MEMORANDUM

TO: Honorable Members  
Sunshine Ordinance Task Force

FROM: Gabriel Zitrin  
Deputy Director of Communications

DATE: September 4, 2014

RE: Fourteenth Annual Report of the Supervisor of Records  
October 1, 2012 to December 31, 2013

Under the Sunshine Ordinance, the City Attorney's Office functions as Supervisor of Records. (S.F. Admin Code §67.20(c).) This Office submits this annual report to the Sunshine Ordinance Task Force under Section 67.21(h) of the 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 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 of Records has decided.

This report covers petitions brought before the Supervisor of Records between October 1, 2012 and December 31, 2013 (the "reporting period"). This report includes petitions for a fifteen month (rather than twelve-month) period, which provides a transition to calendar-year reports going forward.

We include in the body of the report summary information about the petitions and their disposition. A copy of written determinations or responses is included in the Appendix. In identifying the custodian of records for the department whose records are at issue, the report generally gives the name of the employee who responded to the public records request.

Dates of Petitions and Determinations. The Education and Training Committee of the Task Force recently requested that the Supervisor of Records include in the annual report additional information, including the dates that petitions were filed and decided. This report includes petition and decision dates.

1 This report was prepared primarily by Deputy City Attorney Paula Jesson prior to her retirement.
Orders issued: No order from the Supervisor of Records was issued to any City department whose records were the subject of a petition. As noted herein, in some cases the department provided records to a petitioner after the filing of the petition, effectively mooting the petition and rendering unnecessary any potential order. In other cases, the Supervisor of Records denied the petition its merits. In still other cases, the Supervisor of Records dismissed a petition not on its merits but because it presented an issue that is beyond the jurisdiction of the Supervisor of Records.

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

Court Decisions Interpreting or Applying the San Francisco Sunshine Ordinance

At the request of the Task Force, the City Attorney’s Office also provides information on any court decision made during the reporting period in a case in which the City is a party if the decision interprets or applies the San Francisco Sunshine Ordinance. Two recent decisions have interpreted the following language from Section 67.24(b) of the Sunshine Ordinance:

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance: . . . (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or this Ordinance.

On October 25, 2013, the San Francisco Superior Court issued an order granting petitioner Allen Grossman’s Petition for Writ of Mandate seeking disclosure of records the San Francisco Ethics Commission had declined to disclose, notwithstanding the text of Section 67.24(b)(1)(iii), citing the attorney-client privilege and attorney work product doctrine, as they are set forth or reflected in Section 6254(k) of the California Government Code, Sections 952 and 954 of the California Evidence Code, and Section 2018.030 of the California Code of Procedure. Allen Grossman v. John St. Croix, et al, San Francisco Superior Court No. CPF-13-513221.

The California Court of appeal reversed the Superior Court decision in Grossman on July 28, 2014 (outside the current reporting period). The 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 waive the Charter-created attorney client privilege. John St. Croix, et al v. Superior Court of the City and County of San Francisco, 2014 WL 3704275. This decision affirms the authority of City agencies 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.
Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: September 4, 2014
PAGE: 3
RE: Fourteenth Annual Report of the Supervisor of Records
October 1, 2012 to December 31, 2013

DESCRIPTION OF PETITIONS AND THEIR DISPOSITION

1. Petitioner: Kevin Cheng
   Departments: City Planning; Building Inspection
   Records sought: Records relating to condominium conversion applications
   Custodians of Records: Frank Lee (City Planning);
                           Lulu Hwang (Building Inspection)
   Determination: Unresolved

   The petitioner appealed decisions of the Board of Appeals and Board of Supervisors in
   relation to his property and had requested records relating to condominium conversion
   applications for five properties in San Francisco from the Department of City Planning and the
   Department of Building Inspection. The petition alleged that the departments had additional
   responsive records that they had not provided and, further, that the Department of City Planning
   had withheld records based on the attorney-client privilege but should have disclosed certain
   information in those records (the names of those who sent and received the communications).
   Before the Supervisor of Records had finished reviewing the issues raised in the petition, the
   Board of Appeals and Board of Supervisors made decisions on petitioner’s appeals of decisions
   relating to his property, making the issues raised in his petition moot in relation to those appeals.

2. Petitioner: Ray Hartz, Jr.
   Department: Police Department
   Records sought: Complaint filed with the Police Department
   Custodian of Records: Maureen Conefrey
   Determination: Records provided – No determination needed
   Date of Petition: January 14, 2013
   Date of Decision: February 5, 2013

   A copy of the decision is included on pages 1-2 of the Appendix.

3. Petitioner: Larry Bush
   Department: San Francisco Housing Authority
   Records sought: Resumes of Housing Authority staff
   Custodian of

n:\govern\as2014\0100505\00953412.doc
Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: September 4, 2014

PAGE: 4

RE: Fourteenth Annual Report of the Supervisor of Records
October 1, 2012 to December 31, 2013

Records: Not applicable
Determination: Dismissed on jurisdictional grounds – San Francisco Housing Authority not subject to Sunshine Ordinance

Date of Petition: January 17, 2013
Date of Decision: January 18, 2013

A copy of the decision is included on pages 3-5 of the Appendix.

4. Petitioner: Michael Jungwirth
Department: Police Department
Records sought: Records relating to police involvement in a civil court case, complaints about petitioner to the police, and alleged surveillance of petitioner
Records: Sergeant Richard Goss
Determination: Denied – Records properly withheld
Date of Petition: February 7, 2013
Date of Decision: February 26, 2013

The petitioner made three public records requests to the Police Department, asking for records relating to the Department’s involvement in a civil lawsuit (and whether the police copied a record from the court file), any surveillance of petitioner, and complaints to the police regarding his conduct.

The Department informed the petitioner that any responsive records were exempt from disclosure under California Government Code section 6254(f) (local law enforcement agency may withhold records of open investigation).

The petitioner phoned the Supervisor of Records, asking for a review of the Department’s response. The Supervisor of Records determined that the Department properly withheld any records based on Government Code section 6254(f) and informed the petitioner of the determination in a telephone conversation. We did not prepare a written determination.

5. Petitioner: Ray Hartz, Jr.
Department: Public Library
Records sought: Records regarding the Library’s budget
Custodian of Records: Sue Blackman
TO: Honorable Members  
Sunshine Ordinance Task Force  
DATE: September 4, 2014  
PAGE: 5  
RE: Fourteenth Annual Report of the Supervisor of Records  
October 1, 2012 to December 31, 2013

Determination: Denied – Library correctly concluded the request not subject to “immediate disclosure” response deadline

Date of Petition: February 13, 2013
Date of Decision: February 15, 2013

A copy of the decision is included on pages 6-8 of the Appendix.

6. Petitioner: Michael Fondanova  
Department: Assessor-Recorder  
Records sought: Records relating to a church  
Custodian of Records: Francis Huygen
Determination: No determination needed – the Department provided responsive records; as to complaint of inadequate search, dismissed on jurisdictional grounds because it is outside the scope of review under Section 67.21(d)

Date of Petition: March 11, 2013
Date of Decision: Informed petitioner on March 21, 2013 that Supervisor of Records would not decide the petition until he received and reviewed additional records being sent by the Department. The date of the decision was April 5, 2013

A copy of the decision is included on pages 9-11 of the Appendix.

7. Petitioner: Jerry Cadagan and Committee to Save Lake Merced  
Department: Recreation and Park Department  
Records sought: Records relating to preparation for a San Francisco Public Utilities Commission workshop on issues concerning Lake Merced  
Custodian of Records: Olive Gong
Determination: Records provided – No determination needed
Date of Petition: March 18, 2013
Date of Decision: March 28, 2013
Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: September 4, 2014

PAGE: 6

RE: Fourteenth Annual Report of the Supervisor of Records
October 1, 2012 to December 31, 2013

8. Petitioner: Larry Bush
Department: Mayor’s Office
Records sought: Records of “call list” for soliciting contributions relating to America’s Cup
Custodian of Records: Frances Tsang
Determination: Dismissed on jurisdictional grounds – Complaint of inadequate search outside the scope of review under Section 67.21(d)
Date of Petition: March 22, 2013
Date of Decision: March 29, 2013

A copy of the decision is included on pages 12-13 of the Appendix.

Department: Public Library
Records sought: Records relating to the financial relationship between the Public Library and the Friends of the San Francisco Public Library
Custodian of Records: Maureen Singleton
Determination: Dismissed on jurisdictional grounds – Petition alleging failure to identify records under Section 67.21(c) of the Sunshine Ordinance and failure to conduct adequate search outside the scope of review under Section 67.21(d)
Date of Petition: June 8, 2013
Date of Decision: On June 12, 2013, requested additional information from petitioner, which he provided on June 13, 2013. The date of the decision was July 8, 2013

A copy of the decision is included on pages 14-22 of the Appendix.

10 & 11.

Petitioner: Lance Carnes
Department: Municipal Transportation Agency
Records sought: Reports relating to the Central Subway Project
Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: September 4, 2014
PAGE: 7
RE: Fourteenth Annual Report of the Supervisor of Records
October 1, 2012 to December 31, 2013

Custodian of Records: Caroline Celaya
Determination: Records at issue in first petition provided – No determination needed; second petition was not ripe because Department’s time to respond to the records request was still open when second petition was filed
Date of Petition: July 3 and 31, 2013
Date of Decision: July 8 and August 1, 2013

A copy of the decisions on the petitions are included on pages 23-28 of the Appendix.

12. Petitioner: Rajiv Bhatia
Department: Department of Public Health
Records sought: Records of outside funding for Department functions
Custodian of Records: Eileen Shields
Determination: Petition was not ripe because Department’s time to respond to the records request was still open when petition was filed
Date of Petition: July 12, 2013
Date of Decision: July 19, 2013

A copy of the decision is included on pages 29-33 of the Appendix.

13 & 14.
Petitioner: Gonzalo Javier Ferrer
Department: General Services Agency
Records sought: Records relating to a civil service employment examination
Custodian of Records: Tammy Wong
Determination: The Department properly withheld test questions, rating guidelines, test answers of other applicants, and records of qualifications of other applicants; the Department agreed to provide records identifying applicants who received promotive points and veteran’s credit points; as to records of qualifications of current-employee applicants, no
determination needed because the Department provided additional records

Date of Petitions: The date of the first petition was September 30, 2013. The dates of the second and third petitions were October 13 and 20, 2013.

Date of Decisions: The date of the decision on the first petition was October 2, 2013. The date of the decisions on the second and third petitions was December 11, 2013.

A copy of each decision is included on pages 34-47 of the Appendix.

15. Petitioner: Olimpia Tovar Arreola
Department: Human Services Agency
Records sought: Provision of Homeless Services
Custodian of Records: Gary Cantara
Determination: No determination needed – Department provided records
Date of Petition: October 8, 2013
Date of Decision: October 29, 2013

A copy of the decision is included on pages 48-52 of the Appendix.

16. Petitioner: Yianni D. Pantis/CoreLogic
Department: Assessor-Recorder
Records sought: Non-disclosed transfer tax amounts
Custodian of Records:
Determination: Records provided - No determination needed
Date of Petition: October 24, 2013
Date of Decision: November 6, 2013

A copy of the decision is included on page 53 of the Appendix.

17. Petitioner: Rick Denton
Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: September 4, 2014
PAGE: 9
RE: Fourteenth Annual Report of the Supervisor of Records
October 1, 2012 to December 31, 2013

Department: Public Utilities Commission
Records sought: Reports evaluating safety conditions of Broadway Tunnel
Custodian of Records: Suzanne Gautier
Determination: Records provided - No determination needed
Date of Petition: November 8, 2013
Date of Decision: December 2, 2013

A copy of the decision is included on page 54 of the Appendix.

18 & 19.
Petitioner: Mark Miller
Department: San Francisco Municipal Transportation Agency
Records sought: Residential Permit Parking Program cost recovery information
Custodian of Records: Caroline Celaya
Determination: First petition denied because no allegation that department was withholding records; as to second and third petitions, no determination needed – Department provided additional responsive records; as to complaint of inadequate search, it is outside the scope of review under Section 67.21(d)
Dates of Petition: November 20, 2013, December 19, 2013, and April 21, 2014
Dates of Decision: December 5, 2013 for the first petition; March 4, 2014 for the second petition, and June 11 & 16, 2014 for the third petition

Copies of the decisions for all the petitions are included on pages 55-63 of the Appendix

20. Petitioner: Paula Datesh
Department: Arts Commission
Records sought: Records regarding court case, Datesh v. Lazar
Custodian of Records: Howard Lazar
Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: September 4, 2014

PAGE: 10

RE: Fourteenth Annual Report of the Supervisor of Records
October 1, 2012 to December 31, 2013

Determination: No determination needed – Department provided responsive, non-privileged records

Date of Petition: December 5, 2013
Date of Decision: December 16, 2013

A copy of the decision is included on pages 64-66 of the Appendix.

21. Petitioner: Paula Datesh
Department: Arts Commission
Records sought: Street inspection records for November 27, 2013
Custodian of Records: Howard Lazar
Determination: No determination needed – Department informed petitioner it had no responsive records
Date of Petition: December 11, 2013
Date of Decision: December 20, 2013

A copy of the decision is included on pages 67-68 of the Appendix.
### APPENDIX

**FOURTEENTH ANNUAL REPORT OF THE SUPERVISOR OF RECORDS**

<table>
<thead>
<tr>
<th>Petition Number</th>
<th>Petitioner</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kevin Cheng</td>
<td>N/A</td>
</tr>
<tr>
<td>2</td>
<td>Ray Hartz, Jr.</td>
<td>1-2</td>
</tr>
<tr>
<td>3</td>
<td>Larry Bush</td>
<td>3-5</td>
</tr>
<tr>
<td>4</td>
<td>Michael Jungwirth</td>
<td>N/A</td>
</tr>
<tr>
<td>5</td>
<td>Ray Hartz, Jr.</td>
<td>6-8</td>
</tr>
<tr>
<td>6</td>
<td>Michael Fondanova</td>
<td>9-11</td>
</tr>
<tr>
<td>7</td>
<td>Jerry Cadagan and Committee to Save Lake Merced</td>
<td>N/A</td>
</tr>
<tr>
<td>8</td>
<td>Larry Bush</td>
<td>12-13</td>
</tr>
<tr>
<td>9</td>
<td>Ray Hartz, Jr.</td>
<td>14-22</td>
</tr>
<tr>
<td>10 &amp; 11</td>
<td>Lance Carnes</td>
<td>23-28</td>
</tr>
<tr>
<td>12</td>
<td>Rajiv Bhatia</td>
<td>29-33</td>
</tr>
<tr>
<td>13 &amp; 14</td>
<td>Gonzalo Javier Ferrer</td>
<td>34-47</td>
</tr>
<tr>
<td>15</td>
<td>Olimpia Tovar Arreola</td>
<td>48-52</td>
</tr>
<tr>
<td>16</td>
<td>Yianni D. Pantis/CoreLogic</td>
<td>53</td>
</tr>
<tr>
<td>17</td>
<td>Rick Denton</td>
<td>54</td>
</tr>
<tr>
<td>18 &amp; 19</td>
<td>Mark Miller</td>
<td>55-63</td>
</tr>
<tr>
<td>20</td>
<td>Paula Datesh</td>
<td>64-66</td>
</tr>
<tr>
<td>21</td>
<td>Paula Datesh</td>
<td>67-68</td>
</tr>
</tbody>
</table>
Sent via e-mail

Ray Hartz, Jr.

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

Dear Mr. Hartz:

On January 14, 2013, you filed a petition with the Supervisor of Records stating in part as follows:

It has been almost a year since I was interviewed by the San Francisco Police Department as a result of a Police complaint filed against me . . . . I would request the City Attorney’s assistance in determining exactly when I can review SFPD records about me, relating to this matter.

Your current petition asks the Supervisor of Records “to re-examine my petition for review of public records in this matter.”

Your petition refers to events from 2012, which we now briefly summarize. On February 8, 2012, you asked the Police Department (“Department”) for a copy of the police incident report regarding the complaint filed against you (Police Department Complaint #120098278) and, in addition, “copies of any and all documents produced in relation to this complaint . . . .”

The Department responded on February 10, 2012, declining to release the police report “at this time as the investigation is continuing and this is an open investigation,” citing Government Code Section 6254(f). The response also provided certain information about the matter, such as the date and time of incident, location of the incident and identity of the suspect.

On February 10, 2012, you sent a message to Inspector Miranda in which, among other things, you said that you “would appreciate a response to this email when the ‘investigation’ into this matter is complete.”

On March 14, 2012, you sent another request for a copy of the police incident report regarding the complaint filed against you (Police Department Complaint #120098278) and, in addition, “copies of any and all documents produced in relation to this complaint . . . .”

