
To: paula_jesson@sfgov.org,
Date: 02/28/2014 06:30 PM
Subject: Petition to the Supervisor of Records

This IDR was never answered.
From: Paula Datesh
Date: February 6, 2014 at 3:10:06 PM PST
To: howard.lazar@sfgov.com
Subject: IMMEDIATE DISCLOSURE REQUEST

1. I request copies of all inspections done during the month of January 2014 of the Street Artist Program inspectors in the streets of San Francisco.

2. I request all log books; notes and photos for these inspections.

3. I request a log of the hours spent on these inspections and who made them.

I am making this request for these documents pursuant to the SF Sunshine Ordinance.

Paula Datesh
Re: Petition to the Supervisor of Records

Paula Jesson  to: pdatesh
Cc: Howard.Lazar

Dear Ms. Datesh,

The email string below shows your message to the Arts Commission on March 1, 2014 asking for information and records relating to the Union Square BID, as well as the Arts Commission's response of March 3, 2014, informing you that it had no information or records.

The Arts Commission has responded to your public records request. You do not specify the grounds for your petition but it appears to be based on a claim of inadequate search of records. As we have explained, a petition alleging inadequate search is outside the scope of our role as Supervisor of Records and the petition is denied for that reason.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

pdatesh  Hi- Lazar did not answer the request. Can you g... 03/04/2014 07:51:35 AM

From: [redacted]
To: "paula_jesson@sfgov.org" <paula_jesson@sfgov.org>,
Date: 03/04/2014 07:51 AM
Subject: Petition to the Supervisor of Records

Hi-
Lazar did not answer the request. Can you get an answer? I spoke about this request at the full SFAC meeting today. I asked the same questions and showed the request. No one had an answer.

Thanks,
Paula

Begin forwarded message:

From: "Lazar, Howard" <howard.lazar@sfgov.org>
Date: March 3, 2014 at 1:28:15 PM PST
To: [redacted]
Cc: "Krell, Rebekah" <rebekah.krell@sfgov.org>, "Patterson, Kate" <kate.patterson@sfgov.org>, "Page_Ritchie, Sharon" <sharon.page_ritchie@sfgov.org>, Alyssa <Licouris@sfgov.org>
Subject: RE: IMMEDIATE DISCLOSURE REQUEST

Dear Ms. Datesh:

The Arts Commission has no information and no records responsive to your request.

Sincerely,

Howard Lazar
Street Artists Program Director

San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-2583 F: 415-252-2595
sfartscommission.org

e-Newsletter I Twitter I Facebook I YouTube I Flickr

What meeting have the SFAC had in year 2013-2014 with the Union Square BID? I request all internal emails; emails between the SFAC and the Union Square BID for year 2013-14. Logs of phone calls between the SFAC and Union Square BID for same year. Names of contact persons within the BID and records of training given to BID employees concerning Street Artist rules by the SFAC for year 2013-14.

I am making this request pursuant to the Sunshine Ordinance.

Paula Datesh
Dear Mr. White,

I am not in a position to agree to disagree with your analysis. There was no need for the Supervisor of Records to issue a determination in this matter because DBI is taking steps to obtain the records at issue in this matter so that it can provide them to you.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

Ms. Jesson: This email will follow up on our conversation last Friday afternoon.

Within the terms of Administrative Bulletin 082, Mr. Hamburger is a Structural Design Reviewer for the 340 Fremont Street Project. In addition to "providing the Director [of DBI] with a report of [his] findings after completion of [his] work," as an "independent registered design professional" Mr. Hamburger's first duty is to obey the directives of DBI: "The responsibility of the Structural Design Reviewer is to assist the Department of Building Inspection in ensuring compliance of the structural design with the San Francisco Building Code. While the Structural Design Reviewer will contract with the Project Sponsor, their responsibility is to the Department of Building Inspection." As Mr. Tom told you and me on March 7, 2014, DBI selected Mr. Hamburger and deputized him to ensure that the structural design for the 340 Fremont Street Project met its requirements.

DBI has directed Mr. Hamburger to produce to me a CD with digital images of his files for the 340 Fremont Street Project. Mr. Hamburger cannot delay producing the CD by subordinating his responsibility to the Department of Building Inspection. Mr. Hamburger must promptly obey the directive of the Department of Building Inspection without regard to the project sponsor's preferences.
If you disagree with these elements of AB-082, please let me know.

In any event, please give me a call at your earliest convenience (510-499-0393).

Thank you,

Mark N. White, Esq.
Law Offices of Mark N. White
1550 La Vereda Road
Suite B
Berkeley, CA 94708-2036
Mobile: [redacted]
VOIP/Fax: +1.510.922.8672
Email: mark.white@mnwhitelaw.com
http://www.mnwhitelaw.com

From: Mark N White
Sent: Friday, April 04, 2014 1:48 PM
To: Paula.Jesson@sfgov.org
Cc: Mark N White; [redacted]
Subject: FW: 340 Fremont Street -CD-Rom

Ms. Jesson:

Please give me a call (510-499-0393) to discuss this important development.

Mark N. White, Esq.
Law Offices of Mark N. White
1550 La Vereda Road
Suite B
Berkeley, CA 94708-2036
Mobile: [redacted]
VOIP/Fax: +1.510.922.8672
Email: mark.white@mnwhitelaw.com
http://www.mnwhitelaw.com

From: Strawn, William (DBI) [william.strawn@sfgov.org]
Sent: Friday, April 04, 2014 11:49 AM
To: Mark N White
Cc: Tom, Hanson (DBI); Sweeney, Edward (DBI); Strawn, William (DBI)
Subject: FW: 340 Fremont Street -CD-Rom

Mr. White - Per Mr. Hamburger's message below, which just came in earlier this morning, he is apparently awaiting permission to release from the project sponsor. As discussed yesterday, I will let you know as soon as we have the requested CD ROMs.

Thank you.
William Strawn

From: Ronald O. Hamburger [mailto:ROHamburger@sgh.com]
Sent: Friday, April 04, 2014 8:44 AM
To: Strawn, William (DBI); Tom, Hanson (DBI)
Cc: Sweeney, Edward (DBI); Jenny D. In
Subject: RE: 340 Fremont Street -CD-Rom
Mr. Strawn

I have prepared two CDs (one for the City and one for Mr. White) as requested. However, since I am under contract to the developer for 340 Fremont I am unable to release the material without their permission. I have alerted my client to the request and am expecting to hear from them. As soon as I do will forward the CDs.

Please inform Mr. White that if the repro service comes to our office, they will not be permitted to copy anything.

Ronald O. Hamburger, S.E. (CA, IL, NV, OR, UT, WA), P.E. (LA, MN), SECB
Senior Principal
SIMPSON GUMPERTZ & HEGER
415.495.3700 main
415.495.3550 fax
www.sgh.com<http://www.sgh.com>

From: Strawn, William (DBI) [mailto:william.strawn@sfgov.org]
Sent: Friday, April 04, 2014 8:30 AM
To: Tom, Hanson (DBI); Ronald O. Hamburger
Cc: Sweeney, Edward (DBI)
Subject: RE: 340 Fremont Street -CD-Rom

Mr. Hamburger - Thanks for your assistance with this request.

Bill

Hanson -- If Ron Hamburger cannot deliver the CD ROMs to you today, and per Mr. White below, please tell Ron that Mr White also is prepared to send his copying firm --below-- to do this today.

Thanks,

Bill

-----Original Message-----
From: Mark N White [mailto:mark.white@mmwhitelaw.com]
Sent: Friday, April 04, 2014 8:16 AM
To: Jesson, Paula (CAT); Strawn, William (DBI)
Cc: Mark N White; Strawn, William
Subject: RE: Hamburger Documents re 340 Fremont Street

Mr. Strawn:

Thanks for meeting with me yesterday afternoon. As I explained, the upcoming excavation at the 340 Fremont project creates time pressure for us to review Mr. hamburger's documents. I understand that you will try to have digital copies available for me today and will be checking with Hanson Tom to arrange that, if possible.

To expedite matters, I can arrange to have Golden State Legal do on-site imaging at our cost.

Thank you for your assistance,

Mark N. White, Esq.

Law Offices of Mark N. White
1550 La Vereda Road
Suite B
Re: Petition to the Supervisor of Records - maps of spaced for street artists

Paula Jesson to: pdatesh

Dear Ms. Datesh,

I have discussed with Mr. Lazar the issue raised in your petition. He informs me that he does not have any responsive records other than the information contained in the link that he sent to you. As to your concern that the map is not up to date, that is not an issue for determination by the Supervisor of Records. The role of the Supervisor of Records is to determine whether a department is improperly withholding a record that should be made public.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org


pdatesh The reason for the petition is to have an UP TO... 03/14/2014 02:40:03 PM

From: [REDACTED]
To: "Paula.Jesson@sfgov.org" <Paula.Jesson@sfgov.org>,
Date: 03/14/2014 02:40 PM
Subject: Re: Petition to the Supervisor of Records - maps of spaced for street artists

The reason for the petition is to have an UP TO DATE map of current spaces so that when an employee from the Union Square BID comes and has his own idea of spaces and asked me to leave—we all have a map to look at. MMJ management doesn't have a map in their handbook and even the BID cop had no idea what to do. As usual, he called Lazar who didn't pick up the phone. There are 432 permit holders—over half non English speaking.

Sent from my iPhone

On Mar 14, 2014, at 1:32 PM, Paula.Jesson@sfgov.org wrote:

Dear Ms. Datesh,

I received your voice mail message which, if I understood it correctly, referred to the petition in message below.
It appears from the email string that the Arts Commission does not have responsive records other than the information provided through a link sent to you. Your voice mail message seemed to suggest that the information provided to you was inaccurate or not up to date (I should say again that I am not sure that I understood it correctly).

Could you clarify the reason for your petition? Are you alleging that the Arts Commission is improperly withholding a record, or that it has failed to correct a record?

Thank you.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4582
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sf.gov.org

From: Paula Datesh<br>
To: paula.jesson@sf.gov.org, victor.pecheco@sf.gov.org, sof@sfgov.org,
Date: 03/06/2014 01:27 PM
Subject: Fwd: Immediate Disclosure Request-Petition to the Supervisor of Records

To the Supervisor of Records:

Lazar has not read the request. Can you get an answer? Another violation and time before the Task Force will only get him violated and not give me the response to the IDR.

Thanks.

Paula Datesh

-----Original Message-----
From: Paula Datesh <br>
To: howard.lazar <howard.lazar@sfgov.org>; paula.jesson <paula.jesson@sfgov.org>; victor.young <victor.young@sfgov.org>; SOTF <SOTF@sfgov.org>; <br>
Sent: Thu, Mar 6, 2014 1:24 pm
Subject: Re: Immediate Disclosure Request
And once again you have not read the request which I made 3 times. Once again, you will spend time before the Sunshine Task Force.

Paula Datesh

-----Original Message-----
From: Lazar, Howard (ART) (ART) <howard.lazar@sfgov.org>
To: Paula Datesh
Cc: Krell, Rebekah (ART) (ART) <rebekah.krell@sfgov.org>; Patterson, Kate (ART) (ART) <kate.patterson@sfgov.org>; Alyssa <Licouris@sfgov.org>; Jesson, Paula (CAT) (CAT) <paula.jesson@sfgov.org>
Sent: Thu, Mar 6, 2014 12:02 pm
Subject: RE: Immediate Disclosure Request

Dear Ms. Datesh:

We have already provided you with the link to a current list and maps of all street artist spaces in the Downtown area that were approved by the Board of Supervisors. They could not have been designated without the approval of the Board of Supervisors.

Sincerely,

Howard Lazar
Street Artists Program Director
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-2583 F: 415-252-2595
sffartscommission.org

e-Newsletter | Twitter | Facebook | YouTube | Flickr

From: Paula Datesh
Sent: Thursday, March 6, 2014 11:43 AM
To: Lazar, Howard (ART)
Subject: Re: Immediate Disclosure Request

I am AGAIN requesting all lists; maps and documentation of spaces approved by the Board of Supervisors for street artists in the downtown area for year 2012-2014.

Paula Datesh

-----Original Message-----
From: Lazar, Howard (ART) (ART) <howard.lazar@sfgov.org>
To: pdatesh
Cc: Krell, Rebekah (ART) (ART) <rebekah.krell@sfgov.org>; Patterson, Kate (ART) (ART) <kate.patterson@sfgov.org>; Alyssa <licouris@sfgov.org>; Jesson, Paula (CAT) (CAT) <paula.jesson@sfgov.org>
Sent: Thu, Mar 6, 2014 11:29 am
Subject: RE: Immediate Disclosure Request

Dear Ms. Datesh:

We have no such document which reflects the impact of construction on the Stockton Street spaces nor a document which reflects what you call "usable spaces in the downtown area". Furthermore, we are not required by the Sunshine Ordinance to create a document.

Sincerely,

Howard Lazar
Street Artists Program Director

San Francisco Arts Commission  
25 Van Ness Avenue, Suite 345  
San Francisco, CA 94102  
T: 415-252-2583 F: 415-252-2595  
sfartscommission.org

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From: pdatesh
Sent: Thursday, March 6, 2014 11:15 AM
To: Lazar, Howard (ART)
Subject: Immediate Disclosure Request

I am requesting a CURRENT map or list of locations for street artist spaces in the downtown area. As the construction on Stockton Street has blocked several spaces and will continue to do so for the next 5 years-I am requesting a CURRENT list of map of usable spaces in the downtown area.

I am making this request pursuant to the Sunshine Ordinance.

Paula Datesh
Re: Petition to Supervisor of Records – Traffic Collision Report

Dear Mr. Samar:

We received your March 9, 2014 letter asking this office as Supervisor of Records to review a San Francisco Police Department traffic collision report involving an accident that you were involved in. You complain that important facts were omitted from the report and that the reporting officer came to a misleading conclusion.

We are not able to provide assistance in this matter. Under the San Francisco Sunshine Ordinance, this office reviews petitions by members of the public who have submitted public records requests to a City department and believe that the department is improperly withholding a record responsive to the request.

These are the provisions of the San Francisco Administrative Code governing the Supervisor of Records. Section 67.20(c) defines the term “Supervisor of Records” to mean the City Attorney.

Section 67.21(d) provides as follows:

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

Because your letter does not allege that a City department is improperly withholding a record in response to a public records request, the Supervisor of Records has no authority to review the issues you raise.

Very truly yours,

DENNIS J. HERRERA
City Attorney

[Signature]

Paula Jesson
Deputy City Attorney
Michael Samar  
San Francisco, CA 94114  

March 9, 2014  

Office of the City Attorney  
Attention: Supervisor of Records  
City Hall, Room 234  
1 Dr. Carlton Goodlett Place  
San Francisco, CA 94102  

Re: Report Number 140 125 378  

Dear Supervisor of Records:  

I wish to request a review of the above referenced report concerning my accident with a pedestrian on 2/12/14. The report fails to mention that the pedestrian (P2) was highly intoxicated at the time of the incident. Empty beer cans from P2’s possession were strewn all over the street following the accident and P2 reeked of alcohol. The report indicates that Officer Aguayo obtained a statement from P2, however, P2 was too intoxicated to give a statement at the scene of the accident and was immediately taken away by ambulance before any statement could be made.  

The report also fails to mention my statement that P2 was already in the crosswalk before the light turned green. It states that P2 entered the crosswalk after the light turned green, but as I stated that evening, it would be impossible for P2 to make it 21 feet from the curb in the seconds it took me to make the left turn before the impact. In addition, I would have surely seen P2 had he just entered the crosswalk after the light turned green.  

These important facts were omitted from the report and I believe brought Officer Aguayo to a misleading conclusion. While I accept equal responsibility for the accident, P2’s state of intoxication and the fact that he started into the street while the light was still red, makes P2 equally at fault. I should point out that I was not issued a citation for failing to yield to a pedestrian, which is further evidence that I was not at fault.
Thank you for your attention and review of this matter.

Warm Regards,

Michael P. Samar

Enclosures: Traffic Collision Report 140 125 378
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**STATE OF CALIFORNIA**

**TRAFFIC COLLISION REPORT**

CHP 555 CARS Page 1 (Rev 1-03) OPI 061
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**SEATING POSITION**

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**ITEMS MARKED BELOW FOLLOWED BY AN ASTERISK (*) SHOULD BE EXPLAINED IN THE NARRATIVE.**

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**SKETCH**

FOR SKETCH DIAGRAM. SEE PAGE 4

SEE LARGE DIAGRAM
<table>
<thead>
<tr>
<th>DATE OF COLLISION (MO DAY YEAR)</th>
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NAME / D.O.B. / ADDRESS: JUAN BAUTISTA DZIB - MIS ___________[REDACTED]_________ SAN FRANCISCO, CA 94110

TRANSPORTED BY: A.M.R. #7

TAKEN TO: SAN FRANCISCO GENERAL HOSPITAL

DESCRIPT INJURIES: SMALL LACERATION TO LEFT SIDE OF FOREHEAD

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]

DESCRIPT INJURIES.

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]

DESCRIPT INJURIES.

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]

DESCRIPT INJURIES.

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]

DESCRIPT INJURIES.

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]

DESCRIPT INJURIES.

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]

DESCRIPT INJURIES.

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]

DESCRIPT INJURIES.

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]

DESCRIPT INJURIES.

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]

DESCRIPT INJURIES.

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]

DESCRIPT INJURIES.

VICTIM OF VIOLENT CRIME NOTIFIED

NAME / D.O.B. / ADDRESS: [REDACTED]

TRANSPORTED BY: [REDACTED]

TAKEN TO: [REDACTED]
STATE OF CALIFORNIA

SKETCH DIAGRAM

DATE OF INCIDENT: 02/12/2014
TIME: 0041
NCIC NUMBER: 3801
OFFICER I.D. NUMBER: 706
140 125 378

ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE UNLESS STATED (SCALE= )

Factual Diagram
(Not To Scale)
Measured with Rolatape

PREPARED BY
JOEL AGUAYO
I.D. NUMBER: 706
DATE: 02/12/2014
REVIEWER'S NAME: Paul
DATE: 2/14/12
1 SUMMARY:

2

3 V1 (Hyundai) was making a left turn onto southbound Dolores Street from westbound 18th Street when it subsequently collided with P2, who was walking eastbound on 18th Street inside the crosswalk. P2 sustained minor injuries and was transported to the hospital. All times, speeds, and measurements are approximate.

8 FACTUAL INFORMATION:

10 Parties: Parties were contacted at the scene and identified with the valid California driver’s license.

12 Vehicle: V1 was located parked with the front end inside the crosswalk (#1 lane side) at the intersection of Dolores Street and 18th Street.

15 Area of Impact (A.O.I.): The A.O.I. was 21 feet east of the west curb line/ prolongation of Dolores Street and 15 feet south of the north curb line/ prolongation of 18th Street. The A.O.I. was determined based on the statements obtained at the scene and where V1 was discovered.

20 STATEMENTS:

22 Statement of P1 (Michael Samar): P1 stated that he was stopped at a red light westbound 18th Street at Dolores Street. P1 noticed that the light turned green, so he proceeded to make a left turn onto southbound Dolores Street. According to P1, he suddenly felt the impact of colliding with P2. P1 immediately exited V1 and noticed P2 lying on the ground in front of V1. P1 flagged down a passerby and requested that she call 9-1-1 to report the accident. P1 estimated V1’s speed at approximately less than 10 mph.
STATE OF CALIFORNIA
NARRATIVE/SUPPLEMENTAL

DATE OF INCIDENT: 02/12/2014
TIME: 0041
NCIC NUMBER: 3801
OFFICER I.D. NUMBER: 706
706 140 125 378

1 Statement of P2 (Juan Dzib - Mis): P2 stated that he was walking eastbound on 18th Street when he noticed that the traffic signal was green. P2 entered the intersection at Dolores Street and began to cross the street when he was suddenly hit by V1. P2 did not remember anything after the collision and could not estimate V1's speed.

2 INVESTIGATION:

3 On 02/12/2014 at approximately 0041 hours, Officer Manrique #1219 and I responded to the area of Dolores Street and 18th Street on the report of a vehicle-collision involving a pedestrian. Upon arrival, I contacted P1 and obtained his statement. P1 could not provide proof of current insurance, so he was issued an SFPD citation (#015482434) for the violation of 16028(c) CVC, Failure to Provide Current Proof of Insurance at the Scene of a Collision.

4 After speaking to P1, I contacted P2 and obtained his statement. P2 sustained a slight laceration to the left side of his forehead/ temple and had no complaints of pain. A.M.R. Paramedics #7 responded to the scene and transported P2 to San Francisco General Hospital for further treatment.

5 I later inspected V1 and noticed that it sustained a small dent on the hood and a cracked windshield.

6 I checked the area for any kind of evidence and skid marks, but I did not locate anything of evidentiary value.

7 I monitored the intersection and noticed that when the traffic signal turned green the pedestrian signal automatically turned on allowing pedestrians to cross.

8 CONCLUSION:

PREPARED BY I.D. NUMBER DATE REVIEWER'S NAME DATE
JOEL AGUAYO 706 02/12/2014

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1 Based on the statements it appears that D1 was in violation of 21950(a) CVC, *Failure to Yield to a Pedestrian in a Crosswalk*, making him at fault for the collision.

2

3
Dear Ms. Jesson,

Your petition, set for the below, concerns the Arts Commission's response to your March 19, 2014, request for the following:

Request all internal emails; written warnings and written corrosion dance within the SFAC concerning a Street Artist stand on Post at Stockton-KYE COLLECTION. Request photos; all visual media concerning this stand. Request inspection log books done on this stand from March 2012 to the present.

Howard Lazar has provided me with a copy of the response by the Arts Commission sent 3/21/2014 (9:01 AM).

In light of that response, there remains no issue requiring a determination by the Supervisor of Records.

Paula Jesson  
Deputy City Attorney  
City and County of San Francisco  
Room 325 City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Telephone: (415) 554-6762  
Fax: (415) 554-4699  
email: paula.jesson@sfgov.org

-----Original Message-----
From: pdatesh [REDACTED]
To: howard.lazar <howard.lazar@sfgov.org>
Sent: Wed, Mar 19, 2014 3:47 pm
Subject: Immediate Disclosure Request

Request all internal emails; written warnings and written corrosion dance within the SFAC concerning a Street Artist stand on Post at Stockton-KYE COLLECTION.
Request photos; all visual media concerning this stand. Request inspection log books
done on this stand from March 2012 to the present.

I am making this request pursuant to the Sunshine Ordinance.

Paula Datesh
Re: FW: Immediate Disclosure Request

Paula Jesson to: pdatesh
Cc: "Lazar, Howard (ART)", "Patterson, Kate (ART)", "Krell, Rebekah (ART)", "Licouris, Alyssa (ART)", <alyssa.licouris@sfgov.org>

Dear Ms. Datesh,

In the message below, you are an addressee in the email from the Arts Commission, in which were sent "monitoring reports, notes, and photographs relevant to Advisory Committee of Street Artists and Crafts Examiners street artist inspection assignments in the Fisherman's Wharf area from March 2012 through March 2014." I reviewed the attachment and see records spanning 2012-2014.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

"Licouris, Alyssa (ART)" Alyssa Licouris Street Artists Program Ass... 03/31/2014 08:33:34 AM
From: "Licouris, Alyssa (ART)" <alyssa.licouris@sfgov.org>
To: "Jesson, Paula (CAT)" <paula.jesson@sfgov.org>,
Cc: "Krell, Rebekah (ART)" <rebekah.krell@sfgov.org>, "Patterson, Kate (ART)"
<kate.patterson@sfgov.org>, "Lazar, Howard (ART)" <howard.lazar@sfgov.org>
Date: 03/31/2014 08:33 AM
Subject: FW: Immediate Disclosure Request

Alyssa Licouris
Street Artists Program Assistant
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-2581 F: 415-252-2595
sfartscommission.org
e-Newsletter I Twitter I Facebook I YouTube I Flickr

From: Lazar, Howard (ART) <howard.lazar@sfgov.org>
Sent: Thursday, March 27, 2014 8:42 AM
To: [redacted]
Cc: Krell, Rebekah (ART); Patterson, Kate (ART); Alyssa; Jesson, Paula (CAT)
Subject: RE: Immediate Disclosure Request

Dear Ms. Datesh:
Please find the attached pdf copies of all Street Artists Program "Inspector's Logbook" reports relevant to Program Director street artist inspection assignments in the Fisherman's Wharf area from March 2012 through March 2014.

Please find the attached pdf copies of monitoring reports, notes, and photographs relevant to Advisory Committee of Street Artists and Crafts Examiners street artist inspection assignments in the Fisherman's Wharf area from March 2012 through March 2014.

Additional photos taken by both the Program Director and the Advisory Committee at Wharf inspections during this period were numerous and are being postal mailed to you in the form of a CD to the following address which we have on file for you:

San Francisco, CA 94104.

Sincerely,

Howard Lazar
Street Artists Program Director

San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-2583 F: 415-252-2595
sfartscommission.org

e-Newsletter I Twitter I Facebook I YouTube I Flickr

From: [redacted]
Sent: Tuesday, March 25, 2014 9:34 PM
To: Lazar, Howard (ART)
Subject: Immediate Disclosure Request

Request all logbooks; copies of street artist inspections and related photos of all I sections done on Fisherman's Wharf from March 2012-March 2014 inclusive.

I am making this request pursuant to the Sunshine Ordinance.

Wharf logbook Pgm Director.pdf AdvisoryCommittee monitoring.pdf
Petition to the Supervisor of Records-Paula Datesh
pdatesh

to:
paula_jesson@sfgov.org
03/27/2014 07:20 AM
Hide Details
From: [Redacted]
To: "paula_jesson@sfgov.org" <paula_jesson@sfgov.org>,

Dear Ms. Jesson:

I am filing a formal petition for DOCUMENTS (log books) in the attached IDR. It has been over 24 hours without a response.

Paula Datesh

Begin forwarded message:

From: [Redacted]
Date: March 25, 2014 at 7:34:31 PM, PDT
To: howard.jazar@sfgov.org
Subject: Immediate Disclosure Request

Request all logbooks, copies of street artist inspections and related photos of all 1 sections done on Fisherman's Wharf from March 2012-March 2014 inclusive.

I am making this request pursuant to the Sunshine Ordinance.
Sent via U.S. Mail

Emmanuel Kourkoulos
San Francisco, CA 94109-5032

Re: Petition to Supervisor of Records – San Francisco Police Department

Dear Mr. Kourkoulos:

You submitted a petition to the Supervisor of Records asking that we review the response by the San Francisco Police Department to your public records request.

Your petition states that two police incident reports were used to obtain an emergency protective order against you. You asked the Police Department for a copy of those two reports. The Police Department gave you one of the reports (No. 130485370), but not the second (No. 130485386). You inform us that you want to see the second report so that you can find out the accusations made against you.

The Police Department denied your request for a copy of Police Incident Report No. 130485386 report based on California Government Code sections 6254(f) (“Section 6254(f)”) (governing disclosure of records of complaints to and investigations conducted by, among others, local police agencies), 6255 (requiring local agencies to justify withholding records in response to a public records request under an express exemption or under a balancing of the public interest in disclosure and nondisclosure), and Penal Code section 841.5 (prohibiting disclosure of certain contact information of victims and witnesses in certain circumstances).

Analysis

For the reasons discussed below, the Supervisor of Records finds that the Police Department properly withheld the police incident report based on Section 6254(f). In addition, the official information privilege, set forth in California Evidence Code section 1040, supports the Police Department’s decision to withhold the record. We find no need to, and do not, consider or decide whether the Police Department properly relied on other statutes cited in its response.

Government Code Section 6254(f)

We first consider Section 6254(f), which generally exempts from disclosure “[r]ecords of complaints to, or investigations conducted by . . . any state or local police agency . . . . ,” but provides several exceptions. Under one exception, the Police Department must disclose information of reports of the commission of certain crimes to certain limited categories of persons, such as victims and insurance carriers. This disclosure requirement does not apply to you, as you do not fit into one of the categories. In any event, we note that this disclosure requirement does not apply if “disclosure would endanger the safety of a witness or other person...
involved in the investigation . . . .” Section 6254(f) also requires the disclosure of information under several other circumstances, including when the police make an arrest or when they receive a complaint or request for police assistance. But, as with the previous exception, this disclosure requirement does not apply “to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation . . . .”

Deputy Chief Lyn Tomioka informs us that the police incident report at issue here involves an allegation of domestic violence. The Police Department directs that police incident reports alleging the violation of certain crimes, including domestic violence, be kept confidential when the reporting party requests confidentiality. (See the attached copy of San Francisco Police Department Bulletin 08-108.) The police incident report form contains a box that the reporting officer checks to indicate that the person making the report has asked for confidentiality. Moreover, when the Police Department receives a request from a member of the public for a report governed by Bulletin 08-108 that is not checked confidential, the department’s policy is to contact that person to ascertain whether they want the record to be kept confidential to make sure that no report is mistakenly released.

According to Deputy Chief Tomioka, the person who made the complaint that resulted in the police incident report at issue here was given the choice of allowing it to be made publicly accessible or electing to have it kept confidential. The reporting party in this matter requested confidentiality.

Deputy Chief Tomioka informs us that the confidentiality policy is vital in encouraging people who believe they are victims of domestic violence to contact the police. If these individuals fear that their complaint or what they said to the police will be made public, they will not contact the police for assistance out of fear of harm from the person the report identifies as the perpetrator of domestic violence.

