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MEMORANDUM

TO: Honorable Members
Sunshine Ordinance Task Force

FROM: Bradley Russi
Deputy City Attorney 

DATE: July 2, 2018

RE: Eighteenth Annual Report of the Supervisor of Records
January 1 to December 31, 2017

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, 2017 (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 is one such case to report for the current reporting period:

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In *Bayview Hunters Point Arts Council v. City and County of San Francisco*, 2017 WL 2665930, Case No. A146220 (June 21, 2017), the California Court of Appeal considered whether the opening meeting requirements of the Sunshine Ordinance applied to a panel of individuals created by a City employee to review responses to a request for proposal. The court found the review panel not subject to the Sunshine Ordinance's opening meeting requirements.

The San Francisco Public Utilities Commission ("SFPUC") provided grant funding for community art projects in the Bayview-Hunters Point neighborhood. SFPUC agreed that the San Francisco Arts Commission would be responsible for awarding the grants. An employee of the Arts Commission created and advertised a request for proposals. The employee then convened a panel of individuals to review and score the proposals the Arts Commission received. The review panel completed this work and sent its award recommendations to a subcommittee of the Arts Commission. The subcommittee held a public meeting to review the recommendations, and at that meeting the subcommittee approved the review panel's recommendations. The full Arts Commission adopted the subcommittee's approval of the panel's grant recommendations at a subsequent public meeting.

The plaintiff was an unsuccessful applicant for a grant. The plaintiff first contended that the review panel was a policy body under Section 67.3(d)(4) of the Sunshine Ordinance (Admin. Code § 67.3(d)(4)), and as a policy body its meetings were subject to the open meeting requirements of the Sunshine Ordinance. The court disagreed. Section 67.3(d) defines a policy body, and subsection (4) provides that a policy body is "[a]ny advisory board, commission, committee or body, created by the initiative of a policy body." The court found no evidence that the review panel had been created at the initiative of the Arts Commission or any other policy body, rather, it was created by a City employee. The court further noted that the review panel did not meet the definition of a "passive meeting body" under Section 67.3(c), because it was not created by the initiative of a member of a policy body, department head, or the Mayor.

The court also disagreed with the plaintiff's argument that the City employee who created the review panel acted as an agent for the Arts Commission when she created the panel or when the Arts Commission ratified its creation after the fact. The court rejected this theory finding no evidence to support it. And the court expressed "serious doubts" that the Sunshine Ordinance could be construed to permit a policy body to delegate its power to create a policy body to an individual, as an agent of the policy body.

Finally, the plaintiff contended that the review panel met the definition of a policy body under Section 67.3(d)(7), as an "advisory board, commission, committee or council created by a federal, State, or local grant whose members are appointed by City officials, employees, or agents." The plaintiff argued that the SFPUC provided a "grant" to the Arts Commission, and that grant resulted in the creation of the review panel. The court rejected this argument, because there was not a grant from the SFPUC to the Arts Commission. Rather, the SFPUC provided funds through a work order to the Arts Commission to compensate the Arts Commission for assisting in the process of administering the program and selecting the grantees.

The court upheld the lower court's judgment in favor of the City. We attach a copy of the court's opinion as Attachment A.

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DESCRIPTION OF PETITIONS AND THEIR DISPOSITION

1. Petitioner: Janelle Caywood
Department: Fire Department
Records sought: Phone numbers of members of the press
Custodian of Records: Kelly Alves
Determination: The Department may redact personal phone numbers on the basis of privacy.
Date Petition Received: January 13, 2017
Date of Determination: February 22, 2017

A copy of the decision and petition are included on pages 1-7 of the Appendix.

2. Petitioner: Janelle Caywood
Department: City Administrator
Records sought: Service inspection records for Fire Department vehicles from January 1, 2011 to present
Custodian of Records: Jack Gallagher
Determination: Department produced responsive records. No determination needed.
Date Petition Received: January 31, 2017
Date of Determination: Petition closed on February 1, 2017

A copy of the decision and petition are included on pages 8-15 of the Appendix.

3. Petitioner: Todd Berger
Department: Police Department
Records sought: Petitioner asserted the Police Department improperly redacted information regarding the victim of a stalking/domestic violence incident in a police incident report.
Custodian of Records: Briseida Banuelos

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Determination: SFPD properly redacted the name of the victim and information that could lead to the identity of the victim under Government Code § 6254(f) and Administrative Code § 67.24(d).
Date Petition Received: January 30, 2017
Date of Determination: February 17, 2017

A copy of the decision and petition are included on pages 16-19 of the Appendix.

4. Petitioner: Thomas Busse
Department: Controller
Records sought: The most recent financial statements, 2016 meeting minutes, and bylaws of the San Francisco Public Finance Authority
Custodian of Records: Matthew Wiggins
Determination: Department confirmed they have no responsive records. No determination needed.
Date Petition Received: April 27, 2017
Date of Determination: Petition closed on May 10, 2017

A copy of the decision and petition are included on pages 20-27 of the Appendix.

5. Petitioner: Kenneth Lomba
Department: Sheriff's Department
Records sought: Written acknowledgement and/or documents pertaining to the release of requester's payroll records
Custodian of Records: Mark Nicco
Determination: Department produced responsive records. No determination needed.
Date Petition Received: June 12, 2017
Date of Determination: Petition closed on June 20, 2017

A copy of the decision and petition are included on pages 28-34 of the Appendix.

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6. Petitioner: Robyn Purchia
Department: Employees' Retirement System
Records sought: A list of the pension system's holdings in the top 200 largest fossil fuel companies and the value of those holdings as of May 31, 2017
Custodian of Records: Norm Nickens
Determination: Department produced responsive records. No determination needed.
Date Petition Received: June 20, 2017
Date of Determination: Petition closed on June 27, 2017

A copy of the decision and petition are included on pages 35-37 of the Appendix.

7. Petitioner: Harold Christian
Department: Controller
Records sought: Records regarding a particular City payment
Custodian of Records: Edward Chun
Determination: Department produced responsive records. No determination needed.
Date Petition Received: June 24, 2017
Date of Determination: Petition closed on June 26, 2017

A copy of the decision and petition are included on pages 38-41 of the Appendix.

8. Petitioner: David Pilpel
Department: Municipal Transportation Agency
Records sought: Petitioner requested a statement as to the existence, quantity, form, and nature of records relating to the Upper Market Street Safety Project pursuant to Section 67.21(c) of the Sunshine Ordinance.
Custodian of Records: Caroline Celaya
Determination: A department's response to a request for a description of records under Section 67.21(c) is outside the jurisdiction of the Supervisor of Records. No determination needed.

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Date Petition Received: June 29, 2017

Date of Determination: Petition closed on July 6, 2017

A copy of the decision and petition are included on pages 42-49 of the Appendix.

9. Petitioner: Chris Roberts
Department: Mayor's Office; Office of Community Investment and Infrastructure ("OCII")
Records sought: Records regarding the "TIGER team" and the Hunters Point Shipyard environmental cleanup
Custodian of Records: Victor Lim
Determination: Mayor's Office produced responsive records; OCII is not a City department and is not subject to Supervisor of Records jurisdiction. No determination needed.
Date Petition Received: July 24, 2017
Date of Determination: Petition closed on August 7, 2017

A copy of the decision and petition are included on pages 50-61 of the Appendix.

10. Petitioner: Alvin Ja
Department: Planning Department
Records sought: Communications and other related records regarding the Balboa Reservoir development project
Custodian of Records: Christine Silva
Determination: Department produced responsive records. No determination needed.
Date Petition Received: August 17, 2017
Date of Determination: Petition closed on September 22, 2017

A copy of the decision and petition are included on pages 62-64 of the Appendix.

11. Petitioner: Christine Hanson
Department: Public Utilities Commission
Records sought: Exhibits to an exclusive negotiation agreement regarding the Balboa Reservoir development project

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Custodian of Records: Donna Hood
Determinations: Department confirmed that it had no responsive records. No determination needed.
Date Petition Received: November 10, 2017
Date of Determination: Petition closed on November 13, 2017

A copy of the decision and petition are included on pages 65-74 of the Appendix.

12. Petitioner: Ann Treboux
Department: Arts Commission
Records sought: All written public comments presented at the Arts Commission meeting on November 5, 2017
Custodian of Records: Kate Patterson
Determinations: Department confirmed that it had no responsive records. No determination needed.
Date Petition Received: November 17, 2017
Date of Determination: Petition closed on November 17, 2017

A copy of the decision and petition are included on pages 75-76 of the Appendix.

13. Petitioner: Mr. Chan
Department: Juvenile Probation Department; Juvenile Probation Commission
Records sought: Audio recording of the December 2007 meeting of the Juvenile Probation Commission
Custodian of Records: Pauline Silva-Re
Determinations: Department and Commission stated they had no responsive records. Other issues raised by petitioner were outside the scope of review of the Supervisor of Records. No determination needed.
Date Petition Received: December 5, 2017
Date of Determination: Petition closed on December 7, 2017

A copy of the decision and petition are included on pages 77-82 of the Appendix.

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14. Petitioner: Loren Bialik
Department: Mayor's Office of Housing and Community
Development (MOHCD); Office of Community
Investment and Infrastructure (OCII)
Records sought: Records regarding unclaimed bonds and unclaimed
proceeds from bonds
Custodian of Records: Benjamin McCloskey
Determinations: MOHCD confirmed that it had no responsive records.
OCII is not a City department and not subject to
Supervisor of Records jurisdiction. No determination
needed.
Date Petition Received: December 19, 2017
Date of Determination: Petition closed on January 10, 2018

A copy of the decision and petition are included on pages 83-89 of the Appendix.

ATTACHMENT A

18th Annual Report of the Supervisor of Records

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

BAYVIEW HUNTERS POINT ARTS
COUNCIL,

Plaintiff and Appellant,

v.

CITY AND COUNTY OF SAN
FRANCISCO,

Defendant and Respondent.

A146220

(San Francisco City and County
Super. Ct. No. CGC-14-537865)

Bayview Hunters Point Arts Council (plaintiff) appeals after the trial court granted the motion for summary judgment of the City and County of San Francisco (defendant or City) in this action arising from the San Francisco Arts Commission’s alleged violation of the San Francisco Sunshine Ordinance (S.F. Admin. Code, § 67.1 et seq.),¹ which requires that “[a]ll meetings of any policy body shall be open and public.” (§ 67.5.) On appeal, plaintiff contends there are triable issues of material fact regarding whether the Arts Commission violated section 67.5 when it failed to provide advance notice of and allow public comment at a June 25, 2013 meeting of a review panel at which recipients of an arts grant were purportedly selected because the panel was a “policy body” created “by the initiative of” the Arts Commission, pursuant to section 67.3(d)(4), which means it was subject to section 67.5’s open meeting requirements. In a novel argument, plaintiff also asserts that an employee of the City acted as an agent for the Arts Commission when

¹ All further statutory references are to the San Francisco Administrative Code, unless otherwise indicated.

she created the review panel, which should therefore be considered to have been created “by the initiative of” the Arts Commission, pursuant to section 67.3(d)(4). Plaintiff also argues, in the alternative, that the review panel meeting should have been open and publicly noticed under because it was “created by a . . . grant,” pursuant to section 67.3(d)(7). We shall affirm the judgment.

FACTUAL BACKGROUND

The Arts Commission, which was established by the San Francisco Charter (see S.F. Charter, §§ 5.100, 5.103), has 16 members and meets regularly in meetings that are open to the public, are noticed in advance, and provide an opportunity for public comment.

In 2013, the San Francisco Public Utilities Commission (SFPUC) vested the Arts Commission with the responsibility for awarding \$100,000 in SFPUC funding—with a maximum individual grant amount of \$10,000—as part of a grants program entitled “Community Arts in the Bayview ([CABV]): Pilot Grants Program” (grants program), which was intended to support arts engagement in the Bayview Hunters Point neighborhood. The grants program was described in written guidelines as follows: “With funding from the SFPUC, [the Arts Commission’s] Community Arts and Education Program is investing in the Bayview Hunters Point neighborhood with innovative arts programs that support the core values of the SFPUC and promote community engagement. . . .” The written guidelines further stated: “Grantees will be selected through a peer review process. A panel comprised of representatives from the [Arts Commission], the SFPUC, and the Bayview community will review the proposals based on” listed criteria. The guidelines stated that the Community Arts, Education and Grants Committee (Community Arts Committee) review would take place on July 9, and the full Arts Commission review would take place on August 5.²

Judy Nemzoff, an employee of the City, was the Community Arts and Education Program director for the Arts Commission in 2013, and was responsible for administering

² The guidelines did not list the date on which the review panel would meet.

the grants program.³ Nemzoff and her staff wrote the grants program guidelines, which they then posted on the Arts Commission website. They also conducted extensive outreach in the community to ensure that all communities and organizations serving the Bayview Hunters Point neighborhood would learn about the grant opportunities. By the June 17 application deadline, the Arts Commission had received 23 applications for the 10 available grants.

To review the applications, Nemzoff, in consultation with Robynn Takayama, also a City employee and program manager of the Arts Commission's Community Arts and Education Program, created a review panel comprised of representatives from the SFPUC, the arts community, and the Bayview community. On June 25, 2013, the review panel met at the Arts Commission's offices to discuss and score each grant application, without providing advance notice or allowing an opportunity for public comment. After the meeting, the review panel sent its scoring of applications and recommendations as to which applicants it believed should receive the grants to the Community Arts Committee, a subcommittee of the Arts Commission.

On July 9, 2013, the Community Arts Committee held a public meeting at which Nemzoff gave a presentation on the applicants for the grants program and the review panel's recommendations for the 10 recipients. At the conclusion of the presentation, the Community Arts Committee unanimously approved the panel's recommendations. At a September 9 public meeting, the full Arts Commission adopted the Community Arts Committee's approval of the panel's recommendations.

Plaintiff, an unincorporated association based in the Bayview/Hunters Point neighborhood, consists of three arts groups—Our Father's SLE/Clean Lounge, Castle of

³ Nemzoff was not a commissioner of the Arts Commission. Her duties as a staff member for the Arts Commission involved the following: "Supervise, direct, negotiate and monitor all [community arts and education] programs in content, budget, policy and procedures including any and all long range planning, supervise program managers, program associates, interns, all contractors, teaching artists and consultants. Manage 4.7 million [dollar] annual program budget and real estate investments valued at \$80,000,000."

Dreams, and Bayview Repertory Theater—that are based in Bayview/Hunters Point. Each of these arts groups, which at the time of application had a budget of \$0, applied for CABV grants. None of the groups received a grant.

PROCEDURAL BACKGROUND

On July 16, 2014, plaintiff filed a second amended complaint for injunctive relief,⁴ which contained a single cause of action under section 67.5, alleging that defendant was required to provide public notice and allow public comment at the June 25, 2013 review panel meeting. Plaintiff sought an injunction “to enjoin the Arts Commission from conducting closed-door policy body meetings in the future” and declaratory relief “declaring that (1) a selection panel meeting is a policy body meeting and (2) the Arts Commission violated [section 67.5], which requires all meetings of a policy body be open and public.”

On April 10, 2015, defendant moved for summary judgment on the ground that the review panel was not a policy body under section 67.5.

On July 14, 2015, the trial court granted defendant’s motion for summary judgment. The court found: “Plaintiff’s sole cause of action fails because the review panel is not a policy body, or a body created ‘by the initiative of a policy body.’ ([§§ 67.3(d)(4), 67.5.) The undisputed evidence demonstrates that the review panel was not created by the initiative of the Arts Commission, but rather was created by Judy Nemzoff, an employee of the City and County of San Francisco. [Citation.] The undisputed evidence demonstrates that Ms. Nemzoff is not an agent of the Arts Commission, and did not create the review panel as an agent of the Arts Commission. [Citation.] There also is no evidence in the record supporting plaintiff’s assertion that the Arts Commission ratified Ms. Nemzoff’s creation of the review panel. [Citation.] Finally, the undisputed evidence demonstrates that the review panel was not created ‘by a federal, State, or local grant.’ ([§ 67.3(d)(7); citation.) [¶] Accordingly, the review

⁴ Plaintiff had previously filed its original complaint against defendant on March 7, 2014, and a first amended complaint on June 17, 2014.

panel is not a policy body, and the City was not required to provide advance notice of the meeting, or provide an opportunity for public comment.”

On September 10, 2015, plaintiff filed a notice of appeal.

DISCUSSION

I. *Summary Judgment Rules and Standard of Review*

A motion for summary judgment “shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code of Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment has the initial burden of showing either that one or more elements of the cause of action cannot be established or that there is a complete defense. (Code of Civ. Proc., § 437c, subd. (p)(2).) If that initial burden is met, the burden shifts to the plaintiff to show the existence of a triable issue of fact with respect to that cause of action or defense. (*Ibid*; see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-853 (*Aguilar*).) “ ‘The plaintiff . . . may not rely upon the mere allegations or denials’ of his ‘pleadings to show that a triable issue of material fact exists but, instead,’ must ‘set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.’ (Code Civ. Proc., § 437c, subd. ([p])(2).)” (*Aguilar*, at p. 849; accord, *Chaffee v. San Francisco Library Commission* (2004) 115 Cal.App.4th 461, 466 (*Chaffee*).)

“ ‘ “[W]e take the facts from the record that was before the trial court when it ruled on that motion,” ’ and ‘ ‘ “review the trial court’s decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.” ’ ’ ’ [Citations.] In addition, we ‘ “liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.” ’ [Citation.]” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1039.)

II. *Applicability of The Sunshine Ordinance's Open Meeting Requirements to the Review Panel's Meeting*

The Sunshine Ordinance, enacted in 1993 and subsequently amended in 1999, is based on the principle that “[g]overnment’s duty is to serve the public, reaching its decisions in full view of the public.” (§ 67.1, subd. (a); see *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165, 1170.)⁵ Section 67.5 provides:

⁵ Section 67.1 sets forth the guiding purposes of the Sunshine Ordinance, as follows:

“(a) Government’s duty is to serve the public, reaching its decisions in full view of the public.

“(b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.

“(c) Although California has a long tradition of laws designed to protect the public’s access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

“(d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

“(e) Public officials who attempt to conduct the public’s business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public’s interest in open government.

“(f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.

“(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a

“All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 5495 et seq.) [(Brown Act)] and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.”

“ ‘[W]e are mindful that as a remedial statute,’ ” the San Francisco Sunshine Ordinance, like the Brown Act, “ ‘should be construed liberally in favor of openness so as to accomplish its purpose and suppress the mischief at which it is directed.’ [Citation.]” (*McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354, 358.)

In this case, plaintiff contends Nemzoff acted as a “policy body” when she created the review panel, which should therefore be considered to have been created “by the initiative of” the Arts Commission, pursuant to section 67.3(d)(4). Plaintiff further asserts that, to the extent that section 67.3(d)(4) would not otherwise apply in the present circumstances, Nemzoff acted as an agent of the Arts Commission when she created the review panel. Plaintiff also argues, in the alternative, that the review panel meeting should have been open and publicly noticed under section 67.3(d)(7) because the panel was “created by . . . a grant.” (§ 67.3(d)(7).)

A. Section 67.3(d)(4)

In determining the meaning of section 67.3(d)(4) of the Sunshine Ordinance, “we are guided by settled principles of statutory interpretation. ‘The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citation.]’ [Citation.] To determine this intent, we begin by examining the words of the statute. [Citation.] We must follow the construction that ‘comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an

person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.”

interpretation that would lead to absurd consequences.’ [Citation.] Further, we must read every statute, ‘ “with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.” ’ [Citations.]” (*Chaffee, supra*, 115 Cal.App.4th at pp. 467-468.)

Section 67.3(d) of the Sunshine Ordinance defines “Policy Body” for purposes of the requirement that “[a]ll meetings of any policy body shall be open and public.”

(§ 67.5.) Section 67.3(d) provides in full: “ ‘Policy Body’ shall mean:

“(1) The Board of Supervisors:

“(2) Any other board or commission enumerated in the Charter;

“(3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;

“(4) Any advisory board, commission, committee or body, created by the initiative of a policy body.

“(5) Any standing committee of a policy body irrespective of its composition.

“(6) ‘Policy Body’ shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by Charter or by ordinance or resolution of the Board of Supervisors.

“(7) Any advisory board, commission, committee, or council created by a federal, State, or local grant whose members are appointed by City officials, employees or agents.”