On March 16, 2012, the Department provided you with a redacted copy of the police incident report.

On May 15, 2012, the Department informed you that the investigation of the matter was “open but inactive,” and, in addition, that the Department had records of investigation relating to the complaint but declined to provide them on the ground that they were exempt under Government Code Section 6254(f). The May 15, 2012 message also stated that the Department was not required to disclose the investigative records under San Francisco Administrative Code Section 67.24(d). That Section requires disclosure of records of law enforcement investigation, with certain exceptions, if the District Attorney or court determines that a prosecution will not be
sought or if the statute of limitations for filing charges has expired. The Department informed you that neither of these circumstances applied.

Prior to the Department’s sending you the May 15, 2012 message, you filed a petition to the Supervisor of Records asking this office to review the Department’s responses to your February and March requests for a copy of the police incident report and “any and all documents produced in relation to this complaint...”. This office responded on May 21, 2012, noting that the Department had provided you with a redacted copy of the police incident report and had sent the May 15, 2012 message explaining its basis for withholding records of the investigation. In light of these responses from the Department, the Supervisor of Records found the matter moot.

Turning to your January 14, 2013 petition seeking a re-examination of your public records requests from last February and March, our office has discussed the petition with Department staff and they agreed to re-examine the investigative file. Lieutenant Teresa Gracie has informed us that as a result of that review, the Department has determined that one of the provisions of Section 67.24(d) applies. As noted above, Section 67.24(d) requires disclosure of investigative records, with certain exceptions, if the District Attorney or court determines that a prosecution will not be sought. The District Attorney has determined not to prosecute the complaint. Therefore, the provisions of Section 67.24(d) of the Sunshine Ordinance require the disclosure of records of investigation except to the extent that they are otherwise exempt under Section 67.24(d) or other applicable law.

Please contact Maureen Conefrey, Police Legal Office, at 553-9843 if you wish to arrange to review or receive of copies non-exempt records responsive to your request.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Paula Jesson
Deputy City Attorney

cc: Lieutenant Teresa Gracie
Maureen Conefrey
Dear Larry,

The San Francisco Housing Authority is not subject to the San Francisco Sunshine Ordinance. See this part of the City Attorney's Good Government (available on the City Attorney's website under Resources) (emphasis added):

Some public agencies that may be affiliated with but are legally distinct from the City are not subject to the Sunshine Ordinance. These agencies include the San Francisco Unified School District, San Francisco Community College District, San Francisco Redevelopment Agency, San Francisco County Transportation Authority, San Francisco Health Authority, San Francisco Housing Authority, San Francisco In Home Supportive Services Public Authority, San Francisco Local Agency Formation Commission, San Francisco Parking Authority, and the Treasure Island Development Authority. They are subject only to the Public Records Act, the Brown Act (or other similar open meeting law), and, in some cases, other State laws governing public meetings and public records specific to the agency. But, although the Sunshine Ordinance does not of its own force apply to them, some of these agencies have chosen to follow some or all of its requirements.

I understand that there may also be some circumstances where FOIA might apply.

So, the function of Supervisor of Records to review a response to a public records request by City departments does not apply.

I'm sorry I'm unable to provide any assistance, but let me know if you have any questions.

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

LARRY BUSH  thanks...glad to have your views on this. I think if...  01/17/2013 09:19:53 AM

From: LARRY BUSH
To: Paula.Jesson@sfgov.org,
Date: 01/17/2013 09:19 AM
Subject: Re: appeal

thanks...glad to have your views on this.
I think if forced to get an attorney and file, I would guess the odds favor winning release of the documents. Hard to believe they think it is a violation of privacy to release even the Ex Dir's
On Jan 17, 2013, at 9:08 AM, Paula.Jesson@sfgov.org wrote:

Got your message. SFHA appeal is new. Will need to consider if that makes a difference - as I understand it, it's a legally separate entity. In any event, will get back 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

---

From: LARRY BUSH  
To: paula.jesson@sfgov.org  
Date: 01/17/2013 07:36 AM  
Subject: appeal

Hi Paula --

I'm seeking information from SFHA on the resumés of their top staff but have been refused that information.

In the federal system, it is routine to provide both resumés and scoring on applications.

This is what I have by response from SFHA:

"Larry, pursuant to California Government Code Section 6254(c), I really don't think we are obligated to produce anything from the personnel files. If you can provide me with some legal authority that says otherwise, I will be happy to take a look at it. Thanks."

I would like to untangle this without resorting to hiring an attorney.

I also asked for the total amount paid to departing employees (redacting the names) over the past two years in excess of payment for accumulated sick, vacation or other earned compensation.

Perhaps I worded the request poorly, but in the federal system President Obama made it clear that in those cases the agency has a duty to assist the requestor by making suggestions on how to word the request to comply with disclosure rules.

Here is my request:
> 2. Any communications, memos, letters, and so forth regarding any payments to departing staff members in excess of earned vacation or sick leave for 2009, 2010, 2011 and 2012. This includes settlements that were part of a negotiation.

Here is their reply:
> The SFHA objects to production of documents responsive to request number 2 on the grounds that the request constitutes an unwarranted invasion of privacy under Article I of the California Constitution.

In the federal government, that information has to be made public annually as well as sent to Congress.

What advice and assistance can you provide?

Larry Bus
CitiReport
Sent via e-mail

Ray Hartz, Jr.

Re: Petition to Supervisor of Records – San Francisco Public Library

Dear Mr. Hartz:

You have asked this office to review the response by the San Francisco Public Library ("Library") to your public records request for the following records:

"... further details of the San Francisco Public Library approved budget. The section specifically of interest is indicated below: In particular, I request a complete breakdown and all supporting documentation of ACTUAL EXPENDITURES, including employee requests for reimbursement and records of reimbursement by the San Francisco Public Library to employees of the library, in the categories listed below, for the years 2008-2012 inclusive: 02100 Travel – budget; 02103 Air Travel – employees; 02105 Non-air Travel – employees; and 02401 Membership Fees."

You had marked the request "Immediate Disclosure Request," sometimes referred to in this letter as an IDR.

The Library reviewed the request and concluded that it was not properly characterized as an "Immediate Disclosure Request." Library Commission Secretary Sue Blackman responded in part to your request as follows:

Your request is not "simple, routine or otherwise readily answerable" and does not meet the criteria for "immediate disclosure" under the San Francisco Sunshine Ordinance. (S.F. Adm. Code Sec. 67.25(a).) Accordingly, it is a standard public records request not subject to the expedited time limit for response that applies to an immediate disclosure request.

We will respond to your request as quickly as possible and within the standard 10 day period.

In your petition, you explain why you believe that the Library’s response was improper, stating in part as follows:

The Library, as in this case, will sometimes choose to deny an IDR is an IDR. The SOTF has repeatedly taken the position that the person may send an IDR at their choice and it must be responded to as an IDR. That was the reason I sent the Order of Determination regarding Chief Suhr. It was the Legal Division attempting to "reclassify" an IDR as a standard request. Then they take the standard time frame to respond, only at the last day, they invoke a further extension. The result makes the response as long as 40 days to the original request. The kicker is the final response sometimes amounts to only a few pages.
Ms. Blackman's response tries to have it both ways. She invokes a ten day extension, which is appropriate if needed to respond to an IDR. She also puts in the boilerplate about it not being a type of inquiry for which an IDR is "appropriate." If I get the response at the end of the ten day extension to the IDR, then fine. But, if what I get is another extension, which has happened in the past, that's a problem.

In order to make a determination on your petition, we consider the requirements of the San Francisco Sunshine Ordinance governing requests marked "Immediate Disclosure Request." San Francisco Administrative Code Section 67.25(a) ("Section 67.25(a)") provides as follows:

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request. [Emphasis added.]

We understand you to contend that the Library was required to consider your request subject to Section 67.25(a) because you had complied with that Section’s requirement of including the words “Immediate Disclosure Request” in the appropriate place in your request. The Supervisor of Records has addressed this precise issue in an earlier determination, stating as follows:

For a request to be subject to the requirements of Section 67.25(a), it must contain the words "immediate disclosure request" at the top of the request and on the envelope, subject line, or cover sheet. Your requests contain the required wording.

But a request must also be "simple, routine and readily answerable" to qualify as an immediate disclosure request. Labeling a request as an immediate disclosure request does not automatically make it so. In creating a special category of requests subject to a faster response deadline, the drafters of the Sunshine Ordinance and the voters who adopted it were concerned that a requester would have to wait a full 10 days before receiving a record where a City department was in fact able to quickly locate and produce it. For example, a department might have a fee schedule for a service often used by members of the public. Such a record is known by many department staff and can easily be located and provided to a requester.

A review of the requests set forth in Nos. 2 through 5 of your petition, which are those not yet responded to, shows that they require substantial research to locate responsive documents. Request No. 2 seeks communications between Ms. Gong and any other employee of any City department regarding Sunshine laws and certain laws governing ethics, without any limit on time or further narrowing of the subject. Request No. 3 seeks not only a final record of a departmental form, but also initial versions and any amendments, and also seeks all records of approval of the form and records related to all postings of any version of the form. No. 4 seeks records of "every transaction" of "every permittee" within a certain category of summer athletic field permittees and any citizen of San Francisco regarding enrollment and/or payment for Summer 2009 camps/programs. No. 5 seeks any correspondence between five City employees and any
employee of three specified City departments regarding a new classification of certain fees. These are not "simple" or "routine" requests, and thus are not immediate disclosure requests.

Accordingly, the Department is not required to respond to Request Nos. 2 through 5 under the time limits applicable in Section 67.25(a) to immediate disclosure requests.


This interpretation of Section 67.25(a) is also in the City Attorney’s Good Government Guide, which states on page 84 (emphasis added):

The purpose of the immediate disclosure request is to expedite the City’s response to a simple, routine, or otherwise readily answerable request. For more extensive or demanding requests, the maximum deadlines for responding to a request apply. Admin. Code § 67.25(a). Thus, the requester’s designation of a request as an immediate disclosure request does not automatically make it so. Rather, a department may adhere to the time deadlines governing standard requests – an initial 10-day period for response, plus a possible extension of up to 14 additional days – if the extensive or demanding nature of the request would impose an undue burden on the department to respond immediately.

Section 67.25(a) is clear that its requirements only apply if the request contains the prescribed wording and, in addition, is “simple, routine or otherwise readily answerable.” City departments may properly determine whether the request meets both requirements.

With respect to the Library’s deciding that your request was not properly characterized as an “Immediate Disclosure Request,” we agree with its conclusion. The request sought information of employee reimbursement requests in four budget categories for a four year period. Ms. Blackman has informed us that the Library had not already compiled the information. Therefore, staff needed to conduct a search of Library files to locate responsive records (which we understand took considerable time) and had to review the records to make sure that none contained information exempt from disclosure under State and local law.

For these reasons, the Supervisor of Records denies your petition.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Paula Jesson
Deputy City Attorney
Dear Mr. Fondanova,

I have been provided with a copy of further communications from the Office of the Assessor-Recorder in response to your public records request. Those communications may have responded to the issues that you raised in your appeal to this Office in its capacity as Supervisor of Records.

With respect to your concern that the Office may not have provided all responsive correspondence with the State Board of Equalization, please note that the Supervisor of Records does not generally make a determination on that issue. As we noted in response to a prior petition (see Twelfth Annual Report of the Supervisor of Records to the Sunshine Ordinance Task Force, pp. 8-9):

The function of the Supervisor of Records is to determine whether a record that has been requested is public. This function is based on the assumption that a City department has located a record but is withholding it based on an exception 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 exception, not to rule on the adequacy of a department's search for records. For this reason, the Supervisor of Records does not address a complaint that a City department has not adequately searched for records in response to a public records request.

Moreover, in one of the further communications noted above, the Office of the Assessor-Recorder provided you with additional records of correspondence with the State Board of Equalization.

As you note below, the San Francisco Sunshine Ordinance Task Force is an additional administrative appeal procedure available to you if you remain concerned about the adequacy of the Office's search for responsive records.

Please let me know if you have any questions regarding 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

Michael Fondanova  
Ms. Jesson, I appreciate your response to my i...  
03/21/2013 06:06:59 PM

From: Michael Fondanova  
To: paula.jesson@sfgov.org,  
Date: 03/21/2013 06:06 PM  
Subject: Re: Complaint Against Assessor-Recorder

Ms. Jesson,

I appreciate your response to my inquiry. As you noted, the Assessor's Office has yet to complete their response to our request. We are still awaiting their correspondence with complainant(s) against our church.
In addition, we are not satisfied that they have provided all correspondence with the State Board of Equalization. I have notified the Sunshine Ordinance Task Force of our hope to obtain the complete correspondence between the State Board of Equalization and the Assessor-Recorder's office. Is there anything further we can or should do?

Thanks for your assistance in this matter. It is greatly appreciated.

Sincerely,

Michael Fondanova
Assistant to the Lead Pastor
Glad Tidings Church
1280 Webster St
San Francisco, CA 94115
(415) 346-1111 office
(415) 346-1108 fax
www.gtsf.org

On Mar 21, 2013, at 4:37 PM, paula.jesson@sfgov.org wrote:

Dear Mr. Fondanova,

I have been given a copy of a letter that the Assessor's Office sent you on March 14, 2013 regarding the issues that you raise in your petition below. In light of that letter, the Supervisor of Records will not make a determination on your petition at this time, pending the Assessor's Office providing you with its further response. Please feel free to let me know if you have any questions.

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
I am a pastor at Glad Tidings Church in San Francisco and Board Secretary of San Francisco Teen Challenge. I am writing you today to request your assistance in securing several documents that I believe the Assessor-Recorder’s Office has failed to produce. I have already filed a complaint with the Sunshine Ordinance Task Force, and at their request, I am contacting you.

The issues surrounding this complaint stretch back more than two and a half years, and I would be happy to provide more detail should you need it, but I thought it best if I just simply made you aware of the issues we are facing in the past several weeks.

On February 27, 2012, I requested that the complete files, emails, meeting notes, forms, filings, etc. for Glad Tidings Church and San Francisco Teen Challenge be made available to us. On March 4, 2012, the Assessor made us aware that they had located records responsive to our request, which we picked up on March 6, 2012. After reviewing the records provided, it is clear that that several records of note are absent.

Specifically, we have evidence that the Assessor-Recorder has been in correspondence with a complainant that has repeatedly contacted the Assessor. This is made evident in the files the Assessor provided, as they provided one email from the complainant that references earlier correspondence, and they themselves made us aware that this complainant was calling, emailing and otherwise corresponding with them on an almost daily basis.

In addition, the Assessor has made it clear that they have been in consistent correspondence with the State Board of Equalization and the State Labor Board. We would like to have copies of this and all other correspondence and/or communication with the State and State agencies that relate to Glad Tidings Church and San Francisco Teen Challenge and the assessment of our properties.

I would like your assistance in securing these and any other documents that the Assessor failed to produce to us on March 6.

Any attention you can give to this matter would be greatly appreciated.

Sincerely,

Michael Pondanova
Assistant to the Lead Pastor
Glad Tidings Church
1280 Webster St
San Francisco, CA 94115
(415) 346-1111 office
(415) 346-1108 fax
www.gtsf.org
March 29, 2013

Larry Bush

Re: Petition to Supervisor of Records – Mayor’s Office

Dear Mr. Bush:

You filed a petition with the Supervisor of Records regarding the response by the Mayor’s Office to your public records request, which asked for records “regarding the release of public documents for the mayor’s call list soliciting contributions to defray the costs of the America’s Cup events or for contributions to the nonprofit the mayor is establishing for special events.”

You clarified the request in a later message, which included the following information:

According to the news media reports quoting the mayor, his outreach includes breakfast meetings as well as telephone calls. For that reason, I would like this Immediate Disclosure Request to also include any breakfast meetings regarding the America’s Cup contributions. If there are calendar entries, email invitations and acceptances, or other relevant documents, any of those would be suitable in response.

In your petition, you ask "whether the material I received from the Mayor's office is fully responsive" to your request, noting specifically that:

I did not receive any documents with names (even redacted names) or notes. Instead I received several days of calendar entries with no specifics regarding the purpose of the meeting or who attended.

This Office is not making a determination on your petition based on the limited role of the Supervisor of Records under the San Francisco Sunshine Ordinance. As noted in a prior response to a petitioner:

The function of the Supervisor of Records is to determine whether a record that has been requested is public. This function is based on the assumption that a City department has located a record but is withholding it based on an exception 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 exception, not to rule on the adequacy of a department's search for records. For this reason, the Supervisor of Records does not address a complaint that a City department has not adequately searched for records in response to a public records request. For prior determinations to the same effect, see the Ninth and Eleventh Annual Reports of the Supervisor of Records to the Sunshine Ordinance Task Force at, respectively, pages 44 and 27.