Further, in the expert judgment of the Police Department, this fear is a realistic one. The Police Department, which has considerable experience processing reports of domestic violence, has concluded that disclosure of domestic violence incident reports where the reporting party asks for confidentiality would constitute a serious risk to the reporting party’s safety. Deputy Chief Tomioka notes the serious risk inherent in disclosing reports of domestic violence, which often arise between persons involved in a volatile relationship that can escalate or lead to physical injury, even death, which has occurred in San Francisco involving matters of domestic violence cases.

For these reasons, the Police Department keeps confidential domestic violence police incident reports and the information contained therein. These reports constitute records of law enforcement investigations that Section 6254(f) allows the department to withhold in response to a public records request.

We also must consider the San Francisco Sunshine Ordinance. Under state law, Section 6254(f)’s exemption for records of law enforcement complaints and investigations applies even after an investigation has ended. (See Williams v. Superior Court (Freedom Newspapers, Inc.), 5 Cal.4th 337, 355 (1993).) But the San Francisco Sunshine Ordinance (“Sunshine Ordinance”) limits this exemption. San Francisco Administrative Code section 67.24(d) (“Section 67.24(d)”) generally provides that a City department may not withhold records of an investigation “once the District Attorney or court determines that a prosecution will not be sought against the subject.
involved, or once the statute of limitations for filing charges has expired, whichever comes occurs first.”

Deputy Chief Tomioka informs us that no prosecution will be sought regarding the matters at issue in the police incident report that you seek. Therefore, we need to consider whether Section 67.24(d) of the Sunshine Ordinance precludes the Police Department from withholding the record under Section 6254(f).

Although the matter at issue will not be the subject of a prosecution, the Sunshine Ordinance permits withholding of “[p]ersonal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy.” (S.F. Admin. Code sec. 67.24(d)(2).) We find that exception applicable here. As we have discussed, there are reasons centered on the safety of reporting parties that warrant protecting the privacy of persons who report an incident of domestic violence. In this sensitive and potentially dangerous area, we defer to the judgment of the Police Department, which we consider not only reasonable but compelling, and therefore find that disclosure of the report in question would violate the privacy of the reporting party.

It is possible that a person either intentionally or unintentionally may make a police report of domestic violence or threat of domestic violence that is not accurate. In such a case, the target of the report may feel victimized by what the target knows or suspects is a false allegation. The target may feel that the injustice of a false report is compounded when the Police Department withholds the document, making it impossible for the target to know what was said about or against him.

Arguably, the Police Department’s confidentiality policy should not apply if a person who made the report did so falsely. But for the Police Department to make exceptions for false reports would present serious practical problems. Deputy Chief Tomioka informs us that the Police Department is often not able to determine who is providing accurate information during the preliminary reporting of a domestic violence incident and who is not. Further, questions of truth or falsity of a statement can be matters of degree and interpretation. Given the serious potential consequences attending disclosure of false reports, we conclude that the Department lawfully erred on the side of caution to protect the safety of complainants by respecting the privacy of those who request that a report of domestic violence remain confidential.

Official Information Privilege

California Evidence Code section 1040 ("Section 1040") permits the withholding of "official information." The Public Records Act permits local agencies to withhold records protected by the official information privilege in response to a public records request. (See California Government Code sections 6254(k) (exempting from disclosure “[r]ecords the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege”) and 6276.32 (expressly referencing the official information privilege in the Public Records Act).)

Section 1040 exempts from disclosure information acquired in confidence by a public employee where “[d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.” In this case, the information in the police incident report
was acquired in confidence; the reporting party requested confidentiality when offered that option by the Police Department.

There is a strong public interest here in respecting the confidentiality of the report. As discussed above, the Police Department encourages citizens to report incidents of domestic violence by promising the reporting party that it will keep the report confidential when the party requests confidentiality. It is likely that fewer instances of domestic violence would be reported if victims had no assurance that complaints could be kept confidential. Further, disclosure of a domestic violence complaint could itself trigger an additional or ongoing incident or threat of domestic violence. Given these considerations, we conclude that the Police Department has properly withheld the incident report based on the official information privilege.

We do not mean to minimize the interest of someone who believes that they have been falsely accused of domestic violence in a police incident report and is unable to obtain a copy. This is a legitimate concern. But, as noted above, the Police Department has concluded that there is a substantial risk that disclosing domestic violence police incident reports would discourage domestic violence victims from contacting the police, and in certain cases could result in injury to persons involved in the matter. Given the serious potential consequences attending disclosure, we conclude that the Department’s policy of keeping domestic violence police incident reports confidential at the request of the reporting party is lawful.

For the reasons discussed above, the Supervisor of Records denies your petition.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Paula Jesson
Deputy City Attorney
CRIME VICTIMS CONFIDENTIALITY FORM
(Supersedes Department Bulletin 03-215)

Members are reminded to advise victims of their right to confidentiality pursuant to California Government Code section 6254 in any of the following Penal Code sections: 220, 243(e)(1), 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288(a), 289, 422.6, 422.7, 422.75, or 646.9 PC. Advise victims that by electing confidentiality their name will not become a public record. If a victim requests confidentiality, members shall check the 293 Confidential checkbox on the heading page of the incident report form.

In all cases, members shall include the victim’s full name in the Reportee/Victim area of the heading page of the report and complete all of the fields in that area. Individuals electing confidentiality shall be referred to only by their role (“Victim”) in the narrative portion of the incident report.

Members approving incident reports in which the 293 Confidential checkbox has been checked shall stamp the report in red ink with a “CONFIDENTIAL” stamp on the top of the heading page of the police incident report and on the top margin of each succeeding page. Members shall not release any of the above listed reports from the district station.

The Department is in the process of amending the Domestic Violence/Sexual Assault/Elder Abuse Referral Form to include the confidentiality advisement required by Government Code 6254(f)(2) for the following Penal Code sections: 368, 368(b), 368(b)(1), 368(c) PC. Station personnel will be advised when the amended form is available for pickup.

HEATHER J. FONG
Chief of Police
Emmanuel Kourkoulos
San Francisco, CA  94109-5032

Re: Petition to Supervisor of Records – San Francisco Police Department

Dear Mr. Kourkoulos:

You asked the Supervisor of Records to review the response by the San Francisco Police Department to your request for a copy of an emergency protective order granted by Commissioner Abinanti on June 12, 2013. In response to your request, the Police Department disclosed the protective order but redacted the name and address of the person on whose behalf the order issued and the description of the “events that caused the protected person to fear immediate and present danger of domestic violence . . . .” Your petition alleges that the Department’s redactions are unlawful and that you have a right to an unredacted copy of the record.

As we discussed in our telephone conversation this morning, the Police Department has informed the Supervisor of Records that it will send you a less redacted copy of the record. In our conversation, you also confirmed that you do not object to your name remaining unredacted, which means that the Police Department would not redact your name if it were to respond to a subsequent request for the record from a third party.

We find no need to make a determination on the petition in light of the Department’s providing you with a less redacted version of the record in issue. You may file another petition if you have other concerns regarding the Police Department’s response to your request.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Paula Jesson
Deputy City Attorney
SUPERVISOR OF RECORDS
CITY ATTORNEY'S OFFICE
ATTN. DEPUTY CITY ATTORNEY PAULA JESSON
CITY HALL, ROOM 234
SAN FRANCISCO, CA 94102

DEAR MS. JESSON,
ON 03/13/2014 I REQUESTED S.F.P.D.
REPORT #130 485 386 FROM POLICE LEGAL
AT 850 BRYANT ROOM 575, ATTN. MAUREEN
CONEFF, UNDER THE SUNSHINE ORDINANCE.
MY REQUEST WAS REFUSED. THE ABOVE
REPORT, ALONG WITH REPORT #130 485 370,
WAS USED TO OBTAIN AN EMERGENCY PRO-
TECTIVE ORDER, GRANTED BY COMMINGS;
ANT ON 06/12/2013. NO FURTHER ACTION FOL-
LOWED AND I WOULD LIKE TO KNOW THE
ACCUSATIONS AGAINST ME IN REPORT #
130 485 386.

I AM THE VICTIM OF A VIOLENT CRIME
AND THIS IS CAUSING ME UNDUE STRESS,
AS WELL AS FINANCIAL DAMAGES OVER
$2,000.

YOUR ASSISTANCE IN THE MATTER WOULD
BE GREATLY APPRECIATED.

SINCERELY,
[Signature]
PAULA JESSON, DEP. CITY ATTORNEY
SUPERVISOR OF RECORDS
CITY HALL ROOM 234
1 DE, CARLTON B. GOODLETT PLACE.
SAN FRANCISCO, CA 94102

MAY 7, 2014

I HEREBY REQUEST A COPY OF EMERGENCY
PROTECTIVE ORDER GRANTED BY COMM. ABINANTI,
on 06/12/2018, BASED ON FALSE POLICE REPORTS
130 485 370 1/4 130 485 386. –
I HAVE NEVER BEEN SERVED WITH ABOVE ORDER,
AND I WOULD APPRECIATE ALL PERTINENT INFORM-
ATION, INCLUDING THE NARRATIVE PART OF
ABOVE MENTIONED REPORTS. –

SINCERELY,

[Signature]

EMMANUEL KOURKOULOS

SAN FRANCISCO CA. 94109-5032
Dear Mr. Safdie,

Now that I have reviewed your request, I note that it relates to a request for records that you made some years ago, in January of 2010. You will need to make a current request to the SFMTA for these records so that it has an opportunity to respond. If you are not satisfied with the response because you believe that it is withholding a record that should be disclosed, you can then let me know, and we will review the matter in our role as Supervisor of Records.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

Thank you, I look forward to hearing from you.

From: "Safdie, Joe" <Joe.Safdie@sfmta.com>
To: "Jesson, Paula" <Paula.Jesson@sfgov.org>,
Date: 03/28/2014 10:53 AM
Subject: RE: Petition to Supervisor of Records - SFMTA

Thank you. We will review this matter.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org
From: "Safdie, Joe" <Joe.Safdie@afmta.com>
To: "Jesson, Paula" <Paula.Jesson@afgov.org>
Date: 03/28/2014 10:41 AM
Subject: FW: overtime

Paula,
This is the email I received after my initial request.
Joe

From: Boparai, Parveen
Sent: Thursday, January 07, 2010 9:42 AM
To: Safdie, Joe
Cc: Carmen, Angela; Dawson, Amy
Subject: RE: overtime

Joe:
Your request is confidential in nature; therefore, you are not entitled to receive OT records for employees in job codes 1929, 1931 & 1935. Thank you for your inquiry.

Parveen
7-5377

From: Safdie, Joe
Sent: Thursday, January 07, 2010 6:58 AM
To: Boparai, Parveen
Subject: FW: overtime

Good Morning Parveen,

I would like to know when may I expect your response?

Thank you,

Joe Safdie

From: Mitchell, Ericka
Sent: Mon 1/4/2010 8:01 AM

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To: Safdie, Joe  
Cc: Leah.Berlanga@seiu1021.org; Boparai, Parveen  
Subject: RE: overtime  
Good Morning Joe,  
I will forward your request to Ms. Parveen Boparai for a formal response. She works more closely with the Store Keeper unit.  
Thank you,  
Ericka  

Ericka R. Mitchell  
Tel: 415.701.5376  

From: Safdie, Joe  
Sent: Monday, January 04, 2010 7:48 AM  
To: Mitchell, Ericka  
Cc: Leah.Berlanga@seiu1021.org  
Subject: overtime  

Ms Mitchell,  

I have concerns regarding the distribution of overtime in the SFMTA storeroom system. I respectfully request the overtime records for storeroom personnel classes 1929, 1931 and 1935 for the six months ended 1/4/10.  

Thank You  

Joe Safdie
Re: Petition to the Supervisor of Records - Correspondence with street artist

Paula Jesson to: Paula Datesh

Dear Ms. Datesh,

In the petition set forth below, you ask for review of the Arts Commission's response to your March 19, 2014 request for the following:

I request all emails from John Tumui to all employees of the SFAC from November 1, 2013 to March 14, 2014 inclusive.

I request all emails from employees of the SFAC to John Tumui for the same time period.

I request a copy of street artist inspection done from February 1, 2014 to March 14, 2014.

I request a verifiable reason why the March 2014 Street Artist Meeting was cancelled and a copy of the agenda.

Howard Lazar has provided me with the Arts Commission's response sent March 20, 2104 (11:15 AM).

In light of that response, there remains no issue requiring determination by the Supervisor of Records.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

Paula Datesh
Dear Ms. Jesson: I made this IDR on March 19,...

From: Paula Datesh
To: paula_jesson@sfgov.org,
Date: 03/20/2014 05:28 PM
Subject: Petition to the Supervisor of Records-Paula Datesh

Dear Ms. Jesson:

I made this IDR on March 19, 2014 at 9:49am.
I have not received a response. Article II: Sec. 67.17 of the San Francisco Sunshine Ordinance-
(Immediacy of Response) requires a response within 24 hours.
Lazar is in violation.
I would appreciate it if you could get a response.
Paula Datesh
-----Original Message-----
From: pdatesh
To: howard.lazar <howard.lazar@sfgov.org>
Sent: Wed, Mar 19, 2014 9:49 am
Subject: Immediate Disclosure Request

I request all emails from John Tumii
to all employees of the SFAC from
November 1, 2013 to March 14, 2014
inclusive.

I request all emails from employees of
the SFAC to John Tumui for the same
time period.

I request a copy of street artist inspection done from February 1, 2014 to March
14, 2014.

I request a verifiable reason why the
March 2014 Street Artist Meeting was
cancelled and a copy of the agenda.

I am making this request pursuant to
the Sunshine Ordinance.

Paula Datesh
Re: Petition to Supervisor of Records - San Francisco Police Department

Paula Jesson to: Daniel Giles
Cc: ssotf, Maureen Conefrey

04/07/2014 05:05 PM

Dear Mr. Giles,

The City Attorney's Office received your petition to the Supervisor of Records regarding your public records request to the San Francisco Police Department, discussed in the email messages below.

I see from these messages that Ms. Conefrey has provided you with additional information regarding the records that you are seeking. If you still need assistance from this Office as Supervisor Records, please let me know. Please note that the role of the Supervisor of Records is limited to deciding whether a City department is improperly withholding a record that should be made public.

Maureen Conefrey
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-6699
email: paula.jesson@sfgov.org

Hello Mr. Giles,

I have spoken to Sgt. Ware at SFPD Human Resources and he went through Harold Vance's personnel file and confirmed that no such "Oath of Office" or "Records of Official Bond" exists. I also reached out to Sgt. Lacamagane at the Academy and she confirmed the same. She also advised me that she checked with the sworn members who work with her at the Academy and they all advised her that they were sworn in orally, and did not sign an oath or bond. Therefore, the SFPD has no responsive documents to your specific request.

Please let me know if I can be of further assistance to you.

Sincerely,

Maureen Conefrey
Police Legal
Hall of Justice
(415) 553-9843

-----Daniel Giles wrote: -----
To: Maureen.Conefrey@sfgov.org  
From: Daniel Giles  
Date: 04/07/2014 08:46AM  
Subject: Re: H. Vance  

Thank you for your help.  

Daniel Giles  

On Apr 7, 2014 8:28 AM, <Maureen.Conefrey@sfgov.org> wrote:  
Hello Mr. Giles,  

I'm trying to work with you. What I don't know, and am trying to find out, is whether sworn members have to sign an oath of office. Could it be called something else? It was my understanding when I wrote to you with the exemptions, was what I was trained regarding police officer's personnel files. If I am wrong, and the documents exist, I will turn them over. I am waiting to hear from our HR Division.  

I'll let you know what I find out as soon as I hear from HR.  

Thanks.  

Maureen Conefrey  
Police Legal  
Hall of Justice  
(415) 553-9843  

-----Daniel Giles  
Date: 04/07/2014 08:10AM  
Subject: Re: H. Vance  

Mrs Conefrey,  

I made a simple public records request- no clarification necessary. Call the Secretary of State's office if you are unclear if an oath of office and record of bond are public records. I will be submitting a petition to the city attorney this morning including case law and statutes regarding my position. If the request is further denied I will take this to federal court under 1983.  

Thank you in advance.  

Sincerely,  

Daniel Giles  

On Apr 7, 2014 7:44 AM, <Maureen.Conefrey@sfgov.org> wrote:  
Good Morning Mr. Giles,  

When you have a chance, can you please call me. I would like to get clarification on this specific request regarding H. Vance. Thanks.
Sincerely,

Maureen Conefrey
Police Legal
Hall of Justice
(415) 553-9843
Dear Ms. Datesh,

In an email sent 4/11/2014 at 5:16 PM, you sent an email string that raised concerns about noncompliance by a Kye Collection stand located on Post and Stockton (sent 3/28/2014), the Arts Commission's response addressing that concern (sent 3/31/2014), and an appeal to the Supervisor of Records sent 4/11/2014 at 5:16 PM. The appeal states that certain logbooks of Howard Lazar are incorrect, that you had not received timely responses to your public records requests, that the Arts Commission mis-addressed an envelope with records sent to you, and that the Kye stand was still not compliant with requirements.

None of these issues falls within the jurisdiction of the Supervisor of Records, which is to determine whether a City department has a public record that it is withholding in response to a public records request without a lawful basis for doing so.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org
Fwd: IMMEDIATE DISCLOSURE REQUEST-HERE IT IS!

 forwarded message:

From: [Redacted]
Date: April 4, 2014 at 10:44:51 PM PDT
To: Rebekah Krell <rebekah.krell@sfgov.org>, paula.jesson@sfgov.org, soft@sfgov.org
Subject: Fwd: IMMEDIATE DISCLOSURE REQUEST

Begin forwarded message:

From: [Redacted]
Date: April 4, 2014 at 10:33:22 PM PDT
To: "Krell, Rebekah (ART)" <rebekah.krell@sfgov.org>
Subject: Re: IMMEDIATE DISCLOSURE REQUEST

Lazar's SOFT logbooks are incorrect and my SOFT hearings on April 30 of this year will prove this. While he may have recorded responses in his logbook, I did not receive timely responses and almost all IDR's did not satisfy the request. That is the reason why I filed 2 petitions with the Supervisor of Records. I still have not received the documents and CD due to yet another Lazar error of his mistake in my address. A SOFT Order issued against him 2 months ago for the exact same reason.

He still hasn't corrected his error and I am not chasing down a mis addressed envelope with a taped over return address of the SFAC.

I left you a phone message AGAIN today about the KYE stand. I took photos once and Mr. KYE screamed at me. He may have downsized his stand for one day but is it still the same size with tables between both spaces. It measures 20 feet in length, 8 feet from the curb and 20 feet in height with the addition of an advertising banner on the back of a pick up truck. Today were 2 oversized tables; 2 shirt racks and 1 person. It has remained the same for the past 3 years without a change. I suggest that Lazar has OVERLOOKED Article 24 of the SF POLICE Code which mandates the size to 4 feet x 3 feet x 5 feet for EVERY street artist stand. Your statement that he notes in a logbook where each stand is on a given day begs the issue of code compliance and photos- the sole purpose of an inspection.

Moreover, ARTICLE 1 Section 22-24 of the SF Police a Code states that a sidewalk MUST be free of free passage.

There is a stand of hats on Market between 4-5th Street. This stand has boxes on the sidewalk around it. The boxes have over 500 knitted hats in them. The stand is oversized and these people were suspended last year for the EXACT same issues. What measures do you have in place to insure that Lazar monitors this stand? It went overlooked in his inspections for 10 years. As did Fama Thiam. Seems odd that an entire stand of mass produced costume jewelry in an illegal space and oversized could be in code compliance for 25 years.

As I have said before: I do not work for the SFAC and ask what measures you have in place to insure that Lazar is doing his job? This has become yet another circle of me doing the work; chasing you down with photos and Lazar doing nothing to correct the violations or monitor the situations.
Dear Ms. Datesh:

In your "Immediate Disclosure Request" of Friday, March 28th you state that you have "not received a response from Howard Lazar on most of the IDR's sent to him." Contrary to this, the Arts Commission's "Sunshine Logbook" shows that Mr. Lazar has responded to all of the IDR's he has received from you, and that these total 61 IDR's since the start of the current fiscal year.

With respect to your assertion that street artist Kye Rorie's "stand does not conform to Article 24 of the SF Police Code of 5 feet by 4 feet by 3 feet," Mr. Lazar on March 19th showed Kye Rorie photos of his stand which had been forwarded to him by the City Attorney's Office as part of a "Petition to the Supervisor of Records" initiated by you. Mr. Lazar verbally warned Mr. Rorie that he must keep his display within the requirements. He also explained to Mr. Rorie that he could set up a display in each of the two Post Street spaces but could not join them to create one large display. Mr. Rorie apologized and said that he would decrease the size of his display to fit within the regulations.

You ask what efforts Mr. Lazar has made in monitoring the stand. On March 21st, in response to your IDR of March 19th, Mr. Lazar sent you a pdf of two years’ documentation (March 2012 through March 2014) of his monitoring in the Downtown area which included numerous observations of Mr. Rorie's stand. Since speaking with him on March 19th, Mr. Lazar has not had the time to monitor the Union Square/Post Street area; however, it is his intention to do so and to verify whether Mr. Rorie is in compliance.

You allege that Mr. Lazar "selectively" monitors stands. This is refuted by the documents he sent you which clearly list each artist and his/her stand on each block on any given day.

Sincerely,

Rebekah

Rebekah Krell
Deputy Director & CFO
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-4666 F: 415-252-2595
sfartscommission.org

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From: Paula Datesh [REDACTED]
Date: Fri, 28 Mar 2014 20:11:09 -0400
To: Rebekah <rebekah.krell@sfgov.org>, <paula_jesson@sfgov.org>
Subject: IMMEDIATE DISCLOSURE REQUEST

Dear Ms. Krell:

I have not received a response from Howard Lazar on most of the IDR's sent to him. I have a few questions that pertain to the Kye Collection stand located on Post Street.

As you can see from the attached photos, the stand does not conform to Article 24 of the SF Police Code of 5 feet by 4 feet by 3 feet. This stand has had one person running it for over 3 years. It has been at times larger than the attached photos. The following email contains photos of a banner on the back of a pick-up truck which puts the height over 20 feet.

What efforts has Lazar in monitoring this stand? I made a previously unanswered IDR...
where I requested written warnings and other DOCUMENTS regarding this stand. I request this information.

Why does Lazar, "selectively monitor" stands in the street? What efforts have you taken to monitor Lazar?

I am making this request pursuant to the Sunshine Ordinance.

Paula Datash

---Original Message---
From: pdatash
To: rebecka.krell@sfgov.org
Sent: Fri, Mar 28, 2014 4:39 pm
Subject: Kye

Sent from my iPhone
Dear Ms. Datesh,

We discussed your petition with Mr. Lazar and he has informed us that the response sent by the Arts Commission to your request is correct and that the Arts Commission does not have records responsive to your request. In light of this information, the Supervisor of Records denies your petition.

Paula Jesson  
Deputy City Attorney  
City and County of San Francisco  
Room 325 City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Telephone: (415) 554-6762  
Fax: (415) 554-4699  
email: paula.jesson@sfgov.org

Ms. Jesson:  
I believe there are records; documents and certifications relative to this request.  
Paula Datesh

Begin forwarded message:

From: "Lazar, Howard" <howard.lazar@sfgov.org>  
Date: November 6, 2013 at 11:10:54 AM PST  
To: Paula Datesh <\[REDACTED\], "paula_jesson@sfgov.org" <paula_jesson@sfgov.org>  
Cc: Rebekah <Krell@sfgov.org>, "Patterson, Kate" <kate.patterson@sfgov.org>, Alyssa <Licouris@sfgov.org>  
Subject: RE: Immediate Disclosure Request

Dear Ms. Datesh:

Thank you for specifying in your email that you are requesting "all documents; records and certifications" relative to "the job skills and on-going training Lazar has completed concerning inspection of Street Artist wares both in the street and at Street Artist screenings."
The Arts Commission has no such documents, records, or certifications on file.

Sincerely,
Howard Lazar
Street Artists Program Director

San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-2583 F: 415-252-2595
sfartscommission.org

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From: Paula Datesh [REDACTED]
Sent: Tuesday, November 05, 2013 12:15 PM
To: Lazar, Howard; paula_jesson@sfgov.org
Subject: Immediate Disclosure Request

I request all documents; records and certifications relating to the qualifications of Howard Lazar. I am interested in the job skills and on-going training Lazar has completed concerning inspection of Street Artist wares both in the street and at Street Artist screenings. I request all documents for the past 41 years.

I am making this request pursuant to the Sunshine Ordinance.
Paula Datesh
Re: Petition to Supervisor of Records - Arts Commission - Sunshine Training

Paula Jesson  to: pdatesh
Cc: Kate.Patterson

05/28/2014 02:56 PM

Dear Ms. Datesh,

On May 19, 2014 (11:08 AM), you asked the Supervisor of Records to review the response by the Arts Commission to your public records request for the following records:

All certifications; documents and 
verifiable information of SFAC staff 
having taken Sunshine Training for 
years 1010-2014 inclusive.

The response by the Arts Commission (included in the email string below) indicates that staff provided you with "Declarations of Sunshine Training" for certain staff members "required to take Sunshine training." The email message also show additional information provided to you regarding training activities. Staff informed you that the Arts Commission had no further responsive records.

I have discussed your petition with Kate Patterson-Murphy, who informs me that the Arts Commission does not have records responsive to your request other than those already provided to you. The Supervisor of Records therefore has no basis for finding that the Arts Commission is improperly withholding a record.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

pdatesh Petition to the Supervisor of Records-Paula Date... 05/19/2014 11:08:05 AM
From: [Redacted]
To: "Patterson, Kate (ART)" <kate.patterson@sfgov.org>, paula.jeson@sfgov.org,
Date: 05/19/2014 11:08 AM
Subject: Re: Immediate Disclosure Request

Petition to the Supervisor of Records-Paula Datesh
If you had employees who took Sunshine Training there should be a record of the names, dates and times.

I would like to the documents responsive to this request.

On May 19, 2014, at 9:29 AM, "Patterson, Kate (ART)" <kate.patterson@sfgov.org> wrote:
Dear Ms. Datesh,

I’m writing in response to your questions, which I’m including below along with our replies...

“Which city attorney?”
Adine Varah

“What date?”
We have no records responsive to your request.

“What staff attended?”
We have no records responsive to your request.

Sincerely,

Kate Patterson-Murphy
Director of Communications

San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-4638 F: 415-252-2595
sfartscommission.org

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From: Patterson, Kate (ART)
Sent: Friday, May 16, 2014 5:12 PM
To: Patterson, Kate (ART)
Subject: Re: Immediate Disclosure Request

Which city attorney? What date? What staff attended?

Sent from my iPhone

On May 16, 2014, at 3:16 PM, "Patterson, Kate (ART)" <kate.patterson@sfgov.org> wrote:

Dear Ms. Datesh,
I am writing to respond to your email (original included below) dated Monday, May 12, 2014 to Howard Lazar requesting the following: All certifications; documents and verifiable information of SFAC staff having taken Sunshine Training for years 1010-2014 inclusive.

In this response, we assume you mean 2010 and not “1010” as the Arts Commission has only been in existence 1932.

The only staff member required to take Sunshine training is the Director of Cultural Affairs. I am attaching Tom DeCaigny’s Declarations of Sunshine Training from the time he assumed office in 2012 through this year. I’m also attaching those of the previous
two directors Luis Cancel and Interim Director JD Beltran.

Other staff have had voluntary training on Sunshine by one or more of the following: watching all or part of the training video posted on the City Attorney’s website, reviewing and discussing the Good Government Guide published by the City Attorney, attending a presentation by a Deputy City Attorney on Sunshine at a staff meeting. To my knowledge, there are no certifications or documents of this training, and thus no other records responsive to the request.

If you would like to see additional Sunshine documentation for the Arts Commissioners, you can do so here: http://nf4.netfile.com/pub/?aid=SFO.

Sincerely,

Kate Patterson-Murphy
Director of Communications
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-4638 F: 415-252-2595
sartscommission.org

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From: [Redacted]
Sent: Monday, May 12, 2014 10:03 PM
To: Lazar, Howard (ART)
Subject: Immediate Disclosure Request

All certifications; documents and verifiable information of SFAC staff having taken Sunshine Training for years 1010-2014 inclusive.

I am making this request pursuant to the Sunshine Ordinance.

Paula Datesh
<Tom DeCaigny Sunshine 2012.pdf>
<Tom DeCaigny Sunshine 2013.pdf>
<Tom DeCaigny Sunshine 2014.pdf>
<JD_Beltran_Sunshine.pdf>
<Luis_Cancel_Sunshine.pdf>
Petition to Supervisor of Records - Arts Commission - Executive Meeting Minutes
Paula Jesson to: pdatesh
Cc: Sharon, Page Ritchie, Rebekah

06/16/2014 02:34 PM

Dear Ms. Datesh,

Regarding the petition to the Supervisor of Records you sent on 6/6/2014 (1:32 PM), I understand from Ms. Page Ritchie that:

1. Ms. Page Ritchie has provided you with CD copies of the 2012 recordings referred to in her June 2, 2014 email message below. We understand your petition to concern digital recordings of pre-2012 meeting as discussed in paragraph 2 below.

