MEMORANDUM

TO: Honorable Members
Sunshine Ordinance Task Force

FROM: Bradley Russi
Deputy City Attorney

DATE: December 12, 2016

RE: Sixteenth Annual Report of the Supervisor of Records
January 1 to December 31, 2015

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

The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

Reporting period: This report covers petitions brought before the Supervisor of Records between January 1 – December 31, 2015 (the “reporting period”).

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

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

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

Court Decisions Interpreting or Applying the San Francisco Sunshine Ordinance:

At the request of the Task Force, the City Attorney’s Office reports additional information about court decisions when it submits the annual report of the Supervisor of Records. We report on any court decision made during the reporting period in a matter in which the City is a party to the action if the decisions interprets or applies the San Francisco Sunshine Ordinance; there were no such court decisions during the reporting period.
MEMORANDUM

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: December 12, 2016
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RE: Sixteenth Annual Report of the Supervisor of Records
January 1 to December 31, 2015

DESCRIPTION OF PETITIONS AND THEIR DISPOSITION

1. Petitioner: Enrique Godinez
Department: Police Department
Records sought: Peace Officer Standards and Training records for
Sgt. Brian Stansbury
Custodian of Records: Officer Albie Esparza
Determination: Records provided on March 19, 2015 – No
determination needed.
Date Petition Received: February 27, 2015
Date of Determination: Petition closed on April 8, 2015
A copy of the decision and petition are included on pages 1-11 of the Appendix.

2. Petitioner: Rick Denton
Department: Public Utilities Commission
Records sought: Report regarding the safety of the Broadway Tunnel
Custodian of Records: Suzanne Gautier
Determination: The department properly withheld a draft report
under Section 6254(k) of the Government Code, as
protected by state law confidentiality provisions
related to whistleblower complaints. (Gov’t Code §
53087.6(e)(2)). The report was also confidential
under similar provisions of local law. (S.F. Charter
§ 4.123, App’x F.110).
Date Petition Received: March 17, 2015
Date of Determination: May 26, 2015
A copy of the decision and petition are included on pages 12-17 of the Appendix.

3. Petitioner: Rick
Department: Municipal Transportation Agency (SFMTA)
Records sought: Emails of Jay Primus and Ed Reiskin regarding
policies for on-street parking management between
3/31/14 and 2/9/15
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Custodian of Records: Caroline Celaya
Determination: Records provided on April 8, 2015 – No determination needed.

Date Petition Received: April 1, 2015
Date of Determination: Petition closed on April 17, 2015

A copy of the decision and petition are included on pages 18-23 of the Appendix.

4. Petitioner: Joseph May
Department: Police Department
Records sought: Records regarding the arrest of Zachary Parsons on October 25, 2014
Custodian of Records: Officer Albie Esparza
Determination: No determination needed – department confirmed that no responsive records exist.

Date Petition Received: April 7, 2015
Date of Determination: Petition closed on April 13, 2015

A copy of the decision and petition are included on pages 24-31 of the Appendix.

5. Petitioner: Alex Emslie
Department: Police Department; Office of Contracts Administration
Records sought: Records regarding purchase of body-worn cameras; records regarding policies related to body-worn cameras
Custodian of Records: Officer Albie Esparza; John Gavin
Determinations: Police Department properly withheld draft policy documents as recommendations of the author under Government Code Section 6254(a) and Section 67.24 of the Administrative Code. Departments produced documents relating to purchase of body-worn cameras.

Date Petition Received: May 28, 2015
Date of Determination: June 17, 2015

n:\govern\as2014\01005050\01156652.doc
TO: Honorable Members
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DATE: December 12, 2016
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RE: Sixteenth Annual Report of the Supervisor of Records
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A copy of the decision and petition are included on pages 32-39 of the Appendix.

6. Petitioner: Larry Bush
Department: Department of Human Resources
Records sought: Records pertaining to a vacancy and subsequent appointment of a Deputy Director of the Ethics Commission in 2013/2014 and the current process and records regarding filling an anticipated vacancy for Executive Director of the Ethics Commission
Custodian of Records: Paul Greene
Determinations: No determination needed – petition challenged the department’s decision to invoke an extension of time, which is outside the scope of review of the Supervisor of Records.
Date Petition Received: May 29, 2015
Date of Determination: Petition closed on May 29, 2015

A copy of the decision and petition are included on pages 40-43 of the Appendix.

7. Petitioner: Ann Treboux
Department: Arts Commission
Records sought: An email to Rebecca Krell from an eyewitness to an incident that occurred on January 2, 2015
Custodian of Records: Howard Lazar
Determinations: The department properly withheld the record under Section 6254(k) of the Government Code, because (1) it was protected by the identity of informant privilege of Section 1041 of the Evidence Code, and (2) it was protected by the official information privilege of Section 1040 of the Evidence Code due to an ongoing investigation.
Date Petition Received: June 22, 2015
Date of Determination: June 30, 2015

A copy of the decision and petition are included on pages 44-49 of the Appendix.
8. Petitioner: Patrick O’Doherty  
   Department: Police Department  
   Records sought: Documents regarding unmanned air vehicles or drones  
   Custodian of Records: Officer Albie Esparza  
   Determinations: No determination needed – department confirmed that no responsive records exist.  
   Date Petition Received: July 10, 2015  
   Date of Determination: Petition closed on July 14, 2015  
   A copy of the decision and petition are included on pages 50-56 of the Appendix.

9. Petitioner: P.T.  
   Department: Employees’ Retirement System  
   Records sought: The dollar amount of first year pension payout for all SFPD members retiring between January 1, 2011 and June 30, 2015, including civil service classification, employee ID, and name  
   Custodian of Records: Jay Huish  
   Determinations: No determination needed – petition challenged the department’s decision to invoke an extension of time, which is outside the scope of review of the Supervisor of Records.  
   Date Petition Received: July 21, 2015  
   Date of Determination: Petition closed on July 21, 2015  
   A copy of the decision and petition are included on pages 57-62 of the Appendix.

10. Petitioner: Joel Warne  
    Department: Department of Public Health  
    Records sought: Security camera footage from the emergency department of San Francisco General Hospital (“SFGH”) on August 8 or 9, 2015; documents supporting the cost assessed by SFGH for several drugs
MEMORANDUM

TO: Honorable Members
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DATE: December 12, 2016
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RE: Sixteenth Annual Report of the Supervisor of Records
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Custodian of Records: Nancy Sarieh
Determinations: The department properly withheld the SFGH surveillance video as a record of local law enforcement procedures under Section 6254(f) of the Government Code, on privacy grounds under Section 6254(c), and as prohibited from disclosure by federal law under 6254(k). The department produced records regarding drug pricing.

Date Petition Received: November 19, 2015
Date of Determination: December 7, 2015

A copy of the decision and petition are included on pages 63-73 of the Appendix.

11. Petitioner: Alexander Mullaney
Department: Emergency Management
Records sought: Documents regarding the acquisition and use of cell site simulators by the City — requestor challenged redactions made by the Department of Emergency Management

Custodian of Records: Francis Zamora
Determinations: The department properly redacted the documents. The information redacted fell within the scope of 6254(f) of the Government Code as security procedures of a local law enforcement agency. The redactions were also proper under Section 6254(k) of the Government Code as prohibited from disclosure by federal law.

Date Petition Received: December 30, 2015
Date of Determination: January 29, 2016

A copy of the decision and petition are included on pages 74-79 of the Appendix.
APPENDIX
SIXTEENTH ANNUAL REPORT OF THE SUPERVISOR OF RECORDS

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February 27, 2015

Via Facsimile at: (415) 554-4745

Office of the City & County Attorney
City and County of San Francisco
Attention: Supervisor of Records
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place, Suite #234
San Francisco, California 94102-4682

Re: CPRA To SFPD

Dear Mr. Supervisor of Records:

On January 30, 2015, I served the SFPD with a California Public Records Act (CPRA) request. Ms. Briseida Bañuelos advanced the SFPD position on several items requested on February 20, 2015.

The position advanced by the SFPD regarding Sergeant Brian Stanbury’s POST-approved training courses must be rejected because applying Ms. Bañuelos’s legal principles of her interpretation and construction of PC § 832.7, PC § 832.5, BC § 1043 & 1046 is inconsistent with dicta from the California Supreme Court (See Commission on Peace Officer Standards and Training v. Superior Court of Sacramento County) and creates an unreasonable interpretation of cited codes that would lead to arbitrary and anomalous decisions by Police Departments to assert exemptions to disclose information that the Supreme Court of California has ruled is not privileged and thus not exempt from disclosure.

The item at issue is a simple list of POST-certified courses that a public servant has taken. What is so private in nature, personal or confidential about this item? Under Ms. Bañuelos misplaced interpretation, anything that is placed in a personnel file is sacrosanct as to render it private, regardless of whether the document or information is related to personnel matters. As in Williams v. Superior Court, the California Supreme Court ruled that personnel records are confidential not based on their location (a personnel file), but on their content.
Letter to SF City Attorney
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There is no legal basis for the SFPD to shield information from public disclosure simply by invoking PC 832.8 or by asserting a "catch all" exception to refuse release of information. Again, the issue is the content of the information, not where that information is located. Releasing POST courses information is not an unwarranted invasion of Sergeant Stanbury's personal privacy. Ms. Buñuelos "all or nothing approach" is susceptible to a legal challenge.

Unless the item requested is disclose, I will file a petition for a writ of mandate in superior court seeking release of the information I requested under CPRA. If forced to do so, I will ask for court and legal fees.

Yours,

Enrique Godinez
January 30, 2015

Via Facsimile at: (415) -553-7307

San Francisco Police Department
Office of the General Legal Division, RM 575
850 Bryant Street
San Francisco, California 94103

Re: California Public Records Act ("PRA") Request.

Dear Custodian of the SFPD Records:

Pursuant to the rights of citizens under the California Public Records Act (Gov. Code, §§6250-6276.48; "Act") and the California Constitution as amended by the passage by voters of Proposition 59 (§6250; See Cal. Const. art. I, §3, subd. (b), I am herein requesting that I be provided with copies of the following records, in control, possession, custody, and ownership of the SFPD:

→ Sergeant Brian Stansbury full annual salary compensation, including bonus, and overtime for the year ending on December 31, 2014.

→ List of All POST and NON-POST courses Sergeant Stansbury has taken in the last 5 years.

→ The full names, and badge numbers of every SFPD Peace Officer that aided and abetted Inspector Stansbury (false, and unconstitutional arrest of Senior Public Defender, Attorney, Jamie Elizabeth Tillotson (SBN184249). Inspector Stansbury violated Ms. Tillotson right to free speech under the First Amendment, inter alia. To aid you locate this item. Inspector Stansbury’s improper, and deliberate indifference to Ms. Tillotson’s constitutional rights occurred in the hallway, outside Court Room Number 551-0317, Department 17, 2nd Floor, in front of the Hon. Loretta M Giordi’s designated chamber. Inspector’s Stansbury false “contempt of cop” arrest occurred yesterday, January 29, 2015, at the San Francisco Court-Hall of Justice.

→ A copy of the false SFPD arrest report of Attorney Elizabeth Tillotson.

→ Current AOC Rule 1.150, which is binding on all Superior Courts in California, clearly establishes that to safeguard the calmness and solemnity of Courts, permission to photograph, irrespective of the method used, digital or photographic, must be secured from a Judicial Official of the Superior Court, and/or a Judge-Magistrate seating in the Court. Thus, even though Inspector Stansbury behaves as if he were to be above the law, provide me with a copy of the Court’s permission wherein authorization is granted for Inspector Stansbury to disturb court adjudicated controversies inside the Hall of Justice, by taking pictures and video of the
two "subjects" of interest to SFPD who were represented by counsel and were physically inside San Francisco Superior.

→ A copy of the current SFPD policy regarding the conduct of investigations, photographing, and questioning of "suspects" that are represented by counsel.

→ A copy of SFPD's current policy regarding disorderly conduct arrest (note these arrest are also known as "contempt of cop arrests"); Some Federal District Courts have recognized that arrests for being disrespectful to police officers or talking back to them are known as "contempt of cop" arrest, which the courts have ruled as unconstitutional.

→ Amount of taxpayers' moneys wasted so far to defend Inspector Brian Stansbury in Case: 4:13-cv-05233-DMR; This case is before the Hon. Federal Judge-Magistrate, Donna M. Ryu. I am not interested in copies of invoices, I only want to know how much money we have wasted defending a problematic police officer. As in the incident with Attorney Tillotson, in the incident with Officer Lorenzo Adamson (Plaintiff), Inspector Stansbury loves to intentionally, unjustly, unfairly, harassingly, and oppressively take advantage of others by using the power of his position. Inspector Stansbury willfully and consciously shows disregard of the right of others, and now, he has been slapped in the face with a federal lawsuit.

How many more lawsuits will us, the taxpayers pay-out before the SFPD take corrective action to adequately reprimand Inspector's Stansbury systematic and deliberate indifference to the constitutional rights of the people he neither serves nor protects?


Please note that Government Code, Section §6253 (c) provides that "upon a request for a copy of records, (the agency), shall within ten (10) days from receipt of the request determine whether the request, in whole or in part, seeks copies of disclosable public records in possession of the agency and shall promptly notify the person making the request of the determination and the reason therefore".

I request that you please treat this CPRA Request as severable. That is, should you determine that one or more portions of the request cannot be released, please state the legal basis for such non-release, and release the remaining portions expeditiously as required by Government Code Sections §6250 et seq.

If you determine that any or all of the information is exempt from disclosure, I ask that you reconsider that determination in view of Proposition 59, which has amended the California Constitution to require that all exemptions be "narrowly construed".