(See, Twelfth Annual Report of the Supervisor of Records, pp. 8-9.)
However, our general practice when we receive a petition raising this issue is to discuss it with the department. We therefore discussed your concerns with Francis Tsang, Deputy Director of Communications for the Mayor's Office, who made further inquiries among staff to determine whether the Office had responsive records. Mr. Tsang then indicated to me that the Mayor's Office has no additional records responsive to your request.

Very truly yours,

DENNIS J. HERRERA
City Attorney

[Signature]

Paula Jesson
Deputy City Attorney
July 8, 2013

Sent via email
Ray Hartz, Jr.

Re: Petition to Supervisor of Records – San Francisco Public Library

Dear Mr. Hartz:

You filed a petition with the Supervisor of Records on June 8, 2013 ("current petition") relating to your public records requests to the San Francisco Public Library ("Library") for records relating to the Friends of the San Francisco Public Library ("Friends"). The current petition referred to an earlier one you filed almost a year ago, on May 17, 2012, which we describe below.

Your May 17, 2012 petition to the Supervisor of Records ("earlier petition")

The earlier petition related to your request under San Francisco Administrative Code Section 67.21(c) ("Section 67.21(c)") for assistance from the Library in identifying records regarding the expenditure of funds from the Friends for the Library. The Supervisor of Records denied the 2012 petition because the jurisdiction of the Supervisor of Records does not extend to determining whether a City department has violated Section 67.21(c) by failing to assist a member of the public in identifying records maintained by the department, and because the Library had demonstrated its willingness to work with you to identify and provide records relating to Friends’ expenditures.

Current allegations

In your current petition, you quote the following language from our letter denying the earlier petition:

We address two additional issues. First, you complain in your petition that Library staff made comments at a Library Commission meeting that "lead [you] to believe additional documents have been withheld. These documents are records relating to a ‘supposed’ contribution by the [Friends] to the [Branch Library Improvement Program] in an amount in excess of $5.17 million. [Certain Library staff] stated that requests were provided to the Friends for various ‘in kind’ material donations. These ‘requests’ would be public records . . . and would be responsive to [your] request.” We understand from Library staff that the Library is in the process of producing these request records to you.

Your current petition alleges that “a year after your finding and two years after the initial request, the San Francisco Public Library has continued to withhold documents covered under the public records request of July 2011.” We understand the “initial request” in this statement to mean your July 21, 2011 letter to City Librarian Luis Herrera asking for assistance in identifying
records regarding the financial relationship between the Library and the Friends, specifically the amounts raised for fiscal years 2008-2009 and 2009-2010.

After reviewing your current petition, I sent you a message on June 12, 2013, asking you to “please clarify what records you have requested from the Library that you believe the Library is improperly withholding.” You provided a lengthy response, which we address below.

The Role of the Supervisor of Records is Limited

Before reviewing the additional information you sent on June 12, 2013, we remind you that the role of the Supervisor of Records is limited. The Sunshine Ordinance provisions creating the function of Supervisor of Records assume that the petitioner has submitted a public records request to the department, that the department has located a responsive record, and that the department is declining to produce it. If the department declines to produce the requested record by citing an exemption provided in State and local law, the role of the Supervisor of Records is to determine “whether the record requested is public,” that is — whether the department is properly relying on a permissable exemption. If a petitioner does not identify the document or documents that the department is failing to provide, the Supervisor of Records is unable to undertake a review to determine whether it is public.

This limited role does not extend to determining whether a department has conducted an adequate search for records. Nonetheless, when a petitioner makes this allegation, the Supervisor of Records discusses the petitioner’s concerns with the department. By discussing the allegation with the department, we may be able to correct any misunderstanding between the requester and the department, or bring to light any oversight on the department’s part in responding to a request.

Documents Allegedly Withheld

We turn now to your descriptions of the documents that you allege the Library is withholding in response to your public records requests. We have placed these descriptions in italics.

1. “Documents covered by Sunshine Ordinance Task Force (SOTF) Order of Determination #11083 and subsequent referral to the Board of Supervisors (BOS) include documents required under an agreement entitled PUBLIC-PRIVATE SUPPORT AND COOPERATION FRAMEWORK FOR BRANCH LIBRARY IMPROVEMENT PROGRAM AND NEIGHBORHOOD LIBRARY CAMPAIGN (‘Framework’). Under subsection 3.6 City ‘Right to Audit is included the following: ‘Friends will provide the Library or its designee with quarterly reports its cash, pledges and other sources of funding.’ These are specific documents the City Librarian, the San Francisco Public Library (SFPL), and/or the San Francisco Library Commission (SFLC) should have and these have been withheld.”

In-kind contributions of $5,170,760 for the Branch Library Improvement Program (“BLIP”) for Furniture, Fixtures and Equipment (FF&E)

We consider here documents “covered by” an SOTF Order #11083 and the “subsequent referral” to the Board of Supervisors.

The SOTF issued Order #11083 after a December 14, 2011 hearing, when it found that the Library had violated (1) San Francisco Administrative Code Section 67.21(a) by failing to direct you “to the proper office or staff person to respond to [your] request to identify documents related to Library expenditures of Friends’ funds . . . .” and (2) San Francisco Administrative Code Section 67.26 by failing “to keep withholding to a minimum by not including documents related to Library expenditures of Friends’ funds in the documents identified.” The Order
Letter to Ray Hartz, Jr.
Page 3
July 8, 2013

directed the Library to “. . . investigate the existence of the requested documents related to
audited Library expenditures of Friends’ funds . . .” and identify those documents within five
business days of the Order.

SOTF Order #11083 directed the Library to investigate the existence of document; it did
not order the Library to produce a specific document or documents.

As to the “subsequent referral” to the Board of Supervisors, the SOTF made that referral
at a second hearing on November 7, 2012. At that hearing, it found the Library in violation of
San Francisco Administrative Code Sections 67.25(a) and 67.21(c) “based on failure to provide
documents regarding the $5.1 million,” and directed that the matter be referred to the Board of
Supervisors. As we will see, the $5.1 million refers to $5,170,976 in in-kind contributions from
the Friends to the Library for the BLIP Branch Library Improvement Program for Furniture,
Fixtures and Equipment (BLIP FF&E).

We have reviewed the minutes of the November 7, 2012 SOTF hearing. It is not clear
from the minutes which public records request or requests that the SOTF was considering or
what records relating to the $5.1 million for the BLIP FF&E the SOTF determined that the
Library had but was withholding. Therefore, your referring to the “documents covered” by the
“subsequent referral” to the Board of Supervisors fails to identify a particular record or records
that you believe that the Library is withholding.

We have reviewed with Library staff the history of the Library’s response to your request
for records relating to the $5.1 million for the BLIP FF&E. As you know, the Library had
provided many records to you before the SOTF November 7, 2012 hearing regarding this
program. You and Library staff discussed the records at a March 29, 2012 meeting attended by
City Librarian Herrera, Chief Financial Officer Maureen Singleton, and Chief of
Communications, Programs and Partnerships Toni Cordova. Jill Bourne described the substance
of the meeting in a May 21, 2012 email to you. The email says that “[a]s a result of this meeting,
the Library understood your interest to be in financial records for [BLIP FF&E] items funded by
the [Friends] for FY 08-09 and FY 09-10, not in the annual public programs funded by the
[Friends].” The email describes the contribution as $5,170,976, representing purchases made
directly by the Friends and considered “an in-kind gift.”

Following your March 29, 2012 meeting with the Library, it provided you with many
records, including lists of furnishings and equipment that the Library gave the Friends to request
FF&E for the branch libraries. The Library also provided you with documents known as “bid
sheets” that the Library obtained from the Department of Public Works team working on the
BLIP, which list specific products that the Library requested the Friends to purchase.

Thus, the Library has provided many records to you regarding the $5.1 in-kind
contributions. SOTF’s Order # 11083 and the subsequent hearing referring the issue to the
Board of Supervisors do not identify any document or documents being withheld by the Library.

Moreover, we have discussed this matter with City Librarian Luis Herrera, who has
informed us that Library staff made a good faith reasonable effort to understand your requests
and to locate and provide you with all responsive records relating to the $5.1 million for the
BLIP FF&E.

Under these circumstances, we find no basis for further action or consideration by the
Supervisor of Records and this concludes our inquiry regarding this matter.

Public-Private Support and Cooperation Framework for Branch Library Improvement Program
and Neighborhood Library Campaign, or “Framework.”
Your allegation refers to the Public-Private Support and Cooperation Framework for Branch Library Improvement Program and Neighborhood Library Campaign, or “Framework.” The Library and the Friends signed the Framework in 2005. The Framework states that the Friends will have “the primary responsibility to support and fund furniture, fixtures and equipment and other costs that are ineligible or unavailable and are necessary” to complete the BLIP “up to a value of $16 million . . . .”

You allege that the Library has not provided all reports required under the Framework, specifically under Section 3.6. That section provides that the Friends will provide the Library with “quarterly reports of its cash, pledges and other sources of funding” and shall annually “deliver to the City’s Controller and the Library’s City Librarian an independently prepared audit of all Friends’ operations.”

City Librarian Herrera has informed us that the Library did not provide you with the Section 3.6 quarterly reports because it has not received these reports from the Friends. The Library has also informed us that it provided you with audited financial statements of the Friends prepared by an independent auditor for 2008-2009 and 2009-2010, the years for which you asked for these records. If you wish the Friends’ audited financial statements for later fiscal years, the Library informs us that they can provide them to you.

Accordingly, the Supervisor of Records finds no basis for concluding that the Library has additional records under Section 3.6 that it is withholding from you.

2. “You have mentioned some of the documents previously provided by the SFPL [Public Library], SFLC [Library Commission], etc., but, many of those documents were provided missing ‘transmittal documents.’ Also, communications between any of the parties (The Friends, SFPL, SFLC, etc.) which request and/or respond to requests for such information are public records which have been withheld. Any communications between any of the parties which discuss the disclosure of or withholding of certain financial information requested in and covered by the initial public records requests are public records and have been withheld. These are specific documents the City Librarian, the San Francisco Public Library (SFPL), and/or the San Francisco Library Commission (SFLC) should have and have withheld.”

Missing transmittal documents

With respect to the first sentence, it is not clear what “previously provided” documents you refer to, or what you mean by “transmittal documents.” In reviewing your public records request relating to the Friends, we did not see any reference to this issue. Please clarify this part of your petition if you want the Supervisor of Records to examine it more closely.

Communications discussing the disclosure of or withholding of certain financial information

In our review of your public records requests for records relating to the Friends, we did not see a request for this category of records. The role of the Supervisor of Records is to review a department’s response to a public records request. We therefore need to understand what category of records a petitioner has requested so that we can evaluate the department’s response to the request.

The Library has provided us with an October 5, 2011 request from you “for any and all documents, in whatever form, relating to the receipt, processing, investigation, consideration and disposition of any matter relating to [you] . . . pertaining to any matter whatsoever . . . .” The Library responded on October 12, 2011, informing you that staff had located 62 documents and that copies were being or would be provided to you. It is not clear if this is the request for which you seek review. If it is not and there is another public records request for which you seek review, please provide a copy or otherwise identify it.
3. "At numerous public meetings and in a multitude of public documents various "contributions" of The Friends have been listed and the reference is 'Friends of SFPL reported expenditures are in-kind contributions of BLIP FF&E.' Similar references are made in, for example, both CURRENT BUDGET REPORT-2000 Branch Library Improvement Bond Program and in 2000 Branch Library Improvement Bond Quarterly Reports, both issued numerous times over many years. These specific documents reporting such spending, along with transmittal documents, the City Librarian, the SFPL and the SFLC should have and have withheld."

This part of your petition does not identify any records or records that you believe the Friends are withholding. And it does not provide a copy of or identify any public records request for which you seek review. It appears to relate to the issues already addressed in Item No. 1 above, the $5.1 million in-kind contributions for the BLIP FF&E above. Accordingly, the Supervisor of Records denies this part of your petition.

4. "Between 2008 and 2013 the City Librarian controlled $181,000 under the category "City Librarians Discretionary Fund," from The Friends grants to the SFPL approved by the Board of Supervisors. Additional sums were provided in prior years and parceled out to members of the Library staff and members of the Library Commission, including the City Librarian. All specific documents, reporting and/or controlling these fund the City Librarian, the SFPL, and/or the SFLC should have and have been withheld. This would include, but is not limited to:

   o (a) documents communicating The Friends requested spending on behalf of, or to, or in reimbursement of, etc. monies paid to outside entities, SFPL employees, SFLC members under the "City Librarians Discretionary Fund;"

   o (b) documents reporting to any appropriate City department and/or State agency the receipt of such "gifts," as required under the memorandum entitled "Reporting Gifts to City Departments," dated November 17, 2008, issued by the City Attorneys Office to: CITY DEPARTMENT HEADS, and any additional applicable reporting requirements. Under that memorandum, most of the "gifts" can not be considered gifts to the City, as the are gifts of a kind to benefit particular employees and are not in the "control" of the Department and must be reported as gifts worth more than $100.

   o (c) documents reporting such "gifts" to any appropriate taxing authority, including but not limited to the California Franchise Tax Board (FTB) and/or the United States Internal Revenue Service (IRS). This would include any discussion between any of the entities (The Friends, SFPL, SFLC, etc.) regarding the potential tax liability for individuals accepting these "gifts" and any subsequent guidance provided to City employees accepting such gifts.

   o (d) documents covering the actual payment of any monies to City employees for such gifts, either as direct payments in reimbursement or indirect payments on their behalf."

(a) The "Friends requested spending" relating to the City Librarian’s Discretionary Fund

The Friends contribute to many library programs, not just the BLIP. The Library has provided us with a document called "Friends Grant Funding Requests" for 2012-13. It shows four main categories: Traditionally Supported Programs, Grants to Branches & Innovation Grants, Donor Designated Funds, and Friends Initiatives. Some have sub-categories. For each category and sub-category, the form shows the amount of the Friends’ contribution. The category called Traditionally Supported Programs has five subcategories, one entitled City
Librarian Fund; listed under it is the City Librarian’s Discretionary Fund and External Relations Consultant. We understand that descriptions of the categories for 2012-2013 differ in some cases from the descriptions provided on this form for prior fiscal years. We also understand that Library staff and the Friends in fact consider Grants to the Branches & Innovation Grants and Friends Initiatives as “Traditionally Supported Programs,” although the form lists them separately.

You sent a public records request to the Library on December 15, 2011, asking for the following records relating to the City Librarian’s Discretionary Fund:

“[D]ocuments regarding the financial relationship of the [Library] with the [Friends]. Specifically the amounts listed in previously provided documents as grants from the [Friends] during the fiscal years 2008 to 2009 under the headings “City Library Fund – City Librarians Discretionary Fund for $36,000 and External Relations Consultant for $30,000” and 2009 to 2010 under the headings “City Librarian Fund – City Librarians Discretionary Fund for $35,000 and External Relations Consultant for $30,000. The requested information should be from the audited City Library budget records which the City Librarian has provided to the Comptroller’s Office. It should include funds received by the Library from these grants and include all information as to the specific expenditures for which these monies were used.”

The Library has provided us with copies of several email messages transmitting records in response to this request, which is for the two categories listed under the City Librarian’s Discretionary Fund for fiscal years 2008-2009 and 2009-2010. City Librarian Herrera has informed us that the Library has provided you with records responsive to this request.

Your petition asks the Supervisor of Records to review the Library’s provision of records from the City Librarian’s Discretionary Fund for 2008 and 2013, which is beyond the two fiscal years just discussed. Our review of your public records requests shows only one other request related to the Friends Grant Funding Request. It is a May 14, 2013 email asking for the Friends Grant Funding Requests for 2010-2011, 2011-2012 and 2012-2013. The Library responded on May 15, 2013.

As noted above, the City Librarian has informed us that staff have provided all responsive records for fiscal years relating to the City Librarian’s Discretionary Fund for 2008-2009 and 2009-2010 and have provided records in response to your May 14, 2013 request. We are aware of no other public records request from you relating to this category of records. Accordingly, as to this issue, we find no basis for concluding that the department has responsive records that it is improperly withholding.