Other provisions of the Sunshine Ordinance make clear that not every meeting of City employees, even when related to the work of a commission, should be considered a policy body. Specifically, “Passive meeting body” is defined in section 67.3(c) as, *inter alia*, “(1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head; [¶] (2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues.” Under section

67.4 “passive meeting bodies” need not adhere to the same open meeting rules applicable to policy bodies. (§§ 67.3, 67.5.)⁶

1. *Applicability of Section 67.3(d)(4) to the Review Panel*

In arguing that the review panel constituted a policy body, plaintiff relies on the definition in section 67.3(d)(4), which provides that a policy body includes “[a]ny advisory board, commission, committee or body, created by the initiative of a policy body.” With respect to interpreting the phrase, “created by the initiative of a policy body” in section 67.3(d)(4), defendant agrees with plaintiff “that the Sunshine Ordinance does not require that the creation of a policy body occur through a ‘formal resolution or vote,’ and [that] the ‘Arts Commission could create advisory committees by methods other than formal legislative action.’ [Citation.]” However, as defendant notes, the record contains no evidence that the Arts Commission took any action at all to create the review panel, and plaintiff does not argue otherwise.⁷

Therefore, as we shall explain, neither the plain meaning of relevant provisions of the Sunshine Ordinance nor the evidence in the record supports plaintiff’s attempt to cast Nemzoff and the review panel as a policy body.

The undisputed evidence shows that Nemzoff, an employee of the City, was responsible for administering the grants program. She created both the review panel—

⁶ In addition, section 67.4 provides in relevant part:

“(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur. [¶] . . . [¶]

“(5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer

“(6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.”

⁷ Indeed, in its discovery responses, plaintiff admitted that the review panel was created by staff members, not by the Arts Commission itself.

which consisted of representatives from the SFPUC, the arts community, and the Bayview community—and the grant program’s guidelines and application documents, “because [she] determined, in [her] sole discretion, that a review panel would be beneficial. The Arts Commission had no involvement in that decision,” nor did Nemzoff act on behalf of the Commission in creating the panel. Some applicants for whom, according to defendant, Arts Commission staff had an email address were notified by email six days before the panel met to inform them that they were permitted to attend and listen to the panel discussion, but would not be permitted to make any comments or engage in conversation with panelists, “to avoid the perception of influencing deliberations inappropriately.”

The grants program application guidelines contained a section entitled, “Important Dates,” which included the date the Community Arts Committee review of applications would take place (July 9, 2013) and the date the full Arts Commission review would take place (August 5, 2013), at which time the grant agreements would be executed.⁸

The evidence also shows that, at the June 25, 2013 meeting, the review panel discussed and scored the 23 grant applications, ultimately recommending that only the 10 highest scoring applicants receive funding. After the meeting, the review panel sent its scoring and recommendations to the Community Arts Committee for its consideration. In her declaration, Nemzoff stated that on July 9, 2013, the Community Arts Committee “reviewed the grant applications and the recommendations of the review panel at a publicly noticed meeting with an opportunity for public comment.”

The July 9, 2013 Community Arts Committee minutes, attached to Nemzoff’s declaration, state that “Ms. Nemzoff gave a presentation on the applicants for the . . . grant program. . . . [¶] Ms. Takayama [Nemzoff’s colleague at the Arts Commission], said that staff recognized that it’s possible for the arts programming to occur on a volunteer and in-kind basis, so applications from organizations with no operating budget

⁸ The date of the meeting at which the full Arts Commission review took place was ultimately delayed by a month, apparently due to the lack of a quorum at the originally scheduled meeting.

were accepted. [¶] Ms. Nemzoff said that none of the zero-budget applicants were recommended for funding by the grant panel. She added that the grant panelists were looking for quality programs where the applicants had a track record for program execution and grant management capacity.” The meeting minutes reflect that Nemzoff and Takayama then answered a commissioner’s question about “how the first time applicants might be developed to be more competitive applicants.” Another commissioner “observed that there were no grants awarded for music,” to which Nemzoff responded that “the grant intent was to fund programs that were about engagement and interaction with the larger community and were not artist commissions.” Takayama further noted that one of the organizations that had applied for a grant was “recommended for funding to produce music podcasts and videos”

The meeting minutes further reflect that, following this discussion, a commissioner moved “to approve panel recommendations to award ten grants totaling \$100,000 for the FY2013-2014 cycle of [the] Grant Program to the following organizations, and to authorize the Director of Cultural Affairs to enter into grant agreements with each organization for the amounts listed” After listing the 10 organizations, which were to receive \$10,000 each, the minutes noted that there had been no public comment on the matter and that the motion “was unanimously approved.” The minutes also noted that several explanatory pdf documents had been provided to the committee, including “CABV FY2013-2014 Presentation,” “CABV applicant rankings,” “CABV panel bios,” and “CABV summaries.”

In her declaration, Nemzoff further stated that on September 9, 2013, the “Arts Commission reviewed the grant applications and the Community Arts [] Committee’s recommendations at another publicly noticed meeting with an opportunity for public comment. After considering the recommendations of the review panel and Community

Arts [] Committee, the Arts Commission passed a resolution awarding grants to the 10 highest scoring applicants”⁹

The minutes from the September 9 public meeting of the full Arts Commission, attached as an exhibit to Nemzoff ’s declaration, reflect that the Commission passed resolutions adopting a number of “items from the Consent Calendar and their related resolutions,” including the [m]otion to approve the Community Arts [] Committee Meeting Minutes of July 9, 2013.” The minutes reflect that there was no public comment on this resolution.¹⁰

This undisputed evidence demonstrates that Nemzoff, an employee of the City and a staff member at the Arts Commission, created the review panel without any input from the Arts Commission itself. The panel then reviewed the applications and made recommendations to the Arts Commission as to which applicants it believed should receive grants. The Commission’s Community Arts Committee then reviewed and voted to approve the recommendations, and the full Arts Commission subsequently adopted the Community Arts Committee’s decision, both at open meetings.¹¹

⁹ In emails to grantee organizations, Arts Commission program manager Takayama wrote: “An independent review panel of professionals with expertise in the neighborhood and community art carefully evaluated your grant proposal using the criteria established in the guidelines. Recently the Arts Commission approved the awards based on the panel’s recommendation.”

¹⁰ The minutes also reflect that the Arts Commission passed a resolution adopting the “[m]otion to approve panel recommendations to award ten grants” to the recommended organizations, passed on July 10, 2013, by the “Street Artists Committee.” Neither party has discussed the relevance, if any, of the Street Artists Committee approval in their briefing.

¹¹ Even assuming the full Commission did not review the panel’s recommendations at its September 9, 2013 meeting, but merely approved the minutes from the July 9 Community Arts Committee meeting, the evidence shows that Nemzoff had given a presentation on the applicants for the grants program at the July 9 meeting, and that the Committee reviewed, discussed, and then approved the panel’s recommendations. Furthermore, both meetings were noticed, were open to the public, and included an opportunity for public comment.

Thus, because there is no evidence from which a trier of fact could infer that the Arts Commission took *any* action to create the review panel, the review panel’s meeting does not fit the definition of a “policy body” under the plain language of section 67.3(d)(4) because it was not “created by the initiative of a policy body.” (§ 67.3(d)(4); see *Chaffee, supra*, 115 Cal.App.4th at pp. 467-468.) Instead, the review panel, which was created by a staff member, does not even rise to the level of a “passive meeting body” pursuant to section 67.3(c), which includes “[a]dvisory committees created by the initiative of a member of a policy body, the Mayor, or a department head” (§ 67.3(c)(1)), and which is not subject to the open meeting requirements for policy bodies, pursuant to section 67.5. As defendant points out, the only way to harmonize section 67.3(c) and section 67.3(d) without distorting the plain meaning of the statute “would be to conclude that policy bodies cannot be created by the actions of staff members (or other individuals), but only can be created by the actions of a policy body.” (See *Chaffee*, at p. 468.)

We likewise disagree with plaintiff’s assertion that a trier of fact could find that the review panel was a policy body because there is evidence in the record that the review panel made decisions about which applicants would be funded. First, the undisputed evidence shows that the panel made nonbinding recommendations, which the Community Arts Committee considered and voted on in an open meeting and which the full Arts Commission later approved, also in an open meeting. Anyone, including plaintiff, could have attended and raised any concerns it had about the grants program or review panel recommendations at either of the two publicly noticed Arts Commission meetings, where members of the public—including grant applicants—were free to comment before any final decisions were made.

Second, that the review panel could be considered part of the decision making process because its recommendations likely influenced the subsequent decisions by members of the Arts Commission does not mean that it performed the function of a policy body. Indeed, under section 67.3(c), passive meeting bodies, which are not subject to section 67.5’s strict open meeting requirements, often exist specifically to *advise* a

member of a policy body on various issues. (See § 67.3(c)(1) & (c)(2); see also 67.4(a)(5) [gatherings subject to passive meeting provisions include “advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer”]; compare *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263 Cal.App.2d 41, 50, 51 [Board of Supervisors could not avoid Brown Act’s open meeting requirements by “conduct[ing] some part of the decisional process behind closed doors” at informal luncheon].) Thus, as already noted, the undisputed evidence demonstrates that Nemzoff and the members of the review panel did not even meet the definition of a passive meeting body, much less that of a policy body with its open meeting requirements. (See § 67.3(c)(1) & (c)(2); §67.4(d)(4); see also *Aguilar, supra*, 25 Cal.4th at p. 849.)

2. Agency

Despite the foregoing undisputed evidence and the plain language of the Sunshine Ordinance, plaintiff argues, in what it describes as an issue of first impression, that triable issues of material fact exist as to whether the review panel was a policy body because Nemzoff acted as an actual or ostensible agent of the Arts Commission when she created it, and/or when the Arts Commission ratified its creation after the fact. In this way, according to plaintiff, the review panel arguably was “created by the initiative of” the Arts Commission, pursuant to section 67.3(d)(4), for purposes of the Sunshine Ordinance’s requirement that “[a]ll meetings of any policy body shall be open and public.” (§ 67.5.)

We have serious doubts about whether the Sunshine Ordinance can reasonably be construed so as to permit a policy body, such as the Arts Commission, to delegate the power to create a policy body to an individual, as an agent of that policy body. Under section 67.3(d)(4), a “policy body” includes policy bodies created by another policy body’s its own initiative. Neither party has brought to our attention any case applying either the Brown Act or the Sunshine Ordinance to an entity on an agency theory or any

language in either statute suggesting the propriety of such application. Nor do the parties explore the practical and perhaps unforeseen consequences of expanding application of these statutory schemes in such a way.

Nevertheless, even assuming that the Sunshine Ordinance *could* reasonably be interpreted as providing for City staff members, who are not themselves members of policy bodies, to create policy bodies under section 67.3(d)(4) based on the theory of agency, we conclude the undisputed evidence demonstrates that Nemzoff was not acting as an agent of the Arts Commission when she created the review panel.

“ ‘An agent is one who represents another, called the principal, in dealings with third persons.’ (Civ. Code, § 2295.) ‘In California agency is either actual or ostensible. (Civ. Code, § 2298.) An agency is actual when the agent is really employed by the principal. (Civ. Code, § 2299.) An agency is ostensible when a principal causes a third person to believe another to be his agent, who is not really employed by him. (Civ. Code, § 2300.) [¶] An agent has the authority that the principal, actually or ostensibly, confers upon him. (Civ. Code, § 2315.) . . . ’ ” (*J.L. v. Children’s Institute, Inc.* (2009) 177 Cal.App.4th 388, 403 (*J.L.*)) Neither type of agency can “ ‘be created by the conduct of the agent alone; rather, *conduct by the principal* is essential to create the agency.’ ” (*Young v. Horizon West, Inc.* (2013) 220 Cal.App.4th 1122, 1133-1134.)

The existence of an agency relationship is a question of fact and summary judgment is improper where triable issues of material fact exist as to whether there is an agency. (*Universal Bank v. Lawyers Title Ins. Corp.* (1997) 62 Cal.App.4th 1062, 1066.) “Nonetheless, summary judgment is appropriate where . . . the evidence is undisputed and susceptible of but a single inference.” (*Ibid.*; accord, *Emery v. Visa Internat. Service Assn.* (2002) 95 Cal.App.4th 952, 960.)

Plaintiff argues there is evidence in the record demonstrating the existence of triable issues of material fact regarding whether Nemzoff was an agent of the Arts Commission.¹²

Plaintiff first claims that there is a triable issue of fact regarding whether Nemzoff was an *actual* agent of the Arts Commission. “Actual agency typically arises by express agreement. [Citations.] It also ‘may be implied from the conduct of the parties. [Citation.]’ [Citation.] . . . [¶] ‘ “Agency is the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf

¹² The various facts that plaintiff asserts create triable issues as to Nemzoff’s possible agency include the following facts it describes as undisputed: the review panel was comprised of individuals that Nemzoff had selected; Nemzoff, whose job title was “Program Director: San Francisco Arts Commission,” was an employee of the City and worked out of the Arts Commission’s offices; Nemzoff’s job description described her duties as, inter alia, to “ ‘Supervise, direct, negotiate and monitor all CAE [Community Arts and Education] programs in content, budget, policy and procedures’ and ‘Manage 4.7 million annual program budget’ ”; Nemzoff convened the panel pursuant to her job managing community arts programs for the Arts Commission; the panel was publicized on materials containing the Arts Commission’s and SFPUC’s logos and was described as an official part of the grant review process; the panel met for eight hours at the Arts Commission’s offices, and Nemzoff and other Arts Commission staff were present at the meeting; the purpose of the panel was to consider applicants for the arts grants; the panel reviewed all of the applications and gave each one a numerical score; a subcommittee of the Arts Commission met on July 9, 2013, and Nemzoff presented to them on the panel’s process and decisions; the subcommittee voted to approve the panel’s decisions; the full Arts Commission met on September 9, 2013, and voted to approve the subcommittee’s July 9 decision; the City then paid out \$100,000 in grants to organizations chosen by the panel; and, when plaintiff wrote to the Arts Commission to protest the closed-door panel, it was Nemzoff who wrote back, on Arts Commission letterhead with an Arts Commission return address.

The purportedly disputed facts that plaintiff claims raise a triable issue regarding Nemzoff’s agency include whether the Arts Commission expressly instructed Nemzoff to create the panel; whether the Arts Commission was aware that Nemzoff had created the panel; the extent of the Arts Commission’s authority over Nemzoff; whether and when the Arts Commission learned that Nemzoff had convened the panel without publicly noticing it; whether the subcommittee that met on July 9, 2013, reviewed the grant applications themselves or merely heard the summary of the panel’s decisions from Nemzoff; and whether the full Arts Commission considered the applications in its meeting on September 9, 2013, or simply passed a motion to approve the grants.

and subject to his control, and consent by the other so to act.” [Citation.] “The principal must in some manner indicate that the agent is to act for him, and the agent must act or agree to act on his behalf and subject to his control.” [Citation.]’ [Citations.] Thus, the ‘formation of an agency relationship is a bilateral matter. Words or conduct by both principal and agent are necessary to create the relationship’ [Citation.]” (*Van’t Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 571 (*Van’t Rood*)).

Here, the evidence shows only that Nemzoff and the Arts Commission *did not* agree that Nemzoff would act on behalf of the Arts Commission and that Nemzoff *did not* act subject to the Arts Commission’s control. (See *Van’t Rood, supra*, 113 Cal.App.4th at p. 571.) As noted in part II.A.1., *ante*, Nemzoff stated in her initial declaration that she was an employee of the City and was responsible for administering the grants program at issue here. She created the panel, in consultation with fellow-employee Takayama, in her “sole discretion” and did not act on behalf of the Arts Commission when she did so. Nemzoff further stated, “The Arts Commission did not create the panel, direct me to create the panel, or have any involvement at all in the creation of the panel or the selection of the panelists.” The evidence also shows that the panel sent its scoring and recommendations to the Community Arts Committee, which then “reviewed the grant applications and the recommendations of the review panel at a publicly noticed meeting with an opportunity for public comment,” and unanimously voted to “approve panel recommendations.” The Community Arts Committee’s meeting minutes reflect that Nemzoff gave a presentation on the applicants for the grants program, that two commissioners asked questions and/or commented, that there was no public comment on the issue, and that the Community Arts Committee unanimously voted to “approve panel recommendations.” The evidence further shows that the full Arts Commission subsequently passed a resolution, also at a public meeting, approving the Community Arts Committee’s decision to award grants to the 10 highest scoring applicants.

In her supplemental declaration, Nemzoff stated, “I am not an employee of the Arts Commission, but rather am employed by the City and County of San Francisco. The

Arts Commission did not hire me, and cannot fire me. Those employment decisions are made by the head of my department, who reports directly to the Mayor of San Francisco. [¶] The Arts Commission (and the commissioners who serve on the Arts Commission) also do not control or supervise my day to day job duties. The Arts Commission does not direct or interfere in any way with how I perform by job duties. I take direction from the head of my department, not from the Arts Commission or its members. My job duties and the limits on my discretion are set by the Department Head, not by the Arts Commission.”

This evidence indicates that Nemzoff did not create the review panel on behalf of the Arts Commission, but did so in her own discretion, with no direction from or control by the Arts Commission. The Commission did not supervise Nemzoff or interfere with how she performed her job duties, as an employee of the City and under the direction of her department head. Indeed, San Francisco’s Charter prohibits the Arts Commission from giving orders to City employees such as Nemzoff or interfering with their work. (See S.F. Charter, § 4.102 [“Each board or commission, relative to the affairs of its own department, shall deal with administrative matters solely through the department head or his or her designees, and any dictation, suggestion or interference herein prohibited . . . shall constitute official misconduct”].)¹³

¹³ We find unpersuasive plaintiff’s argument that the Arts Commission can control Nemzoff “by means of its control over the budget and by setting the policies, programs, and objectives that its staff are to carry out.” First, plaintiff points to no evidence supporting its theory that Nemzoff could be a “designee[]” of the department head, pursuant to the San Francisco Charter. (S.F. Charter, §§ 4.102, 2A.30.) Moreover, the Arts Commission’s general powers and duties to “[f]ormulate, evaluate and approve goals, objectives, plans and programs and set policies consistent with the overall objectives of the City and County” (S.F. Charter, § 4.102(1)), does not provide evidence that Nemzoff’s day to day activities as an Arts Commission staff member were subject to the control of the Commission or, more particularly, that it controlled her actions when she created the review panel. As discussed in the text, *ante*, the only evidence in the record is to the contrary. (See *Van’t Rood, supra*, 113 Cal.App.4th at p. 571.)

The evidence thus satisfied defendant's initial burden on summary judgment of showing the absence of facts necessary for a finding of actual agency. (See *Van't Rood, supra*, 113 Cal.App.4th at pp. 571-572; see also Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra*, 25 Cal.4th at p. 849.) The burden therefore shifted to plaintiff to show the existence of triable issues of fact regarding an actual agency relationship. (See Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at pp. 850-853.) Plaintiff has failed to satisfy its burden.

The facts cited by plaintiff—whether described as disputed or undisputed—fail to counter defendant's evidence showing the Arts Commission *did not* have authority and control over Nemzoff. Instead, the purported facts are either irrelevant to that question or are merely allegations, with no evidence to support them. For example, the claimed factual disputes regarding whether the Arts Commission expressly instructed Nemzoff to create the panel, whether the Arts Commission had authority over Nemzoff, and whether the Community Arts Committee reviewed the grant applications themselves or merely heard Nemzoff's summary of the panel's recommendations, are supported by no actual evidence and are belied by defendant's evidence, as just discussed. Plaintiff's mere assertions to the contrary are not evidence showing the existence of triable issues of material fact. (See *Aguilar, supra*, 25 Cal.4th at p. 849 [“ ‘The plaintiff . . . may not rely upon the mere allegations or denials’ of his ‘pleadings to show that a triable issue of material fact exists but, instead,’ must ‘set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.’ ”].)¹⁴

In addition, the fact that, as plaintiff points out, an agent does not necessarily have to be an employee of the principal (see *Scholastic Book Clubs, Inc. v. State Board of Equalization* (1989) 207 Cal.App.3d 734, 737-738), does not change our conclusion.