2. Ms. Page Ritchie understood your request for recordings of meetings before 2012 to be for recordings provided in digital format. Ms. Page Ritchie informed you that to provide them in digital format, staff must transfer them from audiotape and this process will take time to complete. I understand from Ms. Page Ritchie that the transfer process is not yet done. Therefore, as we understand the circumstances, the Arts Commission is not withholding these digital format recordings from you because the transfer to digital format is not yet done. Therefore, the petition is denied.

3. In a June 15, 2014 message addressed to me (and not to the Arts Commission), you said "I would like the rough draft Executive meeting minutes" for certain specified dates (for years 2005, 2007, 2008, 2009 and 2010). This request for records should be sent to the Arts Commission, not to the Supervisor of Records. If, after making that public records request to the Arts Commission, you believe that the Arts Commission has not properly responded, you can file a petition with the Supervisor of Records.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

pdatesh Dear Ms. Jesson: I am filing a petition to the Sup...

06/06/2014 01:32:36 PM

From: [REDACTED]
To: Paula Jesson <paula.jesson@sfgov.org>,
Date: 06/06/2014 01:32 PM
Subject: Fwd: IMMEDIATE DISCLOSURE REQUEST-Petition to the Supervisor of Records Paula Datesh

Dear Ms. Jesson:

I am filing a petition to the Supervisor of Records for the remaining Executive meeting minutes that have not posted on the SFAC web site. I have reason to believe that they did not record Executive meetings prior to 2012.

Paula Datesh
Begin forwarded message:

From: [redacted]
Date: June 4, 2014 at 9:05:18 AM PDT
To: "Page Ritchie, Sharon (ART)" <sharon.page_ritchie@sfgov.org>
Subject: Re: IMMEDIATE DISCLOSURE REQUEST

I noted at the full commission meeting of May 2014—there was mention of the
FRIENDS OF THE ARTS COMMISSION established by Dede Wesley. Do you
have any information of that?

On Jun 3, 2014, at 4:37 PM, "Page Ritchie, Sharon (ART)" <
sharon.page_ritchie@sfgov.org> wrote:

Please let me know whether you would like me to mail the CD copies of the audio
recordings for 2012 Executive Committee meetings to your PO Box.

Sharon Page Ritchie
Commission Secretary
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-2591 F: 415-252-2595
sfartscommission.org

From: Page_Ritchie, Sharon (ART)
Sent: Monday, June 02, 2014 6:05 PM
To: [redacted] SOTF (BOS)
Cc: Patterson, Kate (kate.patterson@sfgov.org)
Subject: RE: IMMEDIATE DISCLOSURE REQUEST

In response to your request below, it is still true that clearing the backlog of Executive
Committee minutes is a priority.

I believe you are requesting CD copies of the audio recordings of the meetings. Please
let me know if I have misunderstood your request.

We began digitally recording Executive Committee meetings in January, 2012, and you
can listen to any of them online here: http://sfgov.org/arts/audio-archive-9

I will make CD copies of the 2012 recordings for you by the end of the day tomorrow.
Meetings prior to that were recorded on audiotape, and it will take more time to
transfer those recordings to a digital format to copy to CD.
Please be advised that we are hereby invoking an extension of not more than 14 days from May 30, 2014 to respond to your request pursuant to the California Public Records Act. Under the Public Records Act, the deadline can be extended for up to 14 days due to “the need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request” and “the need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.” (See Cal. Gov't Code §6253(c)(2) and (3)). The City is invoking the extension on both grounds because there is a voluminous amount of records the San Francisco Arts Commission staff must compile.

We will aim to have the entire request fulfilled by June 13, 2014.

Sharon Page Ritchie
Commission Secretary
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-2591 F: 415-252-2595
sfartscommission.org

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-----Original Message-----
From: [REDACTED]
Sent: Thursday, May 29, 2014 5:38 PM
To: Page_Ritchie, Sharon (ART); SOTF (BOS)
Subject: IMMEDIATE DISCLOSURE REQUEST

Dear Commission Secretary:

I noted that no additional Executive meeting minutes have posted since the Compliance meeting of the SOFT Task Force on May 12, 2014. You said (on the public record) that the posting of the additional 51 minutes were a priority and you were working with an outside vendor to this end. The suggestion was to post a working draft minutes.

It has now been two weeks since the hearing and I do not see any change in the Executive meeting minutes. You were compliant in posting 6 meetings and 51 are outstanding.

To this end, I am requesting a CD of each of the 51 executive meeting minutes that have not posted. Please notify me via this email when they are completed.

Thank You,

Paula Datesh
Petition to the Supervisor of Records - Arts Commission - Policies regarding posting of meeting minutes and audio

Paula Jesson  to: pdatesh

06/16/2014 02:33 PM

Dear Ms. Datesh,

I have discussed this petition with Ms. Page Ritchie. It concerns records relating to the policies of the Arts Commission regarding the posting of minutes and audio.

Ms. Page Ritchie tells me that she did not receive the public records request (see the June 5, 2014, message in the email string below). When I discussed the message with her, she said she had not received it, and when I described the email address, she informed me that the address is not correct. Therefore, the Arts Commission did not receive the request and did not have an opportunity to respond to it, and the matter is not ready for review by the Supervisor of Records.

Please note the correct address: Sharon Page_Ritchie/ARTSCOM/SFGOV. (I see that you sent me a message which included Ms. Page Ritchie on 6/13/2014 at 6:57 PM - and that message uses the correct email address).

If you still wish to request these records, please send the message to the correct email address so that the Arts Commission can review and respond to it.

Thank you.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

pdatesh  Paula Datesh  06/06/2014 01:29:20 PM

From: 
To: Paula Jesson <paula.jesson@sfgov.org>,
Date: 06/06/2014 01:29 PM
Subject: Fwd: IMMEDIATE DISCLOSURE REQUEST-petition to the supervisor of records Paula a datesh

Paula Datesh
San Francisco, CA 94104

Dear Ms. Jesson:

I am filing a petition to the Supervisor of Records as this IDR was not answered.

Paula Datesh
Begin forwarded message:

From: Paula Dateh
Date: June 5, 2014 at 3:16:20 PM PDT
To: sharon.page-ritchie@sfgov.org
Subject: IMMEDIATE DISCLOSURE REQUEST

I AM REQUESTING ALL POLICIES IN PLACE WITH THE POSTING OF
MEETING MINUTES
AND AUDIO.
I AM REQUESTING ALL DOCUMENTS REGARDING SUNSHINE
TRAINING FOR
LUIS CANCEL AND PJ JOHNSTON FOR THE YEARS THEY WERE THE
PRESIDENT OF
THE SFAC.
I AM MAKING THIS REQUEST PURSUANT TO THE SUNSHINE
ORDINANCE.
Paula Dateh

SAN FRANCISCO, CA 94104
Re: Petition to Supervisor of Records - Statement of Incompatible Activities

Paula Jesson  to: pdatesh
Cc: Howard Lazar

06/20/2014 03:15 PM

Dear Ms. Datesh,

In your petition below (sent 6/11/2014 8:29 PM), you state that Howard Lazar is "required to file a Statement of Incompatible Activities for each year he held [two] jobs." Your petition states that you asked for these records from Mr. Lazar but that he has not provided all responsive records to you.

Each City department develops its own "Statement of Incompatible Activities." An employee may request a determination that a particular activity is not in conflict with the Department's "Statement of Incompatible Activities." The employee does so by submitting an "Advance Written Determination" request. There is a more detailed description of the law governing departmental "Statements of Incompatible Activities" in the City Attorney's "Good Government Guide" (beginning at page 54), which is available under "Resources" on the City Attorney's website.

Although your petition refers to Mr. Lazar's duty to "file a Statement of Incompatible Activities," employees do not file such a record (as noted, the Department develops the Statement of Incompatible Activities).

Employees may file Advance Written Determination requests. We understand your petition to allege that Mr. Lazar has not provided you with all Advance Written Determination Requests.

The email message from Mr. Lazar in the email string below indicates that he provided an Advance Written Determination request to you. I discussed this matter with Mr. Lazar and he informs me that there are no "Advance Written Determination" records other than what he has provided to you. In light of this information, the Supervisor of Records denies the petition.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
e-mail: paula.jesson@sfgov.org

Dear Ms. Jesson:

I am filing a formal petition to the Supervisor of Records for the documents requested in the following Immediate Disclosure Request. Howard Lazar has held an additional job as a janitor at the South End Rowing a Club for 22 years while in the employe of he City and County as the Director of the Street Artist Program.

He is required to file a Statement of Incompatible Activities for each year he held both
jobs. I asked for years 1979-2014 inclusive. I got one statement copied three times. To the upper right hand corner was the year in Lazar's handwriting on each one. It said 2014; 2013; 2012; 2011. He did fill the request.
I have reason to believe these records are public and that copied of years 1979-1910 exist. It is a legal requirement per the SF City Attorney's web site and I believe Lazar Is with holding these documents.
Paula Datesh

Begin forwarded message:

From: "Lazar, Howard (ART)" <howard.lazar@sfgov.org>
Date: June 11, 2014 at 10:03:07 AM PDT
To: "[Redacted]"
Cc: "Krell, Rebekah (ART)" <rebekah.krell@sfgov.org>, "Patterson, Kate (ART)" <kate.patterson@sfgov.org>, Alyssa <Licouris@sfgov.org>, "Young, Victor" <victor.young@sfgov.org>
Subject: RE: Immediate Disclosure Request

Read the last line of the response again.

We have fully responded to this IDR. The Arts Commission has no additional responsive documents.

Howard Lazar
Street Artists Program Director
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-2583 F: 415-252-2595
sfartscommission.org

e-Newsletter I Twitter I Facebook I YouTube I Flickr

From: [Redacted]
Sent: Wednesday, June 11, 2014 9:49 AM
To: Lazar, Howard (ART); sofi@sfgov.org; Young, Victor
Subject: Re: Immediate Disclosure Request

Read the request again.
It says for years 1979-2014z
Dear Ms. Jesson,

On 6/20/2014 (at 3:15 PM), the Supervisor of Records responded to the petition that you submitted on 6/11/2014 (at 8:29 PM) regarding Statements on Incompatible Activities maintained by the Arts Commission for Howard Lazar.

As we informed you in that response, the Statement of Incompatible Activities is developed by City departments, not employees; employees can submit Advance Written Determination requests under their department’s Statement of Incompatible Activities; as noted in your message below, Mr. Lazar provided you with an Advance Written Determination request for 2012; and Mr. Lazar has informed us that there are no other Advance Written Determinations requests for him.

Therefore, the Supervisor of Records finds no basis for further review of the petition.

Paula Jesson  
Deputy City Attorney  
City and County of San Francisco  
Room 325 City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Telephone: (415) 554-6762  
Fax: (415) 554-4699  
email: paula.jesson@sfgov.org

pdatesh  
Deer Ms. Jesson: I wish to refile this petition as l...  
06/23/2014 08:21:12 AM

Dear Ms. Jesson:

I wish to refile this petition as the request was for years 1979-2014. Lazar only gave 2012.

Paula Datesh

From:  
Date: June 17, 2014 at 7:33:30 PM PDT  
To: Kate Patterson <kate.patterson@sfgov.org>, Paula Jesson <paula.jesson@sfgov.org>, "SOTF (BOS)" <sotf@sfgov.org>  
Subject: Fwd: Immediate Disclosure Request

I didn't get a response to this one either.  
Resend it.
Paula Datesh

From: [Redacted]
Date: June 11, 2014 at 9:49:44 AM PDT
To: "Lazar, Howard (ART)" <howard.lazar@sfgov.org>, sofia@sfgov.org, Victor Young <victor.young@sfgov.org>
Subject: Re: Immediate Disclosure Request

Read the request again.
It says for years 1979-2014 zoom

On Jun 11, 2014, at 9:26 AM, "Lazar, Howard (ART)" <howard.lazar@sfgov.org> wrote:

Dear Ms. Datesh:

The copy of the "Advance Written Determination" filed by Howard Lazar was included in the volume of responses Mr. Lazar sent you on June 3, 2014 in response to your second "Immediate Disclosure Request" of May 28th. This "Advance Written Determination" was signed by his supervisor Rebekah Krell on May 4, 2012 and states that Mr. Lazar's "proposed activity is not incompatible with the SIA ["Statement of Incompatible Activities"] of the Department, Board, or Commission." This "Determination" is the only such filing which was required of Mr. Lazar, and independent contractor, for the time period of which you have requested.

Howard Lazar
Street Artists Program Director
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-2583 F: 415-252-2595
sfrartscommission.org

e-Newsletter I Twitter I Facebook I YouTube I Flickr

From: [Redacted]
Sent: Tuesday, June 10, 2014 6:29 PM
To: Lazar, Howard (ART)
Subject: Immediate Disclosure Request

Request the Statement of Incompatible Activities for Howard Lazar for years 1979-2014 inclusive.

I am making this request pursuant to the Sunshine Ordinance.

Paula Datesh
To: "Seth Hemmelgarn" <s.hemmelgarn@ebar.com>,
Cc: Arlene G Hall/CTYATT,
Subject: Petition to Supervisor of Records

Dear Mr. Hemmelgarn -

Attached please find the response to your petition to the Supervisor of Records submitted on May 29, 2014.

Thank you,

Katherine M. Mahoney
Deputy City Attorney
Office of San Francisco City Attorney Dennis J. Herrera
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: (415) 554-4654 (Mon, Wed, Fri)
Tel: (415) 553-1453 (Tues/Thurs)
Fax: (415) 554-4747

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Please consider the environment before printing this e-mail.
Sent via email
Seth Hemmelgarn

Re: Petition to Supervisor of Records
May 29, 2014

Dear Mr. Hemmelgarn:

This letter responds to your petition sent by email on May 29, 2014 regarding the verbal request you made on May 9, 2014 to Leah Rothstein and Jennifer Scaife of the San Francisco Adult Probation Department (APD) for the list of fields in APD’s case management system.

In an email, a copy of which is attached, to you on August 18, 2014, Ms. Rothstein provided you with the list of fields in APD’s case management system. Ms. Rothstein noted that the list she provided to you represents the database’s technical field names. She stated that the list was compiled to include all fields that contain any data and that the list includes mandatory and optional fields.

Given that APD has responded to your request and provided you with the list of fields in APD’s case management system, there remains no issue for determination by the Supervisor of Records, and we consider this matter closed.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Katherine M. Mahoney
Deputy City Attorney

Encls:
APD's case management system fields
Rothstein, Leah (ADP)
to:
Seth Hemmelgarn
08/18/2014 09:31 AM
Cc:
"Fudym, Bella (ADP)" , "Clark, Jana (CAT)" , "Mahoney, Katherine (CAT)"
Hide Details
From: "Rothstein, Leah (ADP)" <leah.rothstein@sfgov.org>
To: Seth Hemmelgarn <s.hemmelgarn@ebar.com>,
Cc: "Fudym, Bella (ADP)" <bella.fudym@sfgov.org> , "Clark, Jana (CAT)" <jana.clark@sfgov.org>,
"Mahoney, Katherine (CAT)" <katherine_mahoney@sfgov.org>
1 Attachment

Reporter Request - CTAG DB columns with data 08182014.xlsx

Hello Mr. Hemmelgarn,

I am writing to provide you with the list of fields in the Adult Probation Department’s case management system, per your petition below. As we discussed on the phone last week, this list represents the database’s technical field names. We compiled the list to include all fields that have any data in them, so the list includes both mandatory and optional fields.

Please let me know if you have any questions

Thank you,

Leah Rothstein
Research Director, Reentry Division
Adult Probation Department
(415) 553-9702 | leah.rothstein@sfgov.org

Mailing Address
Hall of Justice | 880 Bryant Street, Room 200 | San Francisco, CA 94103

Physical Address
Hall of Justice | 850 Bryant Street, Room 200 | San Francisco, CA 94103

For information about Citywide reentry efforts, please see the websites of the Reentry Council and the Community Corrections Partnership

From: Seth Hemmelgarn <s.hemmelgarn@ebar.com>
To: <paula.isssson@sfgov.org>
Date: 05/29/2014 04:44 PM
Subject: petition for Adult Probation Department data

file:///C:/Users/kmahoney/AppData/Local/Temp/notesC7A056/~web4513.htm
Hello,

I am petitioning for data to be released to me from the San Francisco Adult Probation Department.

On May 9, 2014 I made a verbal request to Leah Rothstein and Jennifer Scaife of the San Francisco Adult Probation Department for the list of fields in their case management system.

On May 13, 2014, Leah Rothstein replied to me via email. In her email, Ms. Rothstein said, "We are unfortunately unable to provide you with a list of fields that are in our case management system. The system is proprietary, licensed software so any screen shots or lists that indicate the database structure would be in violation of our license agreement and there is no list of the fields that does not include the underlying database structure."

I still believe that the list of fields should be public information.

The San Francisco Sunshine Ordinance says:

"Sec. 67.21-1. Policy Regarding Use And Purchase Of Computer Systems.

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet. ...

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records: ...

(3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)"

It appears that the Adult Probation Department has failed to reach the goal mentioned in Section B. The department is an agency supported by public funds, and the information that I requested should be made available to the public. The department should not make agreements that they will not disclose the information that I requested to the public.

Please contact me if you have any questions.

Thank you,

Seth

---

Seth Hemmelgarn
Bay Area Reporter
Max Cherney  
Sent via email

Re: Petition to Supervisor of Records – San Francisco Police Department

Dear Mr. Cherney:

This letter responds to your petition, sent by email on June 10, 2014 at 12:04 p.m., asking the Supervisor of Records to review the response by the San Francisco Police Department to your public records request regarding “Stingray/IMSI catcher” technology.

Your June 9, 2014 request to the Police Department stated that you are “interested in learning a bit about the policy/procedure for using [Stingray/IMSI catcher], and how it’s handled in terms of evidence.” On June 10, 2014, Sgt. Danielle Newman of the Police Department informed you by email that any records the Department may have that are responsive to your request are exempt from disclosure under California Government Code Section 6254(f) (the law enforcement records exemption) and Section 6254(k), which permits to records “the disclosure of which is exempted or prohibited pursuant to federal or state law, including but not limited to, provisions of the Evidence Code relating to privilege.” The Police Department explained that the relevant state and federal laws that exempt or prohibit disclosure of this information include, but are not limited to: California Evidence Code Section 1040 (official information privilege); California Civil Code Section 3426 et seq. (the Uniform Trade Secrets Act); California Evidence Code Section 1060 (trade secrets); 5 U.S.C. secs. 552(b)(4), (b)(6), (b)(7)(c) and (b)(7)(e); 6 U.S.C. secs. 482(e) and (f)(1); 22 C.F.R. Parts 120-130; 22 C.F.R. 121.1, XI, (b); 22 U.S.C. sec. 2778; and Executive Order 13637.

The Supervisor of Records has consulted with the Police Department and based on information the Department has provided to date, we have determined that the only records in the Department’s possession that may be responsive to your request are not subject to disclosure under the Public Records Act or Sunshine Ordinance. Specifically, the only potentially responsive records are: (1) not subject to disclosure based on the state and federal laws cited in the Department’s June 10, 2014 response (the federal statutes and regulations cited were included in the Department’s response at the instruction of the Federal Bureau of Investigation), (2) not subject to disclosure under Section 6254(a) of the California Government Code and Section 67.24(a) of the San Francisco Administrative Code which protects from disclosure “preliminary draft[s] or department memorandum[s],” and (3) court records filed under seal. Accordingly, the Supervisor of Records has determined the Department is not improperly withholding potentially responsive records in its possession and your petition is denied.
Letter to Max Cherney
Page 2
June 20, 2014

Very truly yours,

DENNIS J. HERRERA
City Attorney

FRANCESCA GESSERTER
Deputy City Attorney
Ms. Jesson,

Can you please review the department's reasoning below for withholding documents related to my request?

Feel free to call or email with questions.

Max
Begin forwarded message:

From: Danielle.Newman@sfgov.org
Subject: Re: Fw: Stingray / IMSI catcher - asap deadline SF Appeal
Date: June 10, 2014 at 9:16:16 AM PDT
To: [Redacted]
Cc: SFPDMediaRelations@sfgov.org

Dear Mr. Cherney,

In response to your request:

We have reviewed our records, and if we have any records that are responsive to your request they would be exempt from disclosure pursuant to California Government Code Sections 6254(f) (the law enforcement records exemption) and 6254(k). Section 6254(k) pertains to records "the disclosure of which is exempted or prohibited pursuant to federal or state law, including but not limited to, provisions of the Evidence Code relating to privilege." The relevant state and federal laws include, but are not limited to: Evidence Code Section 1040 (official information privilege); the Uniform Trade Secrets Act (California Civil Code Section 3426 et seq), Evidence Code Section 1060 (trade secret); 5 U.S.C., 552(b)(4), (b)(6), (b)(7)(c) and (b)(7)(e); 6 U.S.C. sec.482(e) and (f)(1); 22 C.F.R. Parts 120-130; 22 C.F.R. 121.1, XI, (b); 22 U.S.C. sec. 2778; and Executive Order 13637.

Sincerely,

Sgt. Danielle Newman
Media Relations
San Francisco Police Department
850 Bryant Street, Room 553
San Francisco, CA 94103
Phone 415-553-1651

-----SFPDMediaRelations SFPD SFGOV wrote -----
Lindsay Waskey  
PETA  
via email to LindsayW@PETAF.org  

Re: Petition to Supervisor of Records – Animal Care and Control  

Dear Ms. Laskey:  

This letter responds to your petition, received by email on June 16, 2014 at 5:05 pm.  

In your petition, you indicate that on March 11, 2014, PETA requested that the San Francisco Department of Animal Care and Control ("Department") provide "all records concerning the Wonderful Opportunities for Occupants and Fidos [WOOF] program." You further indicated that PETA had received one partial response on May 9, 2014, and had received no response to its May 27, 2014 correspondence requesting a further response.  

The Supervisor of Records has concluded that these records are public records and that the Department is responsible for disclosing such records, subject to any applicable laws. We have been informed that the Department transmitted the responsive records to your attention via email and DropBox on June 26, 2014.  

Accordingly, this Supervisor of Records petition is closed.  

We hope this is helpful.  

Very truly yours,  

DENNIS J. HERRERA  
City Attorney  

Jana Clark  
Deputy City Attorney
June 16, 2014

Deputy City Attorney Paula Jesson
Supervisor of Records, City Attorney’s Office

Via email to paula.jesson@sfgov.org


Dear Deputy City Attorney Jesson:

I am writing on behalf of PETA in regards to the San Francisco Department of Animal Care and Control’s unreasonable delay in fully responding to PETA’s March 11, 2014, request, for “[a]ll public records concerning [the] Wonderful Opportunities for Occupants and Fidos [WOOF]” program.¹

Although San Francisco’s Administrative Code requires that a custodian of public records comply with a public records request “as soon as possible and within ten days,” PETA has only received one partial response from the Department, on May 9, 2014, over nine weeks after PETA submitted its request for public records. See SAN FRANCISCO ADMINISTRATIVE CODE § 67.21(b). PETA’s request involves records for a program that lasted only six weeks and involved only 4 dogs, according to my conversation with Rebecca Katz, Director of San Francisco Animal Control, on May 12, 2014. The limited scope and duration of this program strongly suggests that the records responsive to PETA’s request are not voluminous, and thus the Department should have been able to easily respond without delay. Accordingly, pursuant to § 67.21(d), PETA requests that your office make a determination that the records PETA seeks are public and order the Department to immediately release all public records responsive to PETA’s request.

In light of the fact that it took over nine weeks for the Department to produce its first partial response, PETA is concerned that the Department will not produce the remaining documents without the intervention of your office. Indeed, the May 9 partial response was received only after PETA² and counsel to PETA³ contacted the Department numerous times to inquire about the delay. Moreover, the Department has not responded to my May 27, 2014, correspondence requesting

¹ See Ex. 1, public records request from Teresa Chagrin, Animal Care and Control Specialist, PETA, to the San Francisco Department of Animal Care and Control, March 11, 2014.
² See Ex. 2, Email from Teresa Chagrin, Animal Care and Control Specialist, PETA, to Vicky Guldhech, Operations Manager, San Francisco Department of Animal Care and Control, March 26, 2014. See also, Ex. 3, Letter from Teresa Chagrin to Rebecca Katz, Director, San Francisco Department of Animal Care and Control, April 15, 2014.
³ Lindsay Waskey, Esq., PETA Foundation, called the Department of Animal Care and Control on April 25, April 29, May 6, and May 9, and spoke with Rebecca Katz and/or Jeannie Tauleal, Executive Assistant to Rebecca Katz, before the records were received.

(00161739)
immediate release of the public records.\textsuperscript{4} Thank you for your attention to this matter.

Very truly yours,

\begin{center}
\textsc{Lindsay Waskey, Esq.}
\end{center}

LindsayW@PETA.org

cc: Rebecca Katz, Director San Francisco Department of Animal Care and Control (Rebecca.Katz@sfgov.org)

\begin{footnotesize}
\textsuperscript{4} See Ex. 4, Letter from Lindsay Waskey, Esq., PETA Foundation, to Rebecca Katz, Director, San Francisco Department of Animal Care and Control.
\end{footnotesize}
Lindsay Waskey

Subject: FW: California Public Records Act Request

From: Teresa Chagrin [mailto:TeresaC@peta.org]
Sent: Tuesday, March 11, 2014 11:00 AM
To: ACC
Cc: Teresa Chagrin
Subject: California Public Records Act Request

March 11, 2014

Public Records
San Francisco Animal Care & Control
1200 15th Street
San Francisco, CA 94103

Via e-mail: ACC@sfgov.org

Re: California Public Records Act Request

Dear Captain Guldbech:

On behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to the California Public Records Act, Cal. Gov't Code § 6250 et seq., I hereby request copies of the following public records:

- All public records concerning Wonderful Opportunities for Occupants and Fidos, otherwise known as WOOF, including, but not limited to any and all communications, forms, complaints, and reports regarding the program.

If any of the records requested are considered to be exempt from release, please segregate and provide access to non-exempt portions, and itemize and justify deletions by reference to specific exemptions, Cal. Gov't Code §6255. As required by Cal. Gov't Code §6253, I will anticipate a response within ten (10) days of receipt of this request.

PETA is prepared to pay fees, as authorized by the statute, but kindly asks that such fees be waived or reduced, because of PETA’s nonprofit status, and because disclosure of the requested information is likely to contribute significantly to the public understanding of the operations and activities of the agency. If the aforementioned request for a waiver or reduction of fees is denied and fees are expected to exceed $100, please notify PETA to this effect before the request is processed. PETA will accept electronic copies of records. Please forward the requested information via fax to 757-628-0796 or e-mail to TeresaC@peta.org.

Thank you for your prompt attention to this request. If you have any questions regarding this matter, I can be contacted by phone at 443-320-1277 or email TeresaC@peta.org.

Sincerely,
Teresa Chagrin
Animal Care and Control Specialist
Cruelty Investigations Department
Lindsay Waskey

Subject: FW: California Public Records Act Request

From: Teresa Chagrin [mailto:TeresaC@peta.org]
Sent: Wednesday, March 26, 2014 2:10 PM
To: Guldbech, Vicky
Cc: Reiter, Rob (ADM); Katz, Rebecca (ADM)
Subject: RE: California Public Records Act Request
Importance: High

The records requested in PETA's March 11, 2014 Public Records Act Request (below) have not been delivered. Please advise us of the status of the request and the reason for the delay.

Thank you.

*Teresa Lynn Chagrin
Animal Care & Control Specialist
PETA, 501 Front St., Norfolk, VA 23510
Phone 443-320-1277
Fax 757-628-0796
TeresaC@peta.org*

You can help advance the rights of all animals: Donate today!

From: Guldbech, Vicky [mailto:vicky.guldbech@sfgov.org]
Sent: Tuesday, March 11, 2014 4:15 PM
To: Teresa Chagrin
Cc: Reiter, Rob (ADM); Katz, Rebecca (ADM)
Subject: RE: California Public Records Act Request

Hi Teresa,
I do not have access to these records, so I have copied my Director and Deputy Director to direct me on how to process this request.
Thank you,

Captain Vicky Guldbech
Operations Manager
San Francisco Animal Care and Control
415 554-9402
415 557-9950

From: ACC
Sent: Tuesday, March 11, 2014 12:52 PM
To: Reiter, Rob (ADM); Guldbech, Vicky
Subject: FW: California Public Records Act Request

From: Teresa Chagrin [mailto:TeresaC@peta.org]
Sent: Tuesday, March 11, 2014 11:00 AM
To: ACC
Cc: Teresa Chagrin
Subject: California Public Records Act Request

March 11, 2014

Public Records
San Francisco Animal Care & Control
1200 15th Street
San Francisco, CA 94103

Via e-mail: ACC@sfgov.org

Re: California Public Records Act Request

Dear Captain Guldbech:

On behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to the California Public Records Act, Cal. Gov't Code § 6250 et seq., I hereby request copies of the following public records:

- All public records concerning Wonderful Opportunities for Occupants and Fidos, otherwise known as WOOF, including, but not limited to any and all communications, forms, complaints, and reports regarding the program.

If any of the records requested are considered to be exempt from release, please segregate and provide access to non-exempt portions, and itemize and justify deletions by reference to specific exemptions, Cal. Gov't Code §6255. As required by Cal. Gov't Code §6253, I will anticipate a response within ten (10) days of receipt of this request.