In the course of the Library’s discussing with us your current petition to the Supervisor of Records and explaining what records it has relating to the City Librarians’ Discretionary Fund, staff described records called “Check Request Forms,” informing us that it has these forms for the most recent fiscal year. The Supervisor of Records has asked the City Librarian if the Library had Check Request Forms for 2008-2009 and 2009-2010 for the City Librarian’s Discretionary Fund. He has informed the Supervisor of Records that it does not currently have Check Request Forms for that time period and did not have them when you submitted your December 15, 2011 public records request. The Library has informed you about the Check Request Forms, that they are available for the most recent fiscal year, that it is possible that the Friends have records from 2008-2009 and 2009-2010, and that if you wish to review those records staff will ask the Friends to search their files to ascertain what they have. Therefore, please notify Ms. Singleton if you wish to review the Check Request Forms for the most recent fiscal year and if you wish the Library and the Friends to investigate these records for 2008-2009 and 2009-2010.
(b) Documents reporting the receipt from City Librarians Discretionary Fund as gifts to any appropriate City department and/or State agency

You sent a public records request to the Library on February 22, 2012, asking for "a listing of any and all reports and the frequency of reporting, that you are required to file as City Librarian that would be for internal use and/or sent to any outside City agency, State agency, and/or Federal agency, that would include ANY details relating to financial gifts, either in cash or in kind, actually received by the [Library]" from the Friends. The Library responded on February 23, 2012. The response described records that had been provided to you in response to other requests relating to Friends’ contributions, but did not provide responsive records or expressly state that it had no responsive records.

The City Librarian has informed the Supervisor of Records that although the Library did not expressly say this in their response, the Library had no responsive records.

Your petition asks the Supervisor of Records to review the Library’s provision of records relating to this issue for the time period 2008 to 2013. But the only public records request that we have seen on this issue is your February 22, 2012 request. As just noted, the Library informs us that they had no responsive records when they responded to this request. Accordingly, as to this issue, we find no basis for concluding that the department has responsive records that it is improperly withholding.

(c) Documents reporting "gifts" from the City Librarians Discretionary Fund to any appropriate taxing authority, discussions regarding the potential tax liability for individuals accepting these "gifts," and subsequent guidance provided to City employees

The City Librarian has informed us that the Library has not received a public records request from you for this category of records. If that is incorrect, please provide a copy to the Library or otherwise identify it, so that the Library may respond.

(d) Documents covering the actual payment of any monies to City employees for such gifts, either as direct payments in reimbursement or indirect payments on their behalf

We have discussed in subsection (a) above the Library’s response to records relating to contributions from the Friends to the City Librarian’s Discretionary Fund for fiscal years 2008-2009 and 2009-2010. Based on our discussions with Library staff, the Supervisor of Records understands the records at issue in this subsection (d) to be the same as those discussed in subsection (a) above.

Your petition refers to records from 2008 to 2013. But, as already discussed, the role of the Supervisor of Records is to review a department’s response to a public records request. We are not aware of any request other than that described in subsection (a). If in fact there is another public records request that you wish the Supervisor of Records to review, please provide a copy or otherwise identify it.

5. "Besides the specific documentation above, much money was disbursed to the individual SFPL branches for various uses, none of which has been disclosed. Were the individual branches given $500 or $1000 in cash and allowed to expend that money without oversight from SFPL management? Such 'gifts' from The Friends have been passed out each and every year without apparently any documentation of the expenditures. In fact, looking at the overall interactions between The Friends, the SFPL and the SFLC regarding monies raised/expended by The Friends, it would not be unreasonable to consider much of the spending as one, big, giant 'slush fund,' with many City employees as the 'beneficiaries!'"
It is not clear in this part of your petition if you are referring to a public records request not already discussed in this letter. In reviewing your requests regarding Friends’ contributions, we note that they focus on the BLIP FF&E and the City Librarian’s Discretionary Fund. In this part of your petition, you refer to money “disbursed to the individual SFPL branches for various uses, none of which has been disclosed.” As discussed above, the Friends Grant Funding Request document shows many categories of Library activities that the Friends support. The City Librarian has informed us that the Library has not received a public records request from you for records relating to contributions from the Friends for categories of Library activities other than the BLIP FF&E and the City Librarian’s Discretionary Fund. If that is incorrect, please provide a copy to the Library or otherwise identify it, so that the Library may respond.

Concluding Remarks

For the reasons we have discussed, summarized below, the Supervisor of Records denies your petition.

Records of the BLIP FF&E: The Library has informed us that Library staff have made a good faith reasonable effort to understand your requests and to locate and provide you with all responsive records relating to the $5.1 million for the BLIP FF&E.

Quarterly reports and audited financial statements from the Friends under the Framework: The Library has informed us that it did not provide you with the Section 3.6 quarterly reports because it has not received these reports from the Friends; that it provided you with audited financial statements of the Friends prepared by an independent auditor for 2008-2009 and 2009-2010, the years for which you asked for these records; and that the Library can provide you with audited financial statements for later years.

Records relating to the City Librarian’s Discretionary Fund for fiscal years 2008 - 2009 and 2009 – 2010: The Library has informed us that it has provided you with responsive records for those fiscal years. With respect to the Check Request Forms, the Library has informed us that it does not have the Forms for those years but can, if you wish, ask the Friends to search its records to ascertain if the Friends might have them. The Library has also informed us that it has provided you with records responsive to your request for the Friends Grant Funding Request for 2010-2011, 2011-2012 and 2012-2013.

Reports to City, State or Federal agencies relating to gifts from the Friends: The Library informed the Supervisor of Records that although the Library did not expressly say this when responding to your public records request, the Library had no responsive records.

Your petition also describes categories of records for which the Library has informed us that is has not received a public records request from you. As to these, the Supervisor of Records asks that you provide a copy of the requests to the Library or identify them, so that the Library could respond to them.

Your petition alleges that you received documents from the Library that were missing “transmittal documents.” Because it is not clear what documents you mean, the Supervisor of Records asks that you clarify this part of your petition.
Finally, the City Librarian has informed us that the Library is willing to meet with you to clarify what records it has regarding the Friends’ contributions. If you are interested in doing so, please call Maureen Singleton to schedule the meeting.

Very truly yours,

DENNIS J. HERRERA
City Attorney

[Signature]

Paula Jesson
Deputy City Attorney
Thank you, Mr. Carmes.

Because you have just submitted the request to the SFMTA today (8/1/13) and because the SFMTA is still within the response period, your petition is not yet timely and is thus withdrawn. But after the department responds, if you wish to submit a petition to determine whether a record that has been requested is public, you may do so by writing to the Supervisor of Records and including both your request and the department's response.

Thank you.

Sincerely,

Adine Varah
Deputy City Attorney (Acting Supervisor of Records)
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

Dear Ms Varah, I submitted a new request to SF... 08/01/2013 11:34:33 AM

From: Lance Carmes
To: Deputy City Attorney Adine Varah <Adine.Varah@sfgov.org>,
Cc: Deputy City Attorney Paula Jesson <Paula.Jesson@sfgov.org>, Paul.Zarefsky@sfgov.org
Date: 08/01/2013 11:34 AM
Subject: Re: Suppressed documents under SFMTA Sunshine requests

Dear Ms Varah,

I submitted a new request to SFMTA Sunshine today and copied it to you. It is also copied below.

Thank you for your prompt attention to this matter,
Best regards,
Lance Carmes

To: SFMTA Sunshine Requests <sfmtasunshinerequests@sfmta.com>
cc: "Andrea S. Ausberry" <soff@sfgov.org>,
Deputy City Attorney Adine Varah <adine.varah@sfgov.org>,
Central Subway Deputy Program Manager Albert Hoe <albert.hoe@sfmta.com>

On Thu, Aug 1, 2013 at 10:52 AM, Lance Carmes <lance.carmes@sfgov.org> wrote:
For the Central Subway request below, please acknowledge receipt and assign a request ID#.

There are two documents we would like released immediately, We would like them released singly as they are located:
1. A letter regarding demolition at the Pagoda site from John Funghi of SFMTA to MH Construction (the demolition contractor). Work began at the site Tuesday, July 30, and we believe the letter is dated sometime in July 2013, and was apparently delivered to MH Construction on or after July 29, 2013.

2. A permit for the Pagoda demolition, that we believe was issued by SFMTA. It is possible this permit is referred to in the letter from John Funghi of SFMTA mentioned above.

Both of these documents also fall under the Sunshine Request below dated June 20, 2013 which was not fulfilled.

We would appreciate your prompt assistance in releasing these public records.

Less urgent but also required is the release of all other documents requested through Sunshine requests listed below.

Thank you,
Lance Carnes

Requests to "SFMTA Sunshine Requests" <sfmtasunshinerequests@sfmta.com>

Request date, ID#, Description

06-03, No ID #, Updated costs from Pagoda dig and other contractors

06-03, 2013-237, Working plans for Pagoda demolition

06-15, No ID #, For the Central Subway's Pagoda Theater Project, please provide:
    Project schedules;
    all docs & commo related to moving the extraction shaft from Columbus to Pagoda;
    all docs & commo relating to design elements excluded in March 1, 2013 cost estimate.

06-20, 2013-254, For the Central Subway and Pagoda Theater Project, please provide:
    2. Emails and communications between SFMTA and "MH Construction".
    3. Demolition Permit Application, comments by DBI and Demolition Permit.
    4. Soils Boring Test Report and Geotechnical Report for Pagoda Theater by "Parsons Brinckerhoff" and/or other engineers/consultants.
    5. Fee Proposals and Cost Estimates for the Pagoda Theater Project and tunnel extension from Columbus Avenue---
        by "Barnard Impregilo Healy JV", "ARUP", "Parsons Brinckerhoff" and/or other engineers/consultants.

06-25, 2013-263,
    Demolition Contract for MH Construction.

07-01, 2013-272, All plans, contracts, and cost for the Pagoda option demolition, shaft excavation, and boring machine extraction.

07-05, No ID #, May and June 2013, draft and/or final Fee Proposals and Cost Estimates for the Pagoda Project
07-23, No ID#, Pagoda Demolition Permit --- Copy of permit, all approvals, and description of permit procedures

On Thu, Aug 1, 2013 at 11:21 AM, <Adine.Varah@sfgov.org> wrote:

Dear Mr. Carnes,

Thank you for your message of July 31, 2013 regarding your June 20, 2013 request for the following two records from SFMTA:

"1. A letter from John Funghi of SFMTA to MH Construction (the demolition contractor) authorizing work at the Pagoda site without a permit. Work began at the site Tuesday, July 30, and though we have asked workmen at the site for the letter or permit, we have not been able to secure a copy. We believe the letter is dated sometime in July 2013, and was apparently delivered to MH Construction on or after July 29, 2013.

2. A permit for the Pagoda demolition, that we believe was issued by SFMTA. It is possible this permit is referred to in the letter from John Funghi of SFMTA mentioned above."

In order to better help respond to your petition and to determine whether it is timely, please send a copy of the specific request you submitted to the department for the above-listed records (if it is different from the e-mail included below) together with the department's written response to your request.

Also, just to clarify, your June 20, 2013 request would have covered responsive public records in existence as of that date. If you wish to now obtain a letter "dated sometime in July 2013, and ... apparently delivered ... on or after July 29, 2013" as listed in item #1 above, if you haven't done so already, you would need to send an updated request to SFMTA to encompass any responsive letter created after your June 20, 2013 request date.

Please that the role of the Supervisor of Records is limited to determining whether a record that has been requested is public. The following link to the City Attorney's website may be helpful: http://www.sfcityattorney.org/index.aspx?page=431

If we have misunderstood your petition, please let us know.
Please note, I will be away from August 3-12, in my absence, Paul Zarefsky Paul.Zarefsky@sfgov.org will be Acting Supervisor of Records.

Thank you.

Sincerely,

Adine Varah
July 31, 2013

Dear Ms Varah,

On July 3 Deputy City Attorney Paula Jessop from your office was able to help retrieve possibly suppressed documents from SFMTA. Her email reply said you would be replacing her during the next few months, and I wonder if your office could help us again.

Residents of North Beach have been trying unsuccessfully to get documents released from SFMTA regarding the Central Subway Pagoda Option demolition and construction. Since early June we have submitted several SFMTA Sunshine Requests, listed below. To date none of these requests has been fulfilled.

There are two documents we would like released immediately, in order to file an appeal of the demolition work:

1. A letter from John Funghi of SFMTA to MH Construction (the demolition contractor) authorizing work at the Pagoda site without a permit. Work began at the site Tuesday, July 30, and though we have asked workmen at the site for the letter or permit, we have not been able to secure a copy. We believe the letter is dated sometime in July 2013, and was apparently delivered to MH Construction on or after July 29, 2013.

2. A permit for the Pagoda demolition, that we believe was issued by
SFMTA. It is possible this permit is referred to in the letter from
John Funghi of SFMTA mentioned above.

Both of these documents fall under the Sunshine Request below dated June 20, 2013

We would appreciate your prompt assistance in releasing these public records.

Less urgent but also required is the release of all other documents
requested through Sunshine requests listed below.

We believe the SFMTA Sunshine Requests office is trying to do their
job well, and that the documents are not being released by the Central
Subway project at SFMTA.

Thank you for your consideration of this matter,
Lance Caines

San Francisco, CA 94133

Our direct contact is "SFMTA Sunshine Requests"
<sfmtasunshinerequests@sfmta.com> (415) 701-4670.

Other responsible employees at SFMTA:

Ed Reiskin, Director of Transportation, One South Van Ness, San
Francisco, CA 94103  (415) 701-4720  ed.reiskin@sfmta.com

Juhn Funghi, Central Subway Senior Program Manager, One South Van Ness, San
Francisco, CA 94103  (415) 701-4299  john.funghi@sfmta.com

We are concerned about the dangers of the proposed demolition.
Residents, businesses, and property owners near the Pagoda Theater
site at 1731 Powell Street are concerned about demolition plans,
hazardous material abatement plans, traffic plans, and any other
information that may affect businesses, residents, and nearby parks,
schools and playgrounds.

Requests to "SFMTA Sunshine Requests" <sfmtasunshinerequests@sfmta.com>

Request date, ID#, Description
06-03, No ID #, Updated costs from Pagoda dig and other contractors

06-03, 2013-237, Working plans for Pagoda demolition

06-15, No ID #, For the Central Subway's Pagoda Theater Project, please provide:
  Project schedules;
  all docs & commo related to moving the extraction shaft from Columbus to Pagoda;
  all docs & commo relating to design elements excluded in March 1, 2013 cost estimate.

06-20, 2013-254, For the Central Subway and Pagoda Theater Project, please provide:
  2. Emails and communications between SFMTA and "MH Construction".
  3. Demolition Permit Application, comments by DBI and Demolition Permit.
  4. Soils Boring Test Report and Geotechnical Report for Pagoda Theater by "Parsons Brinckerhoff" and/or other engineers/consultants.
  5. Fee Proposals and Cost Estimates for the Pagoda Theater Project and tunnel extension from Columbus Avenue---
     by "Barnard Impregilo Healy JV", "ARUP", "Parsons Brinckerhoff" and/or other engineers/consultants.

06-25, 2013-263,
  Demolition Contract for MH Construction.

07-01, 2013-272, All plans, contracts, and cost for the Pagoda option demolition, shaft excavation, and boring machine extraction.

07-05, No ID #, May and June 2013, draft and/or final Fee Proposals and Cost Estimates for the Pagoda Project

07-23, No ID#, Pagoda Demolition Permit --- Copy of permit, all approvals, and description of permit procedures
Re: Outside Funding Disclosure by Department of Public Health

Adine Varah  to: Rajiv Bhatia
Cc: Paula Jesson

07/19/2013 05:04 PM

Dear Mr. Bhatia,

As we discussed this afternoon during our telephone call, your petition to the Supervisor of Records is not yet timely based on our understanding that DPH is in the process of responding to your records request of July 10, 2013. Accordingly, your July 12, 2013 petition has been withdrawn.

But once DPH responds, if you wish to submit a new petition to determine whether a requested record is public, please feel free to send your petition to me via e-mail at the address below.
As noted below, the role of the Supervisor of Records is limited to determining whether a record that has been requested is public.

Thank you for your suggestions regarding the Sunshine Ordinance training program and will convey them to the individuals involved in the training.

I hope this is helpful.

Sincerely,

Adine Varah
Deputy City Attorney (Acting Supervisor of Records)
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@sf.gov

---

Dear Mr. Bhatia,

Thank you for your message.
I would be happy to speak with you. Please note, however, that the role of the Supervisor of Records is limited to determining whether a record that has been requested is public. The following link to the City Attorney's website may be helpful:

If you have additional questions regarding the role of the Supervisor of Records or the petition process, I should be free to talk briefly at 4pm today.
Thank you.
Sincerely,

Adine Varah (Acting Supervisor of Records)
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

On Jul 18, 2013, at 10:02 AM, "Rajiv Bhatia" wrote:

Dear Ms. Varah
I’d like to speak to you to obtain some information about my request and understand the
admin code section upon which it is based.
Can you advise when you may have 5 or 10 minutes to speak by phone today and a
number at which you may be reached.
Rajiv

On Jul 12, 2013, at 4:47 PM, Adine.Varah@sfgov.org wrote:

Thank you, Mr. Bhatia.