¹⁴ Plaintiff's allegedly disputed facts regarding whether the Arts Commission was aware that Nemzoff had created the review panel do not raise a triable issue as to actual agency since the Commission's mere awareness would not show that it directed Nemzoff to create the review panel, that she agreed to do so on its behalf, or that she was subject to its control. (See *Van't Rood, supra*, 113 Cal.App.4th at p. 571.) In addition, that Nemzoff had discretion to create a review panel and hold a meeting to score grants program applicants and provide recommendations to the Arts Commission does not, as

Plaintiff further argues that even if the Arts Commission did not direct Nemzoff to create the review panel, there is evidence that it *ratified* her creation of the review panel after the fact. “An actual agency also may be created by ratification. (Civ. Code, § 2307; [citation].) But ‘ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified’ (Civ. Code, § 2310.) . . . Where a writing is not required, a principal may ratify an agency ‘by accepting or retaining the benefit of the act, with notice thereof.’ (Civ. Code, § 2310.) But ‘ratification is possible only when the person whose unauthorized act is to be accepted purported to act as agent for the ratifying party.’ [Citation.]” (*Van’t Rood, supra*, 113 Cal.App.4th at p. 571.)

As discussed, the evidence does not show that Nemzoff purported to act as an agent for the Arts Commission itself, rather than as a City employee. She handled the work of outreach, receipt of applications, creation of a review panel, and initial screening of applications. But the evidence does not support the claim that, in performing these acts, she purported to act in place of the Arts Commission, making any final decisions regarding grants program recipients on its behalf. (See *Van’t Rood, supra*, 113 Cal.App.4th at p. 571.) Instead, the evidence shows only that Nemzoff convened the review panel to make nonbinding recommendations to the Arts Commission as part of her job as Community Arts and Education Program Director; that she never believed she was an agent of the Arts Commission; and that, following open meetings with opportunities for public comment, a subcommittee of the Arts Commission and subsequently the Arts Commission as a whole made the final decisions as to which organizations would receive the grants.

Moreover, even were there evidence that Nemzoff attempted to act on behalf of the Arts Commission when she created the review panel, there is no evidence that the Arts Commission knew or should have known that she was purportedly acting as a policy

defendant puts it, automatically “equal the power to create policy bodies,” an act that section 67.3(d)(4) contemplates being performed by an already existing policy body, by its own initiative.

body, given that commissioners twice met publicly to review and vote on the panel's recommendations. (Compare *StreetScenes v. ITC Entertainment Group, Inc.* (2002) 103 Cal.App.4th 233, 242-243 [where principal had to have noticed agent's unauthorized conduct, principal's failure to repudiate agent's acts provided evidence of ratification].)

In addition, as defendant points out, plaintiff's ratification argument is also illogical in that it would mean that the review panel meeting was not that of a policy body when it took place—since Nemzoff would not then have been an agent of the Arts Commission—but became a meeting of a policy body retroactively once the Arts Commission turned it into a policy body by ratification. Such an interpretation of the phrase, “created by the initiative of a policy body” in section 67.3(d)(4) does not comport with principles of statutory construction in that it would *not* demonstrate “adhere[nce] to the [drafter's] intent, as evinced by the plain meaning of the actual words of the law. [Citation.]” (*Gillespie v San Francisco Public Library Commission, supra*, 67 Cal.App.4th at p 1174; accord, *Chaffee, supra*, 115 Cal.App.4th at pp. 467-468; see § 67.3(d)(4) [a “policy body” includes “any advisory board, commission, committee or body, created by the initiative of a policy body”].)

Because plaintiff has pointed to no evidence in the record showing either that Nemzoff's actions in convening the review panel were unauthorized, that she purported to act as an agent of the Arts Commission when she did so, or that the Arts Commission knew or should have known of her allegedly unauthorized conduct, plaintiff has not raised a triable issue of material fact as to agency by ratification. (See *Van't Rood, supra*, 113 Cal.App.4th at p. 571.)

Finally, plaintiff argues that even if Nemzoff was not an actual agent of the Arts Commission, whether from the outset or by ratification, there is a triable issue of material fact regarding whether she was an *ostensible* agent of the Commission. “Before recovery can be had against the principal for the acts of an ostensible agent, three requirements must be met: The person dealing with an agent must do so with a reasonable belief in the agent's authority, such belief must be generated by some act or neglect by the principal sought to be charged and the person relying on the agent's apparent authority must not be

negligent in holding that belief. [Citations.] Ostensible agency cannot be established by the representations or conduct of the purported agent; the statements or acts of the principal must be such as to cause the belief the agency exists. [Citation.]” (*J.L., supra*, 177 Cal.App.4th pp. 403-404.)

Here, there is no evidence suggesting plaintiff reasonably believed that Nemzoff or the review panel was acting in place of the Arts Commission and was charged with the ultimate decision regarding who would receive the SFPUC grants. The guidelines and application materials, which were created by Nemzoff and which plaintiff’s member organizations necessarily used to apply for the grants, stated that the Community Arts Committee and the full Arts Commission would be reviewing the applications on particular dates, and both policy bodies ultimately did review and approve the panel’s recommendations at publicly noticed meetings. That Nemzoff, in her role as Community Arts and Education Program Director for the Arts Commission, administered the grants program and convened the panel that made recommendations to the Arts Commission is not enough for plaintiff to have had a “reasonable belief in [Nemzoff’s] authority” as a policy body under section 67.3(d)(4). (*J.L., supra*, 177 Cal.App.4th at p. 403.) Nor has plaintiff submitted evidence suggesting that it was a foregone conclusion that the 10 groups recommended for grants would receive them following the review panel meeting. The panel’s recommendations were considered by the Community Arts Committee and the full Commission, at open meetings. To the extent that plaintiff wished to have input in the process, it could have attended either of those meetings and asked questions or commented, which it failed to do. Any belief plaintiff held that Nemzoff had authority to make binding decisions regarding grant recipients on behalf of the Arts Commission was not reasonable. (See *J.L.*, at pp. 403-404.)

Moreover, plaintiff has not cited any evidence suggesting that its belief in Nemzoff’s purported authority was “generated by some act or neglect by” the Arts Commission. (*J.L., supra*, 177 Cal.App.4th at pp. 403-404; see *Kaplan v. Coldwell Banker Residential Affiliates, Inc.* (1997) 59 Cal.App.4th 741, 747 [ostensible authority must be based on some act or neglect of principal and not “solely upon the agent’s

conduct”]; compare *Kuchta v. Allied Builders Corp.* (1971) 21 Cal.App.3d 541, 548 [evidence reflected that both agent and principal “held themselves out to the public as one construction firm and that the plaintiffs contracted with” principal on that basis].¹⁵ Because plaintiff has pointed to no evidence even suggesting that the Arts Commission acted or neglected to act in a way that caused plaintiff to reasonably believe in Nemzoff’s authority, there is no triable issue of material fact from which a trier of fact could find Nemzoff was the ostensible agent of the Arts Commission. (See *Van’t Rood, supra*, 113 Cal.App.4th at p. 571.)

In sum, in light of the undisputed evidence, together with the language and purpose of the Sunshine Ordinance and the law of agency, we conclude the trial court correctly found there were no genuine triable issues of fact regarding whether the review panel was itself a policy body, “created by the initiative of a policy body” (§ 67.3(d)(4)), for purposes of the open meeting requirement of section 67.5. (See *Aguilar, supra*, 25 Cal.4th at p. 849; *Emery v. Visa Internat. Service Assn., supra*, 95 Cal.App.4th at p. 960; *Universal Bank v. Lawyers Title Ins. Corp., supra*, 62 Cal.App.4th at p. 1066.)

B. Section 67.3(d)(7)

Plaintiff contends, in the alternative, that the review panel meeting should have been open and publicly-noticed under section 67.3(d)(7), which provides that a policy body includes “[a]ny advisory board, commission, committee, or council created by a federal, State, or local grant whose members are appointed by City officials, employees or agents.” Specifically, plaintiff maintains that the SFPUC’s transfer of \$100,000 to the Arts Commission for the purposes of awarding grants to arts organizations to support arts

¹⁵ Plaintiff cites several cases involving the application of ostensible agency to the unique circumstances of physicians working within hospitals. (See, e.g., *Whitlow v. Rideout Memorial Hospital* (2015) 237 Cal.App.4th 631; *Mejia v. Community Hospital of San Bernardino* (2002) 99 Cal.App.4th 1448; *Jacoves v. United Merchandising Corp.* (1992) 9 Cal.App.4th 88.) The analysis in those cases is applicable only in the physician-hospital context, and therefore is not relevant to the present circumstances. (See *J.L., supra*, 177 Cal.App.4th at p. 405 [finding that physician-hospital cases were inapposite and that presumptions discussed in those cases were not applicable in non-hospital context].)

engagement in the Bayview/Hunters Point neighborhood was *itself* a grant to the Arts Commission, and that that grant caused the creation of the review panel.

This argument is based on a strained interpretation of section 67.3(d)(7). As Nemzoff stated in her supplemental declaration—and as dictated by common sense—“The SFPUC did not ‘grant’ money to the Arts Commission. . . . Instead, the SFPUC provided money in a work order to the Arts Commission” to assist in the grantee selection and administration process. While plaintiff is correct that the review panel would not have existed “but for” the SFPUC grant, that does not mean the grant somehow “created” the review panel for purposes of making it a policy body under section 67.3(d)(7).

Because plaintiff has cited no evidence suggesting that the review panel was “created by a . . . grant” pursuant to section 67.3(d)(7), there are no triable issues of material fact regarding whether the panel’s meeting was subject to the open meeting requirements of the Sunshine Ordinance under that section. (See § 67.5; see also *Aguilar, supra*, 25 Cal.4th at p. 849.)

C. Conclusion

The purpose of the Sunshine Ordinance is to “ensure[] that city and county commissions, boards and councils conduct their business before the people.” (*Gillespie v. San Francisco Public Library Commission, supra*, 67 Cal.App.4th at p. 1170.) Here, after the review panel made nonbinding recommendations to the Arts Commission, those recommendations were approved over the course of two public meetings by a committee of the Arts Commission and the full Arts Commission. Because plaintiff has not set forth any “specific facts showing that a triable issue of material fact exists” (Code Civ. Proc., § 437c, subd. (p)(2)) regarding whether the review panel could be considered a “policy body” under the Sunshine Ordinance (§ 67.3(d)(4) & (d)(7)), we conclude the trial court properly granted defendant’s motion for summary judgment in this case. (See *Aguilar, supra*, 25 Cal.4th at p. 849.)

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to defendant.

Kline, P.J.

We concur:

Richman, J.

Miller, J.

APPENDIX

EIGHTEENTH ANNUAL REPORT OF THE SUPERVISOR OF RECORDS

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CITY AND COUNTY OF SAN FRANCISCO



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February 22, 2017

VIA U.S. MAIL AND EMAIL (Janelle@caywoodlaw.com)

Janelle E. Caywood
Attorney at Law
3223 Webster Street
San Francisco, CA 94123

Re: Petition to Supervisor of Records

Dear Ms. Caywood:

This letter responds to your petition to the Supervisor of Records, dated January 13, 2017. Your petition raises two issues, but by email dated February 3, 2017, you withdrew the petition regarding one of the issues. As to the remaining issue, you "request clarification on whether City departments can legally redact phone numbers of members of the press." You raise this general point in connection with the Fire Department, Office of the Mayor, Department of Human Resources, and the City Attorney's Office, and a specific reporter, Jaxon Vanderbeken, all of which you mention.

Jurisdiction of the Supervisor of Records

Before responding to the legality of the City's redaction of certain numbers from its response to your requests, we address the jurisdiction of the Supervisor of Records. The Sunshine Ordinance states:

If the custodian refuses, fails to comply, or incompletely complies with a [public records request], the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner ... whether the record requested, or any part of the record requested, is public....

(S.F. Admin. Code §67:21(d); initial emphasis in original, other emphases added.) Thus, the sole function of the Supervisor of Records is to consider whether a record or portion thereof withheld from a requester "is public," that is, must be disclosed. In its Supervisor of Records role, this Office generally does not address other issues arising under the Sunshine Ordinance or Public Records Act.

Your petition raises a general issue about the right to privacy, and a narrower issue about redaction of certain records. These two issues touch on the jurisdiction of the Supervisor of Records. But in this case these issues ultimately raise questions regarding the adequacy of a department's search for, and process for redacting, responsive records. These and other process questions go beyond the customary jurisdiction of the Supervisor of Records. In general, in our Supervisor of Records role, this Office does not pass judgment on the adequacy of a department's search for records or of its processing of a public records request. Nevertheless, because all of these search issues are here intertwined with the redaction question, and because it

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Letter to Janelle E. Caywood
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might be helpful to you and others to clarify our perspective on these issues, we address the search issues in this letter, though not, strictly speaking, in our Supervisor of Records role.

Redacting Phone Numbers of Members of the Press

You have inquired whether the law allows a City department to redact a phone number of a member of the press. There is no single answer to this question. It depends on all the facts and circumstances pertaining to the phone number and usage of the phone.

In general, there is a cognizable privacy interest in personal phone numbers. (*See generally County of Los Angeles v. Los Angeles County Employee Relations Comm'n* (2013) 56 Cal.4th 905, 927; *Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347, 359.) The right to be let alone – what Justice Brandeis called “the most comprehensive of rights and the right most valued by civilized men” – could be compromised if the City discloses the personal phone number of anyone, including a member of the press. (*Olmstead v. United States* (1928) 277 U.S. 438, 478 (Brandeis, J., dissenting).) Unauthorized disclosure of a personal phone number can be intrusive, discomfiting, and perhaps worse in extreme cases. Unwanted commercial solicitations, personal harassment or bullying, unpleasant or offensive remarks, all may be conveyed by phone or, with a cell phone, also by text message; and with electronic devices, the possibility of “hacking” or other third-party tampering, and the concomitant threat to privacy that such an occurrence would pose, is also of concern. Thus, the City must be wary of disclosing personal phone numbers to the public, particularly in an electronic age, where disclosure to one person could lead to third-party disclosure to thousands, even millions, of people through the Internet. While typically there is not an absolute privacy interest protecting a personal phone number from disclosure in all circumstances, the privacy interest is significant and must be respected unless the public interest warrants disclosure.

Different considerations apply to a business phone number. In general, privacy does not protect business numbers from disclosure. Thus, if a reporter’s phone number is officially listed as his or her number (for example, on a business card or in official public communications from the reporter) or otherwise disclosed to the public at large for business purposes, the number would typically be disclosable. There might be rare exceptions to this principle, or situations where for some reason other than privacy a business number could be withheld, but we need not address such exceptions or situations here.

A member of the press might use a personal phone in the performance of his or her job even though that phone number is not officially listed as the reporter’s phone number or otherwise disclosed to the public at large. Whether that phone number would be protected from disclosure on the basis of privacy would depend on the circumstances, including, for example, the frequency with which the reporter uses the phone for business purposes, whether it is used only for certain discrete business purposes, and whether the reporter’s course of conduct in using the phone indicates a willingness to expose the number to the public at large. The occasional use of that phone for business purposes would not automatically deprive the phone number of privacy protection. The law of privacy often requires balancing competing factors rather than the application of absolutes. Central to the right of privacy is the autonomy of the individual to determine to whom to disclose personal information. Disclosure of a personal phone number in a particular context for a particular purpose to a particular person does not necessarily indicate a willingness to share the number with the public at large, or necessarily establish waiver of the right of privacy.

Searching for Records of a Specific Reporter’s Number

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This general discussion of privacy forms a backdrop for a more specific issue raised by your inquiry: the nature of the City's duty to perform a search for records that are responsive to a public records request. A City must conduct a reasonable search for records that are responsive to a request, but is not required to conduct an inexhaustible search. (*See generally California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166 (an agency need not search an enormous volume of data for a "needle in a haystack" but must comply with a request if a record can be located with "reasonable effort").)

The reasonableness of any search for public records is an intensely practical question. As *California First Amendment Coalition* indicates, while departments inevitably incur some burdens in conducting a search for records, a rule of reason places limits on the scope of the required search. Indeed, the rule of reason encompasses the public records process as a whole. (*See generally Bruce v. Gregory* (1967) 65 Cal.2d 666, 674-77; *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 760-61; 64 Ops.Cal.Atty.Gen. 186, 1981 WL 126731, at 3-5 (1981); 64 Ops.Cal.Atty.Gen. 317, 1981 WL 126747, at 4 (1981).)

A search for phone records necessarily includes more than merely locating the records. A public agency must also determine whether disclosure of specific numbers would violate individual privacy rights. If so, the agency must redact the numbers. Numerous factors, not obvious on the face of phone records, bear on redaction, including whether a phone number called by a City employee, or the number of a call received by an employee, is a personal number; and who is the holder of the number and/or user of the phone. When a department receives a request for a significant volume of phone records, it should ask employees who might have knowledge of the calls (for example, because the employee's phone was involved) to review the records and determine, based on their knowledge, whether the numbers are business or personal phone numbers; the identity of the person on the phone call; and, if relevant to the public records request, the subject of the call.¹

But, on the other hand, it would not be reasonable to require employees to conduct outside research in an effort to answer these or other questions. Outside research would entail a great deal of staff time and the results often would be spotty or inconclusive, and might at times be erroneous. More fundamentally, the law does not impose an external research requirement on departments responding to public records requests.

Therefore, if a reasonable search for and location of phone records and a review of those records by the departmental employee or employees who might have knowledge of the calls leads the department to conclude that a phone number is a personal number, or the department is unable to determine whether it is a personal or business number, the department may redact the number in light of the privacy concerns discussed above. In such cases, if the department knows the identity of the holder of the number and/or user of the phone, and knows the content of the call related to public business, the department should identify that person, absent certain circumstances where the law would protect the identity of the person.

¹ This letter does not address all issues pertaining to public records requests for phone records. There might be circumstances where such a request is so expansive that a court would find that the City does not have to produce records in response. (*See generally Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 760-61.) Further, a request could be sufficiently broad that the rule of reason would warrant an extended time period for a City department to provide responsive records, to enable the department to balance its responsibilities under our public records laws with its many other public duties. (See the discussion of this issue in the City Attorney's *Good Government Guide*, at 91; available on the City Attorney's website, www.sfcityattorney.org.)

Letter to Janelle E. Caywood

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February 22, 2017

Supervisor of Records Response to Your Petition

We now turn to the subject of your petition to the Supervisor of Records relating to two phone numbers that you assert are Mr. Vanderbeken's. As we understand it, these numbers had not been previously identified in your public records requests to various departments regarding phone records. Through considerable Internet research on our part, we have been able to verify that Mr. Vanderbeken has used one of those numbers (415-298-1051) in an official public manner as a reporter, so that number is subject to disclosure as a business number. We have not been able to verify that Mr. Vanderbeken has used the other number you have attributed to him in the course of his business as a reporter.

In any event, we understand that the Fire Department has been able to locate four calls connected to the Vanderbeken number noted above, and has transmitted or will transmit to you information identifying those four calls. We understand that at the time it reviewed the phone records responsive to your public records request, the Fire Department did not recognize this number as belonging to Mr. Vanderbeken. We understand that the other phone number you supplied for Mr. Vanderbeken did not appear in Fire Department records.

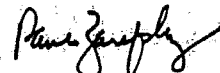
As to your phone records request to the Department of Human Resources, you received the requested records, unredacted, from the Department of Technology. You can check on whether either of the numbers you supplied for Mr. Vanderbeken appears in the records you received from DT. As you know, because the failure to redact these records was inadvertent, the City has asked you to return the records so that the City can properly redact any phone numbers the disclosure of which would constitute an invasion of privacy, and then send the redacted records back to you.

As for the phone records request to the Office of the Mayor, we understand that neither of the Vanderbeken numbers you have identified appears in the requested records.

We trust that this letter is helpful in illuminating the issues raised in your petition to the Supervisor of Records.

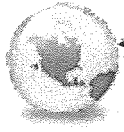
Very truly yours,

DENNIS J. HERRERA
City Attorney



PAUL ZAREFSKY
Deputy City Attorney

2/16/2018



Time Sensitive Sunshine Appeal re: Willful Misconduct

Janelle Caywood

to:

Paul Zarefsky

01/31/2017 09:31 AM

Cc:

"Supervisor.Records@sfgov.org"

Hide Details

From: Janelle Caywood <Janelle@caywoodlaw.com>

To: Paul Zarefsky <Paul.Zarefsky@sfgov.org> ,

Cc: "Supervisor.Records@sfgov.org" <Supervisor.Records@sfgov.org>

1 Attachment



City Administrator Sunshine Appeal_January 31 2017.pdf

Supervisor of Records,

My appeal is attached. I will be filing a complaint with the Sunshine Ordinance Task Force on 2/3/17 and seek enforcement in superior court if this matter is not resolved within 7 days of the date of this letter. This request involves information that impacts the life and safety of first responders and the public. For that reason, I ask that you expedite review.