If you nonetheless determine that the requested records are subject to a still-valid exemption, I would further request that: (1) you exercise your discretion to disclose some or all of the records notwithstanding the exemption; and (2) that, with respect to records containing both exempt and non-exempt content you redact the exempt content and disclose the rest.

Finally, should you deny part or the entire request; you are required to provide a written response describing the legal authority or authorities on which you rely.

I will reimburse for the reasonable cost of copying set per Government Code, §6257, thus notify me in advance of cost for copies as dictated by statute if the cost will exceed $50.

If you need clarification that will help expedite the processing of this request, please contact me by telephone at [REDACTED] or email at [REDACTED]

I look forward to your prompt and professional compliance with this request.

Yours,

Enrique Godinez

Cc: Hon. Presiding Judge Cynthia Ming-Mei
    Mr. T. Michael Yuen, Court Executive Officer
Public Records Act request

1 message

Banuelos, Briseida (POL) <briseida.banuelos@sfgov.org>
To: "egodinez@sfmail.sfgov.org"

February 20, 2015

VIA EMAIL
Mr. Enrique Godinez


Dear Mr. Godinez:

The San Francisco Police Department ("SFPD") received your Public Records Act request on January 30, 2015. We acknowledged your request and invoked an extension on February 10, 2015. You requested records concerning Sergeant Stansbury, and the SFPD's response is provided below.

You requested “Sergeant Brian Stansbury full annual salary compensation, including bonus, and overtime for the year ending on December 31, 2014."

Attached please find a copy of Sergeant Stansbury's earnings for 2014.

You requested a "[l]ist of All POST and NON-POST courses Sergeant Stansbury has taken in the last 5 years."

Sergeant Stansbury's training records are records not subject to disclosure under Cal. Penal Code § 832.7. Penal Code § 832.7 provides that "(a) [p]lace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Penal Code § 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."
Accordingly, peace officers personnel records are not subject to disclosure under the Public Records Act. Furthermore, Penal Code § 832.8 defines a “personnel record” as “any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following: ...(e) Complaints, or investigations of complaints concerning an event or transaction in which he or she participated or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.” Penal Code § 832.8 also precludes the disclosure of any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

You requested “[t]he full names, and badge numbers of every SFPD Peace Officer that aided and abetted Inspector Stansbury false, and unconstitutional arrest of Senior Public Defender, Attorney, Jami Elizabeth Tillotson (SBN184249). Inspector Stansbury violated Ms. Tillotson right to free speech under the First Amendment, inter alia. To aid you locate this item, Inspector Stansbury's improper, and deliberate indifference to Ms. Tillotson's constitutional rights occurred in the hallway, outside Court Room Number 551-0317, Department 17, 2nd Floor, in front of the Hon. Loretta M. Giordi's designed chamber. Inspector's Stansbury false "contempt of cop" arrest occurred yesterday, January 29, 2015, at the San Francisco Court-Hall of Justice.”

Here are the names and badge numbers of the officers involved in the January 27, 2015 incident involving Ms. Tillotson and the SFPD:

Sergeant Brian Stansbury, Star #2387
Sergeant Douglas Farmer, Star #489
Sergeant Gary Buckner, Star #1314
Officer Patrick Woods, Star #2468
Matthew Eng, Star #298
Brian Knuecker, Star #2334

You requested a “[a] copy of the false SFPD arrest report of Attorney Elizabeth Tillotson.”

The January 27, 2015 incident report involving Ms. Tillotson and the SFPD is 150082376. The incident report is not subject to disclosure at this time. Cal. Govt. Code § 6254(f). Once the investigation is closed, the incident report will be subject to disclosure. Please follow the Department's policy for obtaining the incident report by completing the enclosed form and returning to the Records Management Division.

You requested “... a copy of the Court's permission wherein authorization is granted for Inspector Stansbury to disturb court adjudicated controversies inside the Hall of Justice, by taking pictures and video of the two "subjects" of interest to SFPD who
were represented by counsel and were physical inside San Francisco Superior Court.

The SFPD has no responsive records regarding "authorization" from the court.

You asked for "[a] copy of the current SFPD policy regarding the conduct of investigations, photographing, and questioning of "suspects" that are represented by counsel." And, you asked for "[a] copy of SFPD's current policy regarding disorderly conduct arrests (note these arrests are also known as "contempt of cop arrests"); Some Federal District Courts have recognized that arrests for being disrespectful to police officers or talking back to them are known as "contempt of cop" arrest, which the courts have ruled as unconstitutional.

Attached please find responsive General Orders and Department Bulletins addressing your 2 requests for policies and procedures regarding 1) the conduct of investigations, photographing, and questioning of "suspects" and for 2) disorderly conduct.

SFPD has training manuals that are responsive but are not subject to disclosure under Cal. Government Code § 6254(f).

You asked for "[a]mount of taxpayers' moneys wasted so far to defend Inspector Brian Stansbury in Case: 4:13-cv-05233-DMR ...."

We have no responsive documents. Please contact the Office of the City Attorney, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4682 as they may have responsive documents.

Sincerely,

Briseida Banuelos
Legal Assistant for San Francisco Police Department
Legal Division
850 Bryant Street, Room 575
San Francisco, CA 94103
(415) 553-1096 phone
(415) 734-3233 fax
Email: Briseida.Banuelos@sfgov.org
NOTICE: The information contained in this electronic message may be confidential and may be subject to the attorney-client privilege and/or the attorney work product doctrine. It is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any use, dissemination or copying of this communication is strictly prohibited. If you have received this electronic message in error, please delete the original message from your e-mail system. Thank you.

11 attachments

- 20141002154128304.pdf
  65K
- PRA - Earnings.docx
  12K
- 200-09%20Interview%20Room%20Procedures.pdf
  44K
- 13-172.pdf
  107K
  10K
- DGO 5.03.pdf
  67K
- DGO 5.04 as of 08-01-2007.pdf
  91K
- DGO 5.07.pdf
  142K
- DGO 5.08.pdf
  75K
- DGO 5.17 - rev. 05-04-11.pdf
  1174K
- DGO%205.06.pdf
  243K
Response to Supervisor of Records Petition
Supervisor Records  to: egodinez
Sent by: Brad Russi

From: Supervisor Records/CTYATT
To: egodinez

Mr. Godinez,

Please see the attached correspondence regarding your petition to the Supervisor of Records dated February 27, 2015.

Best,

Bradley Russi
Deputy City Attorney
(415) 554-4645

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

Ltr. to E. Godinez 4.8.2015.pdf
April 8, 2015

Re: Supervisor of Records Petition dated February 27, 2015

Dear Mr. Godinez,

By letter dated February 27, 2015, you petitioned the Supervisor of Records for a determination regarding the San Francisco Police Department’s ("SFPD") decision to withhold Peace Officer Standards and Training ("POST") records for Sergeant Brian Stansbury in response to your public records request submitted on January 30, 2015. On March 19, 2015, SFPD provided you with the POST training records you sought. Therefore, your petition to the Supervisor of Records is now moot, and we consider the matter closed.

Very truly yours,

DENNIS J. HERRERA
City Attorney

BRADLEY RUSSI
Deputy City Attorney
Dear Mr. Russi,

Your assumption is incorrect. Although the document I received from Studio 321 is likely the true 10/18/13 report provided to the SFPUC, whether or not that report was then faithfully conveyed to the Controller's Office remains very much in doubt. When the Controller's Office provides to me the report they received from the on 10/18/13, then and only then will I consider the report delivered as requested.

In the meantime, the SFPUC has publicly relied on that report to defend their claim that the Broadway Tunnel is safe. The report's creator recently acknowledged under oath that the report is missing an entire section on nighttime safety which undermines all claims that the tunnel is safe and exposes the City to the possibility that some traffic injuries suffered at Broadway Tunnel are a result of the lighting conditions.

That the SFPUC apparently spent tax-payer dollars to produce a materially altered report and falsified its authenticity to your Office in violation of the Public Records laws, and that the public may have been exposed to harm as a result, are serious matters separate from fulfilling the report request and thus hardly "moot", the City Attorney's Office notwithstanding. The lack of outrage at your Office after being duped into participating in the deception is inexplicable.

As the originator of the records request, concluding these matters requires two actions:

1) I need a true copy of the report received by the Controller's Office on 10/18/13 in native format, and
2) The person(s) responsible for altering the report need to face whatever penalties are provided for under the law for violating their sacred public trust and failing to fulfill their duties under the Public Records laws. At a minimum, your Office should report the matter of the records alteration to the Ethic's Commission who in turn should receive the full cooperation of the City Attorney's Office and the Controller's Office in investigating the matter.

Best regards from a concerned citizen,

Richard A. Denton

From: Brad.Russi@sfgov.org [mailto:Brad.Russi@sfgov.org] On Behalf Of Supervisor.Records@sfgov.org
Sent: Thursday, March 19, 2015 2:26 PM
To: [redacted]
Subject: Re: Follow up on 3/2/15 email: Public Records request for reports on Broadway Tunnel

Mr. Denton,

I understand from your email below that you have obtained the document that you sought from the SFPUC. As a result, we consider the matter closed. Thanks.

Best,
Dear Ms. Jesson,

I sent an email on March 2nd about a matter concerning my 2013 Public Records request for reports on Broadway Tunnel. I hadn't heard back from you so I wanted to take this opportunity to confirm that the email did in fact arrive.

Best regards,

Rick Denton

--- Message from "Rick Denton" on Tue, 3 Mar 2015 00:38:24 -0700 ---

To: "Paula Jesson" <Paula_Jesson@sfgov.org>

Subject: RE: Fw: Public Records request for reports on Broadway Tunnel

Dear Ms. Jesson,

I am writing because of a serious problem I recently discovered related to the SFPUC's response to my Nov 1, 2013 public records request (attached).

Prior to the SFPUC completing the records request, I had declined your offer to accept an altered version. You later wrote that the SFPUC had dropped their objections to my public records request and would produce as requested. Nothing in that communication indicated I would be receiving anything other than a true and exact copy of the report provided to the Controller's Office on 10-18-13.

The report I received from the SFPUC was indeed dated 10-18-13 but was actually created 11-27-13. I recently acquired the actual 10-18-13 report and compared it to the SFPUC's: the latter is 6mb (50%) bigger and has 7 pages containing over 300 word changes over the former. In short, an altered version of the lighting analysis report was delivered and falsely represented as a true copy of the original creating the appearance of compliance under the San Francisco Sunshine Ordinance.

Since my open records appeal came to your desk for resolution, it seemed appropriate I bring this matter to your attention first so that we might discuss it further. If you feel this matter is still closed to your satisfaction, please let me know.

Best regards,

Rick Denton
From: Paula Jesson [mailto:Paula.Jesson@sfgov.org]
Sent: Monday, December 02, 2013 4:11 PM
To: Rick Denton
Subject: Re: Fw: Public Records request for reports on Broadway Tunnel

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

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: Paula Jesson
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.

Suzanne Gautier
Suzanne Gautier  
Communications and Public Outreach  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 12th Floor  
San Francisco, CA 94102  
gautier@sfwater.org  
(415) 554-3204

--- Message from "Rick Denton" on Fri, 1 Nov 2013 15:06:12 -0700 ---

To: "Public Records" <PublicRecords@sfwater.org>
Subject: Public Records Request for reports on Broadway Tunnel

--- To whom it may concern:

I would like to confidentially request the following public record(s):

"Any and all report(s) evaluating lighting, energy efficiency, or health and safety conditions at Broadway Tunnel for the SFPUC since January of 2010."

The following information is confidentially provided in order to assist Public Records in fulfilling my request:

The report(s) are probably available through John Doyle, Manager of Energy Infrastructure. At least one report was probably started in the last six months and probably finished in Oct. At least one report was probably submitted to SFPUC by the professional services consultant EMCOR. That report was probably researched by Studio Three Twenty One Lighting Design, a subcontractor to EMCOR. The report(s) of interest may include other topics such as proposals for redesign, compliance with state law, health and safety, and other topics. It is my understanding that at least one report (from EMCOR) has been delivered to SFPUC. If so, I would like to receive that one as soon as possible.

Thanks for your assistance with this request. Note: If the report is in an electronic format already, email delivery will be fine (or I can come by with a memory stick for a copy). If it is on 8.5x11 paper, either PDF or paper copy is fine. If the report has pages larger than 8.5x11, a photocopy would be best.

Best regards,

Rick Denton

[attachment "image001.gif" deleted by Brad Russi/CTYATT] [attachment "image002.gif" deleted by Brad Russi/CTYATT] [attachment "image003.gif" deleted by Brad Russi/CTYATT] [attachment "image004.png" deleted by Brad Russi/CTYATT]
Sent via email
Rick Denton

Re: Petition to Supervisor of Records
3/17/2015

Dear Mr. Denton:

This letter responds to your email sent to the Supervisor of Records on March 17, 2015, regarding a petition to the Supervisor of Records that was resolved in December 2013. I apologize for not responding sooner; there was a misunderstanding and delay in obtaining the information from the departments due to your pending lawsuit in which you are requesting the same document. To the extent your email reopens your 2013 petition, this letter constitutes the determination of the Supervisor of Records.

Your public records request sought reports completed for the San Francisco Public Utilities Commission (SFPUC) since January 2010, evaluating lighting, energy efficiency, or health and safety conditions at the Broadway Tunnel. You filed a petition with the Supervisor of Records regarding this request in 2013. The SFPUC then produced to you the final version of a report completed by Studio Three Twenty-One. The Supervisor of Records wrote to you stating that SFPUC had agreed to produce the final report and closed your petition as moot. You inform us that in connection with your lawsuit against the City, you obtained from Studio Three Twenty-One an earlier draft of the report. You have now sought to reopen your petition to the Supervisor of Records to obtain from SFPUC or the Controller’s Office the same draft report.