We are reviewing your petition and will be back in touch with you.

Thank you again for your inquiry.

Sincerely,

Adine Varah (Acting Supervisor of Records)
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

From: Rajiv Bhatia
To: Adine.Varah@sfgov.org.
Date: 07/12/2013 02.03 PM
Subject: Re: (Resending) Re: Outside Funding Disclosure by Department of Public Health
No. I received a verbal response. The Department’s website does not contain this information.

rb

On Fri, Jul 12, 2013 at 2:02 PM, <Adine.Varah@sfgov.org> wrote:
Dear Mr. Bhatia,

Thank you for your message. In order to better assist you, we need a bit more information regarding your July 10, 2013 inquiry to Ms. Shields of DPH.
Did you receive a written response from Ms. Shields? If so, we ask that you please provide a copy of that response.

Thank you.

Sincerely,

Adine Varah (Acting Supervisor of Records)
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

From: Raj Bhatia
To: paula.jesson@sfgov.org, adine.varah@sfgov.org.
Date: 07/12/2013 01:16 PM
Subject: Outside Funding Disclosure by Department of Public Health

Dear Ms. Jesson and Ms. Varah

I would like to file a petition with the City Attorney’s Supervisor of Records to
investigate whether the Department of Public Health is disclosing records of outside funding in compliance with Admin Code Section 67.29-6.

The Department conducts or directs many city activities with the support of outside funding. These include contributions and grants to fiscal sponsors, such as the Public Health Foundation Enterprises, the San Francisco Study Center, the San Francisco Trauma Foundation, and the San Francisco General Foundation, and the San Francisco Public Health Foundation. Department staff direct many of the activities under these fiscal sponsors, for example, Shape Up and Project Homeless Connect. As far as I know, the Department does not maintain the required records of outside funding and does not disclose these records on the Department website as required. The SFDPH PIO, Ms. Eileen Shields, has told me that she does not have such records nor any knowledge of the Department compliance with this requirement.

This may be an issue shared by multiple city agencies.

This requirement is discussed in the Good Government Guides, but I am wondering also whether city officers are trained on this specific requirement in the required Sunshine Act Training?

I am writing in my individual capacity and for personal reasons, I would like my identity to remain confidential at this point.

With appreciation.

Rajiv Bhatia
---------- Forwarded message ----------
From: Rajiv Bhatia
Date: Wed, Jul 10, 2013 at 3:00 PM
Subject: Department's Outside Funding Disclosure
To: eileen.shields@sfdph.org
Cc: soff@sfgov.org, paula.jesson@sfgov.org

Dear Ms. Shields

I am requesting a disclosure, immediate if feasible, of all outside funding used for Department of Public Health functions for the past three years. Unfortunately, I am not able to locate any of this information on the Department's website.

Sec. 67.29-6. Sources Of Outside Funding.
No official or employee or agent of the city shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth
more than one hundred dollars in aggregate, for the purpose of carrying out or
assisting any City function unless the amount and source of all such funds is
disclosed as a public record and made available on the website for the
department to which the funds are directed. When such funds are provided or
managed by an entity, and not an individual, that entity must agree in writing to
abide by this ordinance. The disclosure shall include the names of all individuals
or organizations contributing such money and a statement as to any financial
interest the contributor has involving the City. (Added by Proposition G, 11/2/99)

The City Attorney's Good Government Guide provides guidance on the definition
of a city function. It appears to include activities supervised by or conducted
with the participation of city employees, such as the many projects fiscally
sponsored for the Department by outside agencies.

I would appreciate any education or clarification on the definition of city
function from the City Attorney that may help me better understand this
requirement.

Rajiv
Re: Petition to Supervisor of Records of 9/30/13 - "Request under San Francisco Administrative Code sections 67.20(c) and 67.21(d) to review Tammy Wong's, Senior HR Manager of the General Services Agency of the Department of Public Works of the City of San Francisco's failure to respond ...."

Adine Varah to Gonzalo Javier Ferrer <[redacted]> 10/02/2013 05:29 PM
Paula Jesson

Dear Mr. Ferrer,

Thank you for your message. I understand from DPW that Ms. Wong sent you the following response on Monday, September 27.

After you review this response, if you wish to submit a petition to determine whether a record that has been requested is public, you may do so by writing to the Supervisor of Records.

Otherwise, we will consider this matter closed.

We hope this is helpful.

G. Ferrer_Sunshine Request 09.27.13.pdf
Thank you.

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

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.

Dear Ms. Varah: Neither Ms. Tammy Wong ...

Dear Ms. Varah:

From: Gonzalo Javier Ferrer <[redacted]>
To: Adine Varah <Adine.Varah@sfgov.org>,
Date: 09/30/2013 10:32 AM
Subject: Re: Petition to Supervisor of Records of 9/30/13 - "Request under San Francisco Administrative Code sections 67.20(c) and 67.21(d) to review Tammy Wong's, Senior HR Manager of the General Services Agency of the Department of Public Works of the City of San Francisco's failure to respond ...."

Dear Ms. Varah:
Neither Ms. Tammy Wong nor the DPW ever made a request in writing for an extension, or replied to my request.

Sincerely,

Gonzalo J. Ferrer Esq.

Sent from my iPad

> On Sep 30, 2013, at 9:13 AM, "Adine Varah" <Adine.Varah@sfgov.org> wrote:
> Dear Mr. Ferrer,
>
> Thank you for your petition to the Supervisor of Records, dated September 30, 2013.
>
> We are reviewing your petition and will be back in touch with you.
>
> In the meantime, in order to better assist you, please provide copies of any written response or request for extension of time from DPW. Did you receive any written response from Ms. Tammy Wong? If so, we ask that you kindly provide a copy of that response.
>
> Please note that the role of the Supervisor of Records is limited to determining whether a record that has been requested is public. The following link to the City Attorney's website may be helpful:
>
> Thank you.
>
> Sincerely,
>
> Adine Varah (Acting Supervisor of Records)
> 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

> 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.
>
>
> From: Gonzalo Javier Ferrer <[redacted]>
> To: "adine.varah@sfgov.org" <adine.varah@sfgov.org>,
> Cc: Gonzalo Ferrer <[redacted]>
> Date: 09/30/2013 12:26 AM
> Subject: Request under San Francisco Administrative Code sections 67.20(c) and 67.21(d) to review Tammy Wong’s, Senior HR Manager of the General Services Agency of the Department of Public Works of the City of San Francisco’s failure to respond to my Immediate I
Supervisor of Records
City Attorney's Office
Attn. Deputy City Attorney Adine Varah
1 Dr. Carlton B. Goodlett Place
City Hall Room 234, San Francisco
CA 94102.

Ref: Request under San Francisco Administrative Code sections 67.20(c) and 67.21(d) to review Tammy Wong's, Senior HR Manager of the General Services Agency of the Department of Public Works of the City of San Francisco's failure to respond to my Immediate Information Request? under the San Francisco Sunshine Ordinance dated September 10, 2013. See attachment.

Dear Ms. Adine Varah:

On September 10, 2013, I filed an Immediate Disclosure Request under the San Francisco Sunshine Ordinance to inspect and receive copies of records (attached) with the General Services Agency, Department of Public Works of the City of San Francisco addressed to Tammy Wong, Senior HR Manager requesting the following information:

1. Any and all meeting minutes, documents, communications, and other electronic records, references or transcripts pertaining to the examination process for the position of 2978 Contract Compliance Officer II, Recruitment #CBT-2978-060084 attached to this letter.

2. All applications and examination documents for all applicants found eligible for the above-mentioned position and included in the eligible list. It should include the actual examination and scoring work-papers for each eligible applicant's education and experience, including age, sex, race or ethnic group and/or national origin, and other information if disclosed by the candidate, or taken into consideration in any manner to score the candidates' eligibility.

3. All work-papers, documents and communications, related to my application and the review of my application for the above mentioned position, including scoring, experience assessment and calculations.

4. Any document reflecting any exception to the requirements of the position or preferences made for any candidate found eligible, appointed for the position or performing the functions of the above-mentioned position in any capacity.

5. All documents related to the qualifications of any person currently permanently or transitorily appointed for the above-mentioned position, or performing the functions of a Contract Compliance Officer II in any capacity.

On, or about September 13, 2013, I contacted Ms. Wong to inquire on the status of my request, and she requested, and I granted her, an extension until September 20, 2013 to prepare the copies, since it was quite difficult? for her to get them ready before that date.

I tried to contact her last week to no avail. She did not reply to my voice mail dated on or about September 25, 2013.
As of September 27, 2013, Ms. Tammy Wong has failed to respond to my urgent petition.

I hereby request your review, under San Francisco Administrative Code sections 67.20(c) and 67.21(d), of the HR Department of the General Services Administration of the Department of Public Works lack of response to my ?Immediate Information Request? under the San Francisco Sunshine Ordinance.

Sincerely,

Gonzalo J. Ferrer Esq.

Gonzalo J. Ferrer | Colorado C.P.A., M.B.A. in Finance, J.D., LL.M.
Taxation, C.F.P.

San Francisco, California 94114

*** ANY TAX ADVICE IN THIS COMMUNICATION IS NOT INTENDED OR WRITTEN BY GONZALO J. FERRER TO BE USED, AND CANNOT BE USED, BY A CLIENT OR ANY OTHER PERSON OR ENTITY FOR THE PURPOSE OF (i) AVOIDING PENALTIES THAT MAY BE IMPOSED ON ANY TAXPAYER OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY MATTERS ADDRESSED HEREIN. ***

The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the original sender GONZALO J. FERRER immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.

<Gonzalo Ferrer Sunshine Ordinance Petition.pdf>
December 11, 2013

Sent via E-mail

Gonzalo J. Ferrer, Esq.

Re: Petition to Supervisor of Records

Dear Mr. Ferrer:

This determination addresses issues raised in petitions that you submitted to the Supervisor of Records. The petitions seek review of responses by the General Services Agency ('GSA') to your public records requests regarding a civil service employment examination for the contract compliance officer classification.

Brief Summary of Conclusions

This determination considers four categories of records for which you sought review. We briefly summarize below the determination as to each category:

Civil service test questions, rating guidelines and answers provided by applicants other than yourself. GSA properly withheld these records because disclosure would have undermined the security and effectiveness of the civil service examination process.

Records relating to the qualifications of applicants other than yourself to hold the contract compliance officer position. GSA properly withheld these records based on several considerations, including that disclosure of these records could discourage qualified persons from applying because they fear jeopardizing their current employment. GSA's decision was consistent with the City's longstanding practice of withholding information about applicants before they have accepted a City job.

Records relating to the qualifications of City employees currently holding the contract compliance officer position. GSA provided you with responsive records contained in personnel files that it maintains. At our request, GSA conducted a further search and located a database providing access to records of other departments. GSA informs us that it has located additional responsive records which they can provide to you.

Records relating to the allocation of "promotive points" and a "veteran's credit" to applicants for the examination.

GSA informed you that eleven applicants received promotive points. Based on the longstanding practice of the City, GSA withheld the names of the applicants who received promotive points and the number allocated to each. We conclude that you have a right to this information because in this case the public interest in its disclosure outweighs the privacy interest of City employees who receive the points. GSA has
informed us that it will provide you with names of applicants who received promotive points and the number allocated to each.

GSA informed you that one applicant received a veteran's credit. GSA declined to provide records identifying the applicant because of a concern for the applicant's right to privacy. We conclude that GSA may disclose records identifying the applicant without violating that person's right to privacy. GSA has informed us that it will provide a responsive record or records to you regarding allocation of the veteran's credit.

BACKGROUND INFORMATION

You were one of a number of persons who responded to an announcement posted by GSA for a Class 2978 Contract Compliance Officer II citywide examination ("the Contract Compliance Officer examination" or "the examination"). Tammy Wong, Manager for GSA's Human Resources Division, has provided the following information regarding the examination administered for the 2978 classification.

GSA required persons interested in the examination to submit an application to establish their interest in taking the examination and to answer six questions set forth in a Supplemental Questionnaire. The review panel reviewed the answers to determine applicants’ knowledge, skills, and abilities in job-related areas that have been identified as critical for satisfactory performance of the job. The questionnaire directed applicants to include in their answers all relevant experience, education, and/or training. Thus, the questionnaire called upon applicants to provide essay answers; it was not a "multiple choice" examination.

GSA convened a three-member panel to evaluate and score those applicants who met the minimum qualifications and provided responses to the Supplemental Questionnaire. GSA provided the panel with rating guidelines that described how to evaluate answers to the Supplemental Questionnaire. The panel members based their evaluations on the applicants’ written responses to the Supplemental Questionnaire. The panel’s review was "blind," meaning that panel members did not have the applicants’ names or other identifying information. The panel did not conduct oral interviews of the applicants.

After the panel determined the appropriate score for each applicant, GSA adjusted the scores for applicants entitled to "promotive points" or a veteran's preference "credit." Civil Service Commission Rules (the Rules) entitle otherwise qualified City employees with "permanent, probationary, temporary civil service or holdover status" who have had 6 months of verifiable satisfactory service up to 60 additional "promotive" points on some categories of civil service examinations. (See Rule 110.11.) DHR has issued a policy directive requiring up to 60 additional promotive points (30 for employees with 6 months of verifiable satisfactory service, with one point reduction for each day of suspension within the previous 4 years; and another 30 for employees with a performance appraisal of at least "competent and effective"). Veterans (as well as spouses and domestic partners of deceased veterans) are entitled to an additional credit of 5% on their score when applying for an "entrance appointment" (that is, a first City job). Disabled veterans may apply for a disability credit of 10%. (See Rule 111.38.1.)

Based on the final scores, GSA prepared and posted a Tentative Eligible List of the candidates eligible for permanent appointment to the classification. The List shows the candidates’ names, scores, and numbered rank.

Records Requested and GSA's Response

You asked GSA for the following records:
The rating guidelines that the panel used to grade the responses to the Supplemental Questionnaire and rank all applicants who were included on the Tentative Eligible List.

The panel members' work papers and all other records relating to the evaluation and scoring of all applicants' responses to the Supplemental Questionnaire, including oral rating sheets.

Applications and any other records showing whether applicants met the minimum qualifications for the position, including any scoring work-papers for each eligible applicant's education and experience, including age, sex, race or ethnic group and/or national origin, and other information if disclosed by the candidate, or taken into consideration in any manner to determine whether the applicants met the minimum qualifications for the position.

Records relating to applicants' eligibility for promotive points and veteran credits.

Records relating to the qualifications of any person currently appointed to the Contract Compliance Officer position or performing the functions of that position.

GSA provided you with the Tentative Eligible List, your application materials, your responses to the Supplemental Questionnaire, records of the panel's scoring of your responses to the Supplemental Questionnaire, and with respect to current City employees described in the final paragraph above, records for three employees currently appointed to, or performing the functions of, a Contract Compliance Officer classification. GSA also informed you that eleven applicants received promotive points and that one applicant received veteran's credit, but did not disclose other information or records responsive to this part of your request.

With respect to the rating guidelines used by the panel to evaluate and score applicants' written responses, although DHR initially considered the guidelines sufficiently general to disclose, GSA expressed concern about the level of specific detail in those records. The more specific the guidelines, the greater the risk of undermining the integrity or validity of future examinations using the same or similar questions. To disclose detailed rating guidelines could provide an unfair advantage to applicants if the City re-used the questions or variations of them. After considering this concern and conducting a further review of the guidelines, DHR concurred that GSA should not publicly disclose them.

Before discussing the records withheld by GSA, we note that for convenience this letter uses the following terminology:

**Test questions.** The questions in the Supplemental Questionnaire.

**Answers to the test questions.** Responses by applicants to the Supplemental Questionnaire.

**Rating guidelines.** The rating or scoring guidelines or other records used by the panel to evaluate and score the applicants' responses to the Supplemental Questionnaire.

**ANALYSIS**

We now consider the categories of records that GSA withheld in response to your public records request.

**Test Questions and Answers to Test Questions Submitted by Other Applicants**
You asked GSA for the rating guidelines for the test questions and for other applicants’ answers to the test questions. With respect to your request for “oral” rating sheets, Ms. Wong informs us that GSA has no such records because the panel did not interview applicants. The panel scored applicants based on their written answers to the test questions.