PETA is prepared to pay fees, as authorized by the statute, but kindly asks that such fees be waived or reduced, because of PETA’s nonprofit status, and because disclosure of the requested information is likely to contribute significantly to the public understanding of the operations and activities of the agency. If the aforementioned request for a waiver or reduction of fees is denied and fees are expected to exceed $100, please notify PETA to this effect before the request is processed. PETA will accept electronic copies of records. Please forward the requested information via fax to 757-628-0796 or e-mail to TeresaC@peta.org.

Thank you for your prompt attention to this request. If you have any questions regarding this matter, I can be contacted by phone at 443-320-1277 or email TeresaC@peta.org.

Sincerely,

Teresa Chagrin
Animal Care and Control Specialist
Cruelty Investigations Department
April 15, 2014

Rebecca Katz, Director
Rob Reiter, Deputy Director
San Francisco Animal Care and Control
1200 15th St.
San Francisco, CA 94103

Re: Delay in response to PETA’s March 11 request for public records

Dear Ms. Katz and Mr. Reiter,

On March 11, 2014, PETA sent a California Public Records Act request addressed to Operations Manager Vicky Guldebech and sent via e-mail requesting all public records concerning Wonderful Opportunities for Occupants and Fidos, otherwise known as WOOF, including, but not limited to any and all communications, forms, complaints, and reports regarding the program. On March 11, 2014, Captain Guldebech replied via e-mail copying both of you and asking for direction to fulfill the request. The requested records were not received necessitating a follow-up e-mail on March 26, 2014, sent by PETA to both of you and Captain Guldebech inquiring on the status of the request. To date, we have not received a reply.

The California Public Records Act requires San Francisco Animal Control to follow specific procedures in its responses to requests for public records. Specifically:

(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.

Cal. Gov’t Code § 6253(c).

The agency has failed to comply with these procedures. Please find enclosed PETA’s original request, Captain Guldebech’s e-mail to you asking for direction, and our follow-up request on the status of the original records request (to which
we received no response) and advise by April 18 when we can expect a response to our March 11, 2014, California Public Records Act request.

Thank you for your attention to this matter and for you assistance to animals in San Francisco.

Sincerely,

Teresa Chagrin
Animal Care and Control Specialist
Cruelty Investigations Department
443-320-1277
TeresaC@peta.org

Enclosures: PETA's California Public Records Act request, March 11, 2014
Captain Goldbech e-mail to Rebecca Katz and Bob Reider asking for direction on responding to PETA's request, March 11, 2014
PETA's inquiry on the status of our March 11, 2014 request, March 26, 2014

cc: Lori Kettler, Deputy General Counsel, Regulatory Affairs, PETA Foundation
May 27, 2014

Rebecca Katz, Director
San Francisco Department of Animal Care and Control
Rebecca.Katz@sfgov.org

Via email only


Dear Ms. Katz:

I am writing on behalf of PETA in regards to the San Francisco Department of Animal Care and Control’s unreasonable delay in responding fully to PETA’s March 11, 2014, request, made pursuant to the California Public Records Act (CPRA), CAL. GOVT. CODE §§ 6250 - 6276.48, for “[a]ll public records concerning [the] Wonderful Opportunities for Occupants and Fidos [WOOF]” program.

The CPRA requires an agency to make public records “promptly available”. CAL. GOVT. CODE § 6253(b). Despite this, PETA has only received one partial response from your agency, on May 9, 2014—over nine weeks after PETA submitted its request for public records. This partial response was received only after PETA1 and the PETA Foundation2 followed up with the agency numerous times.

The agency’s delay in fulfilling PETA’s request is unreasonable. This is especially true because PETA’s request involves records for a program that lasted only six weeks and involved only 4 dogs, according to our conversation on May 12. The limited scope and duration of this program strongly suggests that the records responsive to PETA’s request are not voluminous. Moreover, the agency has not informed PETA about when it expects to release the remainder of the records, which is at odds with the CPRA. See CAL. GOVT. CODE § 6253(c)(requiring that the agency “state the estimated date and time when the records” will be released when it is determined that the agency has disclosable records.) In light of the fact that it took over nine weeks for the agency to produce its first partial response, PETA is concerned that the agency will not produce the remaining documents in a timely manner. This concern is further heightened because PETA has not received a single document since we spoke on May 12 and you stated that you would try to provide PETA with additional responsive documents that week.

PETA requests that the agency immediately provide PETA with all records requested pursuant to the CPRA. Such disclosure is both in the public interest and

1 See Ex. 1, Email from Teresa Chagrin, Animal Care and Control Specialist, PETA, to Vicky Guldebech, Operations Manager, San Francisco Department of Animal Care and Control, March 26, 2014. See also, Ex. 2, Letter from Teresa Chagrin to Rebecca Katz, Director, San Francisco Department of Animal Care and Control.

2 Lindsay Waskey, Esq., PETA Foundation, called the Department of Animal Care and Control on April 25, April 29, May 6, and May 9, and spoke with Rebecca Katz and/or Jeannie Taulealo, Executive Assistant to Rebecca Katz, before the records were received.

{00160067}
in accordance with the principle of government transparency espoused by the CPRA. Should your office fail to timely release all records, PETA reserves its right to pursue legal action pursuant to CAL. GOVT. CODE § 6258. Thank you for your attention to this matter.

Very truly yours,

[Signature]

Lindsay Waskey, Esq.
LindsayW@PETA.org

cc: City Attorney Dennis Herrera (cityattorney@sfgov.org)
Rajiv Bhatia  
via email from [REDACTED]  
Re: Supervisor of Records Determination for Department of Public Health documents it claimed as protected as propriety information

Dear Dr. Bhatia:

This responds to your petition to the Supervisor of Records, dated June 27, 2014. Your petition follows a public records request submitted to the Department of Public Health ("DPH") seeking documents related to the design and development of the Neighborhood Score application ("Neighborhood Score"). Neighborhood Score is a mobile device application that displays data regarding the health of the City's population by neighborhood, a metric that DPH calls the "Healthy Development Measurement Tool." DPH and Appallicious LLC, Mobile Commerce Platform ("Appallicious") entered into an agreement to collaboratively develop Neighborhood Score.

Based on our several conversations and email exchanges, we understand you seek the following records in the possession of DPH:

1) the data analysis methodology used to create Neighborhood Score ("First Request"); and

2) the "Normalized Geographic Data," which is data on neighborhood livability measures as they were geographically analyzed by DPH staff and provided to Appallicious ("Second Request").

The underlying data presented by Neighborhood Score are all available to the public at data.sfgov; however, DPH has not made the data public in the geographical form used in Neighborhood Score. DPH released many records in response to your previous requests. In response to your First Request, DPH disclosed a Redacted Methodology Document as explained further below. However, DPH declined to release additional documents responsive to your First and Second Requests identified above, because Appallicious asserts that any responsive records are its intellectual property and that the City is precluded from disclosing them to the public.¹

DPH identified two records that may be responsive to your records requests: 1) a document entitled "Neighborhood Score Methods" ("Methodology Document"), and 2) the Normalized Geographic Data as represented within an ArcGIS database. This determination of the Supervisor of Records evaluates Appallicious' intellectual property claim with respect to each of these records.

¹ See Appallicious letter to DPH dated April 1, 2014, attached as Exhibit A.
Letter to Rajiv Bhatia  
Page 2  
June 10, 2015

We have contacted you on several occasions to inform you that we have been working on the difficult legal questions raised by your petition. We regret the delay in completing our review of your petition to the Supervisor of Records.

**Factual Background**

We understand the relevant background facts as follows. On June 1, 2012, the San Francisco Health Authority (“SFHA”) and Appalicious entered into an Agreement to collaborate and create a database design and construction for the Healthy Development Measurement Tool (thedmt.org) and construction of a mobile application. Develop design and programming including architecture, mobile application design, and programming/testing/content migration of data.

Services Agreement, Appendix A (June 1, 2012), attached as Exhibit B hereto.

Neighborhood Score measures the health of a neighborhood using a system of indicators for “livable, equitable, and prosperous cities.” SFHA and Appalicious collectively identified twenty “sustainable communities index” indicators that measure various elements of environment, transportation, community, public realm, education, housing, and economy.

**Methodology Document:** DPH staff and Appalicious worked together to identify the twenty indicators that would be included in Neighborhood Score and to determine how data for each indicator would be represented with a score between 1 and 5. SFDPH provided a Redacted Methodology Document that provided the indicator and description, element, and data type. But the scoring methodology, which contains the formula for the relative distribution between a score from 1 to 5 was redacted from the Methodology Document except for the Air Quality and Cancer Risk indicators. (“Scoring Methodology”) SFDPH provided the Air Quality and Cancer Risk indicators because those indicators represent whether the data exceed a health risk standard set by the U.S. Environmental Protection Agency. This information is entirely available to the public, and neither SFDPH nor Appalicious made judgments about scoring these data or manipulated the data in any way. Appalicious does not contest release of the portions of the Scoring Methodology that relate to Air Quality and Cancer Risk.

As for the Scoring Methodology for the remaining indicators that SFDPH did not disclose, SFDPH and Appalicious staff worked together to make judgments about the cutoff points used to allocate scores on a five point scale. Thus, DPH provided a redacted Methodology Document that did not include the relative distribution for the scoring methodology that SFDPH and Appalicious made decisions about.

**Normalized Geographic Data:** San Francisco data for each indicator are available to the public in GIS map format. However, the various indicators are publicly mapped using a variety of different GIS methodologies (point sources, rosters, census tracts, etc.). In order to develop neighborhood scores, SFDPH and Appalicious normalized all the GIS data into areas of equal size and shape using a quarter mile square grid and ArcGIS software. DPH has declined to provide these Normalized Geographic Data.

Appalicious claims that both the Scoring Methodology and the Normalized Geographic Data are proprietary and/or trade secret information and thus not subject to public disclosure.

---

Legal Analysis

Both the California Public Records Act and the San Francisco Sunshine Ordinance define the term "public record" very broadly. There is no dispute that both the Scoring Methodology and the Normalized Geographic Data satisfy these three elements and are thus public records.

The California Public Records Act establishes numerous circumstances under which a City department may or must decline to disclose a public record. Section 6254(k) of the Government Code allows a department to withhold records “the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.” Section 1060 of the Evidence Code provides a privilege to the owner of a trade secret to refuse to disclose it and “to prevent another from disclosing it . . . .” Thus, under certain circumstances, the law protects trade secrets from disclosure under the Public Records Act. See General American Transportation Corp. v. State Bd. of Equalization (1987) 193 Cal. App. 3d 1175, 1179 (noting that the Public Records Act provides “protection for trade secrets”) (citing Cal. Govt. Code § 6254(k), Cal. Evid. Code § 1060); Uribe v. Howie (1971) 19 Cal. App. 3d 194, 206-07 (trade secrets exempted from disclosure under Section 6254(k) where “allowance of the privilege will not tend to conceal fraud or otherwise work injustice”) (citing Evidence Code § 1060). See also Cal. Civ. Code §§ 3426 et seq. (Uniform Trade Secrets Act); Cal. Govt. Code § 6276.44 (cross-referencing in the Public Records Act the Uniform Trade Secrets Act and Evidence Code § 1060).

Trade Secret

Under the Uniform Trade Secrets Act, a trade secret is “information, including a formula, pattern, compilation, program, device, method, technique, or process that (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Cal. Civ. Code § 3426.1(d).

Trade secret protection “promotes the sharing of knowledge, and the efficient operation of industry,” by “permit[ting] the individual inventor to reap the rewards of his labor by contracting with a company large enough to develop and exploit it . . . .” Altavion v. Konica Minolta Systems Laboratory Inc. (2014) 226 Cal. App. 4th 26, 34 (quoting DVD Copy Control Assn., Inc. v. Burner (2003) 31 Cal.4th 864, 878). “Trade secret law allows the inventor to disclose an idea in confidential commercial negotiations certain that the other side will not appropriate it without compensation. ‘[T]he holder of the secret, [may] disclose information he would otherwise have been unwilling to share, and [this] permits business negotiations that can lead to commercialization of the invention or sale of the idea, serving both the disclosure and incentive functions of [intellectual property] law.’” Altavion, 226 Cal. App. 4th at 24 (quoting Lemley, The Surprising Virtues of Treating Trade Secrets as IP Rights (2008) 61 Stan. L.Rev. 311, 336–337).

The Scoring Methodology and the Normalized Geographic Data Are Appalllicious’ Trade Secrets

The Scoring Methodology and the Normalized Geographic Data both meet the initial threshold for trade secret protection under Civil Code § 3426.1(d); the Scoring Methodology is a “method,” and the Normalized Geographic Data is a “compilation.”

As to the first element of the trade secret analysis – the value of the information – Appalllicious asserts that the Scoring Methodology reflects a formula, technique, or process from which the company hopes to derive economic benefit by providing the application to other communities. Similarly, the Normalized Geographic Data consists of choices made by
Letter to Rajiv Bhatia  
Page 4  
June 10, 2015

Appallicious during the course of developing Neighborhood Score, which are not publicly available and have value for Appallicious. Further, Appallicious contends that Neighborhood Score must be considered as a whole. While the underlying data may be public and the documents reflect input from City employees working on City time, Appallicious asserts that their particular scoring choices reflected in the Scoring Methodology are not known to the public. A trade secret may consist of a combination of publicly-known components. O2 Micro Intern., Ltd. v. Monolithic Power Systems, Inc., 420 F. Supp. 2d 1070, 1089-90 (N.D. Cal. 2006) (the combination of publicly-known elements can be trade secret provided the combination itself is not generally known). The company’s ability to derive economic value from its work with DPH employees would be undermined by release of either record at issue here, because release would allow others to reverse engineer the methodology underlying Neighborhood Score. In other words, the records, if made publicly available, would allow anyone to re-create Neighborhood Score.

Turning to the second element of the trade secret analysis — the efforts that Appallicious has taken to maintain secrecy — the contract between SFHA and Appallicious includes the following provisions:

5.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, [Appallicious “App”] reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to SFHA hereunder other than as expressly set forth herein.

5.2 Restrictions. SFHP shall not (i) create derivative works based on the Services, (ii) copy, frame or mirror any part or content of the Services, other than copying or framing on SFHP’s own internets or otherwise for its own internal business purposes, (iii) reverse engineer the Services, or (iv) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

5.3 Ownership of SFHP Data. As between App and SFHP, SFHP exclusively owns all rights, title and interest in and to all SFHP Data. For purposes of this Agreement “SFHP Data” shall mean all electronic data or information submitted by SFHP to App for the performance of the Services.

These contract provisions demonstrate an effort on the part of Appallicious to maintain the secrecy of its work product, including the Scoring Methodology and the Normalized Geographic Data. Additionally, as mentioned above, after the City notified Appallicious of this public records request, Appallicious asserted that the “records and data related to the scoring methodology applied to the raw data underlying the Mobile Application which was developed and is solely owned by Appallicious, LLC . . . SFDPH has no title or right of ownership to [Appallicious] Intellectual Property . . . [Appallicious] demands that SFDPH cease and desist from any disclosure of the Company Intellectual Property to the City or any other party immediately.” See Exhibit A. These steps demonstrate Appallicious’ efforts to maintain the secrecy of what they assert to be their work product.

Appallicious created an application that uses data normalized through a specific process detailed in the Scoring Methodology. The Scoring Methodology explains the process, and the Normalized Geographic Data represents the outcome of the process. Appallicious attempted to protect these trade secrets in its agreement with SFHA and has consistently maintained that the Scoring Methodology and Normalized Geographic Data are their trade secrets. These facts support Appallicious’ assertion of trade secret protection over this information and weigh in
Letter to Rajiv Bhatia  
June 10, 2015

favor of non-disclosure. Further, the public interest in disclosure of these document does not outweigh the interest in maintaining confidentiality. Uribe, 19 Cal. App. 3d at 206-07. There is no apparent injustice that would result from these documents remaining confidential, as was intended by the parties' understanding when they entered into the agreement to develop the application.

Nevertheless, there are some facts supporting a conclusion that these documents are not trade secrets. First, SFHA has agreed that the underlying data are public information and has made that information available to the public. Second, DPH staff made decisions and normalized the data and inserted the information into the ArcGIS database. Lastly, DPH staff conducted all the work on City time while using City resources, and the information is currently stored on City owned computers.

Working jointly DPH and Appallicious manipulated the geographic data as reflected in the Scoring Methodology. A court is likely to conclude that this information is a compilation, method, and process from which Appallicious derives independent economic value and which is not generally known to the public. Likewise a court is likely to conclude that disclosure of the data in the ArcGIS database would reveal a portion of Appallicious' trade secret that would allow a competitor to reverse engineer the Neighborhood Scoring Methodology or more specifically the Scoring Methodology with minimal effort. The Supervisor of Records finds that the arguments supporting the conclusion that the Scoring Methodology and the Normalized Geographic Data are protectable trade secrets, and that there is no overriding public interest warranting their disclosure. Accordingly, we affirm DPH’s decision to disclose a redacted Methodology Document and not to disclose the Scoring Methodology and the Normalized Geographic Data.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

Alicia Cabrera  
Deputy City Attorney
EXHIBIT A
April 01, 2014

Appalicious, LLC
351 California Street, Suite 400
San Francisco, California 94104

San Francisco Department of Public Health
101 Grove Street, Room 308
San Francisco, California 94102
Attention: Nancy Sherin, Public Information Officer

RE: Cease & Desist

Dear Nancy,

In has come to our attention that the San Francisco Department of Public Health ("SFPDH") has received a request from the City and County of San Francisco (the "City") to disclose records and data related to the Neighborhood Score mobile application (the "Mobile Application"), including, but not limited to the scoring methodology applied to the raw data underlying the Mobile Application which was developed and is solely owned by Appalicious, LLC (the "Company"). Pursuant to Section 5.1 of the Services Agreement by and between the Company and SFPDH, dated June 1, 2012 (the "Services Agreement"), the Company maintains all right and title to the intellectual property related to the Services (as defined in the Services Agreement) provided to SFPDH, including the intellectual property supporting the Mobile Application and the scoring methodology of the raw data (the "Company Intellectual Property"). SFPDH has no title or right of ownership to the Company Intellectual Property, nor the right to share or disclose the Company Intellectual Property. The Company Intellectual Property is vital to the Company's business and must not be disclosed to the City or any other party by the SFPDH.

The Company demands that SFPDH cease and desist from any disclosure of the Company Intellectual Property to the City or any other party immediately. If action is not taken by SFPDH to prevent disclosure of the Company Intellectual Property, the Company will have no choice but to take appropriate legal action against SFPDH.

Sincerely,

Yoichi Yoshida, Chief Executive Officer

Enclosure:

Services Agreement
EXHIBIT

B
SERVICES AGREEMENT

THIS SERVICES AGREEMENT (this "Agreement") is entered into as of June 1, 2012, by and between the SAN FRANCISCO HEALTH AUTHORITY, doing business as the San Francisco Health Plan ("SFHP"), and Appallicious, LLC, a Delaware limited liability company ("APP").

WHEREAS, SFHP currently provides administrative services ("Administrative Services") for the San Francisco Department of Public Health and its Eastern Neighborhoods Community Health Impact Assessment ("ENCHIA"); and

WHEREAS, Administrative Services may include contracting with APP for payment of services provided for the ENCHIA project; and

WHEREAS, SFHP desires that APP perform the Services (as hereinafter defined) on the terms and conditions set forth below; and

WHEREAS, APP wishes to perform the Services on the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. Term. The term of this Agreement will commence on June 1, 2012 (the "Effective Date") and will continue unless sooner terminated as provided in Section 10 of this Agreement.

2. Services.

   (a) APP shall perform the services (collectively, the "Services") described in Exhibit A attached hereto, on the terms set forth in this Agreement.

   (b) In performing the Services, APP shall report to Cyndy Comerford Scully or his or her designee.

   (c) APP shall submit written reports as reasonably requested by SFHP. Such reports will be in form and substance acceptable to SFHP and APP. SFHP will not be obligated to pay for Services until it has received and accepted all requested reports from APP.

3. Payment for Services.

   (a) The aggregate amount of payments under this Agreement will not exceed $65,000. A breakdown of the payments to be made is contained in Exhibit B, attached hereto.
(b) APP shall submit an itemized invoice to SFHP for all Services rendered in form reasonably satisfactory to SFHP. APP shall submit an invoice every two weeks, accompanied by a time and activity log. APP shall promptly supply to SFHP any backup documentation, breakdowns, calculations or explanations as may be reasonably requested by SFHP in connection with any invoice. SFHP will not be obligated to pay for any Services until it has received and accepted all invoices and any supporting documentation requested of APP.

(c) SFHP will use reasonable efforts, in good faith and with diligence, to pay each invoice within thirty (30) days after receipt thereof. Payment will be made by U.S. mail, to the address specified in Section 12. SFHP will not pay any interest, penalties or late charges on any payment made after the date specified above.

(d) Payment will not relieve APP of APP's obligations under this Agreement if the unsatisfactory nature of any Services was not detected by SFHP at the time of payment. The granting of any payment by SFHP, or the receipt thereof by APP, shall in no way lessen the liability of APP to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that does not conform to the requirements of this Agreement may be rejected by SFHP and in such case must be replaced by APP without delay.

4. Independent APP. APP will be an independent APP and not an employee or agent of SFHP. APP will pay to the appropriate governmental authority all taxes levied in connection with this Agreement or the Services, including any self-employment, social security, income, franchise, possessory interest, payroll, gross receipts and sales or use taxes. SFHP will pay to APP, on the terms and conditions set forth in Section 3 hereof, the amount of any sales tax required by the State of California to be collected from SFHP in connection with the Services.

5. PROPRIETARY RIGHTS

5.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, APP reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to SFHP hereunder other than as expressly set forth herein.

5.2 Restrictions. SFHP shall not (i) create derivative works based on the Services, (ii) copy, frame or mirror any part or content of the Services, other than copying or framing on SFHP's own intranets or otherwise for its own internal business purposes, (iii) reverse engineer the Services, or (iv) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.
5.3 **Ownership of SFHP Data.** As between APP and SFHP, SFHP exclusively owns all rights, title and interest in and to all SFHP Data. For purposes of this Agreement "SFHP Data" shall mean all electronic data or information submitted by SFHP to APP for the performance of the Services.

5.4 **Improvements.** APP shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations, improvements or other feedback provided by SFHP relating to the operation of the Services.

6. **Indemnification.** APP shall indemnify, protect, defend and hold harmless SFHP and its governing board, officers, employees and agents (each a "Covered Person") from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) ("collectively "Losses") arising from, in connection with or caused by:

(i) any personal injury or property damage caused, directly or indirectly, by any act or omission of APP (including APP’s employees, subcontractors, agents or representatives);

(ii) any breach of any representation, warranty or covenant made by APP in connection with this Agreement, including any representation regarding APP’s status as a MBE, WBE or LBE under Chapter 12D.A of the San Francisco Administrative Code; or

(iii) any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by APP (including APP’s employees, subcontractors, agents or representatives). Notwithstanding the foregoing, APP shall have no obligation under this Section with respect to any Loss that is caused solely by the active negligence or willful misconduct of the Covered Party and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by APP (including APP’s employees, subcontractors, agents or representatives).

APP acknowledges and agrees that its obligation to defend in this Section: is an immediate obligation, independent of its other obligations under this Agreement; applies to any Loss which actually or potentially falls within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and arises at and continues after the time the Loss is tendered to APP.

7. **Limitation on Liability of SFHP.** SFHP’s PAYMENT OBLIGATIONS HEREAFTER WILL BE LIMITED TO THE PAYMENTS UNDER SECTION 3. SFHP WILL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES.

8. **Default.** APP will be in default if:
a. Contractor fails to perform any covenant (including a lapse in insurance coverage) required by this Agreement;

b. any representation or warranty made by APP is false or materially misleading;

c. Contractor files or is the subject of a petition for bankruptcy or insolvency; or

d. APP has a court-ordered receiver or trustee appointed with respect to APP’s assets.

9. Remedies and Termination.

9.1 Remedies. If a default under Section 8 has occurred and is continuing, SFHP may, individually or in combination with any other remedy: (i) terminate this agreement; (ii) offset the amount of any outstanding liability of APP against funds otherwise due and owing under this or any other agreement SFHP has with APP; (iii) withhold funds due hereunder; or (iv) exercise any other remedy available by law. SFHP will have no obligation to exercise any of the foregoing remedies.

9.2 Termination for Convenience. Either party may terminate this Agreement without cause or penalty upon at least thirty (30) days’ prior written notice to the non-terminating party. In such event, APP shall continue to perform the Services until the termination effective date, and APP will be paid for those Services performed through such date. Thereafter, this Agreement will terminate.

9.3. Return of SFHP Data. Upon request by SFHP made within 30 days after the effective date of any termination, APP will make available to SFHP for download a file of SFHP Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, APP shall have no obligation to maintain or provide any SFHP Data and shall thereafter, unless legally prohibited, delete all SFHP Data in its systems or otherwise in its possession or under its control.

9.4 Surviving Provisions. The sections titled “Fees and Payment,” “Proprietary Rights,” “Proprietary or Confidential Information,” “Warranties and Disclaimers,” “Indemnification,” “Refund or Payment upon Termination,” “Return of SFHP Data,” “Surviving Provisions” and “General Provisions” shall survive any termination or expiration of this Agreement.

10. Proprietary or Confidential Information.

(a) Contractor understands and agrees that, in the performance of the Services under this Agreement, or in contemplation thereof, APP may have access to private or confidential information that may be owned or controlled by SFHP, and that such information may contain proprietary or confidential details, the disclosure of which to
third parties may be damaging to SFHP. APP shall hold all information disclosed by SFHP to APP in confidence and will use such information only in the performance of this Agreement. APP shall exercise the same standard of care to protect such information as a reasonably prudent business entity would use to protect its own proprietary data.

(b) Contractor agrees that all private or confidential information concerning existing or prospective members of SFHP or other persons receiving services from or through SFHP, whether disclosed by SFHP or by the individuals themselves, will be held in the strictest confidence, will be used only in the performance of this Agreement, and will be disclosed to third parties only as authorized by law and with the express prior permission of SFHP.

11. Notices. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, courier or by fax, and will be addressed as follows:

To SFHP: San Francisco Health Plan
568 Howard Street, 4th Floor
San Francisco, CA 94105
Fax: 415-547-7824
Attn: Chief Executive Officer

To APP:
Appallicious, LLC
351 California Street, Suite 400
San Francisco, CA 94104
Email: yo@appallicious.com

12. Audit. APP shall maintain accurate books and records relating to this Agreement and the Services, including accounting records and copies of all invoices. APP shall make such books and records available to SFHP (or its designee) for review and audit for at least five (5) years after termination of this Agreement, at a location that is readily accessible to SFHP.

13. No Assignment or Subcontracting. The Services are personal in nature and will be performed directly by APP and its employees (as set forth in Section 15 hereof). Neither this Agreement nor any duties or obligations hereunder may be assigned, subcontracted or delegated by APP without the prior written consent of SFHP.

14. Nondiscrimination. In the performance of this Agreement, APP will not discriminate

(a) on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or
HIV status (AIDS/HIV status) against any employee of SFHP or any SFHP employee working with APP; or

(b) against any person seeking accommodations, advantages, facilities, privileges, services or membership in any business, social or other establishment or organization operated by APP.

15. **Permits; Resources and Personnel.** The parties represent and warrant that the each have and maintain all licenses, permits and governmental approvals necessary to operate its’ business and to fully perform and comply with the terms of this Agreement. In addition, APP represents and warrants to SFHP that APP has secured or will secure, at its own expense, all persons, employees, equipment and other resources necessary to fully perform and comply with the terms of this Agreement. All Services will be performed by competent personnel under the supervision of and in the employment of APP. APP shall comply with SFHP’s requests regarding assignment of APP’s personnel engaged in performing the Services.

16. **No Waiver.** Any failure to enforce any right or to require performance of any provision of this Agreement will not be considered a waiver of such right or performance.

17. **Modifications.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed by each party hereto.

18. **California Law; Venue.** This Agreement will be governed by the laws of California. The venue for all litigation or other disputes relative to this Agreement will be San Francisco.

19. **Construction.** Section headings are for reference only and will not be used to interpret this Agreement. Terms such as “hereunder” or “herein” refer to this Agreement as a whole. Terms such as “include,” or “including” will be deemed followed by the words “without limitation.” References to consents, approvals, determinations or other decisions of SFHP will (unless otherwise expressly stated herein) refer to the sole judgment of SFHP.

20. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and supersedes all other oral or written provisions.

21. **Compliance with Laws.** Parties shall comply with all applicable laws, rules and regulations, as they may be amended from time to time.

22. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, such finding will not affect the validity of any other provision; and such provision will be enforced to the maximum extent possible so as to effect the intent of the parties.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first hereinabove written.

SAN FRANCISCO HEALTH PLAN

By

John Grgurina
Chief Executive Officer

APPELLICIOUS, LLC

By

Yoichi Yoshida
President & Chief Executive Officer
EXHIBIT A

Description of the Services: Database design and construction for the Healthy Development Measurement Tool (thehdmt.org) and construction of a mobile application.

Develop design and programming including architecture, mobile application design, and programming/testing/content migration of data.
EXHIBIT B

Compensation

SFHP will pay Contractor on behalf of the Department of Public Health and Contractor will accept from SFHP as full and final satisfaction for Services provided hereunder an amount not to exceed $15,000. Payment shall be in the amount of $100.00 per hour.
Dear Ms. Datesh:

Attached please find the response to your petition to the Supervisor of Records sent at 10:36 a.m. on July 22, 2014.