Thank you in advance for your attention to this matter.

Sincerely,

Janelle E. Caywood
Attorney at Law
3223 Webster Street
San Francisco, CA 94123
Tel. (415) 370-2673
Fax (888) 263-0456



To:
Cc:
Bcc:
Subject: Fw: Sunshine Request Opinion

From: Janelle Caywood
Sent: Friday, January 13, 2017 11:27 AM
To: Paul Zarefsky
Cc: Katharine Porter
Subject: Fw: Sunshine Request Opinion

Dear Paul,

I am writing to get an opinion on a Sunshine issue since you have been referred to me as the Supervisor of Public Records at the City Attorney's Office. As background, I am investigating Department of Human Resource's illegal dissemination of San Francisco Fire Fighter's confidential personnel information to the press. I have credible evidence, namely, statements made by Chief Hayes-White, confirming that a DHR employee, possibly a convicted felon, leaked the information to the press and other third parties. Thereafter, I requested telephone calls made to and from various DHR employees be produced once it became clear city officials were intent on covering up the leak, and not being truthful. The Department of Technology produced some of those phone records. Some requests are still pending.

After the Department of Technology produced those records, they demanded them back because they did not redact them. Yesterday, I got a letter from labor attorney, Katharine Porter, demanding that those records be returned.

I am appealing her demand letter which I forwarded below.

To start, although the City Attorney can give a legal opinion as to whether records are public, they cannot take an active role in representing a department head or city employee in declining to produce records. Please review Admin Code 67.21 subdivision (i) states as follows: (i)

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

I believe Ms. Porter's email demanding the return of records violates the above provision.

Also, I request clarification on whether City departments can legally redact phone numbers of members of the press. I am very concerned the City is attempting to cover up its own wrongdoing by redacting phone numbers of members of the press who may have communicated with City employees. Please give your legal opinion as to whether it is

appropriate for the San Francisco Fire Department, the Mayor's Office, DHR, and the City attorney to refuse to disclose calls to and from the press. My particular concern is phone numbers associated with reporter Jaxson Vanderbeken (415-777-7139 and 415-298-1051). Importantly, both of his numbers are publicly available on the internet.

Thank you for your prompt attention to that matter.

Janelle Caywood



Re: 1/3 Sunshine Request: IMPORTANT

Janelle Caywood

to:

Gallagher, Jack (ADM)

02/01/2017 11:40 AM

Cc:

Paul Zarefsky

Hide Details

From: Janelle Caywood <Janelle@caywoodlaw.com>

To: "Gallagher, Jack (ADM)" <jack.gallagher@sfgov.org>,

Cc: Paul Zarefsky <Paul.Zarefsky@sfgov.org>

Thank you. Regardless of terminology confusion, under the Sunshine Ordinance, you cannot simply ignore my emails and calls for weeks on end.

To be clear, these are two white binders with duct tape on them.

I would appreciate electronic copies rather than paper.

Sincerely,

Janelle Caywood

From: Gallagher, Jack (ADM) <jack.gallagher@sfgov.org>

Sent: Wednesday, February 1, 2017 11:33 AM

To: Janelle Caywood

Cc: Zarefsky, Paul (CAT)

Subject: RE: 1/3 Sunshine Request: IMPORTANT

Ms. Caywood,

Thank you for clarifying these binders. Central Shops does have two binders with San Francisco Fire Department logs, which are also placed in the digital database with all inspection and repair records. With Central Shops keeping all records within a digital database I believe this lead to the misunderstand between all parties. The binders are being copied for your records. Each of the pages within the binders are on a card stock and need to be individually copied. Staff at Central Shops are working to copy these pages for you. Central Shops has informed me they will be able to have both binders copied by the end of the day Friday (February 3, 2017). If you wish we can produce the records periodically as they are being scanned.

Regards,

Jack Gallagher

Policy Aide

Office of the City Administrator

City and County of San Francisco

1 Dr. Carlton B. Goodlett Place, Room 362

(415) 554-6272

jack.gallagher@sfgov.org

-----Original Message-----

From: Janelle Caywood [mailto:Janelle@caywoodlaw.com]

Sent: Wednesday, February 01, 2017 7:53 AM

To: Gallagher, Jack (ADM)

Cc: Zarefsky, Paul (CAT)

Subject: 1/3 Sunshine Request: IMPORTANT

Jack,

On 1/3/17 I requested from Central Shops records regarding 300 hour service inspection on SFFD trucks and engines. On 1/13/17 you asked me to narrow my request. On 1/16/17 I sent you two separate emails narrowing my requests to the binders containing the mechanics handwritten notes on service performed on SFFD vehicles. Neither you nor Bill Barnes responded to emails or telephone calls. Yesterday you produced a computer generated print out of work orders that was not responsive to my request.

Please allow me to narrow and clarify my request even further. Please produce two three ring binders that contain handwritten notes on service performed by mechanics on SFFD vehicles. One binder contains complete service records for the trucks, the other for the engines. The binders are located in the Fire Shop by the East Truck entrance/exit sliding door. Typically, they are on the north side on top of the Service Lube/ Mechanics toolbox.

Thank you.



Janelle E. Caywood
Attorney at Law

January 31, 2017

Supervisor of Records,
City Attorney's Office
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94012

Re: Sunshine Appeal Regarding City Administrator's Wilful Misconduct in Refusing to Produce Central Shops Service Inspection Records for San Francisco Fire Department Vehicles

Dear Supervisor of Records,

I write to appeal the City Administrator's blatant refusal to comply with a Sunshine Request in a clear attempt to hide Central Shops failure to inspect and maintain San Francisco Fire Department (SFFD) vehicles.

On January 3, 2017, I requested that Central Shops produce all 300 hour service inspection records for all SFFD vehicles from January 1, 2011, to present. On January 13, 2017, Bill Barnes of the City Administrator's Office claimed no such records existed and claimed my request was too broad and would require the production of 25,000 documents. Whistle blowers familiar with Central Shops and SFFD records informed me his assertion was false statement and that the records I sought were the handwritten records of mechanics who actually performed service on the vehicles and that were contained in binders associated with each vehicle. On January 16, 2017, I clarified my request and specifically stated that I was requesting the handwritten records of the service mechanics who actually serviced SFFD contained in SFFD binders.

From January 16, 2017 to the present, neither Bill Barnes nor Jack Gallagher of the City Administrator's Office have responded to calls or emails about whether and when they intend to comply. I believe they are actively covering up the fact that Central Shops has endangered the lives of first responders and the public by failing to maintain SFFD vehicles in accordance with basic maintenance and safety standards.

I am filing a complaint with the Ethics Commission on Friday February 3, 2017, and am prepared to seek enforcement in the superior court if these records are not produced within 7 (seven) days of the date of this letter. My correspondence with the City Administrator's Office is appended hereto.

Sincerely,

/s/ Janelle Caywood
JANELLE E. CAYWOOD

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Re: Sunshine Request

Janelle Caywood

Mon 1/16/2017 9:14 AM

To: Gallagher, Jack (ADM) <jack.gallagher@sfgov.org>;

Cc: FirePublicRecords, FIR (FIR) <firepublicrecords@sfgov.org>; Barnes, Bill (ADM) <bill.barnes@sfgov.org>;

Dear Jack and Bill,

I am confused by your email and do not believe Central Shops is giving you truthful information. All manuals for all SFFD trucks/engines/apparatuses contain very specific service intervals in hours and miles. The service intervals for emergency vehicles are the most frequent and exacting. Are you telling me that Central Shops makes no effort to adhere to the recommended service intervals and does not maintain records demonstrating compliance with the service requirements? Each SFFD vehicle has a thin binder containing the service inspection records. I believe you are trying to bury me in paper and drive up costs to hide the fact that Central Shops is not maintaining service inspection records in accordance with the recommended service requirements endangering the lives of our first responders and the public. The Sunshine Ordinance is not a joke and Central Shops failure to comply can result in serious legal consequences. The relevant records are not 25,000 pages as I am sure you know. Please check again focusing on the simple binders containing a small number of pages assigned to each SFFD vehicle.

I also ask that you produce all the manuals for all the SFFD trucks/vehicles/apparatuses for inspection and copying.

Sincerely,

Janelle Caywood

From: Gallagher, Jack (ADM) <jack.gallagher@sfgov.org>

Sent: Friday, January 13, 2017 2:13:58 PM

To: Janelle Caywood

Cc: FirePublicRecords, FIR (FIR); Barnes, Bill (ADM)

Subject: RE: Sunshine Request

Ms. Caywood,

On Tuesday, January 3, 2017 we received your communication regarding a public records request. The request you sent was asking for "300 hour service inspections on all SFFD trucks and engines from 1/1/11 to present" as well as "the dates these service inspections occurred for each engine/apparatus". After discussing this request with Central Shops we found there are no 300 Hour Service Inspections. This type of inspection does not exist within Central Shops.

The Central Shops office does have records for all SFFD vehicles inspected between January 1, 2011 to the present. The records will take additional time to both print and review due to the overall size. The page total is estimated to be between 25,000 to 30,000 pages. If you want us to proceed I would like to note each page is 10 cent. If you have information that could help reduce and specify the records size that would be helpful.

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1/31/2017

Re: Sunshine Request - Janelle Caywood

If you have any questions, please do not hesitate to contact me.

Regards,

Jack Gallagher
Policy Aide
Office of the City Administrator
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 362
(415) 554-6272
jack.gallagher@sfgov.org

From: Janelle Caywood [mailto:Janelle@caywoodlaw.com]
Sent: Tuesday, January 03, 2017 5:34 PM
To: Gallagher, Jack (ADM); Barnes, Bill (ADM)
Cc: FirePublicRecords, FIR (FIR)
Subject: Sunshine Request

Central Shops and SFFD:

Please produce records regarding 300 hour service inspections on all SFFD trucks and engines from 1/1/11 to present. This requests includes but is not limited to, the dates these service inspections occurred for each engine/apparatus.

Janelle E. Caywood
Attorney at Law
3223 Webster Street
San Francisco, CA 94123
Tel. (415) 370-2673
Fax (888) 263-0456

Fwd: 1/3/17 Sunshine Request for 300 hour Service Inspection Records, SFFD

Janelle Caywood

Mon 1/30/2017 9:08 PM

To: naomi.kelly@sfgov.org <naomi.kelly@sfgov.org>;

Dear Naomi,

I left a message at your office. The City Administrator has failed to comply with a Sunshine Request. I'm preparing to seek enforcement in the superior court and before the Ethics Commission. Your office's failure to comply is illegal and could warrant referral to the District Attorney's office and/or the Attorney General if it is deemed to be official misconduct. I will file a lawsuit if this is not handled immediately.

Please advise if you will comply by the close of business tomorrow.

Thank you.

Begin forwarded message:

From: Janelle Caywood <Janelle@caywoodlaw.com>
Date: January 27, 2017 at 10:35:21 AM PST
To: "Gallagher, Jack (ADM)" <jack.gallagher@sfgov.org>, "Barnes, Bill (ADM)" <bill.barnes@sfgov.org>
Subject: Fw: 1/3/17 Sunshine Request for 300 hour Service Inspection Records, SFFD

Jack and Bill,

I just left you a message, Jack. For weeks you have failed to my emails regarding the records I requested from Central Shops. These records are overdue. If you do not produce them immediately, I will seek enforcement in superior court and pursue all legal remedies.

Sincerely,

Janelle Caywood

From: Janelle Caywood
Sent: Tuesday, January 24, 2017 9:27 PM

1/31/2017

Fwd: 1/3/17 Sunshine Request for 300 hour Service Inspect... - Janelle Caywood

To: Barnes, Bill (ADM); Gallagher, Jack (ADM)

Subject: Fw: 1/3/17 Sunshine Request for 300 hour Service Inspection Records, SFFD

Jack and Bill,

Please advise on the status of my 1/3/17 records request for service inspection records for SFFD vehicles as clarified below.

Thank you,

Janelle Caywood

From: Janelle Caywood

Sent: Monday, January 16, 2017 10:15 AM

To: Gallagher, Jack (ADM); Barnes, Bill (ADM); FirePublicRecords, FIR (FIR)

Subject: 1/3/17 Sunshine Request for 300 hour Service Inspection Records, SFFD

Jack and Bill,

To further clarify which records I am requesting, I want copies of the CS binders containing the handwritten records of the mechanics who actually performed the service on the SFFD vehicles/trucks/engines/apparatuses. This is a very small number of records. Please produce forthwith.

Sincerely,

Janelle

Janelle E. Caywood

Attorney at Law

3223 Webster Street

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1/31/2017

Fwd: 1/3/17 Sunshine Request for 300 hour Service Inspect... - Janelle Caywood

San Francisco, CA 94123

Tel. (415) 370-2673

Fax (888) 263-0456



Re: Incident Report: 140003586
Supervisor Records to: tberger415 . < [REDACTED] >
Sent by: Brad Russi

02/17/2017 02:24 PM

Mr. Berger,

Please see the attached determination 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 T. Berger 2.17.2017.pdf

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

"tberger415 ." Dear Records Supervisor, I am writing in regard... 01/30/2017 09:19:55 PM

From: "tberger415 ." < [REDACTED] >
To: supervisor.records@sfgov.org,
Date: 01/30/2017 09:19 PM
Subject: Incident Report: 140003586

Dear Records Supervisor,

I am writing in regards to your departments continual denial of my request for Incident Report #140003586.

After my first request, I received your denial six weeks later stating without explanation that I would need a subpoena. Many requests after that were also answered weeks to months later but now citing CA Govt. Code 6254(f), Once I did receive the report, albeit heavily redacted, I found that it consisted of a great deal of false "material" statements.

My question to you is:

1. Who is the custodian of this report?
2. Why can't I view the redacted portion of the report?
3. Why does it take weeks/months to get a response?
4. Why at times have I not received a reply to my requests?

Lets be clear, I am the victim and have a right to know in it entirety what's been published under color that's not only about me but also deliberately kept from me to protect none other than the person who wrote the false statements and appears to now be hiding (or being hidden) under CA Govt. Code 6254(f) than take responsibility for his crime?

No, I am not "opening a can of worms," "trying to ruin a cops life," or am suffering from mental issues." Believe me, by now I've heard it all and am tired of being humiliated, bullied, and

demonized by members of SFPD. What I am seeking, however, is justice and accountability. Not being forthright and transparent will be unacceptable and insulting. Especially when taking into consideration what I now know to be fact Vs. shameful fiction.

With that said, can you/will you help me and if not--why?

Thank you for your time and consideration.

Sincerely,

Todd Berger

[REDACTED]

Cell: [REDACTED]

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

BRADLEY A. RUSSI
DEPUTY CITY ATTORNEY

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

February 17, 2017

Sent via email

Todd Berger ([REDACTED])

Re: Petition to Supervisor of Records

Dear Mr. Berger:

This letter responds to your petition to the Supervisor of Records sent via email on January 31, 2017. The petition arises out of your request for Incident Report No. 140003586 from the San Francisco Police Department ("SFPD"). SFPD produced a redacted copy of the report. Your petition seeks a determination from the Supervisor of Records regarding whether there is a legal basis to support SFPD's redactions.

The incident at issue in the report involved an allegation of stalking and domestic violence. SFPD redacted the name and contact information for the victim of the incident. The department also redacted portions of the narrative of the report and the location of the occurrence, both of which could lead to the identity of the victim. Finally, SFPD redacted the driver license number of the suspect. We determine that SFPD lawfully redacted the report.

SFPD properly redacted the information regarding the victim under Section 6254(f) of the Government Code. Section 6254(f) exempts from disclosure records of investigations conducted by law enforcement agencies, like the report at issue. But that section also requires that law enforcement agencies make certain information – as distinct from the report itself – available. The required information includes the "time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved." Gov't Code § 6254(f)(2)(A). SFPD elected to meet its obligation to provide the required information by producing the redacted report, even though the report itself is exempt under Section 6254(f). This approach to disclosure of required information under Section 6254(f) is consistent with the disclosure requirements of Section 6254(f).

Section 6254(f) allows a department to withhold information "to the extent disclosure of a particular item of information would endanger the safety of a person involved in an investigation . . ." Gov't Code § 6254(f). As mentioned, the incident at issue in the report involved allegations of stalking and domestic violence. SFPD has indicated that it made the redactions based on the concern that the disclosure of the information would endanger the safety of the victim. We defer to the SFPD's expert judgment in this regard, which under the circumstances appears reasonable. We therefore agree that concern for the safety of the victim is

CITY HALL • 1 DR. CARLTON B. GOODLETT PLACE, CITY HALL ROOM 234 • SAN FRANCISCO, CALIFORNIA 94102-4682

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Page 2
February 17, 2017

a proper basis for withholding the victim's name and contact information, the location of the occurrence, and the other information in the narrative of the report that could lead to the identity of the victim or could otherwise endanger the safety of the victim. Further, in a case involving stalking under Section 646.9 of the Penal Code, Section 6254(f)(3) specifically provides that, the victim's address "shall remain confidential."

SFPD's redactions of information relating to the victim were also proper under the San Francisco Sunshine Ordinance. Section 67.24(d) of the Sunshine Ordinance (Administrative Code § 67.24(d)) requires disclosure of records of criminal investigations when the District Attorney or court determines no prosecution will be sought or the applicable statute of limitations has run. But certain information may still be withheld when the public interest in non-disclosure outweighs the public interest in disclosure. Among other categories, the following type of information may be withheld: "[p]ersonal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy." We find that given the nature of the allegations in the incident at issue, the victim's name and information that could lead to the victim's identity is private information. Further, disclosure of the information would constitute an unwarranted invasion of privacy as access to the identity of the victim will not materially enhance the capacity of the public to monitor the functioning of government. Accordingly, in light of the potential danger to the victim, we conclude that the public interest in non-disclosure outweighs the public interest in disclosure. Even if there will be no prosecution in this matter or the statute of limitations has run, SFPD properly redacted the information.

Finally, the department properly redacted the suspect's driver license number on the basis of privacy. See Gov't Code § 6254(c); California Constitution Article, 1 section 1; Administrative Code § 67.26.

For the reasons stated above, the Supervisor of Records denies your Petition.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney



Re: Petition to the City Attorney's Office
 Supervisor Records to: Thomas Busse <[REDACTED]>
 Sent by: Brad Russi

05/10/2017 05:36 PM

From: Supervisor Records/CTYATT
 To: Thomas Busse <[REDACTED]>@SFGOV,

Mr. Busse,

I have confirmed with the Controller's Office that they have no records responsive to your request. Under the Sunshine Ordinance (Section 67.21(d) of the Administrative Code), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so - for determining "whether the record requested, or any part of the record requested, is public." Here, the department has not withheld or redacted any records. Therefore, there is no issue for the Supervisor of Records to address, and we consider this petition closed. Thank you.

Best,

Brad Russi
 Deputy City Attorney

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

Thomas Busse	Thank you for getting back to me, Brad. The Con...	05/08/2017 09:51:00 PM
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From: Thomas Busse <[REDACTED]>
 To: Supervisor Records <Supervisor.Records@sfgov.org>,
 Cc: "SOTF, (BOS)" <sof@sfgov.org>
 Date: 05/08/2017 09:51 PM
 Subject: Re: Petition to the City Attorney's Office

Thank you for getting back to me, Brad.

The Controller's response (below) is wholly unsatisfactory for the following reasons (among others not listed here):

1. I had contacted Ms. Madhavan on 4/22, and her response (also below) was to contact the Controller. I have issued a follow-up request to Ms. Madhavan and a new one to Mr. Gerhard via certified mail subsequent to the Controllers Response (both are CPRA requests) and have heard nothing. As to the Controller's gratuitous and insulting response I learn how to use "ctrl+F" and search for "Sales Tax," I had actually done so prior to contacting Ms. Madhavan on both the SFUSD and SFCCD financials (as my message to her indicates), and I had also perused the minutes of both bodies - ruling out the blended annual meeting of the SFCCD's Finance Corporation as being what I was searching for. As the response from Ms. Madhavan (who did not write back when I asked follow up questions) regarding where the Sales Tax revenues are disclosed in the financials, as she states, they don't segment "sales tax," and her link to page 87 indicates it is mixed in with unrestricted "other local revenue" and not segmented as a sales tax. Technically, it's not sales tax, it's a local transactions and use tax, and I searched for that term as well.