GSA withheld the rating guidelines based on the need to keep the civil service selection examination process secure, relying on a provision of the California Public Records Act (Public Records Act) that protects from disclosure civil service test materials (California Government Code section 6254(g)(Section 6254(g))). GSA also relied on the Rules of the Civil Service Commission, adopted under the authority of San Francisco Charter Section 10.101.

We consider first Section 6254(g), which exempts from disclosure [i]test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination [with an exception not relevant to this matter].” (Emphasis added.)

The panel used rating guidelines to evaluate and score the applicants’ answers to test questions. These records are clearly exempt as a ‘scoring key’ under Section 6254(g).

We conclude that Section 6254(g) also applies to other applicants’ answers to the test questions. Disclosure of these answers would be an indirect way of disclosing test questions and, more particularly, disclosing the issues raised by test questions. The point of protecting test questions from disclosure is to ensure the integrity of future examinations, which may use the same test questions or variations of them. Disclosure to the public, which may include future applicants for the examination, of answers from everyone on an eligible list, which in some cases may be dozens or even hundreds of people (in a few cases, thousands), would indirectly disclose test questions in a way that solitary disclosure to an eligible who has already taken the test of his or her own answers would not. Accordingly, GSA lawfully withheld this category of records under Section 6254(g).

Because Section 6254(g), standing alone, permits, but does not require, a local agency to withhold records used to administer civil service examinations, our analysis does not end there. We consider your argument that the Rules entitle you to rating guidelines and answers to test questions. You cite the following Rules:

Rule 112.7 Posting Period for the Tentative Eligible List
Following the completion of an examination, a tentative eligible list shall be posted for public inspection for a minimum of three (3) business days.

Rule 112.8 Documents Included in Inspection and Maintenance of Anonymity of Examiners
Inspection during the posting period of the tentative eligible list shall include the eligible’s application, documents supporting qualifications to participate in the examination, written answer sheet, oral rating sheet, and other papers needed to verify accuracy of scores. Neither the identity of the examiner giving any mark or grade in an examination nor the questions and answers shall be provided.

Rule 112.9 Appeal of Tentative Eligible List
The exclusive purpose of inspection during the posting period of the tentative eligible list is to review papers supporting a person’s standing on the eligible list. Appeals during this period shall be limited to the qualifications of eligibles and the accuracy of scores. Appeals must be filed in the office of the Department of Human Resources during the
inspection period of the eligible list. The Human Resources Director shall rule on all appeals filed during this period. The decision of the Human Resources Director on the appeal shall be final and shall not be reconsidered by the Commission.

Rule 111.15 Inspection of Ratings by Participants

***

Rule 111.15.2

Any appeal shall be filed in writing within the inspection period and shall be limited to failure of the raters to apply uniform standards. Appeals must state the specific grounds upon which they are based and provide facts which support the allegations. Failure to state the specific grounds for the appeal and provide facts shall nullify the appeal.

You argue that rating guidelines and answers to test questions are "essential to [your being] able to understand the scoring and to reasonably exercise [your] right to appeal the scoring results" of the applicants included on the post-examination list. Moreover, you argue, declining the request of an eligible for access to these records "makes a mockery of the inspection and appeals process . . ." You emphasize that Rule 111.15.2 allows you to appeal your standing on the list only by showing that the raters failed "to apply uniform standards." Therefore, you argue, by giving an applicant the right to inspect records and appeal his own standing based on the failure to apply uniform standards, the Rules intend to provide the applicant access to everyone else's examination materials as well as the applicant's own. While these are interesting policy arguments, they do not affect our interpretation of the Rules in question.

We disagree with your interpretation of the Rules. Rule 112.8 states "[n]either the identity of the examiner giving any mark or grade in an examination nor the questions and answers shall be provided" (Emphasis added.) Clearly, this Rule prohibits disclosure of test questions and answers (except, of course, an eligible's own answers). Further, in context, the prohibition on disclosure of 'answers' includes rating guidelines. On this latter point, we consulted with Susan Gard, Chief of Policy for the Department of Human Resources, who confirmed that this interpretation of Rule 112.8 is the longstanding, and consistently applied, interpretation of the City's Department of Human Resources (DHR).

This interpretation is not surprising. Protecting test questions and rating guidelines furthers the integrity of the examination process. Test questions are often recycled or reformulated in subsequent examinations. Disclosure of test questions would undermine the efficacy of subsequent examinations for the same civil service classification by allowing applicants to answer questions based on known answers and/or research rather than their own knowledge, skills and experience.

Similarly, with respect to rating guidelines, if applicants had access to this material, they could tailor their answers to reflect what the guidelines include or emphasize. DHR informs us that, in its experience, when applicants use their own words to answer questions, the answers provide the material that the panel needs to accurately evaluate applicants' knowledge, skills and experience. That is the purpose of the examination, not assessment of how well applicants can mimic the wording or substance of the rating guidelines. Therefore, disclosure of rating guidelines, like disclosure of test questions, would undermine the efficacy of subsequent examinations for positions under the same civil service classification.

As for other applicants' answers to test questions, the Rules support GSA's withholding of these records. The Rules give an applicant the right to inspect the applicant's own records, but
Letter to Gonzalo J. Ferrer, Esq.
Page 6
December 11, 2013

not those of other applicants. Thus, Rule 112.8 permits inspection of the “eligible’s application, documents supporting qualifications to participate in the examination, written answer sheet, oral rating sheet, and other papers needed to verify accuracy of scores.” The use of the singular (“eligible’s”) suggests an intent to limit inspection by an applicant to the applicant’s own records. And, as previously noted, Rule 112.8 expressly prohibits the disclosure of “answers,” which in context can only mean answers of other test-takers. Rule 112.9 also uses the singular to refer to the purpose in allowing inspection (“The exclusive purpose of inspection during the posting period of the tentative eligible list is to review papers supporting a person’s standing on the eligible list . . .”)

Rules 111.13 and 111.15.1, which also limit the right of applicants’ access to their own examination materials, state (with emphasis added):

Rule 111.13 Inspection of Papers by Unsuccessful Candidates

Where there are remaining parts of an examination, unsuccessful candidates may inspect their papers during a two (2) day period specified by the notice informing them of their scores. Such inspection shall be for the sole purpose of determining that the computation of the score has been accurate.

Rule 111.15 Inspection of Ratings by Participants

Rule 111.15.1 Composite ratings for examinations administered under this section shall be available for a minimum period of two (2) working days during which period each participant may inspect their own ratings. The identity of the examiner giving any mark or grade shall not be disclosed.

It is clear from these Rules that a person on the eligible list may not review the answers to test questions submitted by others on the list. Again, Ms. Gard has confirmed that our reading of the Rules conforms to the longstanding and consistent interpretation of DHR. DHR considers this approach necessary to operate an effective merit system. If the City were to allow applicants to see each others’ answers, the practice could, as GSA said in its response to you, provide “an unfair competitive advantage during a future Civil Service 2978 exam or during his 2978 exam in the event that the exam must be repeated.” Under traditional principles of statutory construction, an administrative agency’s interpretation of its own rules is entitled to great weight. Communities for a Better Environment v. State Water Resources Control Board, 109 Cal.App.4th 1089, 1103-4 (2003).

Even if GSA gave an applicant access to others’ answers and, after reviewing the answers, the applicant concluded that his or her answers deserved a higher score, the applicant could not appeal the score on that basis. The Rules provide that “[a]ppeals shall not be considered merely because candidates believe they are entitled to a higher score. Neither the Commission nor the Human Resources Director shall substitute their judgment for the judgment of the raters . . .” (Rule 111.15.3.)

Applications and Other Records Showing the Qualifications of Current Employees Holding, or Performing the Functions of, the Contract Compliance Officer Position

You asked GSA for records related to the qualifications of any person currently permanently or transitorily appointed to [the Contract Compliance Officer position], or performing the functions of a [Contract Compliance Officer] in any capacity.

GSA responded to this request as follows:

14th SOR – Appendix
Page 43
n:\government\pjessen\supervisorofrecords\response g. ferrer.doc
... the Administrative Services Department (ADM) currently has ten (10) filled 2978 positions. Eight are filled by permanent civil service employees and two are filled by temporary exempt employees.

For three of the eight employees, the response provided copies of Contract Compliance Officer II applications, with the employees’ names included, but with home addresses and other personal data redacted. The response further stated:

Personnel files for the other seven (7) 2978 permanent employees were reviewed and we were unable to locate documents related to their qualifications as a Contract Compliance Officer II. However, please note that six (6) of the seven (7) PCS 2978 employees held appointments in class 2992 Contract Compliance Officer II and had promoted into class 2978 Contract Compliance Officer II. The 7th permanent 2978 has held the position since 2004.

You asked the Supervisor of Records to review GSA’s reply and “determine whether the documents withheld... are public records.” Of “particular interest,” you said, were the seven permanent 2978 employee records for which GSA “was unable to locate documents related to their qualifications.”

Ms. Wong informs us that her response was based on her search of personnel files maintained by GSA. At our request, she undertook a further search and discovered that GSA had access to another database that enabled it to locate applications for City employees currently performing the job of a 2978 contract compliance officer positions that are maintained by other departments. As a result of this further search, Ms. Wong has located additional responsive records and we understand that GSA will provide them to you. GSA was not able to obtain responsive records for all sixteen City employees working in a 2978 position.

Applications and Other Records Showing Qualifications of Other Applicants

You asked GSA for applications submitted by other applicants for the position, as well as any other records showing whether they meet the minimum qualifications for the position. Other than records of applications of City employees described in the previous section, GSA declined to provide you with this category of records.

As noted above, Section 6254(g) exempts from disclosure “[t]est questions, scoring keys, and other examination data used to administer... an examination for employment...” We do not consider or decide whether Section 6254(g) applies to records used for determining whether applicants meet the minimum qualifications for a civil service position. We find no need to do so because we conclude on other grounds that GSA’s decision not to disclose the applications is legally warranted. Three interrelated factors are relevant here.

First, DHR has informed us that GSA’s decision in this case was consistent with the City’s general and longstanding practice to disclose records showing that a person meets the minimum qualifications for a position only after the City hires the person for that position. There is little dispute, at least in San Francisco, that after a City department hires an employee, the public generally has the right to records showing the person’s educational and work qualifications. Section 67.24(c)(1) of the Sunshine Ordinance (S.F. Admin. Code § 67.24(c)(1)) requires disclosure, with appropriate redactions, of such information for “successful job applicants.” We understand that DHR has always interpreted this Section to mean persons who are offered and accept employment with the City. Section 67.24(c)(2) of the Ordinance (S.F. Admin. Code § 67.24(c)(2)) requires disclosure, with appropriate redactions, of the resumes of current City employees. Thus, the Sunshine Ordinance distinguishes between “successful” and unsuccessful job applicants, and does not require disclosure of such records for unsuccessful applicants.
The City's longstanding policy and practice on this issue furthers the City's interest in encouraging applicants to apply for City jobs. Members of the public who would otherwise be interested in applying for a job may be reluctant to do so if they fear that their employers will discover that interest. By disclosing their educational and work history, these persons would make their identity clear to anyone interested in disclosing the information to that person's employer. The Eligible Lists, which provide only names, does not offer the wealth of personal information that educational and employment history provide. Those seeking higher paying positions with the City would be the most likely to pass on the chance to apply for a City job if they believed that doing so would jeopardize their current employment.

Second, there are privacy considerations. (See generally Section 6254(c) of the Public Records Act (Cal. Gov. Code § 6254(c), which exempts "[p]ersonnel . . . or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.") The degree of personal information required of applicants for the position was substantial. Applicants had to provide detailed information regarding their education, including their having a baccalaureate degree from an accredited institution with a major course of study in one of several specified fields and seven years of verifiable experience equivalent to the position of a 2992 Contract Compliance Officer I, or five years of verifiable experience reviewing, monitoring and developing contract or other compliance programs involving contracts, ordinances or vendors, with two-to-five years of this work having been as a supervisor. Applicants could show work experience as a substitute for a four-year degree.

While this information is not especially intimate, it is personal in nature and in some cases may be sensitive, embarrassing, or uncomfortable in the mind of the applicant. Moreover, even if the specifics of the information do not cause discomfort to an applicant, the comprehensiveness of the personal data contained in an application may in itself make public disclosure discomfitting enough to deter application.

It is one thing for an applicant to disclose all of this information to the City, which has a direct interest in the information as the applicant's prospective employer. It is another thing to disclose this information to the world at large, and in the prepackaged form that is an employment application or resume. Once this information is disclosed to one requester, it must be disclosed to all requesters. (Cal. Gov. Code § 6254.5.) And, once disclosed, the requester receiving the information may do with it what he or she wishes. For example, the requester may place it on the Internet. The comprehensiveness of the information provided by applicants, and the potentially broad number of people to whom it might be disseminated, is cause for concern, especially given the high incidence of identity theft made easier when a person's detailed history is accessible online. We understand from DHR that this issue arises most critically where an applicant has concerns about personal safety, such as an outstanding restraining order against someone who has physically abused them or has been harassing them.

Third, the gain to the public interest by disclosing this information is relatively slight. The public has the right to get records establishing the qualifications for those on the eligible list when the City hires the person. Moreover, DHR informs us that generally a department that wants to hire someone from a civil service list does not ask the person for verifying information, such as college transcripts, to establish their qualifications until staff decide that they may want to offer the job to the person.

Fourth, there are practical considerations. The City conducts many civil service exams, which then spawn corresponding lists of eligibles. According to DHR, there are currently approximately 466 active eligible lists for various positions throughout City government. Some eligible lists include dozens of persons; some include hundreds; and a few include thousands. If
materials submitted by these applicants regarding their minimum qualifications are disclosable, there could be a huge burden placed on responding departments, which would be heightened by the need to carefully review the materials and redact personal contact information and other highly personal information that may be included in an application. And, given the extensiveness of the files to be reviewed, there is a high chance of error, with some private information being inadvertently disclosed.

In support of your petition, you have informed us that the Department of Elections gave you the types of records at issue here in 2002 in connection with the selection of the Director of the Department of Elections. Although you informed us that you had records relating to that prior disclosure, you declined to provide them to this Office. We do not know whether the circumstances you describe from 2002 were the same as those at issue here. Nor do we know whether the Department of Elections discussed the matter with DHR or the City Attorney's Office before disclosing the records. Assuming the facts are as you have stated, we nonetheless conclude that GSA lawfully withheld answers to test questions and records regarding the minimum qualifications relating to other applicants.

Records regarding allocation of promotive points and veterans' credits

Promotive Points

You asked for records relating to the allocation of promotive points and veterans' credits. GSA informed you that eleven applicants received promotive points, but did not disclose records relating to these applicants.

GSA withheld records identifying the applicants who received promotive points and the number of points allocated because of the concern that disclosure would violate the applicants' right to privacy. We understand from DHR that GSA's position is consistent with the City's longstanding practice, which is to withhold this information because the allocation of points is tied to information in applicants' personnel files. Applicants receive the 60 maximum allowable promotive points only if they have six months of verifiable satisfactory service with the City and no suspensions for misconduct. Whether an employee has had a satisfactory work performance evaluation or has been disciplined is generally protected from public disclosure because it is part of the employee's personnel file. (See, Government Code section 6254(c), exempting personnel records if their disclosure would constitute an unwarranted invasion of personal privacy and Versaci v. Superiors Court, 127 Cal.App.4th 805 (2005), holding that the Public Records Act does not require public disclosure of the performance goals of a former community college district superintendent that were integral to the evaluation of the superintendent.)

That applicants who are City employees have a right to privacy in their performance evaluations and records of disciplinary actions does not end the inquiry. We must also consider whether disclosure is warranted because of a public interest that outweighs the employees' privacy interest.

We conclude that the public interest in the disclosure of records of the allocation of promotive points in this case outweighs the employees' privacy interest, for several reasons.

First, the amount of substantive information disclosed from an employee's personnel file is limited. We understand that all of the City employees entitled to promotive points for the contract compliance officer position received 60 points. None had points reduced for disciplinary suspensions. Therefore, disclosure shows only that these employees had received a satisfactory performance evaluation.
Second, the names of current City employees and their length of employment with the City is already publicly available information. That information, along with the employees' scores and rankings, would as a practical matter likely disclose which City employees had received promotive points.

Finally, the number of promotive points awarded is substantial. There is a strong public interest in monitoring how the right to promotive points affects the City's civil service examination system.

For these reasons, we conclude that you have a right to records showing the names of applicants for the Contract Compliance Officer II classification who received promotive points and the number of points allocated to each. GSA has informed us that it will provide you with this information.

Veterans Credits

You asked for records relating to the allocation of veterans' credits. As noted above, the Rules allow veterans 5% additional credit on examination scores and disabled veterans 10% credit.