Thank you,

Katherine M. Mahoney
Deputy City Attorney
Office of San Francisco City Attorney Dennis J. Herrera
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: (415) 554-4654 (Mon, Wed, Fri)
Tel: (415) 553-1453 (Tues/Thurs)
Fax: (415) 554-4747

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Please consider the environment before printing this e-mail.

- 00946415.pdf
Sent via email
Paula Datesh

Re: Petition to Supervisor of Records
7/22/2014; 10:36 a.m.

Dear Ms. Datesh:

This letter responds to your petition sent by email on July 22, 2014 at 10:36 a.m. regarding the immediate disclosure request you submitted to Howard Lazar on July 18, 2014 at 4:46 p.m. seeking: a written inventory of all audio recordings of the SFAC from 1932 to 2014, including where the audio records are housed, the environment they are placed in and all written documentation as to the procedures for the care and upkeep of the audio recordings; all documents relative to the process and procedures for a member of the general public to inspect and listen to the original audio recordings; and all documents regarding the procedure the SFAC has in place for audio recording and reproduction of these recordings.

Kate Patterson of the San Francisco Arts Commission (SFAC) forwarded me an email she sent you at 5:06 p.m. on July 23, 2014 responding to the immediate disclosure request which is the subject of the petition you submitted to the Supervisor of Records. Ms. Patterson’s response states that it includes all public records the SFAC possesses responsive to your request. In addition, Ms. Patterson states that the SFAC is in the process of requesting from its off-site storage vendor an inventory of cassette recordings of SFAC meetings that predate the audio recordings that can be found online. Ms. Patterson states that the SFAC will share that inventory with you once it is in the SFAC’s possession.

In light of Ms. Patterson’s response to your request stating that SFAC is disclosing to you all responsive records currently in its possession and will share with you the inventory from the off-site storage vendor once it is in SFAC’s possession, there remains no issue for determination by the Supervisor of Records, and we consider this matter closed.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Katherine M. Mahoney
Deputy City Attorney
Petition to the Supervisor of Records- Paula Datesh v SFAC

Katherine Mahoney

to:
Paula Datesh
07/22/2014 04:09 PM
Cc:
paula_jesson

Hide Details
From: Katherine Mahoney/CTYATT
To: Paula Datesh
Cc: paula_jesson@sfgov.org@SFGOV

Dear Ms. Datesh -

I am in receipt of your petition to the Supervisor of Records sent via email at 10:36 a.m. today regarding an immediate disclosure request you made to the San Francisco Arts Commission on July 18, 2014. I have been assigned to respond to this petition.

Thank you,

Katherine M. Mahoney
Deputy City Attorney
Office of San Francisco City Attorney Dennis J. Herrera
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: (415) 554-4654 (Mon, Wed, Fri)
Tel: (415) 553-1453 (Tues/Thurs)
Fax: (415) 554-4747

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Please consider the environment before printing this e-mail.

-----Paula Datesh [REDACTED] wrote: -----
To: katherine_mahoney@sfgov.org, paula_jesson@sfgov.org
From: Paula Datesh [REDACTED]
Date: 07/22/2014 10:36AM
Subject: Petition to the Supervisor of Records- Paula Datesh v SFAC

[REDACTED]
San Francisco, CA 94104

To the Supervisor of Records:

I am filing a formal petition to the Supervisor of Records for the public documents that have been with held in an Immediate Disclosure Request to the SFAC on July 18, 2014. It is by the non response of the custodian of records at the SFAC that I believe I have been improperly denied access to the documents.

I request the Supervisor of Records to review the IDR and make a determination as
to the non response and justification of non response to the IDR.

Paula Datesh

-----Original Message-----
From: Paula Datesh
To: katherine_mahoney <katherine_mahoney@sfgov.org>
Cc: paula_jesson <paula_jesson@sfgov.org>
Sent: Tue, Jul 22, 2014 9:19 am
Subject: Fwd: Immediate Disclosure Request

Datesh
-----Original Message-----
From: Paula Datesh
To: howard.lazar <howard.lazar@sfgov.org>
Sent: Fri, Jul 18, 2014 04:46 PM
Subject: Immediate Disclosure Request

I am filing a formal document request for the written inventory of all the audio recordings of the San Francisco Arts Commission from 1932-2014. Inclusive in this request is all documentation as to where these audio records are housed; the environment they are placed in and all written documentation as to the procedures for the care and up keep of these audio recordings.

I request all documents relative to the process and procedures for a member of the general public to inspect and listen to the ORIGINAL audio recordings. I request all documents regarding the procedure the SFAC has in place for audio recording and reproduction of these recordings.

Please note that in 2013-Mike Addario filed an Immediate Disclosure Request for the Executive meeting minutes and an inventory of the all Executive meetings. The SFAC invoked a 14 day extension but did not respond.

0 for the above documents as I find the responses from Sharon Page-Ritchie to be conflicting; off topic or not responsive.

Paula Datesh
Dear Ms. Datesh:

Attached please find the response to your petition to the Supervisor of Records sent on July 24, 2014 at 7:58 a.m.

Thank you,

PETRESPDATESH72414758AM8114.pdf
Katherine M. Mahoney
Deputy City Attorney
Office of San Francisco City Attorney Dennis J. Herrera
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: (415) 554-4654 (Mon, Wed, Fri)
Tel: (415) 553-1453 (Tues/Thurs)
Fax: (415) 554-4747

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Please consider the environment before printing this e-mail.
Sent via email
Paula Datech

Re: Petition to Supervisor of Records
7/24/2014; 7:58 a.m.

Dear Ms. Datech:

This letter responds to your petition sent by email on July 24, 2014 at 7:58 a.m. regarding the immediate disclosure request (IDR) you submitted to Howard Lazar at the San Francisco Arts Commission (SFAC) on July 8, 2014 at 3:19 p.m. seeking information as to why the July 2014 street artist meeting is cancelled. Your petition indicates that this IDR was not answered and that you believe Mr. Lazar withheld information.

Kate Patterson of the SFAC included me on an email she sent you at 8:57 a.m. on July 25, 2014 responding to the IDR which is the subject of the petition you submitted to the Supervisor of Records. In her email to you, Ms. Patterson explained that your message was delivered to Mr. Lazar’s Junk Mail folder and had just been retrieved. Ms. Patterson also said the Street Artist meeting was cancelled due to lack of a quorum.

This request to the SFAC does not appear to be a public records request because it simply asks a question of the SFAC. However, this issue is moot given Ms. Patterson’s response to your request stating that the Street Artist meeting was cancelled due to lack of a quorum and explaining that your email message was delivered to Mr. Lazar’s Junk Mail folder. We consider this matter closed.

Very truly yours,

DENNIS J. HERRERA
City Attorney

[Signature]

Katherine M. Mahoney
Deputy City Attorney
RE: Petition to the Supervisor of Records Datesh v SFAC

Patterson, Kate (ART)

to:
Mahoney, Katherine (CAT)
07/24/2014 04:06 PM

Cc:
"Lazar, Howard (ART)", "Licouris, Alyssa (ART)"

Hide Details
From: "Patterson, Kate (ART)" <kate.patterson@sfgov.org>
To: "Mahoney, Katherine (CAT)" <katherine_mahoney@sfgov.org>,
Cc: "Lazar, Howard (ART)" <howard.lazar@sfgov.org>, "Licouris, Alyssa (ART)"
<a.lyssa.licouris@sfgov.org>

My colleagues will get back to you tomorrow as to whether or not they responded to this. I have no record of a response.

Kate Patterson-Murphy
Director of Communications
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-4638 F: 415-252-2595
sfartscommission.org

---

From: Katherine Mahoney [mailto:Katherine_Mahoney@sfgov.org]
Sent: Thursday, July 24, 2014 3:14 PM
To: Patterson, Kate (ART)
Subject: Fw: Petition to the Supervisor of Records Datesh v SFAC

Kate -

We received this petition to the Supervisor of Records today. Please call me after you have reviewed this. I am at 553-1453 today. I will be at 554-4654 tomorrow.

Thank you,

Kathy

Katherine M. Mahoney
Deputy City Attorney
Office of San Francisco City Attorney Dennis J. Herrera
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: (415) 554-4654 (Mon, Wed, Fri)
Tel: (415) 553-1453 (Tues/Thurs)
Fax: (415) 554-4747

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Please consider the environment before printing this e-mail.

file:///C:/Users/kmahoney/AppData/Local/Temp/notesC7A056/~web6413.htm
This IDR was not answered and I believe Lazar with held information.

From: [Redacted]

Date: July 8, 2014 at 3:19:51 PM PDT

To: Howard Lazar <howard.lazar@sfgov.org>

Subject: Immediate Disclosure Request

Request information as to why the July 2014 street artist meeting is cancelled.

I making the request pursuant to the Sunshine Ordinance.

Paula Datesh
Dear Ms. Datesh -

Attached please find the response to your petition to the Supervisor of Records submitted on July 24, 2014 at 7:57 a.m.

Thank you,

PETRESPDATES72414757AM8414.pdf
Katherine M. Mahoney
Deputy City Attorney
Office of San Francisco City Attorney Dennis J. Herrera
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: (415) 554-4654 (Mon, Wed, Fri)
Tel: (415) 553-1453 (Tues/Thurs)
Fax: (415) 554-4747

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Please consider the environment before printing this e-mail.
Sent via email
Paula Datesh

Re: Petition to Supervisor of Records
7/24/2014; 7:57 a.m.

Dear Ms. Datesh:

This letter responds to your petition sent by email on July 24, 2014 at 7:57 a.m. regarding the immediate disclosure request (IDR) you submitted to Howard Lazar at the San Francisco Arts Commission (SFAC) on July 12, 2014 at 5:35 a.m. seeking all documents regarding the street artist budget for 2015-2016, the fee increase for the same time period, the number of permit holders, the name of the person who prepared the budget and the "notice of incomparable activities" filed by Howard Lazar for years 2013 and 2014. Your petition indicates that there was no response to your IDR.

Kate Patterson of the SFAC forwarded me emails she sent you at 4:24 p.m. and 4:27 p.m. on July 24, 2014 responding to the IDR which is the subject of the petition you submitted to the Supervisor of Records. Ms. Patterson’s 4:24 p.m. email states that it includes all public records responsive to your request for documents regarding the Street Artist budget for 2015-2016. Specifically, Ms. Patterson states that she provided you with the number of certificate holders, the names of the people responsible for drafting the 2015-2016 budget, a copy of the budget and the Controller’s Office fee certification letter. Ms. Patterson stated in the email that if there were any additional records she would send them to you no later than Monday, July 28, 2014.

Regarding your request for "notice of incomparable activities filed by Howard Lazar for years 2013 and 2014," Ms. Patterson clarified in the email sent at 4:24 p.m. that she believes you are referring to "incompatible activities." Ms. Patterson cited a June 23, 2014 email letter to you from Deputy City Attorney Paula Jesson, explaining that City departments, not City employees, develop Statements of Incompatible Activities. Ms. Patterson also stated in the email sent at 4:24 p.m. on July 24, 2014 that she was in the process of drafting another response to your request for information relating to Mr. Lazar’s outside employment. Ms. Patterson sent that response to you in an email at 4:27 p.m. on July 24, 2014.

In that email sent to you at 4:27 p.m. on July 24, 2014, Ms. Patterson responds to an IDR you made on July 23, 2014 at 2:12 p.m. for "all Statement of Economic Interest filed by Howard Lazar for all the years he has had a second job and all Statement of Incompatible Activities filed by Howard Lazar for the years he has had a second job." Ms. Patterson states in this email that on June 10, 2014 you requested from Mr. Lazar the "Statement of Incompatible Activities for Howard Lazar for the years 1979 to 2014 inclusive." Ms. Patterson also states that Mr. Lazar responded to this request on June 11, 2014 by telling you that a copy of the "Advance Written Determination" he filed was included in the volume of responses he sent you on June 3, 2014 in
Letter to Sent via email  
Page 2  
August 4, 2014

response to an IDR you filed on May 28th. Ms. Patterson states further that Mr. Lazar explained that this “Determination” was the only filing required of him as an independent contractor for the period you requested. Finally, Ms. Patterson stated that if further relevant documents were in Mr. Lazar’s personnel file Deputy Director Rebekah Krell would furnish those to you upon her return the following Monday.

In light of Ms. Patterson’s responses stating that SFAC has disclosed all relevant documents, there remains no issue for determination by the Supervisor of Records, and we consider this matter closed.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

Katherine M. Mahoney  
Deputy City Attorney
RE: Petition to the Supervisor of Records-Datesh v SFAC

Patterson, Kate (ART)
to:
Mahoney, Katherine (CAT)
07/24/2014 03:55 PM
Hide Details
From: "Patterson, Kate (ART)" <kate.patterson@sfgov.org>
To: "Mahoney, Katherine (CAT)" <katherine_mahoney@sfgov.org>,

Just tried you. – We already responded to this. We plan to respond to this on Monday.

Kate Patterson-Murphy
Director of Communications
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-4638 F: 415-252-2595
sfartscommission.org

e-Newsletter | Twitter | Facebook | YouTube | Flickr

From: Katherine Mahoney [mailto:Katherine_Mahoney@sfgov.org]
Sent: Thursday, July 24, 2014 3:16 PM
To: Patterson, Kate (ART)
Subject: Fw: Petition to the Supervisor of Records-Datesh v SFAC

Kate -

We received this petition to the Supervisor of Records today.

Please call me after you review this petition. I am at 553-1453 today, and I will be at 554-4654 tomorrow.

Thank you,

Kathy
Katherine M. Mahoney
Deputy City Attorney
Office of San Francisco City Attorney Dennis J. Herrera
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: (415) 554-4654 (Mon, Wed, Fri)
Tel: (415) 553-1453 (Tues/Thurs)
Fax: (415) 554-4747

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Please consider the environment before printing this e-mail.

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From: paula_jesson@sfgov.org <paula_jesson@sfgov.org>,
To: "mahoney@sfuca.org"<katherine_mahoney@sfgov.org>,
Date: 07/24/2014 07:57 AM
There was no response to this IDR and I am filing a petition as I believe Lazar with held documents.

From: [REDACTED]
Date: July 12, 2014 at 5:35:50 AM PDT
To: Howard Lazar <howard.lazar@sfgov.org>
Subject: IMMEDIATE DISCLOSURE REQUEST

Request all documents regarding the Street-Artist budget for year 2015-2016. Inclusive is the fee increase for the same time period; the number of permit holders and the name of the person who put this budget together.

Request the notice of in comparable activities filed by Howard Lazar for years 2013 and 2014.

I am making this request pursuant to the Sunshine Ordinance.

Paula Datesh
Dear Ms. Datesh -

Attached please find a response to your petition to the Supervisor of Records sent on July 28, 2014 at 9:32 p.m.

Thank you,

PETRESPDATESH72814932pm8414.pdf
Katherine M. Mahoney
Deputy City Attorney
Office of San Francisco City Attorney Dennis J. Herrera
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: (415) 554-4654 (Mon, Wed, Fri)
Tel: (415) 553-1453 (Tues/Thurs)
Fax: (415) 554-4747

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Please consider the environment before printing this e-mail.
City and County of San Francisco

Dennis J. Herrera
City Attorney

Office of the City Attorney
Katherine M. Mahoney
Deputy City Attorney

Direct Dial: (415) 554-4654
Email: katherine.mahoney@sfgov.org

August 4, 2014

Sent via email
Paula Datesh

Re: Petition to Supervisor of Records
7/28/2014; 9:32 p.m.

Dear Ms. Datesh:

This letter responds to your petition sent by email on July 28, 2014 at 9:32 p.m. regarding the immediate disclosure request (IDR) you submitted to Howard Lazar at the San Francisco Arts Commission (SFAC) on July 24, 2014 at 6:09 p.m. seeking: the names and job title of the nine designated employees of the SFAC who must file both the Statement of Economic Interest and the Statement of Incomparable (sic) Activities; the location where the forms are filed; a copy of each of the above forms with the nine filers noted in the SF Campaign and Government Conduct Code Sec. 3-1-140; a copy of each yearly Form 700 Mr. Lazar is required to file for the 22 years he has had an outside job at the South End Rowing Club; and a copy of each yearly Statement of Incompatible Activities Mr. Lazar filed for the years he has had an outside job at the South End Rowing Club.

Kate Patterson of the San Francisco Arts Commission (SFAC) forwarded me emails she sent you at 6 p.m. on July 29, 2014 and 12:12 p.m. on July 30, 2014 responding to the IDR that is the subject of the petition you submitted to the Supervisor of Records. Ms. Patterson’s responses state that the SFAC has provided you with all public records it possesses responsive to your request. As for your request for a copy of each yearly Form 700 Mr. Lazar is required to file for the 22 years he has had an outside job at the South End Rowing Club and a copy of each yearly Statement of Incompatible Activities Mr. Lazar filed for the years he has had an outside job at the South End Rowing Club, Ms. Patterson states in her July 29, 2014 email sent at 6 p.m. that she provided you with all records responsive to these requests via email on Friday, July 24, 2014.

In light of Ms. Patterson’s responses to your request stating that SFAC has disclosed to you all responsive records, there remains no issue for determination by the Supervisor of Records, and we consider this matter closed.

Very truly yours,

Dennis J. Herrera
City Attorney

Katherine M. Mahoney
Deputy City Attorney
From: Paula Jesson/CTYATT
To: Julia Friedlander/CTYATT@CTYATT
Cc: Katherine Mahoney/CTYATT@CTYATT
Date: Tuesday, July 29, 2014 08:05AM
Subject: Fw: Petition to the Supervisor of Records

----- Forwarded by Paula Jesson/CTYATT on 07/29/2014 08:05 AM -----

From: "paula_jesson@sfgov.org" <paula_jesson@sfgov.org>
To: "paula_jesson@sfgov.org" <paula_jesson@sfgov.org>
Date: 07/28/2014 09:32 PM
Subject: Fwd: Petition to the Supervisor of Records

From: [redacted]
Date: July 25, 2014 at 5:57:20 PM PDT
To: katharine.mahoney@sfgov.org
Subject: Petition to the Supervisor of Records

This IDR was not responded to and it is from the lack of response that I believe the SFAC has with held records.

Paula Dateesh
Begin forwarded message:

From: Paula Dateesh [redacted]
Date: July 24, 2014 at 6:09:54 PM PDT
To: howard.lazar@sfgov.org
Subject: immediate Disclosure Request

I request the names and job title of the nine designated employees of the SFAC who must file both the Statement of Economic Interest and the Statement of Incomparable Activities. Request where these forms are filed. Request a copy of each of the above forms with the nine filers noted in the Sf Campaign and Government Conduct Code. Sec:3-1-140.

I request a copy of each yearly form 700 that Howard Lazar is required to file for the 22 years he has had an outside job at the South End Rowing Club.

I request a copy of each yearly Statement of Incompatible Activities that Howard Lazar has filed for the years he has had an outside job at the South End Rowing Club.

I am making this request pursuant to the Sunshine Ordinance.
I am making this request pursuant to Sec 3-1-140 of the SF Campaign and Government Conduct Code. Note, "records shall be maintained for the entire term of employment."

Paula Datesh
Dear Ms. Datesh -

I am in receipt of your email sent at 6:52 a.m. today, August 1, 2014, entitled “Petition to the Supervisor of Records-Datesh v. SFAC” regarding an immediate disclosure request (IDR) you made to Adine Varah in the City Attorney’s Office at 3:08:56 p.m. on July 30, 2014. You state in your 6:52 a.m. email that the “IDR was not answered.”

In your email to Ms. Varah, you state, “I request all email; written and photographic correspondence between the San Francisco Arts Commission and the SFCA’s Office regarding Street Artist John Tunui’s three year campaign of harassment against me. Request an explanation as to why my public comments about Tunui’s on-going harassment does not post a full Commission meetings and Street Artist meetings. Request an explanation as to why the full Commission has done nothing about this issue. Request an explanation as to why you do not appear before the Sunshine Task Force when requested. Request an explanation as to why the San Francisco Arts Commission does not comply with Orders issued by the SOFT.”

Ms. Varah forwarded me the email she sent you at 10:16 a.m. today responding to this IDR and indicating that the Department has no records responsive to your request.

Given Ms. Varah’s response addressing all of your requests, there is no issue for the Supervisor of Records to decide. We consider this matter closed.

Thank you,

Katherine M. Mahoney  
Deputy City Attorney  
Office of San Francisco City Attorney Dennis J. Herrera  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Tel: (415) 554-4654 (Mon, Wed, Fri)  
Tel: (415) 553-1453 (Tues/Thurs)  
Fax: (415) 554-4747

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Please consider the environment before printing this e-mail.
This IDR was not answered.

Begin forwarded message:

From: Paula Datesh  
Date: July 30, 2014 at 3:08:56 PM PDT  
To: adine.varah@sfgov.org  
Subject: Immediate Disclosure Request

DCA Adine Varah:

I request all email; written and photographic correspondence between the San Francisco Arts Commission and the SFCA's Office regarding Street Artist John Tunui's three year campaign of harassment against me.

Request an explanation as to why my public comments about Tunui's on-going harassment does not post a full Commission meetings and Street Artist meetings.

Request an explanation as to why the full Commission has done nothing about this issue.

Request an explanation as to why you do not appear before the Sunshine Task Force when requested.
Request an explanation as to why the San Francisco Arts Commission does not comply with Orders issued by the SOFT.

I am making this request pursuant to the Sunshine Ordinance. You may provide your response via this email.

Paula Datesh

Paula Datesh
FYI

Adiñe Varah
Deputy City Attorney
City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

(415) 554-4670 (tel)
(415) 554-4747 (fax)
Adiñe.Varah@sfgov.org

CONFIDENTIAL COMMUNICATION
This message may contain privileged and/or confidential information and must not be disclosed. If you received this email inadvertently, please permanently delete it. Thank you.

----- Forwarded by Adiñe Varah/CTYATT on 08/01/2014 10:17 AM -----

From: Adiñe Varah/CTYATT
To: [redacted]
Date: 08/01/2014 10:16 AM
Subject: Response to Immediate Disclosure Request of 7/30/14 from Paula Datesh

Dear Ms. Datesh,

Thank you for your request of 7/30/14.

Our office has no records responsive to your request for records "regarding Street Artist John Tunui's three year campaign of harassment against [Paula Datesh]."

Please note that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Govt Code 6253(b).) The City's obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in its custody. (S.F. Admin. Code section 67.20(b)). There is no requirement that a department or officer construct a document to meet the specifications of the request.

With respect to your request for "an explanation as to why my public comments about Tunui's on-going harassment does not post a full Commission meetings and Street Artist meetings," please note that the Arts Commission, rather than the City Attorney's Office, is in charge of preparing minutes for Commission meetings. Please direct questions regarding the content of meeting minutes to the Arts Commission. We
have no records responsive to that request.

With respect to your request for "an explanation as to why the full Commission has done nothing about this issue," as noted above, the Arts Commission, rather than the City Attorney's Office, operates the Street Artist Program and is in charge of preparing minutes for Commission meetings. We have no records responsive to your request.

You have also requested "an explanation as to why you do not appear before the Sunshine Task Force when requested." As you may know, Gabriel Zitrin represents the City Attorney's Office at Sunshine Task Force meetings.

With respect to your request "as to why the San Francisco Arts Commission does not comply with Orders issued by the [SOTF]," you may wish to direct your inquiries regarding compliance with any particular Sunshine Task Force Order to the Sunshine Task Force, or to the Arts Commission, directly. We have no records responsive to your request.

Sincerely,

Adine Varah
Deputy City Attorney
City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

(415) 554-4670 (tel)
(415) 554-4747 (fax)
Adine.Varah@sfgov.org

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This message may contain privileged and/or confidential information and must not be disclosed. If you received this email inadvertently, please permanently delete it. Thank you.

Paula Datesh DCA Adine Varah: 07/30/2014 03:09:15 PM

From: Paula Datesh*
To: adine.varah@sfgov.org,
Date: 07/30/2014 03:09 PM
Subject: Immediate Disclosure Request

DCA Adine Varah:

I request all email; written and photographic correspondence between the San Francisco Arts Commission and the SFCA's Office regarding Street Artist John Tunui's three year campaign of harassment against me.

Request an explanation as to why my public comments about Tunui's on-going harassment does not post a full Commission meetings and Street Artist meetings.

Request an explanation as to why the full Commission has done nothing about this issue.
Request an explanation as to why you do not appear before the Sunshine Task Force when requested.

Request an explanation as to why the San Francisco Arts Commission does not comply with Orders issued by the SOFT.

I am making this request pursuant to the Sunshine Ordinance. You may provide your response via this email.

Paula Datesh

Paula Datesh
Fwd: Petition to the Supervisor of Records-Datesh v SFAC

To: Katherine Mahoney
08/01/2014 06:52 AM

Hide Details

From: [redacted]
To: Katherine Mahoney <Katherine_Mahoney@sfgov.org>,

History: This message has been forwarded.
This IDR was not answered.

Begin forwarded message:

From: [redacted]
Date: August 1, 2014 at 6:40:10 AM PDT
To: paula_jesson@sfgov.org
Subject: Petition to the Supervisor of Records-Datesh v SFAC

Sent from my iPhone

Begin forwarded message:

From: Paula Datesh [redacted]
Date: July 30, 2014 at 3:08:56 PM PDT
To: adine.varah@sfgov.org
Subject: Immediate Disclosure Request

DCA Adine Varah:

I request all email; written and photographic correspondence between the San Francisco Arts Commission and the SFCA's Office regarding Street Artist John Tunui's three year campaign of harassment against me.

Request an explanation as to why my public comments about Tunui's on-going harassment does not post a full Commission meetings and Street Artist meetings.

Request an explanation as to why the full Commission has done nothing about this issue.

Request an explanation as to why you do not appear before the Sunshine Task Force when requested.

Request an explanation as to why the San Francisco Arts Commission does not comply with Orders issued by the SOFT.

I am making this request pursuant to the Sunshine Ordinance. You may provide your response via this email.

Paula Datesh

Paula Datesh
Re: Fwd: Grisham - San Francisco Sunshine Ordinance Records Request

Supervisor Records  to: [redacted]

Sent by: Jana Clark

To: [redacted]

Dear Mr. Grisham,

Thank you for your re-opened petition dated October 9, 2014. Please recall that the role of the Supervisor of Records is limited to determining whether a record that has been requested is public. I have reviewed this matter and understand that you requested the Department of Public Works ("DPW") public records pertaining to:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction.

We have been informed that DPW has notified you that it anticipates providing public records responsive to your request on a rolling basis according to the following procedure: DPW has requested records from the City Attorney’s Office that pertain to the approximately 544 claims filed against DPW. We understand that the City Attorney’s Office has agreed to provide records pertaining to those claims to DPW at a rate of approximately 10 claims per week. By reference to those records, DPW will determine what DPW employees may have records related to those claims, search for records by contacting those individuals, redact privileged and confidential information if necessary, and provide the records to you at the rate of approximately 10 claims per week.

The Supervisor of Records does not issue a ruling when the Department in question has agreed to search for and provide responsive public records. If the petitioner (requester) does not then get the records, or believes a record has been improperly withheld or redacted, he or she can again petition the Supervisor of Records. Accordingly, this Supervisor of Records petition is closed.

Jana Clark
Deputy City Attorney
(415) 554-4634
Dear Supervisor of Records:

Frank Lee of DPW is still not in compliance with the San Francisco Sunshine Ordinance or the Order of Compliance issued to him by the Sunshine Ordinance Task Force. I ask that you reopen the matter immediately.

Charles Grisham

Begin forwarded message:

From: [Redacted]
Date: October 9, 2014 at 16:32:21 CDT
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Cc: Board of Supervisors <Board.of.Supervisors@sfgov.org>, Mayor Lee <mayoredwinlee@sfgov.org>, City Administrator <city.administrator@sfgov.org>, City attorney <cityattorney@sfgov.org>, David Chiu <David.Chiu@sfgov.org>, Scott Wiener <Scott.Wiener@sfgov.org>, Mohammed Nuru <Mohammed.Nuru@sfdpw.org>, Rachel Gordon <rachel.gordon@sfdpw.org>
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee:

One month after your disingenuous response below --- four months after my original request --- I still have not received a single responsive document from you to the below, rolling or otherwise.

In its Order of Determination dated September 26, 2014, the San Francisco Sunshine Ordinance Task Force stated:
"The Task Force finds Frank Lee, Department of Public Works, in violation of Administrative Code (Sunshine Ordinance), Section 67.21(c) for failure to assist the requester in identifying the existence, form and nature of a requested record."

Yet you continue to be completely unhelpful to me (the requester) in fulfilling my requests for public records.

Do you intend to comply with the law and the SOTF in this matter? Am I to understand you and your department have not yet found one single document responsive to the below, including internal emails?

I am at the limit of my patience with you and DPW. I hold Director Nuru responsible for all your actions in this matter.

Please advise.