2. Publication BOE 105 page 6 (April 2017) is the very thing that caused me to start asking what the San Francisco Public Finance Authority was in the first place. The very first contact I made in this regard was Angela Whittaker as well as the general e-mail of the Office of Public Finance (also below). That was on April 18th, and I received no response from her or them.

3. The Controller's own Citywide Sales and Use Tax Revenue Manual describes the San Francisco Public Finance Authority on page 2 (incidentally, the pie chart on the right doesn't add up to the table on the left and the pie slices don't match the percentages, which might actually be the city's manual).

4. The San Francisco Public Finance Authority was established by Board of Supervisors Resolution 48-93 adopted on 2/1/93. It specifies it is governed by a board of ten members consisting of five members of the BOS appointed by the President and give members of some combination of the governing boards of the SFUSD and CCSFD. In 1993, the Chairperson was Carol Migden. A very similar entity with taxing authority created through board resolution is the County Transportation Authority, and the Controller properly discloses and treats the SFCTA as a blended entity in the CCSF CAFR. These facts establish the SF Public Finance Authority as subject to the Sunshine Ordinance.

5. The Controller, City Attorneys office, and Supervisor Scott Wiener communicated with the Dept. of Elections in reference to November 2016's Proposition K regarding a General Sales Tax, and the San Francisco Public Finance Authority is referenced on documents signed by these individuals, such as this one and the actual published ordinance including the Controller's Statement. Any Reasonable Controller would check that statement for accuracy in the context of the simplified ballot language, and given a deputy city attorney sits on the ballot simplification committee, the city attorney's communication to me below that the SF Public Finance Authority does not exist is baffling. Deputy City Attorney Tom Lakey counseled the Board of Supervisors about the Public Finance Authority in a fascinating set of parliamentary maneuvers in the minutes of March 15, 1993.

6. Under California Government Code section 26909, the Auditor (in our case, the Controller) is required to make an annual audit of or ensure an annual audit is made of every special district in his/her county. Per the City Charter, Section 3.105, the Controller shall "have the power and duties of a County Auditor." I requested the audited financial statements. He did not provide them. Making sure they exist is his most basic job. Failure of the Controller to faithfully execute the duties of his office is grounds for removal for cause. His willful obfuscation evidences a fundamental disregard and lack of concern for the transparency demanded by the voters in enacting the Sunshine Ordinance - a CYA culture I find repugnant.

To be clear: although I think there may be legitimate cause for action to void the sales tax, *my* only goals are transparency and measures of funding effectiveness. Once again I repeat my constructive suggestion to fix this: accrue the BOE's remits to an escrow account and place the Controller, SFUSD, The SF Public Finance Authority, and the CCSFD on the State Auditor's Local Government High Risk Program. Allow the State Auditor to draw from escrow to complete her work, and release the funds on the condition the SF Public Finance Authority adopt her recommendations. The simple fact is, this could be a really great thing because, by reactivating the SFPFA's board, the BOS President can use her governance influence to structure the supplemental funding (even if allocated between the two districts on the basis of attendance) around program objectives such as the initiative for "free" city college, pre-kindergarten, cultural

equity programs, etc. The Public Finance Authority could, for example, pay CCSFD scholarships directly and structure them around underserved communities or build student or teacher housing directly, and it's a great PR move because you can put up big signs, "paid for by San Francisco's Supplemental Education Sales Tax." Several of these are being backfilled from the imbalanced general fund. It also forces members of the BOS and education boards to work together, which will improve city service coordination. There are clauses in R&T Code Chapter 3.5, enabling resolution 48-93, and the 1993 School Sales Tax Ordinance (which took me three weeks to find and the City Attorney says doesn't exist), allowing these funds to be used for health, drug abuse, and crime prevention services when these services fall within the general educational purposes of the school and community college districts. I have a suspicion some folks in city hall have already beat me to this reasoning, and I'm totally cool with it just as long as everyone's honest and transparent. Lying to me (as the Controller has done) loses all confidence.

Cordially,

Thomas J. Busse

----Forwarded Info----

Dear Mr. Busse,

Based on the specific information you requested, we respectfully refer you to contact Reeta Madhavan, the CFO at the SF Unified School District (SFUSD, (415) 241-6542 x1617, MadhavanR@sfusd.edu) and Ron Gerhart, the Vice Chancellor of Finance & Administration at the San Francisco Community College District (SFCCD, (415) 241-2229, rgerhard@ccsf.edu), as they oversee the budget, accounting and audit records related to all sources and uses of funds accruing to their respective districts. For helpful immediate reference, please find their budget, audit and financial statement links below, along with the California BOE Sales Tax allocation link

- 1) the California Board of Equalization's (BOE) tracking and apportionment of sales tax allocations by taxing entity, for the City and County of San Francisco at <http://www.boe.ca.gov/pdf/boe105.pdf> on page 6.
- 2) SFUSD's budget, audit and financial documents [available here](#) as well as the SFCCD's [available here](#). By keyword searching these documents you can find where Sales Tax accrues and is budgeted, for example, by using CTRL-F and typing in "sales tax".

We hope this is of help to you.

Best,

Office of the Controller

From: CON, Controller (CON)

Sent: Wednesday, April 26, 2017 2:38 PM
To: Thomas Busse <[REDACTED]>
Cc: CON, Controller (CON) <controller.con@sfgov.org>
Subject: Sunshine Request - SF Public Finance Authority

Dear Mr. Busse,

Thank you for contacting the Controller's Office. This email is in response to your public information request, we are researching your inquiry and are working to provide you with a response as soon as possible. Please direct any follow-up materials you may have to this email address.

Best,

Office of the Controller

Hello Mr. Busse,

The school district receives our share of the sales tax revenue directly from the city's Controller's Office. You will need to contact the city's Controller's Office for the financial audit of sales tax revenue. This revenue is included on page 87 of the school district's 2015-16 audit report in the \$52,614,948 total of "Local Revenue" in the Unrestricted General Fund column. You are correct in that the audit report does not provide a breakdown of all our revenue sources, and I will discuss this with our auditors if it is feasible to include that level of detail without making the report overly lengthy (to give you a sense of what this would entail, the district receives funding from over 100 different federal, state and local sources and it could get unmanageable to list them all in detail). The detailed revenue breakdown is included in our Unaudited Actuals report that is submitted to the state annually and forms the basis of our audited financials. This report is posted on our district web site [here](#). Please let me know if you have any additional questions.
Thank you,
Reeta

From: Cityattorney <CityAttorney@sfgov.org>
Date: May 1, 2017 at 3:46:49 PM PDT
To: [REDACTED]
Subject: Re: Records Request

Mr. Thomas J. Busse,

Thank for your request dated April 28, 2017 concerning the "San Francisco County Public Finance Authority" Authority, the Office of Public Finance within the Controller's Office here in San Francisco, and/or the San Fran

Best,

Andrea Guzman
Responding for cityattorney@sfgov.org

to Angela Whitta
k.

Dear Ms. Whittaker:

I was perousing the district tax breakdown in the records of the Board of Equalization, and it noted San Francisco has a permanent .25% sales tax for a special district called the "San Francisco County Public Finance Authority" approved by the voters in 1993. Is that the same as your department, the Office of Public Finance? I would assume the special district would float sales tax bonds, but what is unclear to me is why it is set up as a special district (and how it was set up, given San Francisco did not have a Local Agency Forming Commission in 1993). I would like to read its charter.

Yours truly,
Thomas J. Busse

On Mon, May 8, 2017 at 3:56 PM, Supervisor Records <Supervisor.Records@sfgov.org> wrote:
Mr. Busse -

I write in response to your petition below. I apologize for the delay; I was out of the office. It is my understanding that the Controller's Office has responded to your records request. Please let me know if their response resolved your issues. Thank you.


Best,

Brad Russi
Deputy City Attorney

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

-----Forwarded by Cityattorney/CTYATT on 04/28/2017 09:21AM -----

To: info@sfcityattorney.org

From: Thomas Busse < >

Date: 04/27/2017 08:56PM

Subject: Petition to the City Attorney's Office

Petition to the City Attorney:

Pursuant to The San Francisco Sunshine Ordinance, On April 26 2017 at 12:35 PM I submitted an Immediate Disclosure Request to the Controller for the most recent Financial Statements, 2016 Board Minutes, and bylaws of the San Francisco Public Finance Authority. My Immediate Disclosure Request asked for the name of the Public Finance Authority's "Director of Fiscal Services" who was issued a warrant from the State Board of Equalization on April 12, 2017 for \$3,201,400, but most importantly an answer to this question, "Does the San Francisco Public Finance Authority Exist?" This followed up on a Disclosure request the previous morning asking the same thing.

I received a response later on April 26 that they were working on my request, but 24 hours has passed by and I have not seen any documents.

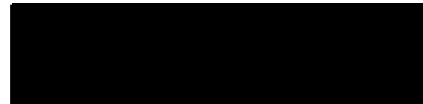
Departments have the discretion to extend an Immediate Disclosure Request if records are voluminous, in off-site storage, etc; however, there is no appropriate reason for the Controller to not be able to produce the Financial Statements of a County Blended Entity. In fact, the Controller is constitutionally obligated to publish these statements. Therefore, I believe the

Controller is in violation of the Sunshine Ordinance's Section 67.25(a) because no reasonable person could consider the information requested for immediate disclosure to not be readily available from any competent County Controller.

As recently as November 2016, the Ballot Simplification Committee's statement on the proposed Proposition K mentioned a 1/4 cent sales tax is collected in the County on behalf of the San Francisco County Public Finance Authority. It is Special District 051 in the Board of Equalization's accounts, legally constituted under section 6500 of the California Government Code as a Joint Powers Authority. Therefore, I have every reason to believe I am asking for Immediate Disclosure of Documents. Sadly, I cannot find the San Francisco Public Finance Authority referenced in any of the San Francisco Legal Codes published by the American Legal Publishing Corporation. The City Attorney may have better research tools. My hope was to start learning about the San Francisco Public Finance Authority's decision making structure by reading the bylaws. After all, I could find them of the Transbay Joint Powers Authority with The Google. My Public Purpose was to determine if the City/County could fund tuition remission at the Community College by asserting its JPA votes to reallocate the Special District Tax the voters already pay to supplement education, thus reducing pressure on the city's general fund. Sadly, the City's Institutions do not seem to welcome my ideas.

As you are the designated "Supervisor of Records," I appeal to you to adjudicate this withholding of information by the Controller. A transparent accounting of taxation and expenditure is essential to any functioning democracy and an informed electorate.

Very truly yours,
Thomas J. Busse



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I write in response to your petition below. I apologize for the delay; I was out of the office. It is my understanding that the Controller's Office has responded to your records request. Please let me know if their response resolved your issues. Thank you.

Best,

Brad Russi
Deputy City Attorney

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

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Very truly yours,

Thomas J. Busse





Re: Fwd: Supervisor of Records

Supervisor Records to: Kenneth Lomba

06/20/2017 02:57 PM

Sent by: Brad Russi
Cc: Supervisor.Records

From: Supervisor Records/CTYATT
To: Kenneth Lomba <[REDACTED]>@SFGOV,
Cc: Supervisor.Records@sfgov.org
Sent by: Brad Russi/CTYATT

Mr. Lomba -

I understand that the Sheriff's Department produced the records that you had requested. As a result, we consider your petition closed. Thank you.

Best,

Brad Russi
Deputy City Attorney

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

Kenneth Lomba Thank you Mr. Russi Sincerely 06/12/2017 05:17:00 PM

From: Kenneth Lomba <[REDACTED]>
To: Supervisor.Records@sfgov.org,
Date: 06/12/2017 05:17 PM
Subject: Re: Fwd: Supervisor of Records

Thank you Mr. Russi
Sincerely
Ken Lomba

On Mon, Jun 12, 2017 at 5:10 PM <Supervisor.Records@sfgov.org> wrote:
Mr. Lomba --

We have received your petition and are looking into it. I will get back to you soon.

Best,

Brad Russi
Deputy City Attorney

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

From: Kenneth Lomba <[REDACTED]>
To: supervisor.records@sfgov.org,
Date: 06/12/2017 08:34 AM
Subject: Fwd: Supervisor of Records

To: SF City Attorney Office
Attn: Supervisor of Records

Please help me obtain public records I have requested from the San Francisco Sheriffs Dept.

I have requested written acknowledgement and/or documents pertaining to the release of my payroll records on June 5th.

SFSD Captain Jackson responded to my email request confirming my payroll records were released and stated, "No other information will be provided to you regarding this matter." See email thread.

I believe it's unlawful that Captain Jackson refuse to provide me with such simple information that is public record.

I am requesting all public information requests, acknowledgements and documents related to the release of my payroll records.

Thank you for your help in this matter.

Respectfully
Ken Lomba
[REDACTED]

Begin forwarded message:

From: Kenneth Lomba <[REDACTED]>
Date: June 9, 2017 at 8:18:50 AM PDT
To: jason.jackson@sfgov.org
Cc: terence.durkan@sfgov.org
Subject: Re: Payroll Information released

Hi Captain Jackson
cc: Sgt. Durkan

Good morning, I hope you are doing well. Respectfully, I have done some research on public records requests and following the FOIA is not the correct guideline for the SFSD.

The SFSD falls under the regulation of the Sunshine Ordinance.

I have formally requested the following on June 5th:

"written acknowledgement or documentation of the request for my payroll records, I would like a copy of that and any written documentation of the delivery of my payroll information "

This includes requests and/or delivery of the document via email.

California Government Code 6252

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

You stated in your email to me, "No other information will be provided to you regarding this matter."

Sunshine Ordinance Sec. 67.1. Findings and Purpose.

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government.

If you will not provide the above request can you please tell me why? Why can someone access my payroll records and I am denied my public request in knowing who requested it and to whom was it given too?

Please get back to me today, I have the utmost respect for you and hope you will honor my request. If not, I will have to follow the guidance of the Sunshine Ordinance to go to the next level of notifying the Sunshine Ordinance Task Force to obtain the requested information.

Respectfully

Ken Lomba

From: Jackson, Jason (SHF)
Sent: Tuesday, June 6, 2017 11:45 AM
To: Lomba, Kenneth (SHF)
Cc: Durkan, Terence (SHF)
Subject: FW: Payroll Information released

Good Morning Deputy Lomba,

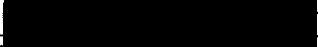
I'm following up regarding your inquiry Sergeant Durkan regarding the release of payroll information pertaining to you. It has been confirmed that the documentation that you have provided was released pursuant to a Freedom of Information Act (FOIA) request. No other information will be provided to you regarding this matter.

Thank you,

Captain Jason H. Jackson
Administration and Programs Division

San Francisco Sheriff's Department
1 Dr. Carlton B. Goodlett Place
City Hall Room 456
San Francisco, CA 94102

Office: (415) 554-7216

From: Kenneth Lomba [mailto: 
Sent: Monday, June 05, 2017 4:06 PM
To: Durkan, Terence (SHF)
Subject: Fwd: Payroll Information released

Hi Sgt. Durkan

I attached a copy of my payroll information that was released from the Sheriff's Dept. I would appreciate your help or if you can connect me to the right person that can tell me who requested this information and who it was released to. If there is a written acknowledgement or documentation of the request for my payroll records, I would like a copy of that and any written documentation of the delivery of my payroll information. See attached payroll info that was released.

Thank you
Ken Lomba

Sent from my iPhone

Begin forwarded message:

From: "Lomba, Kenneth (SHF)" <Kenneth.Lomba@sfgov.org>
Date: May 26, 2017 at 9:47:43 PM PDT
To: "kennethlomba [REDACTED]" <[REDACTED]>
Subject: Fw: Payroll Information released

Deputy Lomba #2074
San Francisco Sheriff's Department

NOTICE: The information contained in this message is proprietary and/or confidential and may be privileged. If you are not the intended recipient of this communication, you are hereby notified to: (i) delete the message and all copies; (ii) do not disclose, distribute or use the message in any manner; and (iii) notify the sender immediately.

From: Durkan, Terence (SHF)
Sent: Friday, May 26, 2017 6:04 PM
To: Lomba, Kenneth (SHF)
Cc: Chau, Cindy (SHF); Hollings, Crispin (SHF); Gorwood, Kathy; Jackson, Jason (SHF)
Subject: RE: Payroll Information released

Good afternoon Deputy Lomba:

Personnel does not have access to payroll system or paystubs, so I don't know who received your information or who would provided it to outside parties.
When you say released ,who exactly are you saying it was released to. My question to you is in what context the information was provided or released/provided.

I am copying Cindy in Payroll and our CFO Crispin Hollings, along with Chief Gorwood and Captain Jackson on your question

Thanks.

Sgt. Terence Durkan
Personnel Manager
San Francisco Sheriff's Department
City Hall, Room 456

1 DR. Carlton B. Goodlett Pl.
San Francisco, Ca 94102-4676
Telephone: (415) 554-4461
Fax (415) 554-7050

From: Lomba, Kenneth (SHF)
Sent: Friday, May 26, 2017 4:17 PM
To: Durkan, Terence (SHF)
Subject: Payroll Information released

Hi Sgt. Durkan

How are you?

I have a question, during the month of April someone released my payroll information, wages, and hours worked. Can you tell me who it was given to?

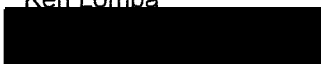
Best regards

Deputy Lomba #2074
San Francisco Sheriff's Department

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--

Best regards,
Ken Lomba



--

Best regards,
Ken Lomba





Re: PRR

Supervisor Records to: Robyn Purchia <[REDACTED]>
Sent by: Brad Russi

06/27/2017 02:32 PM

From: Supervisor Records/CTYATT
To: Robyn Purchia <[REDACTED]>@SFGOV,

Great. We consider your petition closed.

Best,

Brad Russi
Deputy City Attorney

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

Robyn Purchia Thank you, Norm. The documents you sent satis... 06/27/2017 10:01:24 AM

From: Robyn Purchia <[REDACTED]>
To: "Nickens, Norm (RET)" <norm.nickens@sfgov.org>,
Cc: "Records, Supervisor (CAT)" <supervisor.records@sfgov.org>, "Armanino, Darlene (RET)" <darlene.armanino@sfgov.org>, "Huish, Jay (RET)" <jay.huish@sfgov.org>
Date: 06/27/2017 10:01 AM
Subject: Re: PRR

Thank you, Norm. The documents you sent satisfied my request.

Best,

Robyn

On Tue, Jun 27, 2017 at 12:59 PM, Nickens, Norm (RET) <norm.nickens@sfgov.org> wrote:
The holdings that are missing from the previously reported holdings are no longer held by SFERS.

Thanks,

Norm Nickens

Retirement Board Secretary

Retirement Board

San Francisco Employees Retirement System

1145 Market Street, 5th Floor

San Francisco, CA 94103

(415) 487-7025

norm.nickens@sfgov.org

From: Robyn Purchia [mailto: [REDACTED]]
Sent: Tuesday, June 27, 2017 9:51 AM
To: Records, Supervisor (CAT)
Cc: Nickens, Norm (RET); Armanino, Darlene (RET); Huish, Jay (RET)
Subject: Re: PRR

Thank you for sending the document I requested, Norm. Just one question: it appears to be missing several of the fossil fuel holdings that were listed in the document you provided in May. Does this mean SFERS has sold those holdings, or is there another reason they were omitted?

On Mon, Jun 26, 2017 at 3:44 PM, Supervisor Records <Supervisor.Records@sfgov.org> wrote:

Thank you. Ms. Purchia, please let me know if this production has satisfied your concern. Thank you.

Best,

Brad Russi
Deputy City Attorney

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

From: "Nickens, Norm (RET)" <norm.nickens@sfgov.org>
To: [REDACTED] <[REDACTED]>, "Records, Supervisor (CAT)" <supervisor.records@sfgov.org>,
Cc: "Huish, Jay (RET)" <jay.huish@sfgov.org>, "Armanino, Darlene (RET)" <darlene.armanino@sfgov.org>
Date: 06/23/2017 11:24 AM
Subject: PRR

Attached are the most recent public equity and fixed income reports, including holdings and valuation, in response to the revised public records request.