GSA informed you that one applicant received a veterans credit of 5%. GSA declined to disclose records identifying the veteran because of the concern that disclosure of his status as a veteran might invade his right to privacy. We have reviewed this issue and determined that disclosure of an applicant's status as a veteran, and his receipt of the veteran's credit, does not constitute an invasion of privacy. We have discussed the matter with GSA and Ms. Wong has informed us that GSA will provide you with records relating to the veteran's credit allocated in the examination.

Where a veteran is awarded a disabled veteran's credit under the Rules, a different analysis may govern. Because the issue does not arise here, we do not consider or decide it.

As noted above, GSA has informed us that it will provide additional records to you. Please contact Ms. Wong to arrange to receive these records.

Very truly yours,

DENNIS J. HERRERA
City Attorney

[Signature]

Paula Jesson
Deputy City Attorney
Hand Delivered

Olimpia Tovar Arreola
San Francisco, CA 94103

Re: Complaint to the City Attorney's Office Regarding
Non-compliance with the Sunshine Ordinance

Dear Ms. Arreola:

Jack Song provided me with correspondence between you and the San Francisco Human Services Agency and the Department of Aging and Adult Services regarding your requests for information.

I discussed these requests with Gary Cantara of the Human Services Agency. He has provided me with responsive records to provide to you. Enclosed are four letters addressed to you (one dated August 14, 2013, two dated August 20, 2013, and one dated October 23, 2013) from Gary Cantara, Human Services Agencies, with documents attached to each.

I understand that there may have been some concern with knowing the correct address to use when sending you materials.

Although we are not asking for copying costs for the enclosed records, please be aware that City departments are permitted to require members of the public to pay such costs.

If you believe that these materials have not responded to your requests, please feel free to contact me.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Paula Jesson
Deputy City Attorney

cc: Gary Cantara, Human Services Agency
August 14, 2013

Olimpia Tovar Arreola
c/o Mr. Sandoval
San Francisco, CA 94103

Dear Ms. Arreola,

I am responding to your Public Records Request dated August 6, 2013, sent to Megan Owens, Policy analyst for the Local Homeless Coordinating Board (LHCB).

- For your questions regarding the selection of members of the LHCB, please refer to the enclosed copy of the LHCB By-Laws (Section 2 addresses appointment of the Board members) and the copy of Resolution 208-05, which describes the Board membership.

Note that there are no Board seats specified solely for a homeless or formerly homeless members. Rather, possible appointments to the Board must be a representative from one of the following groups: “homeless, formerly homeless, community and advocacy organizations, service-provider agencies, business and corporate sectors of the foundation community.” This description can also be found online at the Board of Supervisor’s webpage concerning the LHCB: http://www.sfbos.org/index.aspx?page=3049

- For your questions regarding “efforts aimed at permanent solutions,” a great deal of information, such as the Five Year Strategic Plan of the San Francisco Local Homeless Coordinating Board, The San Francisco 2012 Homeless Prevention Working Group Report, and other similar documents and reports can be found at the LHCB web-page online at http://www.sfgov3.org/index.aspx?page=1888. Also enclosed here is the Agency’s report, Point in Time Homeless Count, which includes a census, as well as a copy of the Draft Minutes from the July 1, 2013 LHCB Meeting, when the report was discussed by the Board. Regarding how long the Board has been working for solutions, the enclosed Resolution 208-05 was passed with the current formation of the Board in 2005 by the Board of Supervisors.

- For your questions regarding the range of services of the LHCB, please refer to the LHCB webpage at http://www.sfgov3.org/index.aspx?page=1888.

- We do not have reports of any benefit-cost analysis of homeless services. The costs and outcomes of each program funded directly by the LHCB with Continuum of Care grants are included in the project applications submitted each year by the community based organizations that apply for renewal. Please refer to the enclosed application from our community, Before Starting the Exhibit I Continuum of Care (CoC) Application.
August 20, 2013

Olimpia Tovar Arreola  
c/o Mr. Sandoval  
San Francisco, CA 94103

Dear Ms. Arreola,

I assist the Custodian of Records for the San Francisco Human Services Agency with responding to Public Records Requests submitted to the Agency. I am responding to your Public Records Request directed to Contract Manager Danny Yeung, which our office received on August 6, 2013.

In your request you ask for the following:

- What does the compliance with Section 508 refer to?

  Section 508 refers to a section of the United States Code Rehabilitation Act (29 U.S.C. '794 d). This section prohibits the Federal government from procuring electronic and information technology goods and services that are not fully accessible to those with disabilities.

- The list of vendors the HSA has in the shelter services.

  Please see the enclosed document titled Matrix of Single Adult Shelters and Resource Centers.

- How does the Agency monitor compliance?

  Please see enclosed document titled Non-Profit Contractor Review. This is the HSA's standard monitoring tool which can be used for a self-assessment review by the contractor, as well as for site visits conducted by city staff.

- Questions regarding procedures and guidelines for contract staff.

  For additional information regarding procedures and guidelines for contract staff overseeing contracts, please go to http://www.sfhsa.org/214.htm.

  Also enclosed is the job description of the Agency’s 1822 Administrative Analyst position, which is the classification of city workers, including Mr. Danny Yeung, who oversees contracts for the Agency.

If you have any further questions or concerns, please feel free to contact me at (415)503-4889. Thank you for your interest in our work.

Sincerely,

Gary Cantara  
Human Services Agency  
Investigations Division  
City and County of San Francisco
August 20, 2013

Olimpia Tovar Arreola
c/o Mr. Sandoval
San Francisco, CA 94103

Dear Ms. Arreola,

I assist the Custodian of Records for the San Francisco Human Services Agency with responding to Public Records Requests submitted to the Agency. I am responding to your Public Records Request directed to E. Anne Hinton, Executive Director of the Department of Aging and Adult Services (DAAS), which our office received on August 6, 2013.

In your request, you ask the following:

- How is DAAS complying with the Federal Older American Act and tracking compliance for any contractor receiving government funding?

  California Department of Aging (CDA) comes to San Francisco DAAS every 4 years, or according to their own schedule. The last audit was conducted in January 2011. Enclosed are documents regarding a past review of DAAS, including 2 cover letters from CDA to DAAS, a copy of the completed CDA Corrective Action Plan and Monitoring/Assessment Report dated January 24-27, 2011.

- A list of the local contractors for services to seniors.

  Listing of local contractors is enclosed.

- Does DAAS have auditors who oversee performance of services by contractors?

  Office of Older Americans staff monitors the program and services. Enclosed are the Office of Older Americans Staff Desk Manual and the job descriptions for the program analyst and for the nutritionist who monitors the nutrition programs.

If you have any further questions or concerns, please feel free to contact me at (415)503-4889. Thank you for your interest in our work.

Sincerely,

Gary Cantara
Human Services Agency
Investigations Division
City and County of San Francisco
October 23, 2013

Olimpia Tovar Arreola
c/o Mr. Sandoval
San Francisco, CA 94103

Dear Ms. Arreola,

I am responding to your Public Records Request dated August 8, 2013, sent to Diana Christensen, Director of Investigations and Custodian of Records for the San Francisco Human Services Agency.

In this letter you ask for the following:

- What is the position of Ms. Cindy Ward at the HSA?
  
  Cindy Ward is classified as a Manager II in the Housing and Homeless Program. *A job description for this position is enclosed.*

  
  *A copy of your letter is enclosed.*

If you have any further questions or concerns, please feel free to contact me at (415)503-4889. Thank you for your interest in our work.

Sincerely,

Gary Cantara
Human Services Agency
Investigations Division
City and County of San Francisco
Petition to Supervisor of Records - CoreLogic (Assessor-Recorder's Office Records)
Adine Varah  to: ypantis  Cc: Paula Jesson

Dear Mr. Pantis,

Thank you for your petition dated October 24, 2013, filed on behalf of your client, Mr. Joseph Gomez, Currency Coordinator of CoreLogic. Paula Jesson and I have reviewed this matter.

Please note that the role of the Supervisor of Records is limited to determining whether a record that has been requested is public. The following link to the City Attorney’s website may be helpful: http://www.sfcityattorney.org/index.aspx?page=431

It is our understanding from your petition that your client, Mr. Gomez, requested from the Assessor-Recorder "copies of all books, logs, ledgers, reports, documents, papers, or any other writings that contain the amount of transfer tax paid associated with each instrument recorded from March 1, 2013 through August 31, 2013 that did not contain the amount of the transfer tax amount paid on its face." The Supervisor of Records has concluded that these records are public records and that the Assessor-Recorder's Office is responsible for disclosing such records, subject to any applicable laws, including any applicable statutory fees.

We have been informed that the Assessor-Recorder's Office is in the process of compiling the responsive records and will provide them as soon as possible. The Assessor-Recorder's Office will be in contact with you directly.

Accordingly, this Supervisor of Records petition is closed.

We hope this is helpful.

Sincerely,

Adine Varah
Deputy City Attorney (Acting Supervisor of Records)
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
Re: Fw: Public Records request for reports on Broadway Tunnel

Paula Jesson   Rick Denton  12/02/2013 04:10 PM

Dear Mr. Denton,

I understand that the SFPUC is providing the final report to you.

Accordingly, we consider the petition moot and the matter now 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

Rick Denton    Dear Ms. Jesson, I received the email below from... 12/02/2013 03:44:35 PM

From: Rick Denton
To: Paula Jesson <paula.jesson@sfgov.org>,
Date: 12/02/2013 03:44 PM
Subject: Fw: Public Records request for reports on Broadway Tunnel

Dear Ms. Jesson,

I received the email below from Ms. Gautier at SFPUC granting me access to review or obtain a copy of the requested Broadway Tunnel materials. I just wanted to confirm this is expected by--and within the appeal determination process by--the Supervisor of Records (that is, not an error or miscommunication as sometimes happens).

Best regards,

Rick Denton

-----Forwarded Message-----
From: "Gautier, Suzanne"
Sent: Dec 2, 2013 3:30 PM
To: 
Subject: Public Records request for reports on Broadway Tunnel

Dear Mr. Denton,

On November 1, 2013 you asked for “Any and all reports evaluating lighting, energy efficiency, or health and safety conditions at Broadway Tunnel for the SFPUC since January 2010.”

We can provide a copy of the final report to you. We charge 10 cents a page. The report is 134 pages. Alternatively you can come into our offices and review a copy without charge.

If you would like a hard copy, please provide us $13.40.
Dear Mr. Miller,

We have reviewed your petition to the Supervisor of Records regarding your public records request to the San Francisco Municipal Transportation Agency ("SFMTA") for cost-recovery financial statements and related data for the Residential Permit Parking (RPP) program. SFMTA charges a permit fee approved by the Board of Supervisors for participants in the program. Your request sought records showing revenues and costs for the program.

Your petition states that you believe that "SFMTA has improperly withheld" such records from you.

The materials you provided to this Office in support of the petition make clear that you have a number of concerns about the manner in which SFMTA reports the amount recovered and expended for the program. In particular, your petition states that the information "is readily available from every other City department on the Controller's website"; that other City departments report fee-related information on forms required by the Controller's Office [Form Nos 2A, 2B and 2C] but that SFMTA does not use those forms; that "neither the fee schedules published by SFMTA, nor the summary reports provided by the Controller, meet requirements" of California Government Code section 54986 (which governs the adoption by a county of any new fees or increased fees for the provision of a product or service or enforcement of a regulation); and that SFMTA has violated the requirement in Government Code section 54986 that counties make publicly available at least 10 days before adopting a fee or fee increase "data indicating the amount of cost, or estimated cost, required to provide the product or service or the cost of enforcing any regulation for which the fee or charge is levied and the revenue sources anticipated to provide the product or service or the cost of enforcing any regulation, including general fund revenues."

You asked the Controller's Office for records regarding revenues and expenses for the RPP program and the Controller's Office provided you with responsive records. The Controller's Office also informed you as follows: "The [SFMTA] has submitted the budget in a form acceptable to the Controller, and consistent with generally acceptable accounting practices. We did not require the forms [that is, Form Nos. 2A, 2B and 2C] to be submitted by [SFMTA] because of its independent authority under the Charter. [SFMTA] submitted a budget which was balanced, and based on reasonable revenue and expenditures. It was approved by the Board, and continues to be monitored by the Controller during the year." (May 29, 2013 email from Monique Zmuda to Mark Miller)

Your petition seeks review only of the response by SFMTA to your public records request, not the Controller's Office response to your request to that office.

As we discussed by telephone before you filed the petition, the role of this Office when serving as Supervisor of Records is limited. When functioning in this capacity, we determine whether a City department is withholding a record without a lawful basis for doing so.

Your petition does not identify any record or category of records that SFMTA has located but is withholding from you. Rather, you allege that (1) SFMTA is not reporting revenue and cost data for the RPP program as other City departments do for their fee-based programs and (2) SFMTA did not provide the financial data required by Government Code section 54986. These issues are outside the jurisdiction of the Supervisor of Records. As Supervisor of Records, this office does not consider or decide whether a City department's method of reporting financial data is proper or whether the City complied with Government Code section 54986 when the Board approved the fee for the RPP program.

Accordingly, without addressing the merits of the petition, the Supervisor of Records denies your petition.

Paula Jesson
Deputy City Attorney
Attached please find correspondence with the SFMTA regarding public information requests PRR 2012-281 and PRR 2013-202 for cost-recovery financial statements and related data, for the user-fee based Residential Permit Parking (RPP) program. I believe that SFMTA has improperly withheld requested materials.

The information requested from SFMTA is readily available from every other City department on the Controller’s website. The Controller’s office publishes technical budget instructions and forms – including templates used for cost-recovery reporting of user-fee programs – to City departments and agencies. SFMTA does not complete the template forms and only returns user-fee schedules (fee amounts) to the Controller’s office.

[Instructions for FY 2013-2014: http://www.sfcontroller.org/index.aspx?page=102. Section III Controller's Technical Instructions outlines the organization of the budget process and highlights changes from last year's budget instructions. Section IV Budget Submission Forms and Instructions provides the required budget forms.]

I have also contacted the Controller’s office and asked them to obtain the cost-recovery statements from SFMTA. Ms. Zmuda, Deputy Controller, at first claimed that SFMTA is exempt from the budget reporting rules. In subsequent email, she stated the Controller expressly exempted SFMTA from the budget form and reporting requirements. [See attached email correspondence with the Controller’s office.]

Ms. Zmuda’s office did provide – independently of SFMTA, via access to a shared financial transaction database - a summary of expense/revenue data for the RPP program for the years in question, and a transaction based report for the program. However, the data contained within is not equivalent to that reported on the cost-recovery forms (e.g. it is missing all expenses not directly associated with the RPP budget “object” in the transaction database, but which are nonetheless allocated to RPP in a cost-recovery calculation).

Moreover, neither the fee schedules published by SFMTA, nor the summary reports provided by the Controller, meet requirements set by CA Government Code §54986, which states that prior to increasing an existing fee:

"...the board of supervisors shall make available to the public data indicating the amount.
of cost, or estimated cost, required to provide the product or service or the cost of enforcing any regulation for which the fee or charge is levied and the revenue sources anticipated to provide the product or service or the cost of enforcing any regulation, including general fund revenues."

Also note that §54986 requires that the cost/revenue-sources report be made available at least 10 days prior to the fee increase. SFMTA has been in violation of this requirement with regard to the RPP program – and all of their user-fee based programs – for many years.

Detailed user-fee program cost-recovery statements and related information provide direct accountability to fee payers, in this case, residents of the City. The statements are the only means to judge program effectiveness, efficiency, and appropriateness of fee levels. Moreover, detailed cost-recovery statement of the RPP program - including tracking of revenue diverted to other SFMTA funds and functions - is a required element of generally accepted accounting practices for such enterprise programs, and is documented as such in Government Accounting Standards Board (GASB) statements, Government Finance Officers Association (GFOA) best practices and other standards.

I realized that even without the attachments (financial data spreadsheets), the emails exchanged with SFMTA contain much background level finance info. I attempted to highlight what I thought to be the most pertinent sections and messages. Apologies that the yellow-text gets quite dense toward the end of the exchange.

I also deleted certain text sections from the email summary with Denise Zmuda [Controller's Office] in an effort remove extraneous material. A series of dots [...] indicates text removed. I did not alter the remaining text in any way. If you require the original messages, in complete form, I can certainly provide those to you.

Please do not hesitate to contact me with any questions you may have.

Respectfully,
Mark Miller

On Fri, Nov 8, 2013 at 3:38 PM, Mark Miller <mark.miller@sfchron.com> wrote:

Thank you, will do. Any particular time (TUE) that would be good to catch you at your desk?