Charles Grisham

On Sep 10, 2014, at 17:37, Lee, Frank W <Frank.W.Lee@sfdpw.org> wrote:

Dear Mr. Grisham:

Since our department does not accept and handle claims, unless it involves directions from the City Attorney’s Office, we have no idea what we have and what we don’t have that would be considered records related to:

1. Pre-litigation, current or pending legal claims against the City involving Public Works;
2. Legal claims against the City involving Public Works in the past twelve months that have been adjudicated, closed, settled or otherwise concluded;
3. Police reports from the past twelve months involving construction sites under Public Works auspices or involving Public Works;
4. Reports and other documentation regarding accidents during the past twelve months that involved workers, member of the public or persons at sites under Public Works’ jurisdiction.

However, we will begin searching using the attached list, given to me by the City Attorney’s Office. This list contains claims that the City Attorney’s Office received and assigned to Public Works. Each claim is then further assigned to a bureau within Public Works. (We do not have an explanation on why or how these assignments were made. If you need an explanation, please contact the City Attorney’s Office.)

Therefore, we will go down each list and ask the assigned bureau to see if it has any records related to the description and location of the claim. If there are responsive records, we will provide them to you. If we find no responsive records for any of the claims listed, we will let you know.

We do not know how soon we could complete the research on all 544 claims, but we will provide the responsive records to you on a rolling basis.
Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org
Website: www.sfdpw.org

From: CCG [mailto:****]
Sent: Friday, August 29, 2014 6:20 PM
To: Lee, Frank W
Cc: Charles Curtis Grisham Jr.; Board of Supervisors; mayoredwinlee@sfgov.org; Wiener, Scott; Chiu, David; SOTF; Gordon, Rachel; Nur, Mohammed; Administrator, City; Records, Supervisor; Cityattorney; matierandross@sflchronicle.com
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee,

As I did in my original request of June 7, 2014 (which you now have "concluded" three (3) separate times,) I am requesting ALL emails to or from ANY DPW employee regarding ALL 544 claims on the list where those emails IN ANY WAY discuss, refer or pertain to:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction.

Charles Grisham

On Aug 29, 2014, at 5:13 PM, Lee, Frank W <Frank.W.Lee@sfdpw.org> wrote:

Mr. Grisham:

Attached is the email from the City Attorney regarding claims against DPW.

As I mentioned in my response to you, please review the attachments and let me know if any particular claim is of interest to you because we do not have files specifically labeled as pre-litigation, current or pending legal claims. Since we do not have files labeled as such, we
would not know where the requested records, if any, may be. Therefore, we suggest that you help us by reviewing the attachments and letting us know which item or items out of the 544 claims on the list are of interest to you. Then, based on the address of that claim, we will check to see if we have any information.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org
Website: www.sfdpw.org

From: 
Sent: Friday, August 29, 2014 4:31 PM
To: Lee, Frank W
Cc: Board of Supervisors; mayoredwinlee@sfgov.org; Wiener, Scott; Chiu, David; SOTF; Gordon, Rachel; Nuru, Mohammed; herrera.dennis@sfgov.org
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee,

I find you again evasive and obstructive. I will open a new complaint with SOTF based on your response here.

Do not refer me elsewhere for records you maintain at DPW for public scrutiny.

As I believe you understand, I am asking for emails to and from DPW employees regarding any of the subjects I have detailed.

I repeat what I asked below; please answer my question without further evasiveness:

"Is it your assertion that there is not one email communication to or from any DPW employee regarding any of the above substance of my request within the twelve months preceding my initial request?"

Unless you answer to this question is "Yes," you do maintain documents responsive to my request I have repeatedly made since early June of this year.

Please let me know if you still do not understand my request.

CCG Jr

On Aug 29, 2014, at 15:53, "Lee, Frank W" <Frank.W.Lee@sfdpw.org> wrote:
Dear Mr. Grisham:

Since it appears that my referrals were not clear in my June 9 response to your June 7 request for the same information, I’d like to elaborate on those referrals and help you as follows:

Our department – the Department of Public Works (DPW) – does not produce the information that you requested in your request items 1 and 2 because our department is not responsible for accepting, processing, and settling claims. Since we are not responsible for accepting such, we would not know of any claims against DPW unless someone tells us. Since the City Attorney’s Office is responsible for accepting, processing, and settling claims filed against any department in the City and County of San Francisco, I referred you to the City Attorney’s Office for help. Per Sunshine Ordinance, we directed you to the City Attorney’s Office because we believed that the records that you wanted could be within that department. The City Attorney’s website at www.sfcityattorney.org contains information that explains that they accept claims. I also suggested that you could contact and submit records requests to Deputy Communication Officer Gabriel Zitrin of the City Attorney’s Office and gave you two email addresses to use: Cityattorney@sfgov.org and Gabriel.Zitrin@sfgov.org.

Since it appears that you have not contacted the City Attorney’s Office, I contacted them for you. The City Attorney’s Office supplied the attached documents to me, which I am now forwarding to you. Those documents respond to your request items 1 and 2, and they are:

- DPW Claims Filed from 7/1/13 to 6/30/14
- Summary Report of DPW Claims filed from 7/1/13 to 6/30/14
- DPW Claims Paid from 7/1/13 to 6/30/14

Please know that the City Attorney’s Office explained that these claims were assigned to DPW because these were related to claims on the public rights-of-way. The City Attorney’s Office would then investigate these claims and determine if these claims are the responsibility of DPW or of another party. DPW also does not settle claims, because the City Attorney’s Office settles claims.

The Department of Public Works does not investigate claims, unless directed by the City Attorney’s Office. The Department may also not know which claim it is being asked to investigate. In addition, the Department does not keep a separate file for records pertaining to claim investigations. Investigations of all sorts, including those related to claims, are filed by addresses, and there are no designation that would highlight the investigation as being related to a claim. In addition, all investigative material related to claims are then forwarded to the City Attorney’s Office.

Therefore, the best place to find records related to claims and their types and statuses is with the City Attorney’s Office. However, if you still do not wish to contact the City Attorney’s Office, please review the attachments and let me know if any particular claim is of interest to you. Then, we will look into our files, based on the address of that claim, to see if we have any information.

With respect to your request item 3 for police reports, we suggested that you contact the Police Department for them since police reports are made by the Police and because we believed that the records that you wanted are within that department. Our department, in our normal day-to-day work, does not accept and does not collect police reports. Unfortunately, I do not have a contact at the Police Department that you can call or email. Therefore, I referred you and will again refer you to the Police Department for help.

With respect to your request item 4 for reports and other documentation regarding accidents, we suggested that you contact California Department of Industrial Relations’ Division of Occupational Safety and Health, better known as CAL-OSHA, because that agency is responsible for workers’ safety, including workers’ safety and – in some cases – public safety, on public works projects and construction sites and because our department does not keep or produce such reports or documentation. Since I did not have a contact at CAL-OSHA, I referred you to
CAL-OSHA’s website for help: www.dir.ca.gov/dosh/. We know of no local agency that produces such reports and documentation.

Today, I’d like to give you additional resources for you, where you could perhaps find information that would respond to your request item 4. Those resources are all outside of the Department of Public Works and are:

- The US Department of Labor, Occupational Safety and Health Administration, www.osha.gov; a direct link to some information that could be useful to you is here: https://www.osha.gov/oshstats/commonstats.html.
- National Highway Traffic Safety Administration, www.nhtsa.gov; a direct link to some information that could be useful to you is here: http://www.nhtsa.gov/NCSA.
- National Safety Council, www.nsc.org; a direct link to some information that could be useful to you is here: http://www.nsc.org/safety_road/DriverSafety/Pages/driver_safety.aspx.
- Pedestrian and Bicycle Information Center, www.pedbikeinfo.org; a direct link to some information that could be useful to you is here: http://www.pedbikeinfo.org/data/factsheet_crash.cfm.

This concludes your Public Records Request.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org
Website: www.sfdpw.org

From: CCG [mailto:]
Sent: Wednesday, August 27, 2014 4:40 PM
To: Lee, Frank W
Cc: Charles Curtis Grisham Jr.; Board of Supervisors; mayoredwinlee@sfgov.org; Wiener, Scott; Chiu, David; SOTF
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee:

Please consider this my second request for the below records of which you are public custodian.

To date, you have not provided me with a single document or record relating to my below records request dated Jun 7, 2014, at 12:40 PM for:

..."all public documents (including all email communications) maintained by DPW regarding:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction."

Is it your assertion that there is not one email communication to or from any DPW employee regarding any of the above substance of my request within the twelve months preceding my initial request?

Please respond to my public records request of nearly three months ago with no further delay or obstruction.

Charles Curtis Grisham, Jr.

On Jun 7, 2014, at 12:40 PM, CC Grisham wrote:

Dear Mr. Lee,

Preliminary to submitting my detailed requests under San Francisco Sunshine Ordinance for public records maintained by the San Francisco Department of Public Works (DPW,) I request that you provide me with a description of the class, type, format and nature of those records maintained by DPW for public perusal.

I ask for this guidance in order that I might make more focused and effective requests, saving myself and DPW time and effort, thereby reducing cost and waste.

Also preliminary to my requests for public records pertaining to San Francisco construction sites I wish to study, I ask for all public documents (including all email communications) maintained by DPW regarding:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction.

Thank you.

Curt Grisham
Fwd: Grisham - San Francisco Sunshine Ordinance Records Request

to:
Supervisor Records
10/09/2014 02:35 PM
Cc:
Board of Supervisors, Mayor Lee, Mohammed Nuru, City Administrator, Rachel Gordon, City Attorney, David Chiu, Scott Wiener, Gabriel Zitrin, matierandross, bruce

From: [Redacted] Sort List...
To: Supervisor Records <Supervisor.Records@sfgov.org>,
Cc: Board of Supervisors <Board.of.Supervisors@sfgov.org>, Mayor Lee <mayoredwinlee@sfgov.org>, Mohammed Nuru <Mohammed.Nuru@sfdpw.org>, City Administrator <city.administrator@sfgov.org>, Rachel Gordon <rachel.gordon@sfdpw.org>, City Attorney <city.attorney@sfgov.org>, David Chiu <David.Chiu@sfgov.org>, Scott Wiener <Scott.Wiener@sfgov.org>, Gabriel Zitrin <Gabriel.Zitrin@sfgov.org>, matierandross@sfochronicle.com, bruce@sfbg.com

History: This message has been replied to.

Dear Supervisor of Records:

Frank Lee of DPW is still not in compliance with the San Francisco Sunshine Ordinance or the Order of Compliance issued to him by the Sunshine Ordinance Task Force. I ask that you reopen the matter immediately.

Charles Grisham

Begin forwarded message:

From: [Redacted]
Date: October 9, 2014 at 16:32:21 CDT
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Cc: Board of Supervisors <Board.of.Supervisors@sfgov.org>, Mayor Lee <mayoredwinlee@sfgov.org>, City Administrator <city.administrator@sfgov.org>, City Attorney <city.attorney@sfgov.org>, David Chiu <David.Chiu@sfgov.org>, Scott Wiener <Scott.Wiener@sfgov.org>, Mohammed Nuru <Mohammed.Nuru@sfdpw.org>, Rachel Gordon <rachel.gordon@sfdpw.org>

Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee:

One month after your disingenuous response below --- four months after my original request --- I still have not received a single responsive document from you to the below, rolling or otherwise.

In its Order of Determination dated September 26, 2014, the San Francisco Sunshine Ordinance Task Force stated:
"The Task Force finds Frank Lee, Department of Public Works, in violation of Administrative Code (Sunshine Ordinance), Section 67.21(c) for failure to assist the requester in identifying the existence, form and nature of a requested record."

Yet you continue to be completely unhelpful to me (the requester) in fulfilling my requests for public records.

Do you intend to comply with the law and the SOTF in this matter? Am I to understand you and your department have not yet found one single document responsive to the below, including internal emails?

I am at the limit of my patience with you and DPW. I hold Director Nuru responsible for all your actions in this matter.

Please advise.

Charles Grisham

On Sep 10, 2014, at 17:37, Lee, Frank W <Frank.W.Lee@sfdpw.org> wrote:

Dear Mr. Grisham:

Since our department does not accept and handle claims, unless it involves directions from the City Attorney’s Office, we have no idea what we have and what we don’t have that would be considered records related to:

1. Pre-litigation, current or pending legal claims against the City involving Public Works;
2. Legal claims against the City involving Public Works in the past twelve months that have been adjudicated, closed, settled or otherwise concluded;
3. Police reports from the past twelve months involving construction sites under Public Works auspices or involving Public Works;
4. Reports and other documentation regarding accidents during the past twelve months that involved workers, member of the public or persons at sites under Public Works’ jurisdiction.

However, we will begin searching using the attached list, given to me by the City Attorney’s Office. This list contains claims that the City Attorney’s Office received and assigned to Public Works. Each claim is then further assigned to a bureau within Public Works. (We do not have an explanation on why or how these assignments were made. If you need an explanation, please contact the City Attorney’s Office.)

Therefore, we will go down each list and ask the assigned bureau to see if it has any records related to the description and location of the claim. If there are responsive records, we will provide them to you. If we find no responsive records for any of the claims listed, we will let you know.

We do not know how soon we could complete the research on all 544 claims, but we will provide the responsive records to you on a rolling basis.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
From: CCG [mailto:]
Sent: Friday, August 29, 2014 6:20 PM
To: Lee, Frank W
Cc: Charles Curtis Grisham Jr.; Board of Supervisors; mayor@house.gov; Wiener, Scott; Chiu, David; SOTF; Gordon, Rachel; Nuru, Mohammed; Administrator, City; Records, Supervisor; Cityattorney; materandross@schronicle.com
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee,

As I did in my original request of June 7, 2014 (which you now have "concluded" three (3) separate times,) I am requesting ALL emails to or from ANY DPW employee regarding ALL 544 claims on the list where those emails IN ANY WAY discuss, refer or pertain to:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction.

Charles Grisham

On Aug 29, 2014, at 5:13 PM, Lee, Frank W <Frank.W.Lee@sfdpw.org> wrote:

Mr. Grisham:

Attached is the email from the City Attorney regarding claims against DPW.

As I mentioned in my response to you, please review the attachments and let me know if any particular claim is of interest to you because we do not have files specifically labeled as pre-litigation, current or pending legal claims. Since we do not have files labeled as such, we would not know where the requested records, if any, may be.

Therefore, we suggest that you help us by reviewing the attachments and letting us know which item or items out of the 544 claims on the list are of interest to you. Then, based on the address of that claim, we will check to see if we have any information.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org
Website: www.sfdpw.org
From: [Redacted]
Sent: Friday, August 29, 2014 4:31 PM
To: Lee, Frank W
Cc: Board of Supervisors; mayoredwinlee@sfgov.org; Wiener, Scott; Chiu, David; SOTF; Gordon, Rachel; Nuru, Mohammed; herrera.dennis@sfgov.org
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee,

I find you again evasive and obstructive. I will open a new complaint with SOTF based on your response here. Do not refer me elsewhere for records you maintain at DPW for public scrutiny.

As I believe you understand, I am asking for emails to and from DPW employees regarding any of the subjects I have detailed.

I repeat what I asked below; please answer my question without further evasiveness:

"Is it your assertion that there is not one email communication to or from any DPW employee regarding any of the above substance of my request within the twelve months preceding my initial request?"

Unless you answer to this question is "Yes," you do maintain documents responsive to my request I have repeatedly made since early June of this year.

Please let me know if you still do not understand my request.

CCGJr

On Aug 29, 2014, at 15:53, "Lee, Frank W" <Frank.W.Lee@sfdpw.org> wrote:

Dear Mr. Grisham:

Since it appears that my referrals were not clear in my June 9 response to your June 7 request for the same information, I’d like to elaborate on those referrals and help you as follows:

Our department – the Department of Public Works (DPW) – does not produce the information that you requested in your request items 1 and 2 because our department is not responsible for accepting, processing, and settling claims. Since we are not responsible for accepting such, we would not know of any claims against DPW unless someone tells us. Since the City Attorney’s Office is responsible for accepting, processing, and settling claims filed against any department in the City and County of San Francisco, I referred you to the City Attorney’s Office for help. Per Sunshine Ordinance, we directed you to the City Attorney’s Office because we believed that the records that you wanted could be within that department. The City Attorney’s website at www.sfcityattorney.org contains information that explains that they accept claims. I also suggested that you could contact and submit records requests to Deputy Communication Officer Gabriel Zitrin of the City Attorney’s Office and gave to you two email addresses to use: Cityattorney@sfgov.org and Gabriel.Zitrin@sfgov.org.

Since it appears that you have not contacted the City Attorney’s Office, I contacted them for you. The City Attorney’s Office supplied the attached documents to me, which I am now forwarding to you. Those documents respond to your request items 1 and 2, and they are:

- DPW Claims Filed from 7/1/13 to 6/30/14
- Summary Report of DPW Claims filed from 7/1/13 to 6/30/14

file:///C:/Users/gvaldez/AppData/Local/Temp/notesC7A056/~web8981.htm
• DPW Claims Paid from 7/1/13 to 6/30/14

Please know that the City Attorney's Office explained that these claims were assigned to DPW because these were related to claims on the public rights-of-way. The City Attorney's Office would then investigate these claims and determine if these claims are the responsibility of DPW or of another party. DPW also does not settle claims, because the City Attorney's Office settles claims.

The Department of Public Works does not investigate claims, unless directed by the City Attorney's Office. The Department may also not know which claim it is being asked to investigate. In addition, the Department does not keep a separate file for records pertaining to claim investigations. Investigations of all sorts, including those related to claims, are filed by addresses, and there are no designation that would highlight the investigation as being related to a claim. In addition, all investigative material related to claims are then forwarded to the City Attorney's Office.

Therefore, the best place to find records related to claims and their types and statuses is with the City Attorney's Office. However, if you still do not wish to contact the City Attorney's Office, please review the attachments and let me know if any particular claim is of interest to you. Then, we will look into our files, based on the address of that claim, to see if we have any information.

With respect to your request item 3 for police reports, we suggested that you contact the Police Department for them since police reports are made by the Police and because we believed that the records that you wanted are within that department. Our department, in our normal day-to-day work, does not accept and does not collect police reports. Unfortunately, I do not have a contact at the Police Department that you can call or email. Therefore, I referred you and will again refer you to the Police Department for help.

With respect to your request item 4 for reports and other documentation regarding accidents, we suggested that you contact California Department of Industrial Relations’ Division of Occupational Safety and Health, better known as CAL-OSHA, because that agency is responsible for workers’ safety, including workers’ safety and — in some cases — public safety, on public works projects and construction sites and because our department does not keep or produce such reports or documentation. Since I did not have a contact at CAL-OSHA, I referred you to CAL-OSHA’s website for help: www.dir.ca.gov/dosh/. We know of no local agency that produces such reports and documentation.

Today, I'd like to give you additional resources for you, where you could perhaps find information that would respond to your request item 4. Those resources are all outside of the Department of Public Works and are:

• The US Department of Labor, Occupational Safety and Health Administration, www.osha.gov; a direct link to some information that could be useful to you is here: https://www.osha.gov/oshestats/commonstats.html.
• National Highway Traffic Safety Administration, www.nhtsa.gov; a direct link to some information that could be useful to you is here: http://www.nhtsa.gov/NCSA.
• National Safety Council, www.nsc.org; a direct link to some information that could be useful to you is here: http://www.nsc.org/safety_road/DriverSafety/Pages/driver_safety.aspx.
• Pedestrian and Bicycle Information Center, www.pedbikeinfo.org; a direct link to some information that could be useful to you is here: http://www.pedbikeinfo.org/data/factsheet_crash.cfm.

This concludes your Public Records Request.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank W Lee@sfdpw.org
Website: www.sfdpw.org
From: CCG [mailto:]
Sent: Wednesday, August 27, 2014 4:40 PM
To: Lee, Frank W
Cc: Charles Curtis Grisham Jr.; Board of Supervisors; mayoredwinlee@sfgov.org; Wiener, Scott; Chiu, David; SOTF
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee:

Please consider this my second request for the below records of which you are public custodian.

To date, you have not provided me with a single document or record relating to my below records request dated Jun 7, 2014, at 12:40 PM for:

"...all public documents (including all email communications) maintained by DPW regarding:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction."

Is it your assertion that there is not one email communication to or from any DPW employee regarding any of the above substance of my request within the twelve months preceding my initial request?

Please respond to my public records request of nearly three months ago with no further delay or obstruction.

Charles Curtis Grisham, Jr.

On Jun 7, 2014, at 12:40 PM, CC Grisham wrote:

Dear Mr. Lee,

Preliminary to submitting my detailed requests under San Francisco Sunshine Ordinance for public records maintained by the San Francisco Department of Public Works (DPW,) I request that you provide me with a description of the class, type, format and nature of those records maintained by DPW for public perusal.

I ask for this guidance in order that I might make more focused and effective requests, saving myself and DPW time and effort, thereby reducing cost and waste.

Also preliminary to my requests for public records pertaining to San Francisco construction sites I wish to study, I ask for all public documents (including all email communications) maintained by DPW regarding:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction.
Thank you.

Curt Grisham

<DPW Summary Report YTD 2014-06.pdf>
<DPW Claims Filed Detail YTD 2014-06.pdf>
<DPW Claims Paid Detail YTD 2014-06.pdf>
<B-29-14 From CLAIMS.pdf>

<DPW Claims Filed Detail YTD 2014-06.pdf>
Re: follow-up regarding Response to Petition to supervisor of records

To: [Redacted]

Sent by: Jana Clark

09/22/2014 09:05 AM

Dear Sir,

You have asked whether there is an appeal procedure regarding determinations by the Supervisor of Records. Administrative Code section 67.21 provides no appeal from the Supervisor of Records' determination.

My September 16, 2014 response to your petition is consistent with our standard practice. The Supervisor of Records does not issue a ruling when the Department in question has agreed to search for and provide responsive public records. If the petitioner (requester) does not then get the records, or believes a record has been improperly withheld or redacted, he or she can again petition the Supervisor of Records.

As you may know, there are more than 200 Deputy City Attorneys in this office, and the range of work performed in the office is quite broad. It would be extremely rare for the City Attorney to personally participate in or review a determination by the Supervisor of Records. In part because my response was consistent with standard practice, there would have been no occasion for the City Attorney to review it; and, in fact, it was not personally reviewed by the City Attorney.

My supervisor is Deputy City Attorney Buck Delventhal, head of the General Government Team in the City Attorney's Office. He has reviewed this email and concurs in it.

Best regards,

Jana Clark
Deputy City Attorney
(415) 554-4634

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

Dear Ms. Clark: On September 8, 2014, you wro...

From: [Redacted]

To: [Redacted]

Cc: City Administrator <city.administrator@sfgov.org>, City Attorney <cityattorney@sfgov.org>, Mohammed Nuru <Mohammed.Nuru@sfdpw.org>, Frank W Lee <Frank.W.Lee@sfdpw.org>, Rachel Gordon <rachel.gordon@sfdpw.org>, Scott Wiener <Scott.Wiener@sfgov.org>, David Chiu <David.Chiu@sfgov.org>, Mayor Lee <mayoredwinlee@sfgov.org>, Board of Supervisors <Board.of.Supervisors@sfgov.org>, matierandross@sfcronicle.com, bruce@sfbg.com

Date: 09/17/2014 10:44 AM

Subject: Re: Response to Petition to supervisor of records
Dear Ms. Clark:

On September 8, 2014, you wrote to me:

"My role as Supervisor of Records is very limited. My review will be limited to a determination of whether or not DPW withheld in whole or in part public records that you have requested. I will respond with the determination as soon as possible."

In keeping with this role you previously defined for yourself as Supervisor of Records for the City and County of San Francisco, I would like to know your "determination of whether or not DPW withheld in whole or in part public records that you have requested," as you previously promised to me.

Something happened since September 8, 2014 to change substantially your view of your own role and your approach to fulfilling it.

I suspect what changed your line was your boss, Dennis Herrera, who is inimical to me, as he sat on the Board of Directors of the Olympic Club as they voted unanimously to expel me as a member of that corporation for my legitimate, civil and legal inquiries into the organization's conduct of the business of the corporation, of which I was part owner until Mr. Herrera and his cronies on the Board of the "elite" and conservative Olympic Club threw me out for dissenting with the Olympic Club Board of Directors' longstanding practice of wasting corporate assets, including providing themselves and their spouses with valuable gifts of jewelry, golf equipment, trips to Pebble Beach and elsewhere, hospitality at the U.S. Open and elsewhere, dinners with wine and other perquisites, amounting to private inurement that will cost that organization its IRS tax-exempt status, if my predictions are correct.

**Dennis Herrera should have no involvement with me or my complaints against the City going forward, as he cannot be objective, impartial or impassive where I am concerned and because he is not truthful or honorable.**

In my opinion, your below response is tantamount to abdicating your responsibility as Supervisor of Records in the matter and breaking your previous written promises to me.

To whom do you report directly in your role as Supervisor of Records for the City and County of San Francisco? I would like to speak with your supervisor regarding your conduct of your roles and responsibilities toward the Public in this matter.

Did you confer with City Attorney Dennis Herrera before issuing this statement and conclusion of my valid petition?

Again, Mr. Frank Lee and DPW have already "withheld in whole or in part public records that (I) have requested" for over three (3) months.

Therefore, you should have made that determination based upon that obstruction on the part of DPW, which I believe I have amply demonstrated was intentional and which I believe involved knowingly false statements made by Mr. Lee to me and to the Sunshine Ordinance Task Force at the direction of his supervisor Director Nuru and in consultation with the Office of the City Attorney Dennis Herrera, despite Mr. Lee's recorded denials of such consultation, made in official proceedings.

Because of that, I find you and the Office of the City Attorney Dennis Herrera in dereliction of duty in your role as Supervisor of Records and would like to appeal your determination.
Charles Grisham
On Sep 16, 2014, at 16:11, Supervisor.Records@sfgov.org wrote:

Dear Mr. Grisham.

Thank you for your petition dated August 29, 2014. Please note that the role of the Supervisor of Records is limited to determining whether a record that has been requested is public. I have reviewed this matter and understand that you requested from the Department of Public Works ("DPW") public records pertaining to:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction.

We have been informed that DPW is in the process of searching for records and will provide any public records responsive to your request on a rolling basis. Accordingly, this Supervisor of Records petition is closed. If after you receive DPW's response you conclude that DPW has withheld public documents responsive to your request, you may again petition the Supervisor of Records for a determination of whether the record or records requested are public.

We understand that you have concerns regarding the adequacy of the search proposed by DPW. Complaints that a department has not or will not conduct an adequate search are beyond the scope of the role of the Supervisor of Records as defined under Administrative Code section 67.21(d).

Best regards.

Jana Clark
Deputy City Attorney
(415) 554-4634

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team
Dear Supervisor of Records,

I appeal Frank Lee's determination in this matter and complain of his continued obstruction of my attempts to obtain these records.

I complain of the capricious and unprofessional conduct of some of the members Sunshine Ordinance Task Force at the August 26, 2014 special meeting at which were heard my complaints against Mr. Lee along with three other complaints brought against him by other parties regarding Mr. Lee's performance in his role as custodian of public records at DPW.

Charles Grisham

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Begin forwarded message:

From: [redacted]  
Date: August 29, 2014 at 16:30:35 PDT  
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>  
Cc: Board of Supervisors <Board.of.Supervisors@sfgov.org>, "mayoredwinlee@sfgov.org" <mayoredwinlee@sfgov.org>, "Wiener, Scott" <Scott.Wiener@sfgov.org>, "Chiu, David" <David.Chiu@sfgov.org>, SOTF <sotf@sfgov.org>, rachel.gordon@sfdpw.org, Mohammed Nuru <Mohammed.Nuru@sfdpw.org>, herreradaennis@sfgov.org  
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee,

I find you again evasive and obstructive. I will open a new complaint with SOTF based on your response here.

Do not refer me elsewhere for records you maintain at DPW for public scrutiny.
As I believe you understand, I am asking for emails to and from DPW employees regarding any of the subjects I have detailed.

I repeat what I asked below; please answer my question without further evasiveness:

"Is it your assertion that there is not one email communication to or from any DPW employee regarding any of the above substance of my request within the twelve months preceding my initial request?"

Unless you answer to this question is "Yes," you do maintain documents responsive to my request I have repeatedly made since early June of this year.

Please let me know if you still do not understand my request.

CCG Jr

On Aug 29, 2014, at 15:53, "Lee, Frank W" <Frank.W.Lee@sfdpw.org> wrote:

Dear Mr. Grisham:

Since it appears that my referrals were not clear in my June 9 response to your June 7 request for the same information, I'd like to elaborate on those referrals and help you as follows:

Our department – the Department of Public Works (DPW) – does not produce the information that you requested in your request items 1 and 2 because our department is not responsible for accepting, processing, and settling claims. Since we are not responsible for accepting such, we would not know of any claims against DPW unless someone tells us. Since the City Attorney’s Office is responsible for accepting, processing, and settling claims filed against any department in the City and County of San Francisco, I referred you to the City Attorney’s Office for help. Per Sunshine Ordinance, we directed you to the City Attorney’s Office because we believed that the records that you wanted could be within that department. The City Attorney’s website at www.sfcityattorney.org contains information that explains that they accept claims. I also suggested that you could contact and submit records requests to Deputy Communication Officer Gabriel Zitrin of the City Attorney’s Office and gave to you email addresses to use: Cityattorney@sfgov.org and Gabriel.Zitrin@sfgov.org.