Thanks

[attachment "Copy of Equity Gain Loss May 31 2017.pdf" deleted by Brad Russi/CTYATT]
[attachment "ATT00001.htm" deleted by Brad Russi/CTYATT] [attachment "Copy of Fixed
Income Gain Loss May 31 2017.pdf" deleted by Brad Russi/CTYATT] [attachment
"ATT00002.htm" deleted by Brad Russi/CTYATT]



Re: Fw: Petition for Determination of Public Records Request (Our File 121561)

Supervisor Records to: G. Harold Christian
Sent by: Brad Russi
Cc: Edward.Chun, Controller.CON

06/26/2017 12:43 PM

From: Supervisor Records/CTYATT
To: "G. Harold Christian" <[REDACTED]>
Cc: Edward.Chun@sfgov.microsoftonline.com, Controller.CON@sfgov.microsoftonline.com

Mr. Christian -

I understand that the Controller's Office has now produced records responsive to your request. Please let me know if this production has satisfied your concern. Thank you.

Brad Russi
Deputy City Attorney

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

Brad Russi — Forwarded by Brad Russi/CTYATT on 06/26... 06/26/2017 11:04:32 AM

From: Brad Russi/CTYATT
To: Supervisor Records/CTYATT@CTYATT,
Date: 06/26/2017 11:04 AM
Subject: Fw: Petition for Determination of Public Records Request (Our File 121561)

— Forwarded by Brad Russi/CTYATT on 06/26/2017 11:04 AM —

From: "G. Harold Christian" <[REDACTED]>
To: <cityattorney@sfgov.org>, <brad.russi@sfgov.org>,
Cc: <edward.chun@sfgov.org>, <controller.con@sfgov.org>
Date: 06/24/2017 04:09 PM
Subject: Petition for Determination of Public Records Request (Our File 121561)

June 24, 2017

Via Email and Priority US Mail 2-Day 9405 5118 9956 4262 0944 01:

Dennis Herrera, Esq., City Attorney
San Francisco City Attorney's Office
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Dear Mr. Herrera:

**RE: Petition for Determination of Public Records Request
WESTIN SAN FRANCISCO MARKET STREET records (Our File 121561)**

Dear Mr. Herrera:

In accordance with Section 67.21(d) of the City and County of San Francisco Administrative Code, I respectfully petition for a determination regarding my request for public records submitted **June 5, 2017** to the City and County of San Francisco Controller's Office (herein the "County") pursuant to the California Constitution, Article I, Section 3, subdivision (b), and the California Public Records Act, California Government Code, Section 6250, *et seq* . (attached hereto).

The County has a clear duty to respond promptly, but no later than ten days from receipt of the request, and notify me whether the records will be disclosed. Gov. Code, §§ 6253, subd. (c). It has been more than ten days and I still have not been notified whether the records will be disclosed. My request reasonably described the records and adhered to all applicable rules and regulations. The records requested are within the County's control and do not fall within any CPRA exception or exemption.

The County has violated the CPRA by withholding the records without a lawful basis for doing so.

Accordingly, I respectfully request that you inform me in writing as soon as possible and within 10 days, of your determination that the requested records are public and immediately order the custodian of the public records to comply with my request. If any record is withheld in its entirety or any part of a disclosable record is redacted, please provide (i) a signed notification citing the legal authorities on which you rely and the reason(s) therefor, and (ii) the name and title of each person responsible for the decision. Gov. Code, §§ 6253, subd. (d), 6255, subd. (b).

Thank you for your attention to this very important matter.

G. Harold Christian
Vice President Operations

Payment Processing Services, LLC
129 Hanbury Road West, Suite 203, Chesapeake, Virginia 23322
T 757.389.8689 Ext. 101 F 804.237.0196

www.expertmoneyfinders.com

"Be joyful today.." Psalms 118:24

From: G. Harold Christian [mailto: [REDACTED]]
Sent: Monday, June 5, 2017 6:57 AM
To: 'controller.con@sfgov.org' <controller.con@sfgov.org>
Cc: 'edward.chun@sfgov.org' <edward.chun@sfgov.org>
Subject: June 5, 2017 CPRA REQUEST for WESTIN SAN FRANCISCO MARKET STREET check records (Our File 121561)

Via Email:

Benjamin Rosenfield, Controller
City and County of San Francisco Controller's Office
City Hall, Room 316
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102

Dear Mr. Rosenfield and Official Records Custodian:

Pursuant to the California Constitution, Article I, Section 3, subdivision (b), and the California Public Records Act, California Government Code Section 6250, *et seq* ., I respectfully request you produce

copies of public records - that exist as of June 5, 2017 - in an electronic format to [REDACTED] that relate to the following:

Our File: 121561

Payee: WESTIN SAN FRANCISCO MARKET STREET

Check No: 04382647

Amount: \$87,712.12

Date: 6/19/2014

Please provide:

1. The front and back of the negotiated replacement check.
2. All emails – **in their original 'msg' format** – where the email contains the word **WESTIN** in the email address, subject line or body, and limit to those between **9/1/2016** and the date the search is conducted. Please provide responsive emails.
3. The "email signature file" (or whatever your agency calls the information generally included at the bottom of an email) evidencing, reflecting, referring to, or related to the contact information (name, email, title, phone number, postal address, etc.) of **all persons involved in any way** with the search for the requested records (a previously provided email with an "email signature file" is attached hereto as an example).
4. Any record(s) evidencing, reflecting, referring to, or related to the contact information (name, email, title, phone number, postal address, etc.) of **the actual person** (as opposed to the "Office of the Controller") that provides the response to this request.

Please treat each numbered – and lettered – request for records as a separate and discrete request, so that any delay in producing one request does not delay the production of any other request. And, for each numbered – and lettered – request, please inform me if, after a reasonable search, no responsive records whatsoever were located (i.e., 1. No records, 2 (a) Responsive records attached, 2 (b) No records, 3. Responsive records attached, etc.) See Gov. Code, § 6253, subd. (c).

Please also inform me if you determine to withhold a responsive record its entirety or disclose it in redacted form. If you do intend to disclose any responsive record in redacted form, I ask that you redact that record for the time being (by blacking it out not whitening it out) and make the rest of the records available as requested. If you do determine to withhold any record in its entirety or redact any part of a disclosable record, please provide (i) a signed notification citing the legal authorities on which you rely and the reason(s) therefor, and (ii) the name and title of each person responsible for the decision. Gov. Code, §§ 6253, subd. (d), 6255, subd. (b).

Finally, pursuant to Gov. Code, § 6253.1, please assist me in identifying records and information responsive to my request or purpose of my request, describe the information technology and physical location in which the records exist, and provide suggestions for overcoming any practical basis for denying access to the records or information sought.

Thank you for your assistance in fulfilling this request.

G. Harold Christian
Vice President Operations

Payment Processing Services, LLC
129 Hanbury Road West, Suite 203, Chesapeake, Virginia 23322
T 757.389.8689 Ext. 101 F 804.237.0196

www.experimoneyfinders.com

"Be joyful today.." Psalms 118:24

[attachment "EXAMPLE Email signature file.pdf" deleted by Brad Russi/CTYATT]

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

BRADLEY A. RUSSI
DEPUTY CITY ATTORNEY

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

July 6, 2017

VIA U.S. MAIL

David Pilpel
[REDACTED]

Re: Petition to Supervisor of Records

Dear Mr. Pilpel:

This letter responds to your petition to the Supervisor of Records dated June 29, 2017. Your petition seeks a determination regarding whether the Municipal Transportation Agency properly responded to your requests under Section 67.21(c) of the Administrative Code for a statement as to the existence, form, nature and quantity of certain public records.

As you know, the Sunshine Ordinance requires the Supervisor of Records to hear petitions from members of the public claiming that a City department improperly responded to a request for public records made under Section 67.21(b) of the Administrative Code by withholding or redacting a record. 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 – for determining “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 evaluate whether a department properly responded to a request under Section 67.21(c). Because your petition raises issues outside the scope of review of the Supervisor of Records, we will not render a determination. Thank you.

Very truly yours,

DENNIS J. HERRERA
City Attorney

A handwritten signature in black ink, appearing to read "Bradley A. Russi".

Bradley A. Russi
Deputy City Attorney

CITY HALL • 1 DR, CARLTON B. GOODLETT PLACE, CITY HALL ROOM 234 • SAN FRANCISCO, CALIFORNIA 94102-4682
RECEPTION: (415) 554-4700 • FACSIMILE: (415) 554-4699

n:\govern\as2014\0100505\00945474.doc

David Pilpel

[REDACTED]

Dennis Herrera, City Attorney
Office of the City Attorney
1 Carlton B Goodlett Pl Ste 234
San Francisco CA 94102-4682

June 29, 2017

Re: Petition to the Supervisor of Records Pursuant to the San Francisco Sunshine Ordinance

Dear Mr. Herrera,

Pursuant to the San Francisco Sunshine Ordinance, San Francisco Administrative Code section 67.21 (d), I hereby petition you, as the Supervisor of Records, for a written determination as to whether the responses from the Municipal Transportation Agency (MTA) to two recent requests I made under section 67.21 (c) for a statement as to the existence, form, nature, and quantity of public records provides "enough specificity to enable me to identify records in order to make a subsequent public records request under section 67.21 (b)."

While I understand that the plain language of section 67.21 (d) may limit the scope of your review to requests described in section 67.21 (b) and not section 67.21 (c), I have not found a good model or specific guidance as to how City departments should respond to requests made under section 67.21 (c), particularly to address the language quoted above. While timely and somewhat helpful, I believe that the MTA responses fall short of the specificity required, causing me to make additional clarifications and requests to get the information that I am seeking. I am also trying to avoid filing a complaint with the Sunshine Ordinance Task Force on this issue, although I retain the right to do so, especially if you decline to address this petition directly.

Please contact me at [REDACTED] with any questions and to arrange for me to pick up your response to this petition, which is due by the close of business Monday July 10, 2017. Thank you.

Sincerely,



David Pilpel

Attachments: June 19, 2017 letters to MTA; June 26, 2017 responses from MTA

cc: Deputy City Attorney Brad Russi, Supervisor of Records

David Pilpel

RECEIVED

JUN 19 2017

[REDACTED]

Ed Reiskin, Director of Transportation
Municipal Transportation Agency
1 S Van Ness Ave Fl 7
San Francisco CA 94103-5417

Initial: _____

June 19, 2017

Re: Request for Assistance Pursuant to the San Francisco Sunshine Ordinance

Dear Mr. Reiskin,

This is a request, pursuant to San Francisco Administrative Code section 67.21 (c), for a statement as to the existence, form, nature, and quantity of public records available to, in the custody of, or maintained by your department, whether or not the contents of those public records are exempt from disclosure, relating to the Upper Market Street Safety Project, with enough specificity to enable me to identify records in order to make a subsequent public records request under section 67.21 (b).

I look forward to your response to this request, which is required by the close of business Monday June 26, 2017. Please contact me at [REDACTED] with any questions and to arrange for pickup of your response. Thank you.

Sincerely,



David Pilpel

cc: Caroline Celaya, Public Records Coordinator

David Pilpel

RECEIVED

JUN 19 2017

Initial: _____

Ed Reiskin, Director of Transportation
Municipal Transportation Agency
1 S Van Ness Ave Fl 7
San Francisco CA 94103-5417

June 19, 2017

Re: Request for Assistance Pursuant to the San Francisco Sunshine Ordinance

Dear Mr. Reiskin,

This is a request, pursuant to San Francisco Administrative Code section 67.21 (c), for a statement as to the existence, form, nature, and quantity of public records available to, in the custody of, or maintained by your department, whether or not the contents of those public records are exempt from disclosure, relating to the Sloat Boulevard Pedestrian Improvements Project, with enough specificity to enable me to identify records in order to make a subsequent public records request under section 67.21 (b).

I look forward to your response to this request, which is required by the close of business Monday June 26, 2017. Please contact me at [REDACTED] with any questions and to arrange for pickup of your response. Thank you.

Sincerely,



David Pilpel

cc: Caroline Celaya, Public Records Coordinator



SFMTA
Municipal
Transportation
Agency

Edwin M. Lee, *Mayor*

Cheryl Brinkman, *Chairman*

Joel Ramos, *Director*

Malcolm Heinicke, *Vice-Chairman*

Cristina Rubke, *Director*

Gwyneth Borden, *Director*

Art Torres, *Director*

Lee Hsu, *Director*

Edward D. Reiskin, *Director of Transportation*

David Pilpel

June 26, 2017

Dear Mr. Pilpel

On behalf of the San Francisco Municipal Transportation Agency ("SFMTA"), this letter is in response to your public records request dated June 19, 2017. Specifically this letter responds to your request that pursuant to Section 67.21(c) of the San Francisco Administrative Code, the SFMTA identify the existence, form and nature of any requested records or information maintained by, available to, or in the custody or control of the SFMTA, whether or not the contents of those records are exempt from disclosure for the Upper Market Street Sustainable Street Safety Project. The Sustainable Streets Division identified the following:

Approx. 2,434 files in 249 folders composing 30.2 GB (32,511,463,424 bytes)

Identified responsive document break down per the following folders:

- Admin
 - (76 files, including meeting agendas, meeting minutes, photos, planning docs)
- Archive
 - (63 files, inc. area plans, collision analysis, cost estimates, design, meeting notes, CAC presentation materials, timing cards)
- Coordination
 - (19 files, related to coordination w/ SFPD, SF Planning, Public Works, Accessible Services, WalkFirst, BikeShare)
- Data
 - (357 files, inc. re counts, collisions, field work, meters, property records, studies, surveys)
- Design
 - (580 files, inc. re bulb outs, circulation, curb mgmt., other design concepts, paint/signs, parking protected bikeway, signal timing)
- Environmental
 - (54 files, inc. example memos, environmental memos, proposals, and drafts, MTAB calendar items)
- Funding
 - (22 files, index code requests, FAMIS screenshots, costs and estimates)
- Implementation
 - (48 files, inc. 16thxNoe bulbout mitigations, NoexBeaver meter, work orders)
- Outreach
 - (756 files, inc. correspondence, meetings, open house, outreach, agendas, presentations, talking points, photos, sign-in sheets)
- Photos

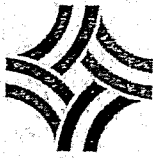
- o (approx. 439 JPEG files)
- Pre-Development
 - o (13 files, inc. previous plans/studies)
- GIS
 - o GIS files, maps

Please contact the Sunshine request line at (415) 701-4670 or at sfntasunshinerequests@sfnta.com if you have any further questions regarding this matter or if you would like additional information.

Sincerely,

Caroline Celaya

Caroline Celaya
Manager, Public Record Requests



SFMTA
Municipal
Transportation
Agency

Edwin M. Lee, Mayor

Cheryl Brinkman, *Chairman*

Joël Ramos, *Director*

Malcolm Heiricks, *Vice-Chairman*

Cristina Rubke, *Director*

Gwyneth Borden, *Director*

Art Torres, *Director*

Lee Hsu, *Director*

Edward D. Reiskin, *Director of Transportation*

David Pilpel

June 26, 2017

Dear Mr. Pilpel

On behalf of the San Francisco Municipal Transportation Agency ("SFMTA"), this letter is in response to your public records request dated June 19, 2017. Specifically this letter responds to your request that pursuant to Section 67.21(c) of the San Francisco Administrative Code, the SFMTA identify the existence, form and nature of any requested records or information maintained by, available to, or in the custody or control of the SFMTA, whether or not the contents of those records are exempt from disclosure for the Sloat Boulevard Pedestrian Improvement Project. Please note that this project is being implemented and funded by the California Department of Transportation (Caltrans). As such, some documents may be within Caltrans' possession.

Following is the Agency's response, based on your request for records relating to Sloat Boulevard Pedestrian Improvement Project:

1. Email/Written Communications
2. Outreach Materials
 - Presentations
 - Constituent Comments and Responses
3. Meeting Documentation
 - Meeting agendas/notes
 - Board of Supervisor Briefing Materials
4. Technical Data
 - Collision history
 - Signal warrant analysis
 - Muni Information
5. Recent/Adjacent Projects
 - San Francisco Public Works – Sloat Boulevard Pedestrian Safety Improvements II
 - Communications, approvals and work orders for nearby modifications
6. SFMTA Approval/Legislative Documents
 - Transportation Advisory Staff Committee (TASC) submission
 - i. San Francisco Fire Department review
 - Legislative Text
 - Public Hearing Posting and Notification Letter
 - Environmental Determination

Please contact the Sunshine request line at (415) 701-4670 or at sfntasunshinerequests@sfmta.com if you have any further questions regarding this matter or if you would like additional information.

Sincerely,

Caroline Celaya

Caroline Celaya
Manager, Public Record Requests



Re: Fw: Immediate disclosure request
 Supervisor Records to: chris roberts <[REDACTED]>
 Sent by: Brad Russi

08/07/2017 05:43 PM

From: Supervisor Records/CTYATT
 To: chris roberts <[REDACTED]>@SFGOV,

Mr. Roberts -

As I've indicated, the role of the Supervisor of Records under the Sunshine Ordinance is very limited. Here, the department has indicated that they are not withholding any records. There are no records at issue. As a result, there is nothing within the jurisdiction of the Supervisor of Records to determine. Thank you.

Brad Russi
 Deputy City Attorney

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

chris roberts Mr Russi -- I am encouraged to hear that the Su... 08/04/2017 05:31:34 PM

From: chris roberts <[REDACTED]>
 To: Supervisor Records <Supervisor.Records@sfgov.org>,
 Date: 08/04/2017 05:31 PM
 Subject: Re: Fw: Immediate disclosure request

Mr Russi --

I am encouraged to hear that the Supervisor of Records, the public's advocate in these matters, is working in such close concert with the Mayor's Office to satisfy this request. Your commitment to an open, honest, and transparent government is appreciated. It is a vital role.

I believe I may have been unclear. As you know, under state law, public agencies are required to maintain most records for a period of two years. Ergo, rather than a determination of adequacy or retention, what I sought was from the Supervisor was a determination whether records produced at these "Tiger Team" meetings were public, and if so, which city department would be the custodian of such records.

Am I to assume, then, that they are indeed public, and that the Mayor's Office is custodian? These records pertain to an ongoing issue of great interest to The City and to the public. I make this request not merely as a private citizen, but as an established journalist who has published work on this ongoing issue in the past and plans to do so again in the future. The public good will simply not be well served without the vital transparency your role ensures.

Should you require at any time further clarification, please feel free to contact me at [REDACTED]. Have an excellent weekend.

Best,
 C

On Fri, Aug 4, 2017 at 5:17 PM, <Supervisor.Records@sfgov.org> wrote:

Mr. Roberts -

I understand that the Mayor's Office has produced additional documents to you that they did not locate in their initial search. I further understand that the Mayor's Office has not withheld any documents responsive to this request based on an exemption and has produced all the responsive documents in their possession. Because the department has not withheld any records based on exemption, there is nothing within the purview of the Supervisor of Records to determine. The Supervisor of Records does not have authority under the Sunshine Ordinance to evaluate the adequacy of a department's search for records or whether a department was required to retain records.

I hope that the further production from the Mayor's Office has satisfied your concern. Thank you.

Best,

Brad Russi
Deputy City Attorney

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

From: chris roberts <[REDACTED]>
To: Supervisor Records <Supervisor.Records@sfgov.org>,
Date: 08/03/2017 01:37 PM
Subject: Re: Fw: Immediate disclosure request

Hi Mr. Russi --

Let me try to explain what happened and why I'd like to elevate my request to you, the supervisor of records, where I hope I can seek resolution without filing a SOTF complaint.

I requested, from the Mayor's Office, records that pertain to a series of meetings, meetings which the Mayor's Office attends and is an organizer. These records do (or should) exist, according to agendas of these meetings, which I am happy to provide. The Mayor's Office responded that it has no records that pertained to my request. I sought to clarify my request, and cited the meeting agendas, which stated, among other things, that documents from the Navy and EPA were supposed to be presented at these meetings. The Mayor's Office responded again that they did not have documents that pertained to my request. These were the same documents sought from OCII, which has informed me that though documents were handed out at the meeting from the Navy, OCII no longer has copies.

So. Pursuant to the Sunshine Ordinance, it is the purview of the Supervisor of Records to

determine whether a record is public and whether it should be disclosed. Please let me know if there is anything else I can do to aid this appeal.

Thanks
C

On Mon, Jul 31, 2017 at 5:49 PM, <Supervisor.Records@sfgov.org> wrote:
If you made a request to the Mayor's Office, and in their response they indicated they were withholding or redacting records based on an exemption, that would be something that the Supervisor of Records can address. As I mentioned below, the Sunshine Ordinance provides that the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so - for determining "whether the record requested, or any part of the record requested, is public." Did the response from the Mayor's Office indicate they were withholding responsive records based on an exemption?

Brad Russi
Deputy City Attorney

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

From: chris roberts <[REDACTED]>
To: Supervisor Records <Supervisor.Records@sfgov.org>,
Date: 07/31/2017 04:39 PM
Subject: Re: Fw: Immediate disclosure request

May I then petition the Supervisor of Records regarding another department's custody of these records?

Earlier this month, a request pursuant to the Sunshine Ordinance was submitted to the Mayor's Office seeking these same records. The Mayor's Office did not supply these records.

Is determining whether the records are public and who their custodian may be within the City Attorney's purview?

I appreciate your commitment to an open, transparent, and accountable local government.

Best,
Chris Roberts

On Mon, Jul 31, 2017 at 4:34 PM, <Supervisor.Records@sfgov.org> wrote:
Mr. Roberts -

As I said in my email of July 26, OCII is not subject to the Sunshine Ordinance. As a result, the Supervisor of Records does not have jurisdiction to hear a petition regarding a request for public records to OCII. Thank you.

Best,

Brad Russi
Deputy City Attorney

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

From: chris roberts <[REDACTED]>
To: Supervisor Records <Supervisor.Records@sfgov.org>,
Date: 07/31/2017 04:05 PM
Subject: Re: Fw: Immediate disclosure request

Mr. Russi --

Thank you for your response and attention to this matter.

Will you, then, make a determination, as supervisor of records, pursuant to Sec. 67.21.(d) of the Administrative Code, if the records sought in this request are in fact public records, and ergo subject to disclosure?

If they are, pursuant to Gov. Code, § 34090, subd. (d), these records should have been retained and should have been disclosed.

Thank you,
Chris Roberts

On Jul 27, 2017 13:51, <Supervisor.Records@sfgov.org> wrote:
Mr. Roberts:

Under the Sunshine Ordinance (Section 67.21(d) of the Administrative Code), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so - for determining "whether the record requested, or any part of the record requested, is public." Your email below raises issues outside this authority. Thank you.

Brad Russi

Deputy City Attorney

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

From: chris roberts <[REDACTED]>
To: Supervisor Records <Supervisor.Records@sfgov.org>,
Date: 07/26/2017 01:46 PM
Subject: Re: Fw: Immediate disclosure request

Thanks for the clarification. While we're here, can we find a definition for the so-called "Tiger Team," the meetings of local, state, and federal officials organized by the Mayor's Office to discuss the Hunters Point shipyard cleanup? Is it a "passive meeting body," is it a "policy body"?

Again, I make this request not only as a member of the public but as an established journalist with bylines in local and national media who has published on this subject as recently as earlier this year.

Thank you,
C

On Wed, Jul 26, 2017 at 1:32 PM, Supervisor Records <Supervisor.Records@sfgov.org> wrote:
Mr. Roberts -

I write in response to your petition to the Supervisor of Records below. This office states in our Good Government Guide at page 83 (<https://www.sfcityattorney.org/good-government/good-government-guide/>) that the Successor Agency to the San Francisco Redevelopment Agency -- the former name of OCII -- is legally distinct from the City and not subject to the Sunshine Ordinance. The Supervisor of Records, which is a function created by the Sunshine Ordinance, has no jurisdiction to consider a petition regarding a public records request to OCII. As a result, we consider this petition closed. Nonetheless, I understand that OCII has indicated that it is responding to your public records request and hope that you are able to obtain the documents that you seek.

Best,

Brad Russi
Deputy City Attorney

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

----- Forwarded by Shayne Gilbertson/CTYATT on 07/24/2017 11:08 AM -----

From: chris roberts <[REDACTED]>
To: "Munson, Marie (CII)" <marie.munson@sfgov.org>,
Cc: "OCII, CommissionSecretary (CII)" <commissionsecretary.ocii@sfgov.org>, "Drew, Tamsen (ADM)" <tamsen.drew@sfgov.org>, "Morales, James (CII)" <james.morales@sfgov.org>, BOS SOTF <sotf@sfgov.org>, cityattorney@sfgov.org
Date: 07/22/2017 02:08 PM
Subject: Re: Immediate disclosure request

Hi everyone --

Thank you for the response.

I want you to clarify something for me: You are claiming that OCII, a city agency, staffed by city employees, is not subject to the Sunshine Ordinance?

On what basis is this claim made? By its own description, OCII is a "state-authorized local agency." Other city entities that fit such a definition include the Police Department--which is subject to the Sunshine Ordinance. As the city's designated "supervisor of records," the City Attorney's Office is CC'd on this email in case clarification that the "Tiger Team," of which representatives of OCII are a member, does not fit the definition of a "passive meeting body," pursuant to the description in Administrative Code Section 67.3(D)(c) (2).

Regardless, in case it is necessary to specify, this request is also made pursuant to the California Public Records Act, California Government Code Sections 6250-6277.

I look forward to receiving the documents from these meetings.

Thank you,
Chris Roberts

On Fri, Jul 21, 2017 at 12:29 PM, Munson, Marie (CII) <marie.munson@sfgov.org> wrote:

Hi Chris,

I am following up on your request for documents pertaining to the TIGER team. The City's sunshine ordinance—Administrative Code 67.25—doesn't apply to OCII. However, OCII has a public records policy that provides for immediate disclosure of simple, routine or readily available information. Your request does not seem simple, routine or readily available. We are processing your request and will respond in a timely manner.

Tamsen Drew, the Project Manager for Hunters Point Shipyard, is out today. She will follow up with you next week.

Marie

<0.125C.jpg>

Marie Munson
Senior Development Specialist

<0.3450.jpg> One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

<0.53A4.jpg> [415-749-2415](tel:415-749-2415) <0.7472.jpg> www.sfocii.org

From: Munson, Marie (CII)

Sent: Thursday, July 20, 2017 6:30 PM

To: 'chris roberts' <[REDACTED]>

Cc: OCII, CommissionSecretary (CII) <commissionsecretary.ocii@sfgov.org>; Drew, Tamsen (ADM) <tamsen.drew@sfgov.org>

Subject: RE: Immediate disclosure request

Hello Chris,

We have received your immediate disclosure request and will respond by close of business tomorrow.

Marie

<0.9B08.jpg>

Marie Munson
Senior Development Specialist

<1.21DA.jpg> One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
<1.412E.jpg> [415-749-2415](tel:415-749-2415) <2.20B4.jpg> www.sfocii.org

From: chris roberts [mailto:]
Sent: Thursday, July 20, 2017 1:07 PM
To: Drew, Tamsen (ADM) <tamsen.drew@sfgov.org>; Munson, Marie (CII) <marie.munson@sfgov.org>
Cc: SOTF, (BOS) <sotf@sfgov.org>; Jones, Natasha (CII) <natasha.jones@sfgov.org>; OCII, CommissionSecretary (CII) <commissionsecretary.ocii@sfgov.org>
Subject: Immediate disclosure request

Hello:

This is a public records request under the Sunshine Ordinance, Section 67 of the San Francisco Administrative Code.

The purpose of this request is to obtain documents, of which the Office of Community Investment and Infrastructure (OCII) is custodian, that pertain to the "TIGER team"--of which OCII is a member and meetings of which representatives of OCCI attend--which is responsible for addressing the cleanup at the Hunters Point Shipyard.

The time frame for documents sought under this request is from March 1, 2017, to the present.

Please provide documents in electronic format.

If you judge this request to be voluminous, please provide documents on a rolling basis.

If any information to subject to withholding, please provide documents in redacted form, with reasons for withholding as per the Sunshine Ordinance.

I make this request as an established journalist with work published in local and national publications, who has published work on this subject within the last six months.

The shipyard's development is a major story with regional implications. I urge you to consider these facts when determining how to prioritize this request.

Will you please provide copies of the following documents:

*Minutes from all TIGER team meetings;

*All presentations, updates, and other data presented in Tiger team meetings by representatives from the U.S. Navy, the Environmental Protection Agency, and the state Department of Toxic Substance Control (DTSC);

*All information presented by the Navy, including but not limited to its "technical scope of work," "community outreach," and "project schedule," as described on meeting agendas;

*The Navy's "initial findings report," which was scheduled to be presented to the Tiger Team in July, as per email communications between Tamsen Drew and Kimberly Ostrowski on May 2;

This request is narrowly constructed, seeks specific documents, and is neither voluminous nor unduly burdensome. This request meets the definition, in Section 67.25 of the Administrative Code, of "a simple, routine or otherwise readily answerable request."

Other state and federal agencies may also be custodians of these documents. However, since the federal Freedom of Information Act (FOIA) and state California Public Records Act (CPRA) processes are not subject to the same public oversight as city Sunshine Requests, it is in the public interest to use this method.

Thank you,
Chris Roberts

--

Chris Roberts

Journalist

Cell/Signal/Telegram: [REDACTED]

[REDACTED]

[REDACTED]

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Chris Roberts

Journalist

Cell/Signal/Telegram: [REDACTED]

[REDACTED]

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Chris Roberts

Journalist

Cell/Signal/Telegram: [REDACTED]

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Chris Roberts

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Cell/Signal/Telegram: [REDACTED]

[REDACTED]

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Chris Roberts

Journalist

Cell/Signal/Telegram: [REDACTED]

[REDACTED]



Re: Attachment: my summary of issue 
Supervisor Records to: Alvin Ja
Sent by: Brad Russi

09/22/2017 04:22 PM

From: Supervisor Records/CTYATT
To: Alvin Ja <[REDACTED]>

Mr. Ja - I understand that the Planning Department has produced documents in response to your request. Please let me know if you continue to assert their response is deficient, and if so, on what basis. Thank you.

Brad Russi
Deputy City Attorney

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

Alvin Ja Deputy City Attorney Russi: FYI, I had a similar... 09/19/2017 09:47:07 AM

From: Alvin Ja <[REDACTED]>
To: Supervisor Records <Supervisor.Records@sfgov.org>
Date: 09/19/2017 09:47 AM
Subject: Attachment: my summary of issue

Deputy City Attorney Russi

FYI, I had a similar Sunshine Request submitted to OEWD. My request was denied by OEWD.

The Compliance and Amendments Committee of SOTF will be hearing my complaint today.

Attached is my summary of the issue for SOTF. I hope it will help in your determination.

Also, please don't let them destroy or hide relevant records.

Thanks,
Alvin

From: Supervisor Records <Supervisor.Records@sfgov.org>

To: Alvin Ja <[REDACTED]>

Cc: Supervisor Records <Supervisor.Records@sfgov.org>

Sent: Tuesday, September 19, 2017 8:20 AM

Subject: Re: Fw: Sunshine Request: Balboa Reservoir Project's working relationship with City College

Mr. Ja - I apologize for the delay. I've been consulting with Planning regarding your request, and I'm optimistic we can reach a resolution. I will have more information for you tomorrow or Thursday. Thanks.

Brad Russi
Deputy City Attorney

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

[attachment "2017-9-18 SOTF FILE #17090 for CAC.pdf" deleted by Brad Russi/CTYATT]



Planning Dept Sunshine Request: Balboa Reservoir Project's working relationship with City College

Alvin Ja

to:

Supervisor.Records@sfgov.org

08/17/2017 03:12 PM

Hide Details

From: Alvin Ja <[REDACTED]>

To: "Supervisor.Records@sfgov.org" <Supervisor.Records@sfgov.org>,

Please respond to Alvin Ja <[REDACTED]>

History: This message has been replied to.

Supervisor of Records, City Attorney:

I ask for your assistance in gaining compliance with my Sunshine Request originally submitted by email to Planning Dept on 8/3/2017.

Please refer to my emails of 8/3/2017 and 8/17/2017, below.

Sincerely,
Alvin Ja

----- Forwarded Message -----

From: Alvin Ja <[REDACTED]>

To: "cpc-recordrequest@sfgov.org" <cpc-recordrequest@sfgov.org>

Sent: Thursday, August 17, 2017 2:18 PM

Subject: Sunshine Request: Balboa Reservoir Project's working relationship with City College

Custodian(s) of Records, Planning Dept:

I made a Sunshine Request on August 3, 2017. Ten working days have passed since that request.

I have received neither notification of denial of records, nor production of relevant records.

In your search for records, please add tBP Architecture, Gary Moon, Phil Newsom, Amy Frater as parties of interest in addition to those named in my original Sunshine request. Sorry for the inconvenience due to my omission from the original request.

I wish to note that Administrative Code only allows for denial of records based upon "specific exemption." Denial is not allowed based upon secondary, tertiary, or far-off connection to the "specific exemption."

Administrative Code 67.24 (i): All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption

To assist your office in complying with the Sunshine Ordinance, I wish to provide you with more specificity in my request for records regarding the Reservoir Project Staff's relationship with City college principals:

1. Information and communications between Planning and City College principals regarding the elimination of student parking and regarding CEQA-related adverse impacts on, and mitigation measures for parking and traffic.
2. Information and communications between Planning and SFCCD principals regarding how to manage or handle complaints about Reservoir parking being eliminated by the Reservoir Project.
3. The Reservoir Project City Staff's 12/4/2015 "Proposed Parameters Regarding Project's Relationship to City College" Principle #3 states: "Participate Actively in City College's master planning process as a key stakeholder." Please produce records regarding City Staffs active participation in SFCCD's master planning process.
4. The Reservoir Project Staff made a presentation on the subject of "The Balboa Reservoir Project's Relationship with City College." The PowerPoint Presentation referred to "Regular meetings between City staff and City College administrators" and to "Future: Joint transportation/parking planning." Please produce records regarding the regular meetings between City Staff and CCSF Administrators and regarding joint transportation/parking planning.
5. Jeremy Shaw presented the Nelson-Nygaard TDM Framework to the SFCTA CAC at its 5/24/2017 meeting. The minutes of the meeting show the following:
Mr. Larson stated that he had heard about a Balboa Working Group and asked if that was related to this. Mr. Shaw replied that there had been a working group in place which included multiple city agencies meeting with San Francisco City College representatives on a monthly basis, and that TDM was one of the main topics.

Please produce records of these "Balboa Working Group" meetings.

I hope that this additional information will make you job of Sunshine Ordinance compliance easier.

I wish to note that the Sunshine Ordinance promotes release of information on an incremental or rolling basis. There is no allowance for withholding of information until all records have been reviewed and collected:

67.24 (d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

As a final note, Administrative Code 67.26 calls for withholding of records be "kept to a minimum."

Sincerely,

Alvin Ja

ORIGINAL SUNSHINE REQUEST

Alvin Ja <[REDACTED]>

Aug 3 at 3:14 PM

To
CPC-RecordRequest@sfgov.org

Planning Dept:

I request public records related to Balboa Reservoir Project's relationship with City College of San Francisco.

Specifically, please provide notes about and communications between Planning Dept staff and SFCCD staff.

Planning Dept parties of interest include, but are not limited to, John Rahaim, Sue Exline, Jeremy Shaw.

SFCCD parties of interest include, but are not limited to, Robert Agrella, Art Tyler, Jeff Hamilton, Mark Zacovic, Fred Sturner, Ron Gerhard, Susan Lamb, Linda Da Silva, Marian Lam, Mark Rocha.

This request is being made, pursuant to Administrative Code 67.24, for public information as defined by Govt Code 6252 (e) and (g).

Thank you for your cooperation.

Submitted by:
Alvin Ja





Fw: RE: Balboa Reservoir Exclusive Negotiating Agreement - November 14, 2017 SFPUC Meeting

christine Hanson to: Supervisor.records

11/13/2017 05:26 PM

From: christine Hanson <[REDACTED]>
To: <Supervisor.records@sfgov.org>,
Please respond to christine Hanson <[REDACTED]>

Dear Mr. Russo,
Thank you for your attention to this matter. Though I did indeed receive a response it was not very encouraging with respect to what is being agreed upon here.

I'm surprised that an ENA can be signed like this and still include these blank pages.

I dont have the time to a search of prior agreements such as this but I would be surprised to find that this is a standard practice for our Water Department.

Thank you again for your efforts.

Best Regards,
Christine Hanson

--- On Mon, 11/13/17, Russell, Rosanna S <RSRussell@sflower.org> wrote:

> From: Russell, Rosanna S <RSRussell@sflower.org>
> Subject: RE: Balboa Reservoir Exclusive Negotiating Agreement - November 14, 2017 SFPUC Meeting
> To: "christine Hanson" <[REDACTED]>
> Cc: "Hood, Donna" <DHood@sflower.org>, "GESSNER, FRANCESCA (CAT)" <Francesca.Gessner@sfcityatty.org>, "DIETRICH, ELIZABETH (CAT)" <Elizabeth.Dietrich@sfcityatty.org>, "Wong, Christopher J" <CJWong@sflower.org>
> Date: Monday, November 13, 2017, 1:08 PM
> Ms. Hanson:

> While I defer to our counsel, I believe the
> answer to your question in no. The Commission's
> approval of the ENA will include Commission approval of the
> ENA exhibits.

> Rosanna Russell

> -----Original Message-----

> From: christine Hanson [mailto:[REDACTED]]
> Sent: Monday, November 13, 2017 12:13 PM
> To: Russell, Rosanna S
> Subject:
> Re: Balboa Reservoir Exclusive Negotiating Agreement -
> November 14, 2017 SFPUC Meeting

> Dear Ms.Russell,
> Thank you for
> your response.
> At the time the permit to
> enter will be executed will it be assigned to the
> Commission's agenda for further Commission approval of the

> terms described in the Exhibits?
> Thank you
> again,
> Christine Hanson
>

> -----
> On Mon, 11/13/17, Russell, Rosanna S <RSRussell@sfwater.org>
> wrote:

>
> Subject: Balboa
> Reservoir Exclusive Negotiating Agreement - November 14,
> 2017 SFPUC Meeting
> To: "[REDACTED]"
> <[REDACTED]>
> Cc: "Hood, Donna" <DHood@sfwater.org>,
> "GESSNER, FRANCESCA (CAT)" <Francesca.Gessner@sfcityatty.org>,
> "DIETRICH, ELIZABETH (CAT)" <Elizabeth.Dietrich@sfcityatty.org>,
> "Wong, Christopher J" <CJWong@sfwater.org>
> Date: Monday, November 13, 2017, 10:55 AM
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> Dear Ms.
> Hanson:

> I am responding to
> your inquiry below regarding the Balboa
> Reservoir Exclusive Negotiating Agreement (ENA). The
> Permit to Enter will be entered into with the
> developer as the due diligence for the
> property proceeds. The ENA authorizes the SFPUC to enter
> into the Permit to Enter so that the developer may
> undertake due diligence activities. At the time the
> specific scope of due diligence activities and names of
> consultants is known, the exhibits will be
> drafted and attached to the Permit to Enter, and the
> Permit to Enter will be executed. At this time, we have no
> records responsive to your request because these exhibits
> have not yet been prepared, in either draft
> or final form. The blank pages attached to
> the Permit are simply placeholders for when the exhibits
> are created in the future. We would be happy to provide
> you with copies of them once they are prepared.

> Sincerely,

> Rosanna

> Russell
> Real Estate

> Director
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>
> From: christine Hanson
> <[REDACTED]>
>
> Date: October 22, 2017 at
> 12:57:26 AM PDT
>
> To:
> DonnaHood <DHood@sflower.org>
>
> Subject: Re: October 24,
> 2017 SFPUC Regular Meeting Agenda
>
> Reply-To: christine Hanson <[REDACTED]>
>
> Dear Donna,
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>
> In the agenda for October 24, 2017 agenda
> item number 12 includes a 69 page ENA.
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> In
> that ENA, Exhibit C contains a Permit to Enter. The Permit
> to Enter itself has four Exhibits that show in the online
> version as blank pages with only their Titles.
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>
> Those Exhibits listed are as follows:
>
> EXHIBIT A: Description of
> Permit Area
>
> EXHIBIT B:
> Description of Permitted Activities
>
> EXHIBIT C: List of Permittee's Agents
>
> EXHIBIT D: First Source
> Hiring (Attached)
>
>
> Please direct me to where
> these Exhibits easily viewed by members of the public
> reading this online document. They do not appear to be
> included in the 69 pages. Have I perhaps missed
> something?
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> If these Exhibits are not
> easily viewed by the public please forward copies prior to
> the meeting on Tuesday.
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> Thank you,

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> Christine
> Hanson
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2/16/2018



Fw: Re: October 24, 2017 SFPUC Regular Meeting Agenda

Christine Hanson

to:

supervisor.records@sfgov.org

11/10/2017 01:20 PM

Hide Details

From: Christine Hanson <[REDACTED]>

To: "supervisor.records@sfgov.org" <supervisor.records@sfgov.org>,

History: This message has been replied to and forwarded.

Dear Records Supervisor,

This is an escalation of a request for documents that I made to SFPUC on October 22, 2017.

I have included below, all of the correspondence pertaining to my request which was forwarded to Rosanne Russell of the SFPUC. I did not receive a reply from Ms. Russell on my inquiry.

The agenda item was pulled from last months agenda and posted on the agenda this month for Commission approval on November 14, 2017, agenda item #10. I had casually assumed after the item was taken off the agenda last month that the agenda for November would contain the missing items but it does not. In this month's version the empty pages are

preceded by a page that states: **[Exhibits to be attached when finalized.]**

The missing information should outline the work to be done on SFPUC's land which is leased and in use by City College and it would very good if the public could view this before Tuesday.

Though I did not state this expressly in my first message to the SFPUC I am now pursuing this information request to your office via your office Pursuant to Sunshine.

Below is the text of my original request for readability.

Thank you for your time and effort in this matter.

Christine Hanson

Dear Donna,

In the agenda for October 24, 2017 agenda item number 12 includes a 69 page ENA.

In that ENA, Exhibit C contains a Permit to Enter. The Permit to Enter itself has four Exhibits that show in the online version as blank pages with only their Titles.

Those Exhibits listed are as follows:

EXHIBIT A: Description of Permit Area

EXHIBIT B: Description of Permitted Activities

EXHIBIT C: List of Permittee's Agents

EXHIBIT D: First Source Hiring (Attached)

2/16/2018

Please direct me to where these Exhibits easily viewed by members of the public reading this online document. They do not appear to be included in the 69 pages. Have I perhaps missed something?

If these Exhibits are not easily viewed by the public please forward copies prior to the meeting on Tuesday.

----- Forwarded message -----

From: **christine Hanson** <[REDACTED]>
Date: Friday, November 10, 2017
Subject: Fw: Re: October 24, 2017 SFPUC Regular Meeting Agenda
To: [REDACTED]

--- On Mon, 10/23/17, Hood, Donna <DHood@sfgwater.org> wrote:

> From: Hood, Donna <DHood@sfgwater.org>
> Subject: Re: October 24, 2017 SFPUC Regular Meeting Agenda
> To: "christine Hanson" <[REDACTED]>
> Date: Monday, October 23, 2017, 6:21 AM

> Hi Christine.

> I have forwarded your to Rosanna Russell our Director
> if Real Estate for response as she provided me with the
> document.

> Thanks.

> Donna

> On Oct 22, 2017, at 1:01 AM, christine Hanson <[REDACTED]>
> wrote:

> Dear Donna,

2/16/2018

>
> In the agenda for October 24, 2017 agenda item number
> 12 includes a 69 page ENA.

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> In that ENA, Exhibit C contains a Permit to Enter. The
> Permit to Enter itself has four Exhibits that show in the
> online version as blank pages with only their
> Titles.

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>
> Those Exhibits listed are as follows:

> EXHIBIT A: Description of Permit Area

> EXHIBIT B: Description of Permitted
> Activities

> EXHIBIT C: List of Permittee's Agents

> EXHIBIT D: First Source Hiring (Attached)

>
> Please direct me to where these Exhibits easily viewed
> by members of the public reading this online document. They
> do not appear to be included in the 69 pages. Have I perhaps
> missed something?

>
> If these Exhibits are not easily viewed by the public
> please forward copies prior to the meeting on
> Tuesday.

> Thank you,

> Christine Hanson

> -----
>
> On Thu, 10/19/17, Hood, Donna <DHood@sfgwater.org>
> wrote:

>
> Subject: October 24, 2017 SFPUC Regular Meeting
> Agenda

> To:

2/16/2018

> Power and Sewer/Services of the San Francisco

> Public

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> Utilities Commission

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> 525 Golden Gate Ave.,

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> 13th Floor

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> San Francisco, CA

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> 94102

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> 415-554-0761

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2/16/2018

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No Mud, No Lotus
Thich Nhat Hanh



Re: Petition to the Supervisor of Records
 Supervisor Records to: Ann <[REDACTED]>
 Sent by: Brad Russi

11/17/2017 04:39 PM

From: Supervisor Records/CTYATT
 To: Ann <[REDACTED]>@SFGOV,

Ms. Treboux,

I have reached out to the Arts Commission, and they confirmed that they do not have any additional documents responsive to your request. Specifically, they do not have a copy of any other 150 word summary submitted during the November 7, 2017 meeting you reference below. As you know, under the Sunshine Ordinance (Section 67.21(d) of the Administrative Code), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so - for determining "whether the record requested, or any part of the record requested, is public." Here, the department has not withheld or redacted any records. Therefore, there is no issue for the Supervisor of Records to address, and we consider this petition closed. Thank you.

Brad Russi
 Deputy City Attorney

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

Ann	Ann Treboux 150 Sutter St 738	11/17/2017 10:57:41 AM
-----	-------------------------------	------------------------

From: Ann <[REDACTED]>
 To: supervisor.records@sfgov.org,
 Date: 11/17/2017 10:57 AM
 Subject: Petition to the Supervisor of Records

Ann Treboux
 [REDACTED]

Dear DCA Russi:

I attended the November 7, 2017 meeting of Advisory Craftsmen of the SF Arts Commission.

I read from a 150 word statement under General comment. Anne Trickey interrupted me (4:35-6:00 of the audio). She ran out the meeting room screaming. After I said, "you abridged my public comment. You need to reset the clock"-(her cell phone), she left.

I read the 150 word statement in its's entirety and handed the written statement to an Adviorary member seated at the table. The audio attests to my reading of the statement.

Guards came twice from the lobby of the

War Memorial demanding that I leave.
Bill Graham, Director of Security game and
we spoke in the hallway.

I read from another 150. word statement under public comment for commercial
items. The (draft?) minutes reflect a statement.

I made a document request to the SF Arts
Commission for, "all written public comments at the Nov. 5, 2017". Kate
Patterson, sent over 300 of the same generic email. She sent a link to the
minutes
of the meeting. This document request was
not satisfied. I know there are 2 written public comments because I read,
signed and
handed both after reading them to an advisory member.

On Nov.8-I went to listen to the audio of
the Nov. 7 meeting at the SFAC offices.
Patterson got the meeting date wrong and
I waited while she downloaded from a
computer. She stood guard outside the door
and constantly interrupted. The audio reflects why I have just recounted.

Patterson's response to SOFT file 17022
Is not correct. There were no supporting documents either posted on-line or
prior
to the Nov. 7, meeting. These documents
posted on Nov.15. There was no other documents (sections from the Good
Government Guide) either at the meeting
of posted as supporting documents.

I wrote to Rebekah Krell for an audio CD
on Nov.8. She doesn't respond to emails.

I request BOTH 150 word written public comments submitted at the Nov. 7
Advisory
meeting.

Ann

Gutierrez, Gina (CAT)

From: Russi, Brad (CAT) on behalf of Supervisor Records
Sent: Thursday, December 07, 2017 1:52 PM
To: 'd250'
Cc: SOTF, (BOS); Tsang, Francis (MYR)
Subject: RE: RE: Fw: Re: FOIA request Nov 3, 2017

Mr. Chan –

As I have explained, the jurisdiction of the Supervisor of Records under the Sunshine Ordinance is limited. There are other forums that may be able to address your concern, such as the Sunshine Ordinance Task Force, which you have copied on your email.

Best,

Brad Russi

Deputy City Attorney

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

From: d250 [mailto:████████████████████]
Sent: Thursday, December 07, 2017 11:59 AM
To: Supervisor Records
Cc: SOTF, (BOS) ; Tsang, Francis (MYR)
Subject: RE: RE: Fw: Re: FOIA request Nov 3, 2017

The mere claim of not having the record requested in their possession does not relieve them of the legal responsibility of having it in their possession. I personally know that such a record was created and existed then, and by law (records retention) the recording had to be kept at least 10 yrs from the date of creation (mid Dec 2007). That they don't have it and don't know where it went indicates a violation of the law and there should be some legal recourse to rectify that situation, as well as resolution to my request for the record.

It is simply not acceptable to merely dismiss this without getting an answer to the question of why they do not have the record as legally required. this brings up the question of whether they also "lost" other records they are required to keep. Just how many violations of Sunshine are you willing to ignore before a government body is made to comply with the law?

----- Original Message -----

From: Supervisor Records <supervisor.records@SFCITYATTY.ORG>
To: 'd250' <████████████████████>
Subject: RE: RE: Fw: Re: FOIA request Nov 3, 2017
Date: Thu, 7 Dec 2017 03:45:37 +0000

Mr. Chan:

I have reached out to the Juvenile Probation Commission and the Juvenile Probation Department, and they both indicated that they conducted an exhaustive search and they are not in possession of the recording that you have requested. Under the Sunshine Ordinance (Section 67.21(d) of the Administrative Code), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so – for determining “whether the record requested, or any part of the record requested, is public.” Here, the department has not withheld or redacted any records. Therefore, there is no issue for the Supervisor of Records to address, and we consider this petition closed. Thank you.

Brad Russi

Deputy City Attorney

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

From: d250 [mailto:████████████████████]
Sent: Tuesday, December 05, 2017 10:24 AM
To: Supervisor Records <supervisor.records@SFCITYATTY.ORG>
Subject: Fw: RE: Fw: Re: FOIA request Nov 3, 2017

To Whom It May Concern:

I have included here the email queue regarding my FOIA request of November for one item, a recording of a public meeting, the December 2007 mtg of the Juvenile Probation Commission, which i know as a fact was made and existed at the time of the meeting. Under public records retention policy of the City, this recording should still be in the possession of the Commission, but none of my efforts to obtain a copy of it have been responded to in a timely or sincere manner.

Such has made this a non responsive reply, for whatever their reason, and makes it in violation of my rights to obtain the recording. I ask that this be resolved to my satisfaction before such recording might be destroyed (if it hasn't already been destroyed in violation of City policy).

Your expeditious attention to this is greatly appreciated.

----- Forwarded Message -----

From: CityAttorney <cityattorney@SFCITYATTY.ORG>
To: 'd250' <[REDACTED]>, "CityAttorney@sfgov.org" <CityAttorney@sfgov.org>
Cc: "SOTF, (BOS)" <sotf@sfgov.org>, "Tsang, Francis (MYR)" <francis.tsang@sfgov.org>
Subject: RE: Fw: Re: FOIA request Nov 3, 2017
Date: Tue, 28 Nov 2017 00:38:27 +0000

Dear Mr. Chan.

I am responding on behalf of the San Francisco City Attorney's office only. Our office does not have any documents or recordings that are responsive to your request.

Best Regards,

Shayne M. Gilbertson
Paralegal
San Francisco City Attorney's Office
Room 325
1 Dr Carlton B Goodlett Pl,
San Francisco, CA 94102
Email: shayne.gilbertson@sfgov.org

From: d250 [REDACTED]
Sent: Sunday, November 26, 2017 9:24 PM
To: CityAttorney@sfgov.org
Cc: SOTF, (BOS) <sotf@sfgov.org>; Tsang, Francis (MYR) <francis.tsang@sfgov.org>
Subject: Re: Fw: Re: FOIA request Nov 3, 2017

To Whom It May Concern:

I am still waiting for your response and fulfillment of my FOIA

----- Original Message -----

From: "d250" <[REDACTED]>
To: CityAttorney@sfgov.org
Cc: sotf@sfgov.org, francis.tsang@sfgov.org
Subject: Re: Fw: Re: FOIA request Nov 3, 2017
Date: Wed, 22 Nov 2017 07:56:58 GMT

Shayne Gilbertson;

Your assertion that the juvenile probation commission only maintained recordings from 2000 thru 2001 and does not have any audio recordings of commission meetings from 2002 thru 2007 is bogus and incorrect. Audio recordings of all full commission meetings were made from 1994 thru 2007, on audio cassette and/or digital voice recorder, then transferred to digital audio files on computer and burned to CD (via digital voice recorder around 1998 or thereabouts).

These records were required by law to be kept, and only destroyed according to a city adopted plan for the destruction of public records.

The fact that the dept claims they cannot find these files does not negate the fact that they were created. it only implies a poor filing system or a deliberate act of disposal or destruction before the full time those records were required to be maintained.

I made a proper request of the Commission. I am not required to 'run around' making the request of anyone else. If your office is responsible for seeing that City bodies properly comply with City laws, then "you" contact Mr Nance ---what would he know anyway, he doesn't manage the commission---

----- Original Message -----

From: CityAttorney@sfgov.org

To: [REDACTED]

Cc: info@sfcityattorney.org

Subject: Re: Fw: Re: FOIA request Nov 3, 2017

Date: Fri, 17 Nov 2017 14:49:43 -0800

Dear Mr. Chan,

Thank you, for your request dated November 3, 2017. Please be advised that our office did not receive your request until November 7, 2017 at 9:14PM. That being said, our office is not beyond it's time to respond.

I am responding on behalf of the San Francisco City Attorney's office and in consultation with the Juvenile Probation Department ("JPD"), Commission Secretary, Pauline Silva-Re. Our office does not have any records responsive to your request. I have been informed by the JPD that there office does not have any audio recordings of Commission meetings from 2002 through 2007. The earliest audio recordings of Commission meetings that the JPD maintains start in 2000 through 2001.

A copy of your request has been sent to the Chief Probation Officer, Allen Nance.. I would suggest that you contact Chief Nance directly at 375 Woodside Ave, Room 243, San Francisco, CA 94127. Tel: (415) 753-7556.

Best regards,

Shayne Gilbertson
Responding for cityattorney@sfgov.org

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

From: "d250" <[REDACTED]>
To: info@sfcityattorney.org,
Date: 11/16/2017 12:21 PM
Subject: Fw: Re: FOIA request Nov 3, 2017

To Whom It May Concern:

I would appreciate your reply to let me know when this request will be fulfilled. Thank you.

It is already beyond the time I understand I should have gotten the information.

----- Forwarded Message -----

From: "Silva-Re, Pauline (JUV)" <pauline.silva-re@sfgov.org>
To: d250 <[REDACTED]>
Subject: Re: FOIA request Nov 3, 2017
Date: Tue, 14 Nov 2017 18:01:27 +0000

Don:

I never received your 11/03 email. I was notified of this request by the City Attorney's office and since this was before my tenure, they will be handling this request directly.

Thank you.

Pauline Silva-Re
Commission Secretary
Juvenile Probation Commission
Office: (415) 753-7870
Pauline.Silva-Re@sfgov.org

For more information on the Juvenile Probation Commission, please visit:

<http://sfgov.org/juvprobation/juvenile-probation-commission>

<http://sfgov.org/juvprobation/juvenile-probation-commission-meeting-information>

<http://sfgov.org/juvprobation/juvenile-probation-commission-audio-archive>

From: d250 [REDACTED]
Sent: Tuesday, November 14, 2017 8:57 AM
To: Silva-Re, Pauline (JUV)
Cc: [REDACTED]
Subject: FOIA request Nov 3, 2017

Dear Ms Silva-Re

I made a simple FOIA request of the Commission (via email to you) on Nov 3, 2017, but you have chosen not to acknowledge or comply with it. It is now 11 calendar days after the request was made, well in violation of the time requirements for responding and fulfilling such a request.

I don't know if you informed the commission and deputy city attorney as i asked you to, if not it would be just another factor evidencing your refusal to comply with the request.

I have escalated this to the City Attorney and Sunshine Taskforce.

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webfacts365.com

<http://thirdpartyoffers.netzero.net/TGL3232/5a0b20ce23ef120ce7e21st01vuc>

Gutierrez, Gina (CAT)

From: Russi, Brad (CAT) on behalf of Supervisor Records
Sent: Wednesday, January 10, 2018 11:26 AM
To: [REDACTED]
Subject: FW: San Francisco Sunshine Laws & California Public Records Act

Mr. Bialik –

I understand that MOHCD has completed their search for records and informed you that they have no records responsive to your request. Under the Sunshine Ordinance (Section 67.21(d) of the Administrative Code), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so – for determining “whether the record requested, or any part of the record requested, is public.” Here, the department has not withheld or redacted any records. Therefore, there is no issue for the Supervisor of Records to address, and we consider this petition closed. Thank you.

Bradley Russi
Deputy City Attorney
San Francisco City Attorney's Office
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Telephone: 415-554-4645
Facsimile: 415-554-4699
brad.russi@sfcityatty.org – **Please note new email address**

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From: Russi, Brad (CAT) On Behalf Of Supervisor Records
Sent: Friday, December 22, 2017 10:16 AM
To: [REDACTED]
Subject: RE: San Francisco Sunshine Laws & California Public Records Act

Mr. Bialik –

MOHCD has informed me that they are conducting a further search to determine whether they have responsive records. OCII is not a City department, and therefore the Supervisor of Records – a function created by the Sunshine Ordinance, which only applies to the City and its departments – does not have jurisdiction over a public records request to OCII. Thanks.

Bradley Russi
Deputy City Attorney
San Francisco City Attorney's Office
City Hall, Room 234

1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Telephone: 415-554-4645
Facsimile: 415-554-4699
brad.russi@sfcityattty.org – **Please note new email address**

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From: Russi, Brad (CAT) **On Behalf Of** Supervisor Records
Sent: Wednesday, December 20, 2017 12:58 PM
To: [REDACTED]
Subject: RE: San Francisco Sunshine Laws & California Public Records Act

Mr. Bialik – We have received your petition and are looking into it. Thank you.

Best,

Bradley Russi
Deputy City Attorney
San Francisco City Attorney's Office
Supervisor of Records: General Government Team

From: Mazel Equities [mailto:[REDACTED]]
Sent: Tuesday, December 19, 2017 9:57 AM
To: cityattorney@sfgov.org
Subject: San Francisco Sunshine Laws & California Public Records Act

Dennis Herrera, City Attorney:

The City Attorney is the supervisor of records under the San Francisco Sunshine Laws.

On December 11, 2017, we made the following request under the San Francisco Sunshine Laws and California Public Records Act to several City agencies:

Benjamin McCloskey, Deputy Director:

Under the Public Records Act we request access and copies of the following:

1. All unclaimed bonds and proceeds from bonds, including the dates, names, last addresses, and amounts due the bondholders. (Bonds are debt obligations issued by public agencies that use the loans to fund public projects such as the construction of houses, schools, hospitals, and highways. We're not interested in performance bonds.)

A list of these items, rather than actual copies is acceptable. And we can accept it by email.

We are only interested in items that are \$5,000 or over and ones issued by your office (not ones that have escheated to the state unclaimed property office).

Our intent is to locate the rightful owners and assist them in claiming their money. Our firm has been in business over 34 years. We continue our mission of helping agencies, like yours, clear unclaimed items off their books, which is a good accounting practice, and help citizens recover their lost assets.

We are willing to pay reasonable costs. Please give us an estimate of the cost before beginning the work.

We appreciate a reply within 10 working days as provided for in the law. You may also respond via e-mail at

Thank you.

Sincerely,

Loren J. Bialik

*Loren J. Bialik, President
Mazel Equities National Associates
445 Warren Drive, Suite #10
San Francisco, CA 94131-1045
(415)759-1662; fax: (415)759-1664*

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On December 12, 2017, re received the following reply:

Ms. Bialik,

We do not have any documents which are responsive to your request. Bonds issued by our office are purchased by sophisticated institutional investors who have tracking systems in place to ensure bonds are claimed. In addition, it is the role of the trustee(s), not our office, to track redemption of bonds.

Thank you,

Benjamin

Benjamin McCloskey

Deputy Director – Finance and Administration

Mayor's Office of Housing and Community Development

1 South Van Ness, 5th Floor

San Francisco, CA 94103

tel: 415.701.5575 fax: 415.701.5501

benjamin.mccloskey@sfgov.org

Then the following reply on December 13, 2017, to our reply to his