-Mark Miller

On Fri, Nov 8, 2013 at 3:23 PM, <Paula.Jesson@sfgov.org> wrote:

Dear Mr. Miller,

I would appreciate your calling me so that I can better understand the background of your request and the responses and records you've received to date. I would suggest that as a first step.

I am unable to do that today. But you can call me next week (Monday is a holiday - but Tuesday or any other day next week is good).

Paula Jesson
Ms. Jesson -

I will ask your office (as Supervisor of Records) to review a department's response to a public records request.

Taken together, the records request, the department response, and the material at issue is voluminous and detailed, as the rejected request stems from several earlier partially satisfied requests.

It would be helpful if we could meet briefly, before I submit. I hope to walk you through the material, and get guidance how to limit the submission to just the materials you will need.

Please let me know if this is possible. If so, please suggest a day/time. I am available most days (with notice) between 10:30 - 2:00.

Thank you.
Mark Miller

Sent via Email
Mark Miller
Re: Petition to Supervisor of Records - SFMTA

Dear Mr. Miller:

This letter responds to concerns that you raised regarding a determination of December 5, 2013, made by this Office in its role as Supervisor of Records. We denied your petition seeking review of responses by the San Francisco Municipal Transportation Agency (“SFMTA”) to your public records requests for cost-recovery financial statements and related data for the Residential Permit Parking (RPP) program.

You asked to meet with me so you could explain your concerns. We met for about an hour and you provided me with additional information, both when we met and thereafter by email. You alleged that the SFMTA had additional responsive records, including draft records and attachments to email messages.

The role of the Supervisor of Records under the San Francisco Sunshine Ordinance is limited to determining “whether the record requested is public.” (S.F. Administrative Code §67.21(d).) As we have noted in earlier determinations, this Office’s obligation under that section 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 this Office under that section 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 role of the Supervisor of Records is not to rule on the adequacy of the department’s search. (For prior determinations to the same effect, 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).)

But, as you know from our conversations, when we receive a petition alleging an inadequate search, we generally inform the department of the allegation so that it can review the matter, even though in the role of Supervisor of Records we are not required to take this step. We have done so here. It is our understanding that SFMTA has now provided you with additional records, including those provided to you on February 28, 2014, when SFMTA informed you that the department had no additional responsive records.

We have concluded our review as Supervisor of Records of the issues raised in your petition. We deny your petition because, as explained in this letter, it seeks a determination of an issue that is beyond the jurisdiction of this Office under San Francisco Administrative Code section 67.21(d).

Very truly yours,

DENNIS J. HERRERA
City Attorney

Paula Jesson
Deputy City Attorney

March 4, 2014
June 11, 2014

Sent via e-mail

Mark Miller

Re: Petition to Supervisor of Records – SFMTA – Residential Parking Permit Program

Dear Mr. Miller:

This letter concerns your public records requests to the San Francisco Municipal Transportation Agency ("SFMTA") for expenditure and cost-recovery financial statements and related data for the Residential Parking Permit ("RPP") Program.

You filed a petition with the Supervisor of Records on November 20, 2013 regarding the SFMTA's response to your requests. On December 5, 2013, we denied the petition because it did not identify any record or category of records that the SFMTA had located but was withholding from you. Therefore, the matter was not within the jurisdiction of the Supervisor of Records.

In response to that determination you informed us that in fact you had reason to believe that the SFMTA was withholding responsive records. We met for about an hour to discuss your concerns in detail and you provided records that you believed supported your allegation.

As a courtesy, we then discussed your concerns with SFMTA staff, who provided you with additional records. When SFMTA staff informed the Supervisor of Records that the department had no additional responsive records, the Supervisor of Records informed you on March 4, 2014, that we had concluded our review of the matter.

On April 21, 2014, you asked the Supervisor of Records to review the SFMTA's response to your public records requests further, alleging that staff was still withholding records responsive to your requests.

Before addressing the renewed allegation, it is important to emphasize that the role of the Supervisor of Records does not extend to determining whether a department has adequately searched for responsive records. The Sunshine Ordinance contemplates a more limited scope of review. The Supervisor of Records is responsible for determining whether a department that has located a responsive record is lawfully permitted to withhold it.

Nonetheless, as a courtesy to requesters and in an effort to facilitate responses to public records requests, it is our general practice to discuss with departments petitions that allege that a department has responsive records that it does not acknowledge having. Accordingly, we discussed with the SFMTA the issues that you raised in your April 21 request for further review. We turn now to three of those issues. We will respond separately to the fourth issue regarding RPP expenditure data provided in FAMIS.
Letter to Mark Miller
Page 2
June 11, 2014

(1) Alleged Failure to Provide All Email Messages, Including Attachments

You alleged that the SFMTA had not produced all of its email messages, including attachments, relating to expenditure and cost-recovery information for the RPP program. To address that concern, you suggested that the SFMTA implement an electronic search, using specific search parameters. To that end, you suggested a search using eleven words and phrases for email messages for five SFMTA staff member for two time periods: 8/1/2012-8/31/2013 and 9/1/2009-4/30/2010. The five staff members were S. Bose, T. Navarro, L. Zhang, T. Williams, and F. Atangan. On May 2, 2014, I provided those parameters to SFMTA staff and asked them to conduct that search.

They did so. But Sonali Bose has informed me that the “net” cast by those parameters was very broad because the SFMTA’s software has limited filtering sensitivities based on a search that uses key words along with the names of senders/recipient. As a result, the number of records produced was voluminous (nearly 2 GB) and I understand from Ms. Bose that many were unrelated to RPP program expenditure and cost-recovery information. Ms. Bose also informs me that some were altogether unrelated to RPP.

It will take staff considerable time to sort through the records produced from the search in order to locate those that are responsive and, of those, which may contain information that the SFMTA is required or permitted to withhold under exemptions provided in State and local law. I understand from SFMTA staff that they can begin providing the records by the beginning of next week. Ms. Bose informs me that staff will produce the records over a period of weeks because they must limit time for this project so that they are able to perform other work duties, including the duty to respond to requests for records from other members of the public.

Please contact Caroline Celaya if you have any questions regarding this issue.

(2) Number of Annual and Pro-Rated RPP Permits for FY12 and FY13

You alleged that the SFMTA is withholding records showing the number of annual and pro-rated RPP permits for two fiscal years. I discussed the issue with Diana Hammons of the SFMTA, who provided several charts with RPP permit data so that I could provide them to you, which I have done. Ms. Hammons has informed me that the SFMTA had already provided the substance of the information contained in the charts to you and that the charts just show it in a different format. In addition, Ms. Hammons informed me that the SFMTA did not have information for a certain time period for pro-rated permits because of a computer programming error, and I also passed that information on to you. Finally, Ms. Hammons informed me that there are no other records responsive to your request for information on the number of pro-rated RPP permits.

After you received this additional information, you expressed various concerns, including that staff’s work in responding to your request for these records was negligent, or worse; that you found what you believe are inconsistencies between the categories of information and numbers set forth in the records; and that you found it troubling that the SFMTA is apparently unwilling to correct the tracking problem caused by the computer problem so that it could provide more useful information.

It is not the role of the Supervisor of Records to answer the questions you have raised about the substance of the information provided by the SFMTA. Further, Ms. Hammons informs us that there are no additional responsive records for this category of records. Accordingly, there is no basis for the Supervisor of Records to review further your petition with respect to this issue.
(3) Cost Recovery Statement for FY 2009-2010

We understand that the SFMTA provided you with a document relating to the RPP program second fee increase for FY 2009-10, but included a disclaimer as to its accuracy. Therefore, you argue, the SFMTA is withholding records that show the "final justification" to support the second RPP fee increase for FY 2009-10.

The role of the Supervisor of Records is to determine whether a City department is withholding a record that should be made public. It is not to decide whether a department has properly characterized a record when producing it or whether it was appropriate to issue a disclaimer regarding its content. We note, though, as a general rule, that neither the Public Records Act nor the Sunshine Ordinance prohibits a department from including disclaimers or other comments when transmitting a public record to a requester.

Accordingly, the Supervisor of Records finds no basis for further review of this issue.

To summarize, your April 21 communication asked the Supervisor of Records to further review the SFMTA's response to your requests for records of expenditure and cost-recovery information regarding the RPP Program. The Supervisor of Records has gone beyond its legally mandated role in an effort to assist you regarding your public records requests to the SFMTA. The Supervisor of Records finds no basis for further review of the three issues discussed in this letter. As noted above, we will respond separately to the final issue you raised regarding RPP expenditure data provided in FAMIS.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Paula Jesson
Deputy City Attorney
June 16, 2014

Mark Miller

Re: Petition to Supervisor of Records – SFMTA – Residential Parking Permit Program

Dear Mr. Miller:

On June 11, 2014, we sent you a letter (via email attachment) responding to several concerns you had raised in an April 21, 2014 email sent to this Office as Supervisor of Records. Your concerns related to a determination by the Supervisor of Records sent to you on December 5, 2013, regarding your public records requests to the San Francisco Municipal Transportation Agency ("SFMTA") for expenditure and cost-recovery financial statements and related data for the Residential Parking Permit ("RPP") Program.

We informed you in the June 11, 2014, letter that we would address a final issue in a separate communication. That issue relates to RPP Program expenditure records provided through the City’s Financial Accounting and Management Information System ("FAMIS"). You had expressed concern that the SFMTA was withholding expenditure data available through FAMIS. As we understand it, you believe that FAMIS has index code numbers associated with expenditures for the RPP Program and that the SFMTA should therefore have been able to produce RPP expenditure data using those numbers and provide that information to you.

The Supervisor of Records has discussed this matter with the Director of Finance and Information Technology, Sonali Bose. Ms. Bose has informed the Supervisor of Records that there are no FAMIS index code numbers that provide data for only RPP expenditures. Rather, the index codes that include RPP expenditure data also include expenditure data for other (non-RPP) SFMTA operations. Ms. Bose has also informed the Supervisor of Records that some City records show FAMIS code numbers that are no longer active and do not contain information for the periods of time covered by your public records requests.

In addition, the Controller’ Office researched the issue and, in an email to you on June 12, 2014, Deputy Controller Monique Zmuda provided information about the limitations in obtaining RPP Program expenditure data through FAMIS. Ms. Zmuda’s email also states that SFMTA staff report that they track program costs separately in their internal records and that they have reported that information to you.

In light of the information provided by Ms. Bose and the Controller’s office, we find no basis for further review of the SFMTA’s response to your public records request for records from FAMIS relating to RPP Program expenditures.

This letter concludes our response to the concerns raised in your April 21, 2014 email to the Supervisor of Records.

Very truly yours,

DENNIS J. HERRERA
City Attorney

                                                 
Paula Jesson
Deputy City Attorney
Dear Ms. Datesh,

This response concerns your petition to the Supervisor of Records sent by email on December 5, 2013 (10:40 AM) regarding your November 19, 2013 public records request to Howard Lazar for the following:

"All documents pertaining to a civil case Datesh v Lazar heard yesterday. Copy of the brief Lazar tried to submit and a copy of the paperwork in his hands."

On December 4, 2013, Mr. Lazar responded to your November 19, 2013 public records request, providing you with records in the possession of the Arts Commission and informing you that it was withholding records of communications between the Arts Commission and the City Attorney's Office under the attorney client and attorney work product privileges. The response also noted that the civil case "was handled by the San Francisco City Attorney's Office and therefore the Arts Commission does not retain all documents" related to it, including the requested "brief."

On December 9, 2013, Mr. Lazar provided a further response to your request, enclosing a pdf of approximately 50 pages. In the email message transmitting the pdf to you, Mr. Lazar stated as follows:

"In your November 19, 2013 'Immediate Disclosure Request', you requested a 'Copy of the brief Lazar tried to submit' relative to 'a civil case Datesh v Lazar' heard in Small Claims Court on November 18th. While the 'brief' was not in my possession (as I had stated in my December 4th letter to you), I have now obtained a copy from the City Attorney's office and have herewith attached it as courtesy to you."

I have discussed this matter with Mr. Lazar and understand from him that he has no records responsive to your request other than those provided to you or withheld based on the attorney client and attorney work product privileges. In light of these circumstances, the Supervisor of Records finds this matter moot and denies the petition on that ground.

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

Yes, this request relates to the November 19 req...

From: Paula Datesh <...>
To: Paula.Jesson@sfgov.org,
Date: 12/05/2013 06:31 PM
Subject: Re: Petition to Supervisor of Records

Yes, this request relates to the November 19 request.
Paula Datesh

-----Original Message-----
From: Paula.Jesson <Paula.Jesson@sfgov.org>
To: pdatesh
Sent: Thu, Dec 5, 2013 1:14 pm
Subject: Re: Petition to Supervisor of Records

Dear Ms. Datesh,

You filed a petition to the Supervisor of Records today regarding the following:

On November 19, 2013 I filed an Immediate Disclosure Request for documents to Howard Lazar of the San Francisco Arts Commission. To date, I have not received any documents. See the following email.

It is my understanding that the information in the email below relates to the November 19 request that is the subject of your petition.

If that is not the case, please let me know.

Otherwise I assume that this is the public records request in issue and we will review this matter and inform you when the review is final.

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: ]n]
To: paula.jesson@sfgov.org,
Date: 12/05/2013 10:41 AM
Subject: Fwd: Immediate Disclosure Request

Begin forwarded message:

From: ]n]
Date: December 4, 2013 at 10:21:41 AM PST
To: paula.jesson@sfgov.org
Subject: Fwd: Immediate Disclosure Request
It has been over 14 days. I never got a response and filed a formal request for these documents with the SF Board clerk today.

Paula

Begin forwarded message:

From: "Lazar, Howard" <howard.lazar@sfgov.org>
Date: November 20, 2013 at 2:02:00 PM PST
To: "pdatesh[redacted]", "Jesson, Paula" <paula.jesson@sfgov.org>
Cc: "Krell, Rebekah" <rebekah.krell@sfgov.org>, "Patterson, Kate" <kate.patterson@sfgov.org>, Alyssa <licouris@sfgov.org>, Adine <yarah@sfgov.org>
Subject: RE: Immediate Disclosure Request

Dear Ms. Datesh:

Please see the attached letter to you invoking the 14-day extension of time in which to respond to your Immediate Disclosure 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

From: pdatesh[redacted]
Sent: Tuesday, November 19, 2013 6:37 AM
To: Lazar, Howard; Jesson, Paula
Subject: Immediate Disclosure Request

All documents pertaining to a civil case Datesh v Lazar heard yesterday. Copy of the brief Lazar tried to submit and a copy of the paperwork in his hands.

I am making this request pursuant to the Sunshine Ordinance.

Paula Jesson
(See attached file: Datesh111913.doc)
Dear Ms. Datesh,

On December 11, 2013, you filed a petition to the Supervisor of Records regarding your public records request to the San Francisco Arts Commission for the following records (the request and petition are set forth in the email string below):

"I am requesting all documents relating to a street inspection done last Wednesday-Nov.27,2013 by Lazar in which he was asking messengers on Market Street where, "Paula is?" and to call Lazar when they see me. I am requesting the inspector log book of the same day-Nov. 27, 2013".

In your petition, you stated that you had not received a response from the Arts Commission.

We have received a copy of an email message sent to you on December 16, 2013 (at 10:22 AM) responding to your request. Accordingly, we consider this matter moot and deny the petition on that ground.

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

Datesh

Dear Supervisor of Records:
It has now been 10 days without a response from Howard Lazar-the Custodian of Records.
I am filing a formal request for the documents requested in this
Immediate Disclosure Request.
Paula Datesh
On Dec 9, 2013, at 6:09 PM, [name redacted] wrote:

Dear Mr. Young:
I haven't received a response from
Lazar on this. It has been 7 days.
I spoke to Rebecka Krell and Jill Manton
last Friday about this. Both are hard to reach.
I would like a formal hearing on this and will
Mail a request tomorrow.
Paula Datesh

Begin forwarded message:

From: Paula Datesh [redacted]
Date: December 5, 2013 at 6:34:05 PM PST
To: howard.lazar@sf.gov, rebecka.krell@sfgov.org
Subject: Fwd: Immediate Disclosure Request

Paula Datesh

-----Original Message-----
From: pdatesh <[redacted]>
To: rebecka.krell <rebecka.krell@sfgov.org>; paula.jesson <paula.jesson@sfgov.org>
Sent: Thu, Dec 5, 2013 10:46 am
Subject: Immediate Disclosure Request

I am requesting all documents relating to a street inspection done
last Wednesday-Nov.27,2013 by Lazar in which
he was asking messengers on Market
Street where, "Paula is?" and to
call Lazar when they see me.

I am requesting the inspector log book of the same day-Nov. 27, 2013.