Since it appears that you have not contacted the City Attorney’s Office, I contacted them for you. The City Attorney’s Office supplied the attached documents to me, which I am now forwarding to you. Those documents respond to your request items 1 and 2, and they are:

<!-[if !supportLists]-->•  <!-[endif-->DPW Claims Filed from 7/1/13 to 6/30/14
<!-[if !supportLists]-->•  <!-[endif-->Summary Report of DPW Claims filed from 7/1/13 to 6/30/14
<!-[if !supportLists]-->•  <!-[endif-->DPW Claims Paid from 7/1/13 to 6/30/14

Please know that the City Attorney’s Office explained that these claims were assigned to DPW because these were related to claims on the public rights-of-way. The City Attorney’s Office would then investigate these claims and determine if these claims are the responsibility of DPW or of another party. DPW also does not settle claims, because the City Attorney’s Office settles claims.

The Department of Public Works does not investigate claims, unless directed by the City Attorney’s Office. The Department may also not know which claim it is being asked to investigate. In addition, the Department does not keep a separate file for records pertaining to claim investigations. Investigations of all sorts, including those related to claims, are filed by addresses, and there are no designation that would highlight the investigation as being related to a claim. In addition, all investigative material related to claims are then forwarded to the City Attorney’s Office.

file:///C:/Users/gvaldez/AppData/Local/Temp/notesC7A056/~web3393.htm
Therefore, the best place to find records related to claims and their types and statuses is with the City Attorney’s Office. However, if you still do not wish to contact the City Attorney’s Office, please review the attachments and let me know if any particular claim is of interest to you. Then, we will look into our files, based on the address of that claim, to see if we have any information.

With respect to your request item 3 for police reports, we suggested that you contact the Police Department for them since police reports are made by the Police and because we believed that the records that you wanted are within that department. Our department, in our normal day-to-day work, does not accept and does not collect police reports. Unfortunately, I do not have a contact at the Police Department that you can call or email. Therefore, I referred you and will again refer you to the Police Department for help.

With respect to your request item 4 for reports and other documentation regarding accidents, we suggested that you contact California Department of Industrial Relations’ Division of Occupational Safety and Health, better known as CAL-OSHA, because that agency is responsible for workers’ safety, including workers’ safety and – in some cases – public safety, on public works projects and construction sites and because our department does not keep or produce such reports or documentation. Since I did not have a contact at CAL-OSHA, I referred you to CAL-OSHA’s website for help: www.dir.ca.gov/dosh/. We know of no local agency that produces such reports and documentation.

Today, I’d like to give you additional resources for you, where you could perhaps find information that would respond to your request item 4. Those resources are all outside of the Department of Public Works and are:

< ![supportLists]-->: The US Department of Labor, Occupational Safety and Health Administration, www.osha.gov; a direct link to some information that could be useful to you is here: https://www.osha.gov/oshestats/commonstats.html.
< ![supportLists]--> National Highway Traffic Safety Administration, www.nhtsa.gov; a direct link to some information that could be useful to you is here: http://www.nhtsa.gov/NCSA.
< ![supportLists]--> National Safety Council, www.nsc.org; a direct link to some information that could be useful to you is here: http://www.nsc.org/safety_road/DriverSafety/Pages/driver_safety.aspx.
< ![supportLists]--> Pedestrian and Bicycle Information Center, www.pedbikeinfo.org; a direct link to some information that could be useful to you is here: http://www.pedbikeinfo.org/data/factsheet_crash.cfm.

This concludes your Public Records Request.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org
Website: www.sfdpw.org

From: CCG [mailto:
Sent: Wednesday, August 27, 2014 4:40 PM
To: Lee, Frank W
Cc: Charles Curtis Grisham Jr.; Board of Supervisors; mayoredwinlee@sfgov.org; Wiener, Scott; Chiu, David; SOTF
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee:
Please consider this my second request for the below records of which you are public custodian.

To date, you have not provided me with a single document or record relating to my below records request dated Jun 7, 2014, at 12:40 PM for:

"all public documents (including all email communications) maintained by DPW regarding:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction."

Is it your assertion that there is not one email communication to or from any DPW employee regarding any of the above substance of my request within the twelve months preceding my initial request?

Please respond to my public records request of nearly three months ago with no further delay or obstruction.

Charles Curtis Grisham, Jr.

On Jun 7, 2014, at 12:40 PM, CC Grisham [REDACTED] wrote:

Dear Mr. Lee,

Preliminary to submitting my detailed requests under San Francisco Sunshine Ordinance for public records maintained by the San Francisco Department of Public Works (DPW,) I request that you provide me with a description of the class, type, format and nature of those records maintained by DPW for public perusal.

I ask for this guidance in order that I might make more focused and effective requests, saving myself and DPW time and effort, thereby reducing cost and waste.

Also preliminary to my requests for public records pertaining to San Francisco construction sites I wish to study, I ask for all public documents (including all email communications) maintained by DPW regarding:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction.

Thank you.

Curt Grisham

<DPW Summary Report YTD 2014-06.pdf>
<DPW Claims Filed Detail YTD 2014-06.pdf>
<DPW Claims Paid Detail YTD 2014-06.pdf>
Mr. Lee,

As I did in my original request of June 7, 2014 (which you now have "concluded" three (3) separate times,) I am requesting ALL emails to or from ANY DPW employee regarding ALL 544 claims on the list where those emails IN ANY WAY discuss, refer or pertain to:

1) pre-litigation, current or pending legal claims against the City involving DPW in any aspect;
2) legal claims against the City involving DPW in any aspect that in the past twelve (12) months have been adjudicated, closed, settled or otherwise concluded;
3) police reports from the past twelve (12) months involving construction sites under DPW auspices or involving DPW in any aspect;
4) reports and other documentation regarding accidents during the past twelve (12) months that involved workers, members of the public or other persons at sites under DPW jurisdiction.

Charles Grisham

On Aug 29, 2014, at 5:13 PM, Lee, Frank W <Frank.W.Lee@sfdpw.org> wrote:

Mr. Grisham:

Attached is the email from the City Attorney regarding claims against DPW.

As I mentioned in my response to you, please review the attachments and let me know if any particular claim is of interest to you because we do not have files specifically labeled as pre-litigation, current or pending legal claims. Since we do not have files labeled as such, we would not know where the requested records, if any, may be.

Therefore, we suggest that you help us by reviewing the attachments and letting us know which item or items out of the 544 claims on the list are of interest to you. Then, based on the address of that claim, we will check to see if we have any information.

file:///C:/Users/gvalde/AppData/Local/Temp/notesC7A056/~web3242.htm
Sincerely,

Frank W. Lee  
Executive Assistant to the Director  
Department of Public Works  
Tel: (415) 554-6993  
Fax: (415) 522-7727  
Email: Frank.W.Lee@sfdpw.org  
Website: www.sfdpw.org

From:  
Sent: Friday, August 29, 2014 4:31 PM  
To: Lee, Frank W  
Cc: Board of Supervisors; mayoredwinlee@sfgov.org; Wiener, Scott; Chiu, David; SOTF; Gordon, Rachel; Nuru, Mohammed; herrera.dennis@sfgov.org  
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

Mr. Lee,

I find you again evasive and obstructive. I will open a new complaint with SOTF based on your response here.

Do not refer me elsewhere for records you maintain at DPW for public scrutiny.

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CCGJr

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at www.sfcityattorney.org contains information that explains that they accept claims. I also suggested that you could contact and submit records requests to Deputy Communication Officer Gabriel Zitrin of the City Attorney’s Office and gave to you two email addresses to use: Cityattorney@sfgov.org and Gabriel.Zitrin@sfgov.org.

Since it appears that you have not contacted the City Attorney’s Office, I contacted them for you. The City Attorney’s Office supplied the attached documents to me, which I am now forwarding to you. Those documents respond to your request items 1 and 2, and they are:

- DPW Claims Filed from 7/1/13 to 6/30/14
- Summary Report of DPW Claims filed from 7/1/13 to 6/30/14
- DPW Claims Paid from 7/1/13 to 6/30/14

Please know that the City Attorney’s Office explained that these claims were assigned to DPW because these were related to claims on the public rights-of-way. The City Attorney’s Office would then investigate these claims and determine if these claims are the responsibility of DPW or of another party. DPW also does not settle claims, because the City Attorney’s Office settles claims.

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- The US Department of Labor, Occupational Safety and Health Administration, www.osha.gov; a direct link to some information that could be useful to you is here: https://www.osha.gov/oshestats/commonstats.html.
- National Highway Traffic Safety Administration, www.nhtsa.gov; a direct link to some information that could be useful to you is here: http://www.nhtsa.gov/NCSA.
- National Safety Council, www.nsc.org; a direct link to some information that could be useful to you is here: http://www.nsc.org/safety_website/DriverSafety/Pages/driver_safety.aspx.
- Pedestrian and Bicycle Information Center, www.pedbikeinfo.org; a direct link to some information that could be useful to you is here: http://www.pedbikeinfo.org/data/factsheet_crash.cfm.
This concludes your Public Records Request.

Sincerely,

Frank W. Lee  
Executive Assistant to the Director  
Department of Public Works  
Tel: (415) 554-6993  
Fax: (415) 522-7727  
Email: Frank.W.Lee@sfdpw.org  
Website: www.sfdpw.org

From: CGG  
Sent: Wednesday, August 27, 2014 4:40 PM  
To: Lee, Frank W  
Cc: Charles Curtis Grisham Jr.; Board of Supervisors; mayoredwinlee@sfgov.org; Wiener, Scott; Chiu, David; SOTF  
Subject: Re: Grisham - San Francisco Sunshine Ordinance Records Request

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Charles Curtis Grisham, Jr.

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file:///C:/Users/gvaldez/AppData/Local/Temp/notesC7A056/~web3242.htm
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Thank you.

Curt Grisham

<DPW Summary Report YTD 2014-06.pdf>
<DPW Claims Filed Detail YTD 2014-06.pdf>
<DPW Claims Paid Detail YTD 2014-06.pdf>
<8-29-14 From CLAIMS.pdf>
Re: SFMTA response to RE: IDR: email msgs, follow-up to PRR 2012-281 and PRR 2013-202-

Supervisor Records  to: Mark Miller
Sent by: Francesca Gessner
Cc:  "Celaya, Caroline", Supervisor.Records
Bcc:  David Greenburg

From: Supervisor Records/CTYATT
To:  Mark Miller
Cc:  "Celaya, Caroline" <Caroline.Celaya@sfmta.com>, Supervisor.Records@sfgov.org
Bcc:  David Greenburg/CTYATT@CTYATT

Mr. Miller,

Ms. Celaya has informed me that she sent you a response yesterday at 3:03 p.m. stating the following: "Staff has provided the final disc and it is at the Seventh Floor front desk reception for pick up."

I hope that this resolves your inquiry. Please let me know if I can be of further assistance.

Thanks,

Francesca Gessner
Deputy City Attorney
(415) 554-4762

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

Mark Miller  Ms. Celaya - Does staff consider this PRR close...  09/03/2014 02:43:43 PM

From:  Mark Miller
To:  "Celaya, Caroline" <Caroline.Celaya@sfmta.com>, Supervisor.Records@sfgov.org,
Date:  09/03/2014 02:43 PM
Subject:  Re: SFMTA response to RE: IDR: email msgs, follow-up to PRR 2012-281 and PRR 2013-202-

Ms. Celaya -
Does staff consider this PRR closed? There has been no communication or production since 8/18. Please reply immediately.

DCA, as Sup. of Records -
Please contact me regarding this outstanding PRR. SFMTA completed collecting the emails by 5/16/14. On 6/19/14, Ms. Celaya wrote on behalf of SFMTA: "We will endeavor to respond to your request as soon as possible, but not later than July 1, 2014."

On 7/22/14, in response to SFMTA's continuing failure to disclose, I provided further guidance to assist SFMTA in sequencing: "I request that future production of the emails happen in (roughly) forward date-order, beginning with the earliest records within the date ranges."

Respectfully,
Mark Miller
On Mon, Aug 18, 2014 at 3:52 PM, Celaya, Caroline <Caroline.Celaya@sfmta.com> wrote:

Dear Mr. Miller:

A disc with responsive documents is available for pick up at One South Van Ness Avenue, Seventh Floor.

Caroline Celaya
Manager, Public Records Requests
SFMTA
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
415.701.4670
415-701-4502 fax

From: Celaya, Caroline
Sent: Friday, August 15, 2014 4:33 PM
To: 'Mark Miller'
Subject: RE: SFMTA response to RE: IDR: email msgs, follow-up to PRR 2012-281 and PRR 2013-202-

Staff has indicated they will have more documents on Monday, August 18.

From: Mark Miller [mailto:________________________]
Sent: Thursday, August 14, 2014 5:38 PM
To: Celaya, Caroline
Subject: Re: SFMTA response to RE: IDR: email msgs, follow-up to PRR 2012-281 and PRR 2013-202-

A week has passed since the last production (8/7/14), which contained only 37 email messages.
Please provide the next set of messages (earliest dates) immediately.

Additionally, indicate a final-completion date for production of the email messages.
Dear Mr. Kerr,

I apologize for the delay in response. We understand that you were satisfied with the production of documents DPH provided you. But you identified an "unexplained blackout of 8 months. No records from November 2013 through June 2014 were provided. ... [You] believe that 8 months of records have been withheld - without explanation."

We have confirmed that DPH is not withholding any documents. DPH has provided all responsive records to you. The Sunshine Ordinance requires the Supervisor of Records to hear administrative appeals from members of the public who believe that a City department is improperly withholding or redacting a record in response to a public records request. Under Section 67.21(d), 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. DPH has not asserted that any records responsive to your request are subject to withholding or redacting.

Best,
Alicia

Alicia Cabrera
Deputy City Attorney
(415) 554-4673

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

----- Forwarded by Alicia Cabrera/CTYATT on 06/12/2015 03:40 PM -----
Thank you, Ms. Cabrera.
Your prompt acknowledgment is much appreciated.
Derek Kerr, MD

In a message dated 9/10/2014 12:33:36 P.M. Pacific Daylight Time, Supervisor.Records@sfgov.org writes:

Dear Mr. Kerr,

I am in receipt of your petition and I will look into this matter and get back to you.

Best,
Alicia Cabrera
We have been seeking a response from the DPH on a records request initially submitted in June 2014, as noted in the e-mails below.

Although we are satisfied that many records were provided, there is an unexplained blackout of 8 months. No records from November 2013 through June 2014 were provided.

We have twice requested an explanation for this large gap in requested records, but without a response from the DPH Information Officer.

We believe that 8 months of records have been withheld - without explanation.

Would you please investigate this matter.

Thank You,
Derek Kerr, MD
Maria Rivero, MD
Columnists-Reporters: The Westside Observer

-----Original Message-----
From: derekonvanness
To: nancy.sarieh <nancy.sarieh@sfdph.org>; PublicRecords.dph
    <PublicRecords.dph@sfdph.org>
Cc: DerekVanNess

Sent: Thu, Sep 4, 2014 2:40 pm
Subject: Fwd: SUNSHINE REQUEST: LLEWELLYN E-MAILS

Hello Again Ms. Sarieh,

We are still perplexed at the gaps in the e-mails relating to former LHH COO Mike Llewellyn that you provided in response to our Public Records request.

Specifically, zero records were provided that were dated between 10/29/2013 and 6/20/2014. That's an 8-month blackout that requires explanation.

We would appreciate knowing whether some of the requested records were withheld, and the legal exemption applicable.

Thank you.
Derek Kerr, MD
Maria Rivero, MD
The Westside Observer

---Original Message-----
From: DerekVanNess
To: nancy.sarieh <nancy.sarieh@sfdph.org>
Cc: derekonvanness

Sent: Sat, Aug 23, 2014 12:28 pm
Subject: Re: SUNSHINE REQUEST: LLEWELLYN E-MAILS
Hello Ms. Sarieh,

We have spent over 40 hours examining the records you sent. We want to thank you - and your associates - for the efforts and diligence that went into retrieving these records. It was quite a job!

Despite the great volume of documents, we sense that there may be some gaps, perhaps due to withheld documents.

If the DPH did withhold one or more of the requested records, please describe the legal exemption that justified the withholding.

Thanks again for your exemplary response to this voluminous records request.

Derek Kerr, MD
The Westside Observer

In a message dated 8/15/2014 3:03:00 P.M. Pacific Daylight Time, nancy.sarieh@sfdph.org writes:

Nancy Sarieh  Public Information Office
San Francisco Department of Public Health101 Grove Street415.554.2716

CONFIDENTIALITY NOTICE: This communication and its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use, or disclosure is prohibited and may violate applicable law. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

From: Sarieh, Nancy (DPH)
Sent: Friday, August 15, 2014 3:01 PM
To: [Redacted]
Cc: [Redacted]; DPH, PublicRecords (DPH)
Subject: RE: SUNSHINE REQUEST: LLEWELLYN E-MAILS

Mr. Kerr,

This is in response to your Sunshine Request sent by email on June 25, 2014. On July 7, 2014, this office invoked an extension of time to respond to your request.

Your June 25, 2014 request included the following:

1) Please provide access to, or electronic copies of, any and all e-mail correspondence from 11/3/2009 to 6/20/2014 between COO Mike Llewellyn and;

a) William Decker Company
- Our office conducted a diligent search and has found records responsive to this request. These records are enclosed electronically as 'Item 1_1'.

b) William Decker Co./RHD Enterprise
- Our office conducted a diligent search and has found records responsive to this request. These records are enclosed electronically as 'Item 1_2'.

c) RHD Enterprise
- Our office conducted a diligent search and has found records responsive to this request. These records will be enclosed electronically in a separate email as the attachments are voluminous. There will be a total of 3 attachments labeled 'Item 1_3', 'Item 1_4' and 'Item 1_5'.

d) Rachel Decker (President of William Decker Co/RHD Enterprise) - Our office conducted a diligent search and has found records responsive to this request and are provided as stated above.

e) wmdeckerco@gmail.com - Our office conducted a diligent search and has found records responsive to this request and are provided as stated above.

2) Please provide access to, or electronic copies of, any and all e-mail correspondence from 11/3/2009 to 6/20/2014 between COO Mike Llewellyn and any/all vendor/contractors wherein the terms;
   a) "contract"
   b) "bid"
   c) "bids"
   are used.

- For request #2 and all items under this request (a, b and c), our office conducted a diligent search and has found records responsive to this request and are provided as stated above for Item #1. Our office will continue to search for any related records to this request. If we should identify additional records responsive to this request, all records will be provided subject without waiver of any applicable exception.

Nancy Sarieh  Public Information Office
San Francisco Department of Public Health
101 Grove Street
SF 94158

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From: [Redacted]
Sent: Wednesday, June 25, 2014 1:27 PM
To: Sarieh, Nancy (DPH)
Cc: [Redacted]
editor@westsideobserver.com
Subject: SUNSHINE REQUEST: LLEWELLYN E-MAILS

Hello Ms. Sarieh,

This is a routine disclosure request for public records in accord with the California Public Records Act and the SF Sunshine Ordinance

Background:

The Westside Observer is investigating the sudden, mysterious expulsion of
Laguna Honda Hospital COO Mike Llewellyn.

Llewellyn was COO of LHH from 11/3/2009 to 6/20/2014

Request:

1) Please provide access to, or electronic copies of, any and all e-mail correspondence from 11/3/2009 to 6/20/2014 between COO Mike Llewellyn and;

   a) William Decker Company
   b) William Decker Co./RHD Enterprise
   c) RHD Enterprise
   d) Rachel Decker (President of William Decker Co/RHD Enterprise)
   e) wmdeckerco@gmail.com

2) Please provide access to, or electronic copies of, any and all e-mail correspondence from 11/3/2009 to 6/20/2014 between COO Mike Llewellyn and any/all vendor/contractors wherein the terms;
   a) "contract"
   b) "bid"
   c) "bids"
   are used.

Procedure:

1) Please provide the requested records electronically. If only paper records are available, please provide an estimate of copying costs.

2) Please provide the requested documents on a rolling basis, rather than waiting to collect and send them all at once.

3) Please contact us if there is anything we can do to facilitate your response.

Thank you in advance for your assistance.

Derek Kerr, MD
Maria Rivero, MD
Columnists/Reporters - The Westside Observer
Re: Request for Second Opinion - Access to Hoeper Report

15th Annual SOR Report
APPENDIX - Page 177

Drs. Kerr and Rivero,

Your October 30, 2014 petition to the Supervisor of Records sought release of a Draft Report of Investigation prepared by former Chief Trial Deputy Joanne Hoeper dated July 18, 2012 ("Draft Report"). Matt Dorsey from the City Attorney's Office responded to your requests by advising that the Draft Report is exempt from disclosure because it is attorney work product, reflects confidential attorney client communications and implicates individual privacy rights under the California Constitution.

As you know, the circumstances surrounding this document and Ms. Hoeper's employment have become the subject of a claim filed with the City and County of San Francisco on July 1, 2014 and a complaint filed with the California Department of Industrial Relations. I have reviewed the Draft Report and the documents filed by Ms. Hoeper and the City with the Department of Industrial Relations. Based on this review, I understand that the disclosure status of the Draft Report may be resolved in the existing administrative proceeding or in subsequent court litigation.

In these circumstances, the Supervisor of Records will not render a determination on a petition. Where the Supervisors of Records receives a petition regarding a request for records and there is actual or anticipated litigation that is likely to resolve whether the City is required to disclose the requested records, the Supervisor of Records has declined to make a determination until the litigation is complete or the disclosure issue is authoritatively resolved.

I apologize that I have not been able to respond to you sooner. As you know, Mr. Dorsey has indicated that he will advise you if the ongoing proceedings result in a change in the City's position regarding the Draft Report.

Julia M. C. Friedlander
Deputy City Attorney
(415) 554-4658
Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

[Email exchange]

15th Annual SOR Report
APPENDIX - Page 177
Hello Ms. Friedlander, and thanks for contacting us.

Yes, we are only requesting an appropriately redacted copy of Joanne Hoeper's 27-page, "Draft Report of Investigation" from 7/18/2012.

Since portions of that Report have already been quoted or cited in briefs to the California Division of Labor Standards & Enforcement, the public should have access to the full Report - with only the legally exempt portions redacted.

Thanks for your assistance,
Derek Kerr, MD
Maria Rivero, MD
Columnists/Reporters - The Westside Observer

In a message dated 11/5/2014 5:41:16 P.M. Pacific Standard Time, Supervisor.Records@sfgov.org writes:
Dr. Kerr and Dr. Rivero,

I wanted to let you know that our office has received your request, and I will be reviewing the issue raised in your petition. (Ms. Cabrera does not handle all petitions to the Supervisor of Records.)

I see from the email discussion below that you have obtained a number of records already, and I understand your petition to seek only the text of the investigation report prepared by Ms. Hoeper. Please let me know if I have misunderstood. Thanks.

Best,

Julia M. C. Friedlander
Deputy City Attorney
(415) 554-4658

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

From: supervisor.records@sfgov.org, alicia.cabrera@sfgov.org
To: editor@westsideobserver.com, matt.dorsey@sfgov.org
Cc:
Date: 10/30/2014 12:57 PM
Subject: Request for Second Opinion - Access to Hoeper Report

Alicia Cabrera
Supervisor of Records
Office of the City Attorney

Hello Ms. Cabrera,

On behalf of the readership of The Westside Observer, we are requesting a Second Opinion from the Supervisor of Records regarding public/media access to a 7/18/2012 "Draft Report of Investigation" (Report) authored by former Chief Trial Attorney Joanne Hoeper.

As you know, Ms. Hoeper and her attorney, Stephen Murphy, have filed a Claim against the City Attorney's Office alleging misuse of tax-payer funds related to the replacement of residential sewer lines, as well as whistleblower retaliation.

In the City's rebuttal to that Claim, authored by attorney John Keker, and in Mr. Murphy's response to Mr. Keker's rebuttal, excerpts from Ms. Hoeper's Report were quoted or cited. Therefore, portions of the Report have already been publicly disclosed. These selected references support contradictory narratives - without giving the public the broader picture underlying the now-public dispute about the sewer investigation and program.

As shown in the e-mails appended below, the CAO spokesperson, Matt Dorsey explained to us that copies of Ms. Hoeper's "Draft Report" were exempt from public disclosure at this time.

Because the content of Ms. Hoeper's 27-page 7/18/2012 investigation Report is a crucial document in this dispute, and because the dispute involves the expenditure of millions of dollars of public funds, it is impossible for the public to determine whether tax monies were properly or improperly spent without greater access to the content of Ms. Hoeper's original Report.

Further, as the City Attorney's spokesperson, Mr. Dorsey may be inclined to express the viewpoint of the respondent in this Claim. Although Mr. Dorsey has responded to our records requests conscientiously and in good faith, a potential bias exists.

We are therefore requesting your Second Opinion as to whether Ms. Hoeper's 7/18/2012 "Draft Report of Investigation", appropriately redacted, is disclosable, given the circumstances outlined above and in the correspondence appended below.

Respectfully,
Derek Kerr, MD
Maria Rivero, MD
Columnists/Reporters - The Westside Observer

From: Matt.Dorsey@sfgov.org
To: [redacted]
editor@westsideobserver.com
CC: gabriel.zitrin@sfgov.org
Sent: 10/20/2014 4:36:43 P.M. Pacific Daylight Time
Subj: Re: SUNSHINE FOLLOW-UP: Response to Hoeper's state retaliation claim
Drs. Kerr and Rivero:

Thanks for following up, and for your patience while our office conferred with outside counsel on your new request. I have been advised that the same exemptions to disclosure that applied in my Sept. 15 response still apply today, and that I am accordingly unable to provide you the document you requested at this time.

While there is, legally speaking, no such thing as a "standing Sunshine request," it's not unusual for the City Attorney Office to extend such a courtesy to journalists so that they need not worry about getting scooped by competing publications whose reporters happen to make their requests at the right time. City Attorney Herrera has been adamant that we treat everyone in the news media fairly, so I've asked our lawyers to alert me immediately if the document you've requested ever becomes disclosable -- in whole or in part -- during the course of the litigation Ms. Hoeper's attorney has threatened. If it does, you have my commitment that I'll provide the publicly disclosable portions to you promptly.

Thanks again for following up. If you have any questions, feel free to let me know.

Best,
MATT DORSEY
Press Secretary

OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

(415) 554-4662 Direct
(415) 554-4700 Reception
(415) 554-4715 Facsimile
(415) 554-6770 TTY

http://www.sfcityattorney.org/

From: 
To: Matt.Dorsey@sfgov.org, gabriel.zitrin@sfgov.org,
Cc: editor@westsideobserver.com, 
Date: 10/16/2014 10:13 PM
Subject: SUNSHINE FOLLOW-UP: Response to Hoeper's state retaliation claim

Hello Mr. Dorsey & Mr. Zitrin,
Since our initial request for a copy of Joanne Hoeper's 7/18/12 "Draft Report on Investigation" (Report), Ms.Hoeper and her attorney Stephen Murphy submitted a response on October 6th to the September 2nd rebuttal by John Keker representing your Office and Dennis Herrera.

As you may know, the Hoeper/Murphy response of 10/6/14 refers to additional material from her original 7/18/12 Report. We now have two contrasting narratives based on different interpretations of that Report's findings and recommendations.

Your 9/15/14 response to our Sunshine Request for said Report provided a clear and comprehensive explanation as to why you could not release a copy to The Westside Observer at that time. (Please see e-mail below)

Given the circumstances mentioned above, would your Office now consider releasing Joanne Hoeper's Report - or do the same exemptions to disclosure apply?

Respectfully,
Derek Kerr, MD
Maria Rivero, MD
Columnists/Reporters - The Westside Observer

In a message dated 9/15/2014 4:53:08 P.M. Pacific Daylight Time, Matt.Dorsey@sfgov.org writes:
Drs. Kerr and Rivero:

I write in response to your email of Sept. 8, 2014, in which you posed some follow-up questions on the City's outside counsel's response to a claim filed with the California Division of Labor Standards and Enforcement by former Deputy City Attorney Joanne Hoeper, which mirrors Ms. Hoeper's claim for monetary damages against city taxpayers.

You asked: "Can you provide a copy of Ms. Hoeper's 7/18/12 Report?" in reference to the investigation report that itself refutes allegations Ms. Hoeper later made in her claim for monetary damages?

At this time, no.

The investigation report of July 18, 2012 constitutes attorney work product, and is as such non-disclosable under multiple provisions of state and local law, including: the California Code of Civil Procedure §2018.030, which protects from disclosure any writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories; Gov't Code §6254(k), a provision of the California Public Records Act that expressly exempts from disclosure records so protected under federal or state law; and S.F. Admin. Code §67.21(k), a provision of the San
Francisco
Sunshine Ordinance incorporating the California Public Records Act
respecting records subject to withholding.

The July 18, 2012 investigation report also constitutes attorney client
communications, which additionally subjects the record to withholding
under
state and local law. Relevant provisions here include: Gov't Code §6254
(k), which provides an exemption for records protected from disclosure
under federal or state law, including provisions of the Evidence Code
relating to privilege; Cal. Evidence Code §954, which protects as
privileged communications between attorneys and their clients; and S.F.
Admin. Code §67.21(k), a provision of the San Francisco Sunshine Ordinance
incorporating the California Public Records Act respecting records subject
to withholding. The attorney-client and attorney work product privileges
are additionally cross-referenced in the Public Records Act at Cal. Gov't
Code §6276.04.

The limited portions quoted in the Keker response do not constitute a
waiver of these privileges.