The Public Records Act (Act) allows a public entity to decline to disclose records that state law exempts from disclosure or the disclosure of which state law prohibits. Gov’t Code § 6254(k). The Sunshine Ordinance also recognizes that a department may withhold a record the disclosure of which state law prohibits. S.F. Admin. Code § 67.27(b). Under Section 53087.6(e)(2) of the Government Code, when a city or county controller conducts an investigative audit in response to a complaint to a whistleblower program, such investigative audit “shall be kept confidential, except to issue any report of an investigation that has been substantiated, or to release any findings resulting from a completed investigation that are deemed necessary to serve the interests of the public.”

Local law includes a similar provision. Appendix F.110 of the Charter of the City and County of San Francisco provides that “all drafts, notes, preliminary reports of Controller’s benchmark studies, audits, investigations and other reports shall be kept confidential.” (emphasis added). Additionally, Section 4.123 of the Campaign and Governmental Conduct Code specifically addresses whistleblower files. That section provides that “[e]very officer and employee of the City shall keep confidential . . . Complaints or reports to the Whistleblower Program and information related to the investigation of the matter, including drafts, notes,
preliminary reports, working papers, records of interviews, communications with complainants and witnesses, and any other materials and information gathered or prepared in the course of the investigation."

The draft Studio Three Twenty-One report was completed in response to your complaint to the Controller's whistleblower program and is part of the Controller's investigation into the complaint. Because the draft report is part of the Controller's investigative file into a whistleblower complaint, California and City law require that the SFPUC and the Controller decline to disclose it.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Bradley A. Russi
Deputy City Attorney
SFMTA response to IDR#15-065: Request for Immediate Disclosure of Public Record

Rick
to:
Supervisor.Records, sfmtasunshinerequests
04/01/2015 08:02 PM
Cc:

Hide Details
From: Rick

To: Supervisor.Records@sfgov.org, sfmtasunshinerequests@sfmta.com,
Cc: cac@sfmta.com, London.Breed@sfgov.org, Julie.Christensen@sfgov.org,
David.Campos@sfmta.com, Eric.Mar@sfgov.org

History: This message has been replied to and forwarded.

To: Supervisor of Records and Caroline Celaya
CC: SFMTA CAC, Sup. London Breed, Sup. Eric Mar, Sup. Julie Christensen, Sup. David Campos

I request that you, in your role as Supervisor of Records, require SFMTA staff and management to fulfill their responsibilities under the SF Sunshine Ordinance and the CA Public Records Act.

SFMTA has failed to complete Immediate Request for Public Records #2015-065. As you are aware, the Sunshine Ordinance requires a complete response within 1 business day; this request remains unsatisfied over 1 -1/2 months after filing. The failure to comply is indefensible, as the requested records are less than a year old, and are easily searchable and retrievable on SFMTA email servers. Following is the history of this request:

On 2/9/15, I requested all records that discuss, reference, or otherwise pertain to the "Policies for On-Street Parking Management", dated between 3/31/14 and 2/9/15. I further requested that the response - at minimum - include all subsequent messages to/from the sender and recipients of a particular relevant email message I provided to SFMTA, header information included below:

From: Ed Reiskin
To: Folks, Tom; Primus, Jay; Olea, Ricardo
Subject: RE: onstreet parking management policies
Cc: Robbins, Jerry; Mattern, Lauren; Kothari, Amit; Sukhenko, Alexiy
Date: Tuesday April 22, 2014 12:49:38pm

SFMTA issued an initial production of records on 2/10/15, which was substantially incomplete. On 2/19/15, I informed SFMTA that I had received records from the email accounts of only two staff members: Ricardo Olea and Tom Folks. [That records were produced only from these staff is plainly discernible from filenames and internal content of disclosed messages.] I again requested email records from the accounts belonging to: Reiskin, Primus, Robbins, Mattern, Kothari, Sukhenko, and any other relevant materials.

On 3/16/15, SFMTA produced the additional PDF file "IDR#15-065 emails from JPrimus-LMattern-AKothari.PDF". The file contains >400 pages of email messages that fall significantly outside the date range requested, and are primarily dated from 2012 and 2013. Only six of the records disclosed - out of hundreds - meet the requested search criteria, and none are responses to the Reiskin 4/22/14 email message (above).

It is clear that SFMTA again failed to disclose email messages from the accounts of Mr. Primus and Mr. Reiskin. The 4/22/14 message from Mr. Reiskin cites an SFMTA CAC motion to the SFMTA Board, urging them to rescind the "Policies for On-Street Parking Management", and ends with a request from Mr. Reiskin to his staff "for your thoughts." As of 5/1/14, per emails disclosed 2/10/15, staff were in strident disagreement on the matter. [See IDR#15-065 RO emails part 4.PDF]
It is extremely unlikely that no further email messages from/to Mr. Primus or Mr. Reiskin exist beyond those disclosed, given Mr. Reiskin’s request for guidance on his reply to the CAC, Mr. Primus’ initial responses and Mr. Folk’s messages dated 5/1/2014 and 5/2/2014. I am, in fact, in possession of email messages that prove SFMTA has not provided all responsive records. It is particularly disturbing that no e-mail has been produced from Mr. Reiskin’s account since this request centered on these communications.

Please ensure this request is fully and properly completed.

Thanks,
Rick
RE: SFMTA response to IDR#15-065: Request for Immediate Disclosure of Public Record

Supervisor Records to: Rick
Sent by: Brad Russi

04/17/2015 10:22 AM

From: Supervisor Records/CTYATT
To: Rick

Dear Sir,

In light of the SFMTA's further production of documents on April 8, 2015, the Supervisor of Records considers your petition dated April 1, 2015 closed.

Best,

Brad Russi
Deputy City Attorney
(415) 554-4645

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

"Celaya, Caroline" Dear Mr. Hall: Attached are the emails directly fr... 04/08/2015 04:58:39 PM

From: "Celaya, Caroline" <Caroline.Celaya@sfmta.com>
To: "rlistad@gmail.com" [mailto: rlistad@gmail.com]
Cc: "Records, Supervisor" <Supervisor.Records@sfgov.org>
Date: 04/08/2015 04:58 PM
Subject: RE: SFMTA response to IDR#15-065: Request for Immediate Disclosure of Public Record

Dear Mr. Hall:

Attached are the emails directly from Mr. Ed Reiskin. Some of them may have already been sent to you from other staff that are included in the emails.
I apologize for the oversight.

Sincerely,

Caroline Celaya
Manager, Public Records Requests
SFMTA
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
415.701.4670
415-701-4502 fax

From: Brad Russi [mailto:Brad.Russi@sfgov.org] On Behalf Of Supervisor Records
Sent: Thursday, April 02, 2015 5:27 PM
To:
Cc: Celaya, Caroline
Subject: Re: SFMTA response to IDR#15-065: Request for Immediate Disclosure of Public Record

Dear Sir,

I wanted to let you know that our office has received your message below. The Sunshine Ordinance requires the Supervisor of Records to hear administrative appeals from members of the public who believe that a City department is improperly withholding or redacting a record in response to a public records request. Under Section 67.21(d), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so. In contrast, the Supervisor of Records does not make determinations as to the adequacy of a City department’s search for records.

It appears to me that the SFMTA has not asserted that any records responsive to your request are subject to withholding. Rather, it looks as if your complaint really addresses the adequacy of the department's search for the records you are requesting. In any case, I will make an effort to see whether I can help facilitate a resolution to your concern.

Brad Russi
Deputy City Attorney
(415) 554-4645

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

From: Rick
To: <SupervisorRecords@sfgov.org>, <sfmtasunshinerequests@sfmta.com>,
Cc: <cac@sfmta.com>, <London.Breed@sfgov.org>, <Julie.Christensen@sfgov.org>, <David.Campos@sfgov.org>, <Eric.Mar@sfgov.org>
Date: 04/01/2015 08:02 PM
Subject: SFMTA response to IDR#15-065: Request for Immediate Disclosure of Public Record

To: Supervisor of Records and Caroline Celaya
David Campos
I request that you, in your role as Supervisor of Records, require SFMTA staff and management to fulfill their responsibilities under the SF Sunshine Ordinance and the CA Public Records Act.

SFMTA has failed to complete Immediate Request for Public Records #2015-065. As you are aware, the Sunshine Ordinance requires a complete response within 1 business day; this request remains unsatisfied over 1 1/2 months after filing. The failure to comply is indefensible, as the requested records are less than a year old, and are easily searchable and retrievable on SFMTA email servers. Following is the history of this request:

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Date: Tuesday April 22, 2014 12:49:38pm

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It is clear that SFMTA again failed to disclose email messages from the accounts of Mr. Primus and Mr. Reiskin. The 4/22/14 message from Mr. Reiskin cites an SFMTA CAC motion to the SFMTA Board, urging them to rescind the “Policies for On-Street Parking Management”, and ends with a request from Mr. Reiskin to his staff “for your thoughts.” As of 5/1/14, per emails disclosed 2/10/15, staff were in strident disagreement on the matter. [See IDR#15-065 RO emails part 4.PDF]

It is extremely unlikely that no further email messages from/to Mr. Primus or Mr. Reiskin exist beyond those disclosed, given Mr. Reiskin’s request for guidance on his reply to the CAC, Mr. Primus’ initial responses and Mr. Folk’s messages dated 5/1/2014 and 5/2/2014. I am, in fact, in possession of email messages that prove SFMTA has not provided all responsive records. It is particularly disturbing that no e-mail has been produced from Mr. Reiskin’s account since this request centered on these communications.

Please ensure this request is fully and properly completed.

Thanks,
Rick [attachment "RE_ onstreet parking management policies .pdf" deleted by Brad Russi/CTYATT] [attachment "RE_ onstreet parking management policies 2.pdf" deleted by Brad Russi/CTYATT] [attachment "RE_ onstreet parking management policies 3.pdf" deleted by Brad Russi/CTYATT] [attachment "RE_ onstreet parking management policies 4.pdf" deleted by Brad Russi/CTYATT] [attachment "RE_ onstreet parking management policies 5.pdf" deleted by Brad Russi/CTYATT] [attachment "RE_ onstreet parking management policies 6.pdf" deleted by Brad Russi/CTYATT] [attachment "RE_ onstreet parking management policies 7.pdf" deleted by Brad Russi/CTYATT] [attachment "RE_ onstreet parking management policies 8.pdf" deleted by Brad Russi/CTYATT]
April 9, 2015

[Address]

Under the California Public Records Act Request for Records and Information

REQUEST FOR RECORDS PARADIGM CORPORATION

March 26, 2015

I hereby request that you provide me with any and all records or information that are material to the following request:

- Any correspondence between Paradigm Corporation and any other party related to the acquisition of [Company Name].
- Any financial documents, including, but not limited to, purchase agreements and transactional agreements.
- Any legal documents, including, but not limited to, contracts and agreements.
- Any internal company communications, including, but not limited to, emails and memos.
- Any documentation regarding the due diligence process.

If you have any questions about this request, don't hesitate to contact me at [your email address] or [your phone number].

Very truly yours,

[Your Name]

[Title]

[Company Name]

cc: [Counsel's Name]
February 23, 2015

S.F.P.D. Records Bureau
Hall of Justice
850 Bryant Street, Room 475
San Francisco, CA 94103

Re: California Public Records Act Request for Records and Information
Arrest of Zachary Parsons on October 25, 2014

Dear Sir/Madam,

I am writing to request any and all records, documents and information, including but not limited to police incident reports, public incident reports, CAD reports, dispatch logs, and recordings or logs of 911 calls, which relate to the October 25, 2014 detention and/or arrest of Zachary Parsons. [REDACTED] It is my understanding that Mr. Parsons was arrested at AT&T Park during game 4 of the World Series, on suspicion of violating PC 647(c) and was booked into CI 4 and released early on October 26, 2014.

Enclosed, please find an authorization for release of these records executed by Mr. Lawlor along with a "Request for Police Report" and a self-addressed stamped envelope. Please be advised that this request is made pursuant to the California Public Records Act, Gov. Code § 6250 et seq. Your courtesy and prompt attention to this matter are greatly appreciated.

Very truly yours,

Joseph S. May

[Signature]

Copies:

Zachary Parsons
RELEASE OF RECORDS/INFORMATION

To Whom it May Concern:

You are hereby authorized to release and give to the Law Office of Joseph S. May, or any representative thereof, any and all information, documents, records, and reports, including but not limited to incident reports, public intoxication reports, CAD reports, recordings of 911 calls, or any other materials that they may request regarding or related to my arrest and/or detention by the San Francisco Police Department and/or San Francisco Sheriff Department on October 25, 2014 and subsequent release on or about October 26, 2014.

I hereby waive any privilege I may have to this information with respect to its release to the Law Office of Joseph S. May or any of its employees or representatives. This authorization shall be valid for one year from the date listed below, unless revoked prior thereto.

Dated: February 13, 2015

Zachary Parsons
REQUEST FOR POLICE REPORT

IT IS MANDATORY TO HAVE A SELF ADDRESSED LEGAL SIZE STAMPED ENVELOPE FOR YOUR REPORT TO BE PROCESSED.

Mail Request To: San Francisco Police Department
Report Management Section
850 Bryant Street, Room 475
San Francisco, CA 94103-4603

Name: Joseph May
Address: 744 Montgomery Street, 5th Floor
City, State, Zip: San Francisco, CA 94111

Contact Phone: (415) 781-3333

SF Police Report #: __________________________

Name of Party Listed in Report: Zachary Parsons

Date of Birth: Month __/Day __/Year _____

Your Interest In This Incident: Attorney for Zachary Parsons (authorization enclosed)

Type of Incident: Arrested on charge of public intoxication

Date/Time of Occurrence: October 25, 2014, evening

Location of Occurrence: AT&T Park

Vehicle Involved: (License Plate Number / State) N/A

I declare this statement to be true and correct:

Signature

February 22, 2015

Note: VEHICLE ACCIDENT REPORTS ARE ONLY PREPARED FOR HIT & RUN, DRUNK DRIVING AND PERSONAL INJURY CASES. All request for copies of police reports will be handled in the order they are received and will be delivered to requestor by return mail ONLY. Some reports are restricted and/or inaccessible.

Requestor ID/DL: ___________________ RMS Signoff: ___________________

Date: _________________
RE: Petition to Supervisor of Records
Joseph S. May
to:
'Supervisor Records', Brad.Russi
04/07/2015 06:55 PM
Hide Details
From: "Joseph S. May" <joseph@josephmaylaw.com>
To: 'Supervisor Records' <Supervisor.Records@sfgov.org>, <Brad.Russi@sfgov.org>

History: This message has been replied to.

Hello Brad,

Thank you for the e-mail. I would certainly appreciate any assistance you could provide. As noted in my request, there should be, at the very least, a public intoxication report. There would likely be other documents regarding Mr. Parsons’ arrest and detention in CJ 1.

If you have any questions about the request, please feel free to contact me.

Regards,
Joseph

LAW OFFICE OF JOSEPH S. MAY
744 Montgomery Street, 5th Floor
San Francisco, CA 94111
Tel: (415) 781-3333
Fax: (415) 707-6600
Please visit our new web site: www.josephmaylaw.com

The information contained in this e-mail message is intended only for the use of the individual or entity in the address portion of the e-mail, and inadvertent disclosure to or use by any person other than the intended recipient shall not be deemed a waiver of any attorney-client privilege or expectation of confidentiality. If you are not the designated recipient or the agent or employee responsible to deliver it to the intended recipient, you are not authorized to read, review, disseminate, distribute or copy this communication and any such activity is strictly prohibited. If you have received this communication in error, please notify us immediately. Thank you.

From: Brad Russi [mailto:Brad.Russi@sfgov.org] On Behalf Of Supervisor Records
Sent: Tuesday, April 7, 2015 6:01 PM
To: Joseph May
Subject: Petition to Supervisor of Records

Dear Joseph,

I wanted to let you know that our office has received your petition dated April 2, 2015. The Sunshine Ordinance requires the Supervisor of Records to hear administrative appeals from members of the public who believe that a City department is improperly withholding or redacting a record in response to a public records request. Under Section 57.21(d), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so. In contrast, the Supervisor of Records does not make determinations as to the adequacy of a City department’s search for records.

It appears that SFPD has not asserted that any records responsive to your request are subject to withholding. Rather, it looks like your complaint addresses the adequacy of the department’s search for the records you are requesting. In any case, I will make an effort to see whether I can help facilitate a resolution to your concern. Regarding your request for CAD and dispatch records, and recordings or logs of 911 calls, such records are in the custody of the Department of Emergency Management.

file:///C:/Users/gvaldez/AppData/Local/Temp/notesC7A056/~web4172.htm

6/23/2015
RE: Petition to Supervisor of Records

Sent by: Brad Russi
From: Supervisor Records/CTYATT
To: "Joseph S. May" <joseph@josephmaylaw.com>@SFgov,

The SFPD has confirmed that they have no responsive documents. As a result, we consider this petition closed. I suggest making a records request to the Sheriff's Department for documents relating to Mr. Parsons' time in custody. Thanks.

Brad Russi
Deputy City Attorney
(415) 554-4645

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

"Joseph S. May" Hello Brad,

From: "Joseph S. May" <joseph@josephmaylaw.com>
To: Supervisor Records' <Supervisor.Records@sfgov.org>, <Brad.Russi@sfgov.org>,
Date: 04/07/2015 06:55 PM
Subject: RE: Petition to Supervisor of Records

Hello Brad,

Thank you for the e-mail. I would certainly appreciate any assistance you could provide. As noted in my request, there should be, at the very least, a public intoxication report. There would likely be other documents regarding Mr. Parsons' arrest and detention in CJ 1.

If you have any questions about the request, please feel free to contact me.

Regards,

Joseph

LAW OFFICE OF JOSEPH S. MAY
744 Montgomery Street, 5th Floor
San Francisco, CA 94111
Tel: (415) 781-3333
Fax: (415) 707-6600
Please visit our new web site: www.josephmaylaw.com

The information contained in this e-mail message is intended only for the use of the individual or entity in the address portion of the e-mail, and inadvertent disclosure to or use by any person other than the intended recipient shall not be deemed a waiver of any attorney-client privilege or expectation of confidentiality. If you are not the designated recipient or the agent or employee responsible to deliver it to the intended recipient, you are not authorized to read, review, disseminate, distribute or copy this communication and any such activity is strictly prohibited. If you have received this communication in error, please notify us immediately. Thank you.
From: Brad Russi [mailto:Brad.Russi@sfgov.org] On Behalf Of Supervisor Records
Sent: Tuesday, April 7, 2015 6:01 PM
To: Joseph May
Subject: Petition to Supervisor of Records

Dear Joseph,

I wanted to let you know that our office has received your petition dated April 2, 2015. The Sunshine Ordinance requires the Supervisor of Records to hear administrative appeals from members of the public who believe that a City department is improperly withholding or redacting a record in response to a public records request. Under Section 67.21(d), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so. In contrast, the Supervisor of Records does not make determinations as to the adequacy of a City department's search for records.

It appears that SFPD has not asserted that any records responsive to your request are subject to withholding. Rather, it looks like your complaint addresses the adequacy of the department's search for the records you are requesting. In any case, I will make an effort to see whether I can help facilitate a resolution to your concern. Regarding your request for CAD and dispatch records, and recordings or logs of 911 calls, such records are in the custody of the Department of Emergency Management.

Brad Russi
Deputy City Attorney
(415) 554-4645

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team
Petition Regarding SF OCA, Police Commission
Alex Emslie
to:
'Supervisor.Records@sfgov.org'
05/28/2015 01:09 PM
Hide Details
From: Alex Emslie <aemslie@KQED.org>
To: "Supervisor.Records@sfgov.org" <Supervisor.Records@sfgov.org>,

History: This message has been replied to and forwarded.
1 Attachment

KQED News CPRA Sunshine Request 150422.pdf

Hello,

My name is Alex Emslie, and I am a reporter for KQED News. I filed the attached California Public Records Act and Sunshine Ordinance request on April 22, 2015. While I have received a partial response from the San Francisco Police Department, neither the city Office of Contract Administration nor the Police Commission has responded. I have called the OCA multiple times, as well as followed up via email, but I have not received any response, including even an acknowledgement of the receipt of the request.

At this point, I am still seeking documentation regarding a contract and purchase of equipment from Taser International. The police department displayed the equipment on April 29, 2015, and some documentation that department has provided indicates that a purchase was made. However, I have not received documentation of the actual purchase.

Any assistance you can provide would be greatly appreciated. Please don’t hesitate to call my cell phone if I can explain this inquiry further:

Sincerely,
Alex Emslie

Alex Emslie
Reporter
KQED News
Mr. Emslie -

Attached please find the determination of the Supervisor of Records regarding your petition.

Best,

Brad Russi
Deputy City Attorney
(415) 554-4645

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

Ltr. to A. Emslie 6.17.2015.pdf

Hello Mr. Russi,

I sincerely appreciate your work on this issue. I am interested in the draft policy documents, and while they are not specifically identified in the request I filed, I believe they would fall under the broadest portion of the request for: “Any and all documentation related to the San Francisco Police Department’s planned body-worn camera pilot program.”

My understanding of the exemption is that draft policies that would eventually go before a policy body are not required to be immediately disclosed. As the pilot program is now no longer happening, those drafts would not, as I understand, go before a policy board. I would seek a determination as to whether this set of circumstances affects these documents’ exemption.

Also, thank you for working with the Office of Contract Administration, and I look forward to that office’s response. It is concerning that one city department would allow another city department to respond to and adjudicate a public records request.

While I addressed the records request, in written format, to multiple city departments, I formally filed the request separately – with the Police Commission, the Office of Contract Administration, and the Police Department. I would expect an individual response from each department/commission, and not to have public records requests for separate city entities adjudicated by the Police Department.
A copy of the April 22 public records act request I filed is attached for your reference. Thanks again for your work on this.

Sincerely,
Alex Emslie

From: Brad.Russi@sfgov.org [mailto:Brad.Russi@sfgov.org] On Behalf Of Supervisor.Records@sfgov.org
Sent: Monday, June 08, 2015 10:54 AM
To: Alex Emslie
Cc: 'Supervisor.Records@sfgov.org'
Subject: RE: Petition Regarding SF OCA, Police Commission

Mr. Emslie -

As an update on your petition, it is my understanding that Officer Esparza has responded to you on behalf of the Police Commission and that OCA will be separately responding as well, though anything they have is likely duplicative of what you have already received. I will ask that OCA contact you directly, if they have not already. With respect to your request for a determination regarding the documents withheld pursuant to Section 67.24(a), in our phone conversation, I believe you indicated concern that there were contract documents withheld. It is my understanding that SFPD has withheld drafts of policies under this exemption. I'm not sure such drafts are even responsive to your request. Before I invest a lot of time and effort into investigating this matter further and drafting a determination, please let me know whether you are interested in such documents. Thank you.

Best,

Brad Russi
Deputy City Attorney
(415) 554-4845

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

From: Alex Emslie <emslie@KQED.org>
To: "Supervisor.Records@sfgov.org" <Supervisor.Records@sfgov.org>,
Date: 05/29/2015 01:49 PM
Subject: RE: Petition Regarding SF OCA, Police Commission

Hello Mr. Russi,

Thank you for your response. I am contesting the SFPD's non-provision of purchasing documentation. The department has not necessarily provided all responsive documents, and has informed me the documents will be
provided on a rolling basis. However, the department has asserted that some documents covered by the request are exempt, and I would like the supervisor of records to make a determination on that exemption. From one of SFPD’s responses:

“Here’s the first set. I have several other documents which I will have to see if redactions are necessary. Also we’ve found and identified several other documents, however they are exempt from disclosure per SF Admin code 67.24 (a) drafts/memoranda.”

Thank you very much for your help.

Sincerely,

Alex Emslie

From: Brad.Russi@sfgov.org [mailto:Brad.Russi@sfgov.org] On Behalf Of Supervisor.Records@sfgov.org
Sent: Thursday, May 28, 2015 1:33 PM
To: Alex Emslie
Cc: 'Supervisor.Records@sfgov.org'
Subject: Re: Petition Regarding SF OCA, Police Commission

Mr. Emslie - I will attempt to facilitate a response to your request from the Police Commission and OCA. Regarding SFPD’s response, are you contesting SFPD’s decision to withhold documents based on an exemption, if any? Thank you.

Best,

Brad Russi
Deputy City Attorney
(415) 554-4645

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

Hello,

My name is Alex Emslie, and I am a reporter for KQED News. I filed the attached California Public Records Act and Sunshine Ordinance request on April 22, 2015. While I have received a partial response from the San Francisco
Police Department, neither the city Office of Contract Administration nor the Police Commission has responded. I have called the OCA multiple times, as well as followed up via email, but I have not received any response, including even an acknowledgement of the receipt of the request.

At this point, I am still seeking documentation regarding a contract and purchase of equipment from Taser International. The police department displayed the equipment on April 29, 2015, and some documentation that department has provided indicates that a purchase was made. However, I have not received documentation of the actual purchase.

Any assistance you can provide would be greatly appreciated. Please don’t hesitate to call my cell phone if I can explain this inquiry further.

Sincerely,
Alex Emslie

Alex Emslie
Reporter
KQED News

[attachment "KQED News CPRA Sunshine Request 150422.pdf" deleted by Brad Russi/CTYATT] [attachment "KQED News CPRA Sunshine Request 150422.pdf" deleted by Brad Russi/CTYATT]
Sent via email
Alex Emslie (aemslie@KQED.org)

Re: Petition to Supervisor of Records
5/28/2015

Dear Mr. Emslie:

This letter responds to your petition to the Supervisor of Records sent via email on May 28, 2015 (the "Petition"). The Petition relates to a public records request to the San Francisco Police Department ("SFPD"), the San Francisco Police Commission ("Commission"), and the Office of Contract Administration ("OCA"), dated April 22, 2015 ("the Request"). In the Request, you seek various documents regarding SFPD's body-worn camera pilot program. You state in the Petition that the Commission and OCA did not respond to the Request. SFPD informs us that it responded to the Request on behalf of the Commission, and OCA informs us that it will separately respond, if it has not done so already. SFPD informs us that it produced hundreds of pages of materials in response to the Request, but withheld certain draft documents under Section 67.24(a) of the San Francisco Sunshine Ordinance (San Francisco Administrative Code § 67.24(a)). You have petitioned the Supervisor of Records for a determination as to the SFPD's withholding of these records under Section 67.24(a). This letter is the determination of the Supervisor of Records on that issue. We conclude that SFPD properly withheld the records as draft recommendations of the author.

The documents that SFPD withheld under Section 67.24(a) consist of draft policies and procedures for the body-worn camera pilot program, and notes regarding policy issues concerning that program. SFPD recently chose to forego the pilot program and instead proceed with implementing body-worn cameras department-wide. The Commission created a working group to make recommendations to the department and the Commission regarding the department-wide body-worn camera program. The meetings of the working group are open to the public.

Section 6254(a) of the California Public Records Act (California Government Code § 6254(a)) provides an exemption from disclosure for "[p]reliminary drafts, notes, or interagency or intra-agency memoranda." The San Francisco Sunshine Ordinance limits the scope of this exemption, but it still applies where a document is the "recommendation of the author." (Admin. Code § 67.24(a).) In practical terms, this means that where a preliminary draft, note, or interagency memorandum is a recommendation of an author on an issue that may later be decided by a department head or a commission, the public agency may decline to disclose the record under Section 6254(a), provided it meets the statutory requirements of that section. The availability of the Section 6254(a) exemption depends on the existence of "conditions for exemption": (1) The record sought must be a preliminary draft, note, or memorandum; (2) which is not retained by the public agency in the ordinary course of business; and (3) the public interest in withholding must
clearly outweigh the public interest in disclosure.” (Citizens for a Better Environment v. California Dept of Food and Agriculture (1985) 171 Cal. App. 3d 704, 711-12.) Factual information contained in such materials may not in itself be exempt, but may be exempt if inextricably intertwined with the advisory opinion or policy deliberation to which it relates. (Id. at 713.)

Here, all the documents withheld are draft policies and procedures or internal notes of SFPD personnel regarding the draft policies and procedures. They are not drafts that the department head or the Commission authored or approved and are therefore subject to the exception to Section 67.24(a) as “recommendation[s] of the author.” Thus, our inquiry turns to whether the records qualify for exemption under Section 6254(a) of the Government Code.

The records meet the first statutory requirement, because they are preliminary drafts and notes. Regarding the second statutory requirement, SFPD has indicated that draft policy documents of this type are not retained in the ordinary course of business. Indeed, these draft documents would not meet the definition of a “record” under SFPD’s record retention policy. Therefore City law does not require the Department to retain them. Thus, the second statutory requirement is also satisfied.

Finally, as stated, Section 6254(a) requires an evaluation of the public interest in disclosure weighed against the public interest in withholding. Here, the public interest in withholding these documents clearly outweighs the interest in disclosure. Courts have recognized that the public interest in disclosure is “derived from the nature of the information at issue,” and “is proportionate to the gravity of the governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate. . . .” (Id. at 715 (citation omitted).) Conversely, the public interest in withholding documents focuses on the “interest in fostering robust agency debate. . . .” that may be inhibited by the disclosure of draft documents. (Id.) There is a public interest in withholding draft recommendations where disclosure would discourage “candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.” (Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325, 1341 (analogizing 6254(a) exemption to exemption 5 of the federal Freedom of Information Act).)

Here, the draft documents contain recommendations and discussions of policies to govern the pilot program that the department did not ultimately implement. The documents do not contain factual information, but are policy and planning recommendations that the department never carried out. Thus, while there is a public interest in law enforcement body-worn cameras generally, there is only a limited public interest in this pilot program. The ongoing robust public process for the development of the department-wide body-worn camera program involving participants from the ACLU, the Public Defender’s Office, the Police Officers Association, among others, highlights the limited continuing public interest in the abandoned proposed pilot program. That process provides the public with the opportunity to observe and comment on the implementation of body-worn cameras generally. Finally, there is a clear interest in withholding these draft policy recommendations in order to foster intra-agency debate. That interest is particularly applicable here, where individuals made policy recommendations, but no decision resulted. Release of these draft policies could inhibit future frank internal discussions during the development of potentially controversial policies.
Accordingly, we conclude that SFPD properly withheld the documents at issue.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Bradley A. Russi
Deputy City Attorney
Petition regarding Human Resources response to an Immediate Disclosure Request
LARRY BUSH

to:
Supervisor.Records
05/29/2015 05:56 AM
Hide Details
From: LARRY BUSH
To: <Supervisor.Records@sfgov.org>
History: This message has been replied to.

This is a petition to the Supervisor of Records regarding an unreasonable delay by the Department of Human Resources to an Immediate Disclosure Request for records pertaining to a vacancy and subsequent appointment of a Deputy Director of the San Francisco Ethics Commission in 2013/2014 and the current process and records regarding filling an anticipated vacancy for Executive Director of the San Francisco Ethics Commission.

The Human Relations Department is invoking a 14 day extension on the basis that it needs to consult with another department.

"Mr. Bush,

The Department of Human Resources is hereby invoking an extension of time to respond to your request for records pursuant to Government Code Section 6253(c) and San Francisco Administrative Code Section 67.25(b) due to need to consult with another interested department. We understand that we are required to conduct this consultation with all practicable speed and will endeavor to process your request as quickly as possible but no later than fourteen calendar days from the date of this email.

Thank you

Pául Greene
Department of Human Resources
Client Services Division
415-551-8939"

My Immediate Disclosure Request was as follows:

"This is an Immediate Disclosure Request.

This request is for all materials, documents and related records for the recruitment and position of San Francisco Ethics Commission Executive Director.

This request is for all materials, announcements, search, applications and ratings and final selection process for San Francisco Ethics Deputy Director made in 2013 and 2014.

Please respond to Larry Bush via email to  

I may be contacted for additional information regarding this request by calling Larry Bush, 

This information is for a public purpose for posting by CitiReport.

Sincerely,

Larry Bush
Friends of Ethics"

The requested records should be readily available at the Human Resources department and do not require consultation.

file:///C:/Users/gvaldez/AppData/Local/Temp/notesC7A056/~web1388.htm 6/23/2015
with any other Department. At a minimum, the material regarding the announcement, applications and selection of the Deputy Director of San Francisco Ethics should be in the Department’s own files and would have been completed.

I petition the Supervisor of Records to direct the Human Resources Department to comply with the terms of an Immediate Disclosure Request. Any records that require consulting with another department should be specified and should identify why any department other than Human Resources would have custody of the records.

Thank you for your attention to this petition. Please respond via email to [REDACTED]

Larry Bush.
Re: Petition regarding Human Resources response to an Immediate Disclosure Request

Sent by: Brad Russi
Cc: Supervisor.Records

From: Supervisor Records/CTYATT
To: LARRY BUSH
Cc: <Supervisor.Records@sfgov.org>
Sent by: Brad Russi/CTYATT

Mr. Bush,

Our office has received your message below. As you know, the Sunshine Ordinance requires the Supervisor of Records to hear petitions from members of the public claiming that a City department is improperly withholding or redacting a record in response to a public records request. Under Section 67.21(d), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so. As Section 67.21(d) states, the role of the Supervisor of Records is to determine "whether the record requested, or any part of the record requested, is public." In contrast, the Sunshine Ordinance does not empower the Supervisor of Records to determine whether a department has improperly invoked an extension of time. Because your petition addresses a matter outside the scope of the duties of the Supervisor of Records, we will not reach a determination. If you have any questions, feel free to contact me. Thank you.

Brad Russi
Deputy City Attorney
(415) 554-4645

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

LARRY BUSH

This is a petition to the Supervisor of Records re...

From: LARRY BUSH
To: <Supervisor.Records@sfgov.org>
Date: 05/29/2015 05:56 AM
Subject: Petition regarding Human Resources response to an Immediate Disclosure Request

This is a petition to the Supervisor of Records regarding an unreasonable delay by the Department of Human Resources to an Immediate Disclosure Request for records pertaining to a vacancy and subsequent appointment of a Deputy Director of the San Francisco Ethics Commission in 2013/2014 and the current process and records regarding filling an anticipated vacancy for Executive Director of the San Francisco Ethics Commission.

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"Mr. Bush,

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Thank you

Paul Greene
Department of Human Resources
Client Services Division
415-551-8939"

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This request is for all materials, documents and related records for the recruitment and position of San Francisco Ethics Commission Executive Director.
This request is for all materials, announcements, search, applications and ratings and final selection process for San Francisco Ethics Deputy Director made in 2013 and 2014.
Please respond to Larry Bush via email to [removed].
I may be contacted for additional information regarding this request by calling Larry Bush, [removed].

This information is for a public purpose for posting by CitiReport.

Sincerely,
Larry Bush
Friends of Ethics"

The requested records should be readily available at the Human Resources department and do not require consultation with any other Department. At a minimum, the material regarding the announcement, applications and selection of the Deputy Director of San Francisco Ethics should be in the Department's own files and would have been completed.

I petition the Supervisor of Records to direct the Human Resources Department to comply with the terms of an Immediate Disclosure Request. Any records that require consulting with another department should be specified and should identify why any department other than Human Resources would have custody of the records.

Thank you for your attention to this petition. Please respond via email to [removed].

Larry Bush.
Subject: Petition to the Supervisor of Records

Ann Treboux

To the Supervisor of Records:

I made an immediate disclosure request for an email of an eye witness to an incident on Jan. 2, 2015 to Rebekah Krell-the custodian of records of the SFAC.

I am filing this petition as the email was not given to me.

Thanks,
Ann

Begin forwarded message:

From: "Chatfield, Garrett (ETH)" <garrett.chatfield@sfgov.org>
Date: April 24, 2015 at 1:55:10 PM PDT
To: "Chatfield, Garrett (ETH)" <garrett.chatfield@sfgov.org>
Subject: Ethics Commission Complaint No. 03-150127

The above referenced complaint is scheduled to be Agenda Item V at the Ethics Commission’s next regular meeting on Monday, April 27, 2015. The agenda can be viewed here. You previously received all related documents.

Thank you,

Garrett Chatfield
San Francisco Ethics Commission
City and County of San Francisco
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(P) 415.252.3100/(F) 415.252.3124
garrett.chatfield@sfgov.org
http://www.sfethics.org
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Re: Fwd: Petition to the Supervisor of Records

Supervisor Records to: atrebou
Sent by: Brad Russi
Cc: supervisor.records

From: Supervisor Records/CTYATT
To: [redacted]
Cc: supervisor.records@sfgov.org

Ms. Treboux,

Attached please find the determination of the Supervisor of Records regarding your petition.

Best,

Brad Russi
Deputy City Attorney

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

Ltr. to A. Treboux 6.30.2015.pdf

From: [redacted]
To: supervisor.records@sfgov.org,
Date: 06/22/2015 04:35 PM
Subject: Fwd: Petition to the Supervisor of Records

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Subject: Petition to the Supervisor of Records

Ann Treboux

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Thank you,

Garrett Chatfield
San Francisco Ethics Commission
City and County of San Francisco
25 Van Ness Avenue, Suite 220
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(P) 415.252.3100/(F) 415.252.3124
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June 30, 2015

Dear Ms. Treboux:

This letter responds to your petition to the Supervisor of Records sent via email on June 22, 2015 (the “Petition”). The Petition relates to a public records request to the San Francisco Arts Commission (the “Arts Commission”), dated January 16, 2015 (“the Request”). In the Request, you sought an email regarding an incident that occurred on January 3, 2015. It is our understanding that the Arts Commission withheld a responsive email and that the email is a complaint to the Street Artist Program regarding a street artist.

While the Ethics Commission does not review or have authority over the Supervisor of Records and the Supervisor of Records does not have authority over or review decisions of the Ethics Commission, we note that the Ethics Commission has already adjudicated your complaint against the Arts Commission in which you contested the Arts Commission’s decision to withhold the same document that is the subject of this Petition. On May 27, 2015, the Ethics Commission determined that the Arts Commission properly withheld the document on the basis of the informant privilege, Section 1041 of the California Evidence Code, and the official information privilege, Section 1040 of the California Evidence Code.

The Public Records Act protects from disclosure “[r]ecords the disclosure of which is exempted or prohibited pursuant to federal or state law, including but not limited to, provisions of the Evidence Code relating to privilege.” (Cal. Gov. Code § 6254(k).) One such provision is the identity of informant privilege, Section 1041 of the Evidence Code. This privilege extends beyond informants in the criminal law context to those who “furnish[] information . . . purporting to disclose a violation of a law . . . of a public entity in this state . . . in confidence . . . to . . . [a] representative of an administrative agency charged with the administration or enforcement of the law alleged to be violated . . . .” (Cal. Evid. Code § 1041.) The privilege applies where “[d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice . . . .” (Id.) The privilege protects individuals within its ambit from hassle, harassment, threats, and retaliation. Under the identity of informant privilege, an entire record may be withheld if disclosure of the contents of the record would effectively enable the object of the complaint to identify the source of the information. (People v. Galland (2008) 45 Cal.4th 354, 364.)

Further, to the extent disclosure of such information might impede an ongoing investigation, a department may also withhold the record under the official information privilege.
of Section 1040 of the Evidence Code. The official information privilege covers information acquired in confidence by the department where "[d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice..." (Cal. Evid. Code § 1040.)

Here, we have reviewed the materials pertaining to your complaint to the Ethics Commission regarding the Arts Commission's decision to withhold the email. As stated, our understanding is that the email is a report to the Street Artist Program of a complaint against a street artist. The Street Artist Program investigates such complaints and treats documents that contain or may lead to the identity of a complainant as confidential in order to protect the informant from retribution or harassment and to ensure that participants in the program and members of the public will not be deterred from reporting wrongdoing, misconduct, or other problems caused by participants in the program. Further, the release of records identifying a complainant may jeopardize the integrity of an investigation that remains open.

There is a significant public interest in protecting the individual who reports suspected violations of the law from retribution or harassment and ensuring the effectiveness of enforcement efforts that depend on receiving complaints and information from individuals who observe or know of wrongdoing, misconduct, or other problems caused by program participants. Similarly, there is a significant public interest in the protecting the integrity of an ongoing investigation, where disclosure of a record may interfere with that investigation. These public interests support the Arts Commission's decision to withhold the record at issue.

Accordingly, we conclude that the Arts Commission properly withheld the document under Sections 1041 and 1040 of the Evidence Code to protect the identity of the complainant and the integrity of its investigation.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Bradley A. Russi
Deputy City Attorney
FOIA APPEAL

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

CC:
San Francisco Police Department
Public Records Officer, Media Relations
1245 3rd Street
San Francisco, CA 94158
via email: sfpdmediarelations@sfgov.org

June 26, 2015

To Whom It May Concern,

This letter constitutes a formal appeal under the California's Sunshine Amendment (Cal. Const. Art. I, § 3(b)).

In a response dated June 19th 2015 to my request for records relating to the use of unmanned aerial vehicles (drones), the San Francisco Police Department returned a response of no responsive documents, along with assurances that the department has never attempted to acquire or use drones.

This is in direct contradiction to an earlier request for such documents in July 2012, where the department returned documents detailing a rejected proposal by the SFPD to acquire such technology. This response and the document contained are available here: https://www.muckrock.com/tbi/san-francisco-141/san-francisco-police-department-drone-documents-1486/

I hereby appeal the SFPD inadequate search for documents relating to my request and request that the SFPD conduct a new complete and thorough search for any and all documents that refer to the department's attempts to acquire and use such technology, as detailed in my original request.

Sincerely,

Patrick O'Doherty
On June 19, 2015:
Good Afternoon Mr. O'Doherty,

The San Francisco Police Department does not have/utilize nor has ever attempted to acquire/use drones. As such, we do not have any associated drone documents.

This fulfills your Public Records Request.

Officer Grace Gatpandan #80
Public Information Officer
San Francisco Police Department
Office of the Chief of Police
Media Relations Unit
1245 3rd Street, 6th Floor
San Francisco, CA 94158
(415) 837-7395 - Main Line
www.sanfranciscopolice.org<http://www.sanfranciscopolice.org>

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On June 11, 2015:
Good Morning Patrick O'Doherty,

I am writing to acknowledge your request for Police Department public records, received at the Media Relations Unit via email on Thursday June 11th 2015. I will respond to your request within not more than 10 calendar days, or by Sunday June 21st, 2015. See California Government Code Section 6253(e).

Officer Grace Gatpandan #80
Public Information Officer
San Francisco Police Department
Office of the Chief of Police
Media Relations Unit
1245 3rd Street, 6th Floor
San Francisco, CA 94158
(415) 837-7395 - Main Line
www.sanfranciscopolice.org<http://www.sanfranciscopolice.org>

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On June 11, 2015:
To Whom It May Concern:

Pursuant to the California's Sunshine Amendment (Cal. Const. Art. I, § 3(b)), I hereby request the following records:

51
All documents created from January 2005 to the date this request is processed related to the agency's use of aerial drones, remotely piloted vehicles (RPVs), remotely piloted aircraft (RPAs), unmanned aerials (UAs), unmanned aerial vehicles (UAVs), and/or unmanned aerial systems (UASs) (hereinafter "drones").

Please search specifically for the below document categories, and respond to each of the categories and items:

1) Acquisition documents:
   i) requests for proposals (RFPs), proposals/quotes submitted by vendors, contracts, leases, budget requests, project/equipment budgets, cost allocations or reimbursements for the purchase of drone equipment;
   ii) Grant applications and award letters for drone equipment purchases;
   iii) Insurance contracts for all drone equipment;
   iv) Communications (including electronic communications) between the agency head or agency quartermaster (or individual responsible for equipment purchases and maintenance) and drone vendors, manufacturers or retailers;
   v) Communications (including electronic communications) between the agency head and agency quartermaster (or individual responsible for equipment purchases and maintenance) regarding acquisition, lease or use of drone equipment;
   vi) Communications (including electronic communications) between the agency head and the governor, mayor and city/town manager regarding the acquisition of drones;
   vii) Applications (including all components and support documentation) for Certificates of Waiver/Authorization (COA) from the Federal Aviation Administration, as well as COA grant notifications and final agreement;
   viii) Contracts for services related to drones, such as data storage, data analysis, image storage, image analysis, video storage, video analysis, operation, maintenance;

2) Equipment logs:
   i) Inventories/logs/lists/databases of all drones owned, leased or operated by or for the agency;
   ii) Maintenance logs for all drones owned, leased or otherwise operated by or for the agency;

3) Policy documents:
   i) Policies, guidelines, protocols, manuals and/or instructions on the use/operation of drones and usage of data, images and video obtained from drone flights;
   ii) Communications from the agency head, quartermaster (or individual responsible for overseeing equipment purchases and maintenance) on approved uses for drones;
   iii) Memorandums of understanding (MOUs), memorandum of agreement (MOAs) or any other agreements or contracts with other government agencies, private corporations, organizations or individuals to share drone equipment, data, images or video or to operate drones on behalf of the agency;

4) Training documents:
   i) Curriculum used to train drone operators and observers;
   ii) Training log for all drone operators and observers;
   iii) Certifications of training completion for all drone operators and observers;
iv) Contracts, purchase orders, budget requests or reimbursement orders for training sessions for all drone operators and observers;

5) Usage documents:

i) Flight logs for all drone flights, including training flights;

ii) Flight logs transmitted to the Federal Aviation Administration pursuant to Certificate of Waiver/Authorization (COA) requirements;

iii) Reprimands relating to drones, including misuse of equipment and failure to properly maintain equipment.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that fees cannot be waived, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 calendar days, as the statute requires.

Sincerely,

Patrick O'Doherty

Filed via MuckRock.com
E-mail (Preferred): 18571-14270578@requests.muckrock.com

For mailed responses, please address (see note):
MuckRock News
DEPT MR 18571
PO Box 55819
Boston, MA 02205-5819

PLEASE NOTE the new address as well as the fact that improperly addressed (i.e., with the requester's name rather than MuckRock News) requests might be returned by the USPS as undeliverable.
Mr. O'Doherty,

Please see the attached letter regarding your petition to the Supervisor of Records.

Best,

Brad Russi
Deputy City Attorney

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

VIA E-MAIL (18571-14270578@requests.muckrock.com)

Patrick O’Doherty
MuckRock News
DEPT MR 18571
PO Box 55819
Boston, MA 02205

Re: Supervisor of Records Petition dated June 26, 2015

Dear Mr. O’Doherty,

By letter dated June 26, 2015, you petitioned the Supervisor of Records for a determination regarding the San Francisco Police Department’s (“SFPD”) response to your request for documents regarding unmanned aerial vehicles or drones. The SFPD indicated in its response to you that it had no responsive records. You pointed to a responsive document that you had previously obtained several years ago. The SFPD stated that it was able to locate that document, but that it did not have any other responsive documents.

As I noted in my email to you dated July 10, the Sunshine Ordinance authorizes the Supervisor of Records to hear administrative appeals from members of the public who believe that a City department is improperly withholding or redacting a record in response to a public records request. Under Section 67.21(d), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so. In contrast, the Supervisor of Records does not make determinations as to the adequacy of a City department’s search for records.

The SFPD has not asserted that any records responsive to your request are subject to withholding. As a result, your petition does not fall within the scope of the duties of the Supervisor of Records.

Very truly yours,

DENNIS J. HERRERA
City Attorney

BRADLEY RUSSI
Deputy City Attorney
Mr. O'Doherty,

I wanted to let you know that we received your petition to the Supervisor of Records regarding a records request you made to SFPD. As an initial matter, the Sunshine Ordinance requires the Supervisor of Records to hear administrative appeals from members of the public who believe that a City department is improperly withholding or redacting a record in response to a public records request. Under Section 67.21(d), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so. In contrast, the Supervisor of Records does not make determinations as to the adequacy of a City department's search for records.

It appears that SFPD has not asserted that any records responsive to your request are subject to withholding. Rather, it looks like your complaint addresses the adequacy of the department's search for the records you are requesting, which is not within the purview of the Supervisor of Records. Nonetheless, I will make an effort to see whether I can help facilitate a resolution to your concern and will respond when I have more information.

Best,

Brad Russi
Deputy City Attorney

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team
Please review Sunshine Request for appropriateness of Failure to Immediately Disclose

to:
Supervisor.Records
07/21/2015 12:53 AM
Hide Details
From: pt pt
To: Supervisor.Records@sfgov.org,
Security:
To ensure privacy, images from remote sites were prevented from downloading. Show Images
History: This message has been replied to.

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

Dear Supervisor of Records:

Please review the below "delayed" Sunshine Request petition to ascertain if the reason for the delay of an immediate disclosure is valid and allowable per Ordinance.

Thank you for your opinion. Please respond to [redacted]

Immediate Disclosure Request

Friday,
July 20,
2015

Retirement Board of the City and County of
San Francisco Employees' Retirement System
c/o Mr. Jay Huish, Executive Director
1145 Market Street, 6th Floor
San Francisco, Ca 94103  Jay.Huish@sfgov.org

RE: Sunshine Ordinance Request
Immediate Disclosure Request

Director Jay Huish:
I am formally requesting an Immediate Disclosure Request; to make available documents in any form requested which are available or easily generated by the department of all records of dollar amount of first year pension payout for all SFPD members retiring between January 1, 2011 and June 30, 2015, including civil service classification, employee ID, and name.

Pursuant to the Provisions of the Sunshine Ordinance-Section 67.25 (a) the documents are to be made available no later than the close of the business day following the day of the request.

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.

I look forwarding to hearing from you within the statutory time period on this matter.

Sincerely,

P.T.

San Francisco tax payer

If the records are in electronic form please email the records to the following email address: __________________________. If the records cannot be sent electronically, advise via email.

----------------------------------------------------------------------------------
Re: Please review Sunshine Request for appropriateness of Failure to Immediately Disclose

07/21/2015 12:24 PM

Sent by: Brad Russi
Cc: Supervisor.Records
Bcc: Gina Gutierrez

From: Supervisor Records/CTYATT
To: pt pt
Cc: Supervisor.Records@sfgov.org
Bcc: Gina Gutierrez/CTYATT@CTYATT

To Whom It May Concern,

We received your petition to the Supervisor of Records below regarding an immediate disclosure request you made to the San Francisco Employees' Retirement System ("SFERS"). The Sunshine Ordinance requires the Supervisor of Records to hear administrative appeals from members of the public who believe that a City department is improperly withholding or redacting a record in response to a public records request. Under Section 67.21(d), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so. In contrast, the Supervisor of Records does not make determinations as to whether a City department properly invoked an extension of time to respond to a public records request. Your petition appears to contest the decision of SFERS to invoke an extension of time to respond to an immediate disclosure request. The department has not yet responded but has indicated that it will respond by August 3, 2015. Your petition is outside the scope of review of the Supervisor of Records, and we will not render a determination.

Best,

Brad Russi
Deputy City Attorney

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

Office of the City Attorney Attention: Supervisor of Records

07/21/2015 12:53:00 AM

From: pt pt
To: Supervisor.Records@sfgov.org,
Date: 07/21/2015 12:53 AM
Subject: Please review Sunshine Request for appropriateness of Failure to Immediately Disclose

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

Dear Supervisor of Records:

Please review the below "delayed" Sunshine Request petition to ascertain if the reason for the delay of an immediate disclosure is valid and allowable per Ordinance.

Thank you for your opinion. Please respond to...
Immediate Disclosure Request

Retirement Board of the City and County of
San Francisco Employees' Retirement System
c/o Mr. Jay Huish, Executive Director
1145 Market Street, 6th Floor
San Francisco, Ca 94103  Jay.Huish@sfgov.org

Friday, July 20, 2015

RE: Sunshine Ordinance Request
Immediate Disclosure Request

Director Jay Huish:

I am formally requesting an Immediate Disclosure Request; to make available documents in any form requested which are available or easily generated by the department of all records of

dollar amount of first year pension payout for all SFPD members retiring between January 1, 2011 and June 30, 2015, including civil service classification, employee ID, and name.

Pursuant to the Provisions of the Sunshine Ordinance-Section 67.25 (a) the documents are to be made available no later than the close of the business day following the day of the request.
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.

I look forwarding to hearing from you within the statutory time period on this matter.

Sincerely,

P.T.

San Francisco tax payer

If the records are in electronic form please email the records to the following email address:

[Email Address] . If the records cannot be sent electronically, advise via email.

Huish, Jay (RET) <jay.huish@sfgov.org> 3:45 PM (8 hours ago)

> to Darlene

, me

I am responding to your Immediate Disclosure Request sent on Monday, July 20, 2015 in which you requested the following information:
dollar amount of first year pension payout for all SFPD members retiring between January 1, 2011 and June 30, 2015, including civil service classification, employee ID, and name. SFERS is invoking an extension of time to respond to your request due to the voluminous nature of the records requested (Admin. Code § 67.25(b). and to compile electronic data or construct a computer report to extract data (Cal. Govt. Code § 6253(c)(4)). We will respond as soon as reasonably possible, and no later than Monday, August 3, 2015.

Best regards,
Jay Huish
Executive Director
SAN FRANCISCO EMPLOYEES’ RETIREMENT SYSTEM
30 Van Ness Avenue, Suite 3000
San Francisco, CA 94102
415-487-7015
415-487-7023 fax

CONFIDENTIALITY NOTICE:
The information transmitted is intended solely for the use of the intended recipient(s) and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. Delivery of this message to any person other than the intended recipient is not intended to waive any right or privilege. If you are not the intended recipient, please promptly notify the sender by reply email, delete this message from your system and destroy all copies of the message.

From: pt pt [mailto:]
Sent: Monday, July 20, 2015 2:11 AM
To: Huish, Jay (RET)
Subject: IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS Sunshine Request
Hello:
This email is in regards to a request for public records sent to the Department of Public Health on September 8, 2015. On September 25, 2015, the Department of Public Health responded, denying the request. I filed a complaint with the Sunshine Ordinance Task Force, and the Complaints Committee held a hearing on it last night, November 17, 2015. The Sunshine Ordinance continued the issue because the Department of Public Health failed to appear to defend their exemption.

I'm asking that you offer expedited consideration for these items, given the time I've waited for it, nature of the request, etc.

The specific items that I requested are as follows:
1. A copy of any security camera footage, audio recordings, or any other electronic media captured at SFGH on or between August 8 and 9, 2015 from any corridor, room, or other space at or in which my person was located or relocated during the course of treatment, e.g., security camera footage that shows me being restrained, bound, and forcibly sedated and the events preceding and succeeding that activity.
2. Copies of any and all documents, electronic or physical, that serve as justification for assessing patients with expenses at a rate of $1,807 for one (1) two-milliliter (2-ml) ampule of generic 2 mg/2 ml benzatropine myelate. This item may be satisfied by providing a copy of a wholesale pharmaceutical acquisition receipt or invoice by the SFGH Pharmacy Dept.
3. Copies of any and all documents, electronic or physical, that serve as justification for assessing patients with expenses at a rate of $1,807 for one (1) two-milliliter (2-ml) ampule of name brand 2 mg/2 ml Cogentin. This item may be satisfied by providing a copy of a wholesale pharmaceutical acquisition receipt or invoice received or paid by the SFGH Pharmacy Dept.
4. Copies of any and all documents, electronic or physical, that serve as justification for assessing patients with expenses at a rate of $134 for every available dosage of name brand Haldol by method or route administered to me between August 8 and 9, 2015. This item may be satisfied by providing a copy of a wholesale pharmaceutical acquisition receipt or invoice by the SFGH Pharmacy Dept.
5. Copies of any and documents, electronic or physical, that serve, or may serve, as justification for assessing patients with expenses at a rate of $134 for every available dosage of generic haloperidol by method or route as administered to me between August 8 and 9, 2015 at SFGH. This item may be satisfied by providing a copy of a wholesale pharmaceutical acquisition receipt or invoice by the SFGH Pharmacy Dept.

6. Copies of any and documents, electronic or physical, that serve, or may serve, as justification for assessing patients with expenses at a rate of $134 for every available dosage of name brand Haldol by method or route as administered to me between August 8 and 9, 2015 at SFGH. This item may be satisfied by providing a copy of a wholesale pharmaceutical acquisition receipt or invoice by the SFGH Pharmacy Dept.

In regards to the first, it is important to note that the General Hospital does not use security cameras in individual patient rooms. While admitted to the emergency department of General Hospital on August 8 and 9, 2015, I was kept on a gurney in a public hallway nearly the entire night. I was never admitted to a private room. So, although it sounds like I’m asking for a personal record, I’m simply clarifying that I do not want the videos from all security cameras; I only want the videos from the security cameras that would have most likely captured my person while admitted.

In regards to the second through sixth, when I left the hospital, I was billed $1,807 for a drug called ‘benztropine mesylate.’ Benztropine is a drug used to treat Parkinson’s Disease, and it is considered tier 1. The charge master published with the OSHPD states that 1 CC of benztropine injectable, as was administered to me, is $8. So, I’m curious where the additional $1,799 came from. I requested, in essence, the formulary documents for pricing benztropine in both its generic and name brand (Cogentin) forms. Because I had questions about how they priced benztroponie, I decided to request the same for another drug administered, haloperidol.

On September 25, 2015, the DPH responded. With regards to the first request, they stated that they could not provide the security camera footage because the video cameras were there for “law enforcement” and “security” purposes. It did not expressly cite a provision of statute that supports exemption. Because 6255(a) requires that exemptions made under the provisions of the CPRA be expressly cited, meaning the section or subsection identified, it’s my determination that they have not, in fact, ‘responded’ at all, in so far as their response doesn’t meet the criteria established in 62559(a).

In any case, DPH is not a “local police agency;” nor does the security camera footage exist for “correctional, law enforcement, or licensing purposes” to qualify for exemption under Sec. 6254(f), they must demonstrate that the security cameras’ primary use is law enforcement.

There are thousands of videos on the internet from hospital security camera installed in hospital public hallways. This article, although from another state, describes a video from a hospital security emergency department obtained by the local news station through their state’s FOIA laws.

http://wgn.tv/2014/11/18/dramatic-surveillance-video-released-in-suburban-hospital-shooting/. It’s important to note that in response to File No. 15129, Warne v. Sheriff’s Department, requesting the same video, Freya Horne, Chief Counsel, has repeatedly divested any idea that they’re responsible for security cameras or their resulting video. “It’s a DPH record.”

I note also that there’s no reason to believe the video footage was compiled for law enforcement
purposes. The camera footage was compiled because on September 8, 2015, I requested it and
advised them not to destroy it. DPH is not a law enforcement agency, and while they use the
sheriff’s department for security at their facility, “security” and “law enforcement” are not the
same; Freya Horne points out that its not the Sheriff’s function, etc. Additionally, there’s no
reason to believe at anytime the camera footage served a “concrete and definite” law enforcement
purposes.

With regard to 2-6, they responded as follows:

"SFGH purchases pharmaceuticals through a group purchasing organization called the University
Health System Consortium or “UHC”. All pricing information for pharmaceuticals is proprietary
to the UHC. “

The same issue applies. They failed to expressly identify the section of the CPRA that supports
that exemption. Because exemptions are permissive and not compulsory under either the CPRA
or Sunshine Ordinance, you aren’t required to infer as to what section they intended to invoke as
cause for exemption. It also fails to comply with Sec. 67.27(c) of the Administrative Code, which
states: "A withholding on the basis that disclosure would incur civil or criminal liability shall cite
any specific statutory or case law, or any other public agency's litigation experience, supporting
that position.”

Subject to that position and without waiving it, I wanted to test that theory. So I pulled up the
UHC members list. https://www.uhc.edu/docs/003675406_SupplyChainParticipants.pdf. San
Joaquin County responded with the attached. They said they had no problem providing formulary
documents, but said they had to object because they weren’t 100% sure with what I wanted to
see. Alameda is not a supply chain participant, but is a UHC member. Compare those prices with
the price that I was charged, and mind you, In the case of San Joaquin County, the drugs come
from the same distributor.

When DPH is potentially negotiating deals which is making drugs, particularly benztropine
which retails at Walgreens for $51, 390-2,2800% of what neighboring counties are charging,
that’s a fraud, waste, or abuse problem and the people have a right to know.

As an aside, I called UHC and read their response to them. They had no clue what DPH was
talking about, though they said any pricing documents I would have to get from the hospital.
November 12, 2015

Via e-mail: [redacted]

Mr. Joel Warne

Re: California Public Records Act Request received November 2, 2015

Dear Mr. Warne:

This letter is in response to your Public Records Act request received by San Joaquin County on November 2, 2015. This letter constitutes a written response pursuant to Government Code Section 6255(b), and is based upon the authorities interpreting the California Public Records Act ("CPRA") and Article I, Section 3 of the California Constitution.

At the outset, please be advised that the County objects to your request on the ground that the request does not reasonably describe "identifiable records" pursuant to Government Code Section 6253(b). The CPRA does not require that answers to specific questions be provided, nor that documents be compiled or created by the responding agency. See Haynie v. Superior Court (2001) 26 Cal 4th 1061.

Without waiving these objections, or any additional objections, protections or exemptions available under California law, the County has made a good faith effort to respond to your request. See below information.

Benztropine is a drug usually used to treat Parkinson’s disease and it is rarely, if ever, used in the ED. It is not stocked for clinic use at this time. If we had an ED patient receive a dose, they would be charged our typical price, which is "(acquisition cost x 3) + $30 (dispensing fee)". Our current acquisition cost is $127.48 per 2ml ampule (charge of $412.44). We typically would have a lower priced generic in stock ($32.88 per 2ml ampule with a charge of $128.64) but it has been affected by an ongoing product shortage.

The County does not waive any privileges, protections or objections which might be available in any future litigation, and without waiving any additional privileges, protections or exemptions'
available under the CPRA.

Should you have any questions, or should you require any additional information, please do not hesitate to contact the undersigned.

Very truly yours,

Kristen M. Hegge
Chief Deputy County Counsel

c: Carla Bomben, San Joaquin General Hospital
TO: Joel Warne

FROM: Susana Flores, Clerk of the Board
Alameda Health System

DATE: November 16, 2015

SUBJECT: Public Records Request

Benztropine is a drug solely used by Highland Hospital to treat any labeled indication.

Normally we only carry generic; however, generic has been out of stock for past 6-8 months, so we have been using brand name. We do not stock brand name when generic is available.

Our generic benztropine is acquired at a cost of $50.96 per 2 ml ampule. A patient admitted to the emergency department of Highland hospital and administered the drug can expect to pay $241.55.

Our name brand analog, Cogentin, is acquired at a cost of $134.35 per 2 ml ampule. A patient admitted to the emergency department of Highland hospital and administered the drug can expect to pay $476.93.
Mr. Warne -

Attached please find the determination regarding your petition submitted by email on November 18, 2015.

Best,

Brad Russi
Deputy City Attorney

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

2015.12.7 J. Warne Determination.pdf
Sent via email
Joel Warne

Re: Petition to Supervisor of Records

Dear Mr. Warne:

This letter responds to your petition to the Supervisor of Records sent via email on November 18, 2015 and received by this office on November 19, 2015 (the “Petition”). The Petition relates to your public records request to the San Francisco Department of Public Health (“DPH”), dated September 8, 2015 (“the Request”). In the Request, you sought, among other things:

1. A copy of any security camera footage, audio recordings, or any other electronic media captured at SFGH on or between August 8 and 9, 2015 from any corridor, room or other space at or in which my person was located or relocated during the course of treatment, e.g. security camera footage that shows me being restrained, bound, and forcibly sedated and the events preceding and succeeding that activity.

2. Copies of any and all documents, electronic or physical, that serve as justification for assessing patients with expenses at a rate of $1,807 for one (1) two-milliliter (2-ml) ampule of generic 2 mg/2 ml benztropine myelate. This item may be satisfied by providing a copy of a wholesale pharmaceutical acquisition receipt or invoice by the SFGH Pharmacy Dept.

3. Copies of any and all documents, electronic or physical, that serve as justification for assessing patients with expenses at a rate of $1,807 for one (1) two-milliliter (2-ml) ampule of name brand 2 mg/2 mlCogentin. This item may be satisfied by providing a copy of a wholesale pharmaceutical acquisition receipt or invoice received or paid by the SFGH Pharmacy Dept.

4. Copies of any and all documents, electronic or physical, that serve as justification for assessing patients with expenses at a rate of $134 for every available dosage of name brand Haldol by method or route administered to me between August 8 and 9, 2015. This item may be satisfied by providing a copy of a wholesale pharmaceutical acquisition receipt or invoice by the SFGH Pharmacy Dept.

5. Copies of any and [all] documents, electronic or physical, that serve, or may serve, as justification for assessing patients with expenses at a rate of $134 for every available dosage of generic haloperidol by method or...
route as administered to me between August 8 and 9, 2015 at SFGH. This item may be satisfied by providing a copy of a wholesale pharmaceutical acquisition receipt or invoice by the SFGH Pharmacy Dept.

6. Copies of any and [all] documents, electronic or physical, that serve, or may serve, as justification for assessing patients with expenses at a rate of $134 for every available dosage of name brand Haldol by method or route as administered to me between August 8 and 9, 2015 at SFGH. This item may be satisfied by providing a copy of a wholesale pharmaceutical acquisition receipt or invoice by the SFGH Pharmacy Dept.

With respect to Nos. 2-6 above, we understand that DPH has agreed to produce responsive documents and is no longer withholding any records. Therefore, this determination of the Supervisor of Records relates only to the first item above, seeking surveillance video from San Francisco General Hospital (“SFGH”) on August 8 or 9, 2015, that shows you “being restrained, bound, and forcibly sedated and the events preceding and succeeding that activity.” In subsequent correspondence, you have clarified that your request is for video from any corridor, room, or space in which you were located – even if the camera did not capture you.

DPH declined to disclose the video, stating that the video was created for “security and law enforcement purposes,” and that the federal Health Insurance Portability and Accountability Act (“HIPAA”) (42 U.S.C. § 300gg and 29 U.S.C § 1181 et seg. and 42 USC 1320d et seg.) and the California Confidentiality of Medical Information Act (“CMIA”) (Cal. Civ. Code § 56 et seq.) prohibit disclosure of these records.

DPH staff inform us that the underlying incident occurred in the emergency department at SFGH. DPH indicates there are several security cameras in the emergency department. There is also a camera in trauma room, though there is no video from that camera responsive to your request, because it was not in operation at the time of your treatment.

The only camera view that could potentially show “any corridor, room, or other space at or in which [you were] located or relocated during the course of treatment” on August 8 or 9, 2015, is the view of the main nurses’ station and adjacent corridor. The video from the time period of your treatment shows the activity at the nurses’ station and throughout the adjacent corridor. Off the corridor are doors to trauma rooms. The video shows patients and staff moving through the corridor and going in and out of trauma rooms. It shows staff transporting patients through the corridor in wheelchairs and gurneys. It shows staff attending patients who are waiting in the corridor outside the trauma rooms. And it shows patients and staff approaching the nurses’ station. The video is grainy and not of high resolution, particularly in the corridor some distance from the camera. But, even without enhancing the video, faces are identifiable when individuals approach the location of the camera near the nurses’ station.

**DPH Lawfully Withheld the Security Video**

Upon reviewing the facts and law, the Supervisor of Records concludes that DPH lawfully declined to disclose the security video that is responsive to your Request.

First, the video is a security record created for law enforcement purposes. DPH staff inform us that the primary purpose of the SFGH video system is to ensure the security of the facility. The Sheriff’s Department handles security at SFGH. While DPH owns the video
system, Sheriff’s Department deputies monitor the video feeds. Section 6254(f) of the Public Records Act (Cal. Govt. Code § 6254(f)) exempts from disclosure “security files compiled by any . . . local agency for . . . law enforcement . . . purposes.” Because the purpose of the video is to enable law enforcement officers to monitor the hospital for security and law enforcement reasons, DPH lawfully invoked this exemption in declining to release the video.

Second, DPH properly withheld the video on privacy grounds. The video includes footage of patients moving through the hospital and interacting with medical staff. Section 6254(c) of the Public Records Act (Cal. Govt. Code § 6254(c)), provides an exemption for “. . . medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” To the extent the video shows patients receiving medical care, it falls within this exemption, because public disclosure of video showing the delivery of medical care to patients would violate the privacy of those patients. Even if the video did not show patients actually receiving treatment, patients have a reasonable expectation of privacy moving through a corridor of the emergency department not generally open to the public for purposes of obtaining medical care. Indeed the Constitution forbids disclosure of such information. California Constitution Article, 1 section 1. Upon review of the video, we have concluded that on balance the privacy interest of patients who appear on the video outweighs the public interest in disclosure.

Third, DPH properly declined to produce the video under Section 6254(k) of the Public Records Act (Cal. Govt. Code § 6254(k)). That section protects from disclosure records the disclosure of which is exempt or prohibited under state or federal law. To the extent the video shows identifiable patients receiving medical care, DPH is prohibited from disclosing it under HIPAA and the CMIA. The HIPAA Privacy Rule, prohibits a covered entity like SFGH from disclosing “protected health information.” 45 C.F.R. Parts 160, 164. Protected health information is any individually identifiable health information maintained by a covered entity. 45 C.F.R. § 160.103. A video of a patient receiving medical care in which the individual can be identified constitutes protected health information. 45 C.F.R. § 164.514 (full face photographic images relevant identifier). Similarly, the CMIA precludes DPH from releasing patients’ medical information. See Cal. Health & Safety Code § 1280.15; Cal. Civ. Code § 56.05 (“‘Medical information’ means any individually identifiable information . . . .”) Here, the release of video containing “protected health information” under HIPAA or “patient medical information” under the CMIA would violate state and federal law. Thus, DPH lawfully declined to produce the video on this basis.

You have also stated in correspondence that you believe DPH has “foreclosed any argument in support of exemption when it provided” video footage to the California Department of Public Health (“CDPH”). CDPH is a government agency that has responsibility for licensing and certification of hospitals in the state. We understand that you made a complaint to CDPH, and that CDPH viewed the video in connection with the investigation of the complaint. DPH informs us that this disclosure was for investigatory purposes only. DPH did not provide CDPH a copy of the video, and it was only viewed by those at CDPH conducting the investigation. Under these circumstances disclosure to CDPH for investigatory purposes does not constitute public disclosure. Section 6254.5(e) of the Government Code, provides that a local agency does not waive its right or duty to invoke any exemption by providing a record to another government agency that agrees to treat the disclosed material as confidential. The exception applies to the viewing of the video by CDPH in connection with CDPH’s investigation of your complaint.
Accordingly, for the above reasons, we conclude that DPH properly declined to disclose the security video from SFGH.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Bradley A. Russi
Deputy City Attorney
Mr. Mullaney --

Attached please find the determination of the Supervisor of Records regarding your petition. Thank you.

Best,

Brad Russi
Deputy City Attorney
(415) 554-4645

Office of San Francisco City Attorney Dennis J. Herrera
Supervisor of Records: General Government Team

2016-01-29 Ltr. to A. Mullaney.pdf

If I'm interpreting this as a request for a press office response, Alexander, there isn't one -- other than to say that the redactions and withholding are fully in accordance with relevant law.

Under the San Francisco Sunshine Ordinance, however, there is an administrative process for Sunshine Appeals if you believe a response you received to a request was non-compliant or incomplete. For more information, you can read about it here: http://www.sfcityattorney.org/good-government/sunshine-appeals/.

Because no formal pleading is required for such appeals, and because most of the required factual information for an appeal seems to be contained within your email, I'm taking the liberty of forwarding this to the Supervisor of Records as a Sunshine Appeal. If you have complete records of what you were provided in response to your Sunshine Request, it would be helpful for you to send those to the Supervisor of Records to review at Supervisor.Records@sfgov.org.

Now, you should be aware that the Supervisor of Records is designated under the Sunshine Ordinance as the City Attorney. Still, your petition -- and let's call this email your petition -- will be reviewed and adjudicated by an independent deputy city attorney to determine whether records withheld and/or redactions are public. (S.F. Administrative Code §§ 67.20(c) and 67.21(d)) I'm not aware of a way to
"conflict-out" this office for another agency to handle administrative Sunshine Appeals. But be aware, too, that you still have other avenues of appeal available to you in the San Francisco Superior Court and the S.F. Sunshine Ordinance Task Force. There would certainly be no hard feelirgs from us should you avail yourself of either option, or both.

Anyway, I hope that helps, Alexander. Further correspondence about your appeal should be directed to the Supervisor of Records at (again) Supervisor.Records@sfgov.org.

Best,
MATT DORSEY
Press Secretary

OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

(415) 554-4662 Direct
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--- Forwarded by Matt Dorsey/CTYATT on 12/30/2015 12:17 PM ---

From: Alexander Mullaney
To: matt.dorsey@sfgov.org,
Date: 12/29/2015 03:10 PM
Subject: Re: Cell-Site Simulator Documents

Mr. Dorsey,
Any response?
Thank you.

All the best,
Alexander Mullaney

On Sat, Dec 19, 2015 at 3:55 AM, Alexander Mullaney wrote:
Dear City Attorney Dennis Herrera,
I am Alexander Mullaney, publisher of the neighborhood newspaper The Ingleside-Excelsior Light.
This month, I obtained heavily redacted documents regarding the Department of Emergency Management's role in purchasing cell-site simulators for the San Francisco Police Department. Since the City Attorney's office advised DEM in how to to prepare the documents for release to
the press and, moreover, guided the City in signing a non disclosure agreement to acquire the devices from the manufacturer, I appeal the redactions and request answers to a few questions.

In June, digital privacy rights activist Patrick O’Doherty requested documents from SFPD related to cell-site simulators. By mistake, the public information officer did not redact that payment form completely and left the manufacturer's name exposed.

The ACLU and Electronic Frontier Foundation have sued Harris Corporation, the dominant manufacturer that sells the popular StingRay model, over its practices. In May, Santa Clara County broke off a deal with Harris Corporation over the draconian contract it required. Furthermore, in October, Governor Jerry Brown signed Senate Bill 178 the California Electronic Privacy Act and Senate Bill 741 both which change the requirements for use and acquisition of cell-site simulators and similar technology.

Given these developments, will the City Attorney's office continue instructing City agencies to honor the NDA? Since it's clear the City has/had a relationship with Harris Corporation, will the City Attorney's office continue insisting the documents be redacted? Finally, with the changes in state law, are there any forthcoming changes to how the City Attorney's office will handle disclosures related to this sort of technology?

Thank you.

All the best,
Alexander Mullaney
January 29, 2016

Sent via email  
Alexander Mullaney

Re: Petition to Supervisor of Records

Dear Mr. Mullaney:

This letter responds to your petition to the Supervisor of Records sent via email and received by the Supervisor of Records on December 30, 2015 (the "Petition"). The Petition relates to your public records request to the San Francisco Department of Emergency Management ("DEM"), dated November 5, 2015 ("the Request"). In the Request, you sought "all documents related to the acquisition and use of cell site simulators since 2008." In DEM's response dated December 9, 2015, DEM stated that "You later clarified that you were looking for documents related to the acquisition and use of cell site simulators by the City and County of San Francisco." DEM produced 41 pages of records, many of which contain redactions. In the petition, you state that you "appeal the redactions and request answers to a few questions."1

DEM's response to you invoked a number of exemptions to support the redactions made to these documents. DEM stated as follows:

Please note that redactions have been made and records have been withheld based on: California Government Code Section 6254(f) which exempts from disclosure records of complaints to, investigations conducted by, intelligence information or security procedures of, and investigatory or security files compiled by local police agencies; Government Code Sec. 6254(c) and Article I, sec. 1 of the California Constitution incorporated into the California Public Records Act by Government Code Sec. 6254 (k) because disclosure would constitute an unwarranted invasion of privacy; California Penal Code Section 832.7, which broadly protects the confidentiality of peace officer or custodial officer personnel records; Government Code Section 6254(k) which pertains to records "the disclosure of which is exempted or prohibited pursuant to federal or state law, including but not limited to, provisions of the Evidence Code relating to privilege." The relevant state and federal laws include, but are not limited to: Evidence Code Section 1040 (official information

1 The role of the Supervisor of Records under the Sunshine Ordinance is limited to determining whether a record or a part of a record withheld by a City department is public. (Admin. Code § 67.21.) Many of the questions you posed to the City Attorney's Office in the Petition are outside this limited scope of the Supervisor of Records' review.
privilege); the Uniform Trade Secrets Act (California Civil Code Section 3426 et seq), Evidence Code Section 1060 (trade secret); 5 U.S.C. 552(b)(4), (b)(6), (b)(7)(c) and (b)(7)(e); 6 U.S.C. sec.482(e) and (f)(1); 22 C.F.R. Parts 120-130; 22 C.F.R. 121.1, XI, (b); 22 U.S.C. sec. 2778; 26 USC 6103; and Executive Order 13637.

We conclude that the redactions were proper under Section 6254(f) of the Government Code, because the information redacted relates to security procedures of a local police agency. The redactions were also proper under Section 6254(k) of the Government Code, because disclosure of the redacted information is prohibited by federal law. Because these exemptions properly support the redactions, we do not address the other exemptions invoked by DEM.

We understand that cell site simulator technology is used in counterterrorism and law enforcement activities. The federal government regulates the technology and controls its distribution. The federal government has taken the position that the release of even minor details about cell site simulators may enable individuals to defeat or circumvent the technology. As such, the federal government has made efforts to limit disclosure of most information regarding cell site simulators on the theory that such disclosure would harm national security and inhibit the efficacy of law enforcement. We also note that the Chief of Police stated at the March 11, 2015, meeting of the Police Commission that, in the past, the SFPD had access to this technology with a warrant or court order, and at the time of the meeting, the department was in the process of ensuring it was not the proprietor of such technology.

In response to your request for “documents related to the acquisition and use of cell site simulators,” DEM produced documents indicating the total paid on various purchase orders. DEM redacted the component names and prices as well as the vendor name and contact information and purchase order numbers. DEM also produced a memorandum dated March 23, 2013, requesting approval to purchase items with grants from the U.S. Department of Homeland Security’s Urban Area Security Initiative (“UASI”) and State Homeland Security Grant Program (“SHSGP”). DEM redacted information from the memorandum regarding the type of technology, its capability, the specific items being requested, and regarding the vendor. DEM applied similar redactions to documents regarding the San Francisco Police Department’s (“SFPD”) request for a sole source waiver, the SFPD’s cost benefit analysis for the purchase, and Department of Human Resources personal services contract forms.

**DEM Lawfully Redacted the Documents**

Section 6254(f) of the Government Code provides an exemption from disclosure for records of “security procedures of . . . any . . . local police agency . . . .” This exemption supports DEM’s redactions of information identifying the items purchased and explaining the functionality of cell site simulator technology, because this technology is intended to be used for security purposes, including terrorism prevention and law enforcement activities. This information falls within the scope of “security procedures” of the SFPD.

Under Section 6254(k) of the Government Code, a department may (or must) decline to disclose records “the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.” DEM’s redactions are supported by this exemption as prohibited by federal law.
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All of the redacted information is considered by the federal government to be protected under 6 U.S.C. § 482(f) as "homeland security information," because it relates to the ability to prevent, interdict, or disrupt terrorist activity; it is information that would improve the identification or investigation of a suspected terrorist or terrorist organization; and it is information that would improve the response to a terrorist act. 6 U.S.C. §§ 482(f)(1)(B)-(D). Homeland security information remains in federal control, and "State or local law authorizing or requiring such a government to disclose information shall not apply to such information." 6 U.S.C. § 482(e). Federal law does not permit disclosure here. 6 U.S.C. § 482.

The federal government also considers cell site simulator technology to be a regulated defense article on the United States Munitions List ("USML"). Technical details concerning items on the USML are subject to the non-disclosure provisions of the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130), which implement the Arms Export Control Act (22 U.S.C. § 2778), and Executive Order 13637. Under the ITAR, export of any defense article or technical information regarding a defense article requires a permit from the U.S. Department of State. 22 C.F.R. § 123.1. Technical information regarding an item regulated by the USML and ITAR need not leave the borders of the United States to be deemed an export subject to regulation. 22 C.F.R. § 120.17. Dissemination of any part of the technical information with the knowledge that a media organization intends to release the information to the public may constitute a violation of the Arms Control Export Act. This regulatory and statutory scheme also prohibits disclosure of technical information regarding cell site simulators.

We conclude that federal law regarding the disclosure of “homeland security information” and technical details concerning items on the USML requires non-disclosure of all the information redacted by DEM.

Accordingly, for the above reasons, we conclude that DEM properly redacted information from documents produced to you regarding cell site simulator technology.

Very truly yours,

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City Attorney

Bradley A. Russi  
Deputy City Attorney