Beyond the aforementioned privileges, portions of the document you
requested may include information that must be withheld from disclosure on
privacy grounds. Such withholdings would be based on California
Constitution, Article I, section 1; California Government Code Section
6254
(k); and California Government Code Section 6254(c)-all provisions
guarding
against disclosure of information that would invade an individual's
personal privacy. Both the California Public Records Act (California
Government Code Section 6250) and the San Francisco Sunshine Ordinance
(San
Francisco Administrative Code Section 67.1(g)) acknowledge the importance
of protecting personal privacy where disclosing records in response to a
public records request.

Should the July 18, 2012 report be disclosed as a public document (in
whole
or part) in the course of Ms. Hooper's attorney's threatened litigation,
I'm happy to let you know as a courtesy and provide it to you promptly.

You asked if "Ms. Hooper's supervisors conduct formal written Annual
Performance Appraisals...[and] If not, why not?"

Formal written annual performance appraisals are not conducted for members
of the City Attorney's Executive Team. Formal job performance appraisals
are generally helpful for organizational leadership purposes in middle
management tiers, so that higher level management can be regularly
apprised
of the performance of direct reports as well as their managers throughout
the organization. As an independently elected official, however, the City
Attorney is accountable to San Francisco voters rather than to a higher
level manager or official within the organization. Given multiple
factors,
formal job performance appraisals of executive team members would fulfill
no purpose in terms of offering additional information to the City
Attorney
or other executive team members beyond what they know from the performance
of their day-to-day roles. These factors include the fact that executive
team members: (a) are exempt from civil service rules, policies and
procedures; (b) report directly to the City Attorney; and (c) regularly
meet and work with one another as well as with the City Attorney.

Noting that two exhibits in the City’s filing from former Chief Deputy
City Attorney (and now Associate Justice of the California Court of
Appeal) Therese M. Stewart both show hand-written dates, you asked:
"Were the hand-written dates contemporaneous with the writing of these
documents, or were they added later?"

The hand-written dates were added later to reflect the documents’ actual
dates.

Best,
MATT DORSEY
Press Secretary

__________________________________________
OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

(415) 554-4662 Direct
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(415) 554-6770 TTY

http://www.sfcityattorney.org/

From: [Redacted]
To: Matt.Dorsey@sfgov.org, Gabriel.Zitrin@sfgov.org,
   editor@westsideobserver.com
Cc: [Redacted]
Date: 09/08/2014 11:36 AM
Subject: QUESTIONS: Re: Response to Hooper's state retaliation claim

Gentlemen,

Thanks again for sending us a copy of the City Attorney's rebuttal to
Joanne Hooper's retaliation claim. To improve the Westside Observer's
coverage of this story, please address 3 inquiries;

1) One point in the rebuttal against Ms. Hooper's claim is that her own
27-page, "Draft Investigation Report" of 7/18/12 does not support some of
her current allegations. Since Mr. Keker's rebuttal quotes excerpts from
Ms. Hooper's Report, and since that Report will likely be disclosed in
future legal proceedings;

Q: Can you provide a copy of Ms. Hooper's 7/18/12 Report?

2) Most City agencies provide its employees with formal Annual Performance Appraisals, wherein employees can comment on their supervisors' assessments. John Keker's rebuttal includes a less-formal hand-dated 2007 assessment of Ms. Hooper's performance by Ms. Stewart. Although the content of Annual Performance Appraisals is confidential, there is no mention of them in Mr. Keker's rebuttal.

Q: Did Ms. Hooper's supervisors conduct formal written Annual Performance Appraisals between 2007 and 2012? If not, why not? (Note: We are not asking for the content of these Appraisals, merely asking they were done.)

3) Two documents in Mr. Keker's rebuttal; Ms. Stewart's untitled 5/22/07 appraisal of Ms. Hooper, and her 12/21/12 "Possible Leadership Changes 2012" memo both show hand-written dates.

Q: Were the hand-written dates contemporaneous with the writing of these documents, or were they added later?

Thank You.
Derek Kerr, MD
Maria Rivero, MD
The Westside Observer

In a message dated 9/5/2014 10:51:49 A.M. Pacific Daylight Time,
Matt.Dorsey@sfgov.org writes:
Drs. Rivero and Kerr:

I read with interest your column on former Deputy City Attorney Joanne Hooper's claim against city taxpayers for monetary damages, and thought you might be interested in the City's formal response to a related claim she filed with the California Division of Labor Standards and Enforcement. It is attached for your perusal, and it was covered in today's Chronicle.

Best,
MATT DORSEY
Press Secretary

_________________________________________________________________
OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

(415) 554-4662 Direct
(415) 554-4700 Reception
(415) 554-4715 Facsimile
(415) 554-6770 TTY

http://www.sfcityattorney.org/
Dear Mr. Grisham,

I wanted to let you know that our office has received your message below and several other messages addressed to the Sunshine Ordinance Task Force and the Department of Public Works ("DPW"). It is my understanding that you have been in ongoing discussions over DPW's production of records. As you know, the Sunshine Ordinance requires the Supervisor of Records to hear administrative appeals from members of the public who believe that a City department is improperly withholding or redacting a record in response to a public records request. Under Section 67.21(d), 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. In contrast, the Supervisor of Records does not make determinations as to the adequacy of a City department's search for records.

It appears to me that the DPW has not asserted that any records responsive to your request are subject to withholding and that DPW has not inappropriately redacted any responsive records. Rather, it looks as if your complaints really address the adequacy of the department's search for the records you are requesting. Notwithstanding the limited role of the Supervisor of Records, I have made an effort to work with DPW to facilitate disclosure of all relevant public records in response to your 11/06/14 request for hiring and compensation data for specified employees that is the subject of your 11/07/14 petition. As of today, I understand that DPW has provided the specific compensation data you requested. We now consider your petition of 11/07/14 closed. In addition, as noted in my 11/04/14 email (attached), we consider your petition of 10/09/14 closed.

Jana Clark
Deputy City Attorney
(415) 554-4634

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

Re: Your immediate records request #14-428
On Nov 20, 2014, at 08:08, CC Grisham wrote:

P.S. I should have sent this directly to you instead of copied. Please add this to my complaints.
cg

Begin forwarded message:

**Subject: Re: Your immediate records request #14-428**

**From:** CC Grisham

**Date:** November 20, 2014 at 8:06:44 AM PST

**Cc:** "Nuru, Mohammed" <Mohammed.Nuru@sfdpw.org>, "Gordon, Rachel" <Rachel.Gordon@sfdpw.org>, "SOTF (BOS)" <sotf@sfgov.org>, "Records, Supervisor (CAT)" <supervisor.records@sfgov.org>, Scott Wiener <scott.wiener@sfgov.org>, "Administrator, City (ADM)" <city_administrator@sfgov.org>, "City attorney (CAT)" <cityattorney@sfgov.org>, "Board of Supervisors (BOS)" <board_of_supervisors@sfgov.org>, "Lee, Mayor (MYR)" <mayoredwinlee@sfgov.org>, "mariatrandross@sfchronicle.com" <matierandross@sfchronicle.com>, "CON, Controller (CON)" <controller.con@sfgov.org>

**To:** "Lee, Frank W" <Frank.W.Lee@sfdpw.org>

Dear Supervisor of Records and SOTF:

Please add the below to my open complaints and petitions with your offices.

I find Mr. Lee's statements unacceptable, and I still doubt and challenge their truthfulness and completeness.

Moreover, Mr. Lee's statements here and elsewhere betray an attitude and *modus operandi* at DPW that are inimical to the Public's best interests.

Mr. Lee has admitted that DPW does not follow and has not followed for some period of time its own Records Retention written procedures or other related DPW written procedures.

DPW's solution here is *not* to come into compliance with its own written procedures (or the Sunshine Ordinance) in order to give me the requested job descriptions and requirements, which information would be necessary for any DPW manager to evaluate their employees' job performance.

[This could explain the continued and unabated poor performance of some DPW employees, which I have documented.]

Instead, now that it has been caught out, DPW opts to *revise* its written procedures (at some unspecified time in future) to conform with how it *actually* conducts the Public's business, which I believe involves negligent and possibly illegal conduct of that business, as I believe I have amply demonstrated.

Charles Grisham

On Nov 19, 2014, at 18:34, Lee, Frank W <Frank.W.Lee@sfdpw.org> wrote:

Dear Mr. Grisham:

The Controller's Office has confirmed that the attached document, which is a Controller's Office document, is accurate. It contains the compensation information for the employees that you listed and for Fiscal Year 2014.
Due to privacy concerns, personal information, such as personal phone numbers and e-mail addresses, has been redacted from the documents that we are making available to you. We redacted this personal information, pursuant to Section 6254(c) and Section 6254(k) of the California Public Records Act and Article 1, Section 1 of the California Constitution.

The attached document responds to your request for compensation data.

If you have questions about the attached data or any further questions regarding employees’ compensation, the Controller’s Office suggests that you contact them directly to inquire because that agency holds employee compensation data for all employees and because they handle such requests.

As I mentioned in my previous email to you, Public Works-hiring duties are handled by the General Services Agency-Human Resources. Any records regarding hiring of these employees, including any job description and responsibilities and reviews, would be in that agency’s records. Please contact the General Services Agency-Human Resources because that agency handles such requests and keeps such records for all Public Works employees. You could also visit the Department of Human Resources website and follow the instructions that I provided for finding the job descriptions.

Our department no longer has a Personnel office. That office was severed from Public Works about eight years ago and is now part of the General Services Agency-Human Resources. As we have already established at the November 10, 2014 Sunshine Ordinance Task Force Meeting, the current Public Works’ Records Retention Policy or Index of Records is not accurate and does not reflect what our department currently does or possesses. Personnel records, if any, for all Public Works employees were transferred to the General Services Agency-Human Resources’ files.

Public Works will be revising and updating its Records Retention Policy/Index of Records.

Sincerely,
Frank W. Lee

Frank W. Lee
Executive Assistant to Director and Custodian of Records

director's Office  | San Francisco Public Works  | City and County of San Francisco
City Hall, Room 348 - 1 Dr. Carlton B. Goodlett Pl.  | San Francisco, CA 94102  | (415) 554-6993  | sfpublicworks.org  ·  twitter.com/sfpublicworks
Mr Lee:

My request was for the following records for certain named DPW staff members:

"All disclosable hiring and compensation data
"Job description (including job title, job requirements and job responsibilities)"

I understand that DPW has no duty to create a document for the Public, only to produce (deliver, give over) responsive public documents that already exist.

So far, the alleged lacunae in DPW record-keeping and -retention have been more telling that any records I have received from your department.

Again, I must check my understanding of your statements:

Is it your assertion that DPW itself has NO RECORDS of any of the elements of my subject request?

NO DPW-specific "job description" for the named DPW employees' positions?

NO EMAILS discussing "hiring" considerations or "compensation" matters for these staff?

NO EMAILS discussing job "description," "title," "requirements," or "responsibilities?"

NO record of DPW-position-specific "requirements" or "responsibilities" that were used to qualify the candidates before the offers of employment were made to them?

NO DPW-position-specific "job description (including job title, job requirements and job responsibilities)" against which to evaluate those employees' job performance when that performance is being reviewed by their direct supervisors?
That, to me, is not credible.

If that actually were the case, I would say there is a much more serious problem at DPW than an intractable custodian of records.

Charles Grisham

On Nov 18, 2014, at 5:20 PM, Lee, Frank W <Frank.W.Lee@sfdpw.org> wrote:

Dear Mr. Grisham:

Here is an update of your request. The Controller’s Office was unable to confirm the figures on the document that our department produced. They do not know how those figures were determined and do not know if those figures are accurate.

Although the Controller’s Office would prefer that requests for employee compensation be submitted to them, they understand that our department is trying to respond to your request. Therefore, they asked for an additional day to allow them to verify the figures to ensure their accuracy before releasing them to you.

I will contact you when the record is ready for you.

Sincerely,
Frank W. Lee

<image003.jpg>

Frank W. Lee
Executive Assistant to Director and Custodian of Records

Director’s Office | San Francisco Public Works | City and County of San Francisco
City Hall, Room 348 - 1 Dr. Carlton B. Goodlett Pl. | San Francisco, CA 94102 | (415) 554-6993 | sfpublicworks.org · twitter.com/sfpublicworks

From: Lee, Frank W
Sent: Monday, November 17, 2014 4:08 PM
To: 'CC Grisham'
Cc: Nurul Mohammed; Gordon, Rachel; SOTF (BOS); Records, Supervisor (CAT); Wiener, Scott; Administrator, City (ADM); Cityattorney (CAT); Board of Supervisors (BOS); Lee, Mayor (MYR); matierandross@sfchronicle.com; CON, Controller (CON)
Subject: RE: Your immediate records request #14-428

Dear Mr. Grisham:

It has come to my attention that the Controller’s Office has the employee compensation information...
that you seek and that our department could access the Controller’s Office database that contain this information. However, since this record is the Controller’s records, we need to consult the Controller’s Office about this record before releasing it to you.

The Controller’s Office has suggested that I should ask you to contact them directly with your request since the data that you want is their data; however, I informed them that I would rather first give you the responsive record that we found and then refer you to the Controller for any follow-up request or questions. Therefore, the Controller’s Office has agreed to review the document that I found and will give me their comments tomorrow. Afterwards, I will then let you know of our response.

Sincerely,
Frank W. Lee

From: CC Grisham
Sent: Friday, November 07, 2014 10:24 PM
To: Lee, Frank W
Cc: Charles Curtis Grisham Jr.; Nuru, Mohammed; Gordon, Rachel; SOTF (BOS); Records, Supervisor (CAT); Wiener, Scott; Administrator, City (ADM); Cityattorney (CAT); Board of Supervisors (BOS); Lee, Mayor (MYR); matterandross@schronicle.com; CON, Controller (CON)
Subject: Re: Your immediate records request #14-428

Mr. Lee:

Again, I find you less than helpful, to say the least.

As happened repeatedly with my previous requests: instead of actually producing records, you attempt to discharge your responsibility by telling me where I might be able to find them elsewhere.

I understand this is less work for you; however, I don't believe it fulfills your duty as DPW Custodian of Records.

Below you state: "This concludes your Immediate Disclosure Request."
Yet, you have produced zero (0) records responsive to my immediate records request #14-428.

I asked for the exact salaries of specific employees at DPW; following the instructions you gave me (so that I could fulfill my own records request) provided me with general information only.

For example, using your methodology and the "Job Classification Number" you provided, I searched for the specific job title and salary of DPW Director Mohammed Nuru.

The results of that search were, in part, as follows:


"Please refer to the PDF Compensation Manual for Ranges B and C.

"Compensation rate for this position is $173,368 to $221,286 annually (Range A)."

[There is a $47,918 difference between the top and bottom of "Range A" for Job Classification Number 0964.]

Since, in this example, I do not know if Director Nuru's salary is "Range A," I still don't know even the correct ballpark of Director Nuru's salary.

Needless to say, I am not wasting any more time with your misdirection to this search engine that provides only non-responsive general information.

You are unwilling to provide me with the employee-specific salary and job records that I requested and that are available in-house at DPW only.

I believe you are engaged in continued willful obstruction of my efforts to obtain the clearly-defined records I have requested, which are public information protected by the San Francisco Sunshine Ordinance.

Since time is of the essence, your failure in this immediate records request #14-428 is especially repugnant to me.

I will add this record to my burgeoning complaints against you at the Sunshine Ordinance Task Force and ask the Supervisor of Records Deputy City Attorney Jana Clark to open a new petition regarding this fresh instance of your unwillingness to comply with either the letter or the spirit of the San Francisco Sunshine Ordinance, effectively withholding public records from a member of the public requesting them.

Charles Grisham
On Nov 7, 2014, at 4:11 PM, Lee, Frank W <Frank.W.Lee@sfdpw.org> wrote:

Dear Mr. Grisham:

We are responding to your Immediate Disclosure Request within the time frame as specified in the San Francisco Sunshine Ordinance. That Ordinance requires departments to respond as soon as possible or by the end of the next business day following receipt of any Immediate Disclosure Requests. See San Francisco Administrative Code § 67.25(a). Your Request was assigned #14-428.

The information that you seek – compensation data and job descriptions – are publicly available on the Department of Human Resources website at www.sfdhr.org.

To find the information, click on the “Classification & Compensation” button on the left of the Department of Human Resources’ homepage. On the following page, find the link called “Classification & Compensation Database” and click on it. On the next page is a search engine. (A direct link to the search engine is here: http://www.sfdhr.org/index.aspx?page=32. To find the compensation data and job descriptions, input the job classification number into the “Class Number (?)” box and click on the “Find” button. A new window will then pop up with the pay rates or a link to the pay rates for that classification. In addition, one could also find the job description of the classification by clicking on the name or “description” of that job classification.

Below are the classification numbers for the employees that you listed.

Frank W. Lee – Job Classification Number 1824
Mohammed Nuru – 0964
Rachel Gordon – 0933
Edgar Lopez – 0954
Larry Stringer – 0954
Fuad S. Schweiss – 0954
Nathan Rodis – 1820
Alex Lapid – 1404
Maria Leiva – 2708
Cynthia Chono – 0932
Mindy Linetzky – 9251
Lynda Penwell - 1454

Public Works-hiring duties are handled by the General Services Agency-Human Resources. If you need any hiring data regarding the above employees, may I suggest that you contact General Services Agency to see if it might have the hiring data that you need. Please see here to learn more and to learn how to contact the General Services Agency: http://sfgsa.org/index.aspx?page=830.

This concludes your Immediate Disclosure Request.

Public Records Requests to the Department of Public Works could be sent directly to me via email at Frank.W.Lee@sfdpw.org or via Fax at (415) 522-7727. My direct telephone number is (415) 554-6993.
Sincerely,
Frank W. Lee

Frank W. Lee
Executive Assistant to Director and Custodian of Records

Director's Office | San Francisco Public Works | City and County of San Francisco
City Hall, Room 348 - 1 Dr. Carlton B. Goodlett Pl. | San Francisco, CA 94102 | (415) 554-6993 | sfpublicworks.org · twitter.com/sfpublicworks

From: CC Grisham
Sent: Thursday, November 06, 2014 6:18 AM
To: Lee, Frank W
Cc: Charles Curtis Grisham Jr.; Nuru, Mohammed; Gordon, Rachel; SOTF (BOS)
Subject: DPW: immediate records request from Charles Grisham

Mr. Lee:

I hereby request immediate production of the following public records, under the San Francisco Sunshine Ordinance:

All disclosable hiring and compensation data
Job description (including job title, job requirements and job responsibilities)

....for the following persons employed at the Department of Public Works:

Frank W. Lee (yourself)
Mohhamed Nuru
Rachel Gordon
Edgar Lopez
Larry Stringer
Fuad S. Sweiss
Nathan Rodis
Alex Lapid
Maria Leiva
Cynthia Chono
Mindy Linetzky
Lynda Penwell

I need this information to use in my presentation before the Sunshine Ordinance Task Force hearing scheduled for this coming Monday, November 10, 2014 at 5:30.
Please acknowledge and advise of your ability to comply with this request.

Charles Grisham

<Public Works employee compensation info.pdf>
October 9, 2014 re-opened petition to the supervisor of records.

Supervisor Records  
To: [Redacted]  
Sent by: Jana Clark  
12/02/2014 10:11 AM

From: Supervisor Records/CTYATT  
To: [Redacted]

Dear Mr. Grisham,

I understand that your 12/1/14 email regards your October 9, 2014 petition, the subject of which was your request for records regarding claims filed against the Department of Public Works. My response to that petition, which is attached below, included the following language:

"The Supervisor of Records does not issue a ruling when the Department in question has agreed to search for and provide responsive public records. If the petitioner (requester) does not then get the records, or believes a record has been improperly withheld or redacted, he or she can again petition the Supervisor of Records."

Based on our understanding that the Department had agreed to search for and provide responsive public records, we did not issue a ruling and closed the matter. If you have not received any responsive records or believe that a record has been improperly withheld or redacted, I invite you to reopen your petition, bearing in mind that under Section 67.21(d), 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. In contrast, the Supervisor of Records does not make determinations as to the adequacy of a City department's search for records.

Re_Fwd_Grisham - San Francisco Sunshine Ordinance Records Request.eml

My 12/1/14 email response regarded your separate petition, the subject of which was your request for records of specific compensation data that I understand was provided.

Best regards,

Jana Clark  
Deputy City Attorney  
(415) 554-4634

Office of San Francisco City Attorney Dennis J. Herrera  
Supervisor of Records: General Government Team
Sent via email
Duwayne A. Carr

Re: Supervisor of Records Determination Re: Request for Order Granting Officer Matthew P. Tonsing an Industrial Disability Retirement

Dear Mr. Carr:

This letter responds to your petition to the Supervisor of Records sent by email on November 14, 2014 at 11:50 a.m. seeking review of the San Francisco City Attorney’s Office’s response to your public records request for copies of former San Francisco Police Officer Matt Tonsing’s disability-related retirement application and the order granting or denying his application.

Based on our telephone conversation on Thursday, November 20, 2014, I understand that your petition to the Supervisor of Records is now limited to review of the City Attorney’s determination that the order granting or denying Officer Tonsing’s application for an Industrial Disability Retirement (IDR) is exempt from disclosure.

The City Attorney’s Office responded to your initial request by providing the minutes of the July 8, 2008 meeting of the Retirement Board of the San Francisco Employees’ Retirement System (SFERS). The consent calendar portion of the minutes reflects the hearing officer’s decision to grant Officer Tonsing’s IDR application effective July 24, 2007. City Attorney Press Secretary Matt Dorsey stated in the response, sent via email at 2:13 p.m. on November 13, 2014, that all other documents in the office’s custody regarding Officer Tonsing’s IDR matter are exempt from disclosure for the following reasons:

1. Attorney Client Privilege (see: Cal. Evidence Code §954 governing communications between attorneys and their clients; see also: Cal. Government Code §6276.04, cross-referencing in the Public Records Act the attorney-client and attorney work product privileges; S.F. Admin. Code §67.21(k), release of records under the San Francisco Sunshine Ordinance governed by the California Public Records Act in particulars not addressed by the Sunshine Ordinance; Gov’t Code §6254(k), providing an exemption for records protected from disclosure under federal or state law, including provisions of the Evidence Code relating to privilege).

2. Attorney Work Product (see: Code of Civil Pro. §2018.030, protecting from disclosure any writing that reflects an attorney’s impressions, conclusions, opinion, or legal research or theories; Cal. Government Code §6276.04, cross-referencing in the Public Records Act the attorney-client and attorney work product privileges; and S.F. Admin. Code §67.21(k) and Gov’t Code §6254(k), providing exemption for records protected from disclosure under federal or state law).
3. California Penal Code Section 832.7, which broadly protects the confidentiality of peace officer or custodial officer personnel records.

4. Other provisions protecting personal privacy when disclosing records in response to a public records request, including: the California Constitution, Article I, section 1; California Government Code Sections Section 6250; 6254(c) and 6254(k); and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Section 67.1(g)).

Mr. Dorsey included in his email contact information for Norm Nickens at SFERS and suggested that you may want to contact Mr. Nickens regarding your request.

You responded to Mr. Dorsey via email at 11:50 a.m. on November 14, 2014 and clarified that you seek only a copy of the administrative order granting the IDR. Mr. Dorsey responded at 4:31 p.m. on November 14, 2014 that the requested document is exempt from public disclosure based on California Penal Code Section 832.7, Article I, Section 1 of the California Constitution, Government Code Sections 6250, 6254(c), 6254(k) and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Section 67.1(g)).

In an email sent at 10:25 a.m. on November 18, 2014, you asked for “final reconsideration” of your request for the order and you attached a four-page document with points and authorities regarding your request.

The Supervisor of Records has reviewed all of the documents and correspondence regarding this request, and we have determined that the document you have requested is exempt from disclosure under the Public Records Act and the Sunshine Ordinance. Specifically, the document is not subject to disclosure based on the authorities cited in the City Attorney’s responses to you.

Accordingly, the Supervisor of Records has determined the City Attorney’s Office is not improperly withholding the requested document, and your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Katherine M. Mahoney
Deputy City Attorney
RE: Public Records Requests Re: Matt Tonsing (SFPD)

Matt Dorsey  to: Carr, Duwayne A. <DaCarr@seyfarth.com>  
11/14/2014 01:03 PM

History: This message has been forwarded.

Mr. Carr,

This email acknowledges receipt of your petition to the Supervisor of Records “for a determination whether the record requested is public,” in accordance with the administrative appeals provision of the San Francisco Sunshine Ordinance (S.F. Admin. Code, Sec. 67.21 (d). You will note that the Supervisor of Records’ email address is cc’d above.

You additionally appear to be making what appears to be a new Sunshine request “for a copy of the administrative decision granting Matthew P. Toning [sic] disability retirement.” I have been informed that the public record I provided you previously is the lone document in the custody of the City Attorney’s Office respecting this matter that is publicly disclosable. Out of an abundance of caution, however, I will also re-submit this as a new Sunshine request just in case there was a misunderstanding by the attorneys who reviewed it.

Best,
MATT DORSEY
Press Secretary

OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

(415) 554-4662 Direct
(415) 554-4700 Reception
(415) 554-4715 Facsimile
(415) 554-6770 TTY

Signup for S.F. City Attorney’s Office news and updates at http://sfcityattorney.org/signup

"Carr, Duwayne A." Matt, I write to request that you forward this e-mail to the Supervisor of Records as a petition for determination of why the records previously requested are exempt from disclosure. Further, I write to modify the Sunshine request I made previously. I now limit that request to a copy of the administrative decision granting Matthew P. Toning disability retirement. To be clear, I am not seeking any document protected by attorney-client privilege or the work-product doctrine. I only
want a copy of the administrative order.

Sincerely,

Duwayne A. Carr, Senior Fellow | Seyfarth Shaw LLP
560 Mission Street, Suite 3100, San Francisco, CA 94105
Direct Phone: (415) 544-1050
Main Fax: (415) 397-8549
dacarr@seyfarth.com | www.seyfarth.com

From: Matt.Dorsey@sfgov.org [mailto:Matt.Dorsey@sfgov.org]
Sent: Thursday, November 13, 2014 2:13 PM
To: Carr, Duwayne A.
Subject: Re: Public Records Requests Re: Matt Tonsing (SFPD)

Mr. Carr:

I write in response to the Public Records Request you made of this office for the following documents:
- The disability-related retirement application for Matt Tonsing, of -- or formerly of -- the San Francisco Police Department
- The order granting or denying his application

Attached, you will find the minutes of the July 8, 2008 meeting of the City and County of San Francisco's Retirement Board, which reflects on the consent calendar the decision of the hearing officer to grant the Industrial Disability Application for Matthew P. Tonsing, of the SFPD, effective July 24, 2007. Beyond this lone public record, documents in the custody of the City Attorney's Office respecting this matter are exempt from disclosure under multiple legal provisions, including:
- Attorney Client Privilege (see: Cal. Evidence Code §954 governing communications between attorneys and their clients; see also: Cal. Gov't Code §6276.04, cross-referencing in the Public Records Act the attorney-client and attorney work product privileges; S.F. Admin. Code §67.21(k), release of records under the San Francisco Sunshine Ordinance governed by the California Public Records Act in particulars not addressed by the Sunshine Ordinance; Gov't Code §6254(k), providing an exemption for records protected from disclosure under federal or state law, including provisions of the Evidence Code relating to privilege).
- Attorney Work Product (see: Code of Civil Pro. §2018.030, protecting from disclosure any writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories; Cal. Gov't Code §6276.04, cross-referencing in the Public Records Act the attorney-client and attorney work product privileges; and S.F. Admin. Code §67.21(k) and Gov't Code §6254(k), providing exemption for records protected from disclosure under federal or state law).
- California Penal Code Section 832.7, which broadly protects the confidentiality of peace officer or custodial officer personnel records.
- Other provisions protecting personal privacy when disclosing records in response to a public records request, including: the California Constitution, Article I, section 1; California Government Code Sections Section 6250; 6254(c) and 6254(k); and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Section 67.1(g)).

I am informed that the San Francisco Employees' Retirement System (SFERS) may be a custodian of other records responsive to your request, though the above exemptions from public disclosure are very likely to apply there as well. However, if only to fully document your due-diligence in seeking these records, you may wish to submit a separate request to SFERS. The point-of-contact for Sunshine requests at SFERS is Norm Nickens at norm.nickens@sfgov.org.

Best,
MATT DORSEY
Press Secretary

---------------------------------------------------
OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

(415) 554-4662 Direct
(415) 554-4700 Reception
(415) 554-4715 Facsimile
(415) 554-8770 TTY

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From: "Carr, Duwayne A." <DaCarr@seyfarth.com>
To: "matt.dorsey@sfgov.org" <matt.dorsey@sfgov.org>,
Date: 11/13/2014 10:29 AM
Subject: Public Records Requests Re: Matt Tonsing (SFPD)

Matt,
To memorialize the request I made by phone, I am writing to make a public records request for the following documents:
1. The disability-related retirement application for Matt Tonsing, of - or formerly of - the San Francisco Police Department
2. The order granting or denying his application

Thank you for responding to this request at your earliest convenience.

Sincerely,
Duwayne A. Carr, Senior Fellow | Seyfarth Shaw LLP
560 Mission Street, Suite 3100, San Francisco, CA 94105
Direct Phone: (415) 544-1050
Main Fax: (415) 397-8549
dacarr@seyfarth.com | www.seyfarth.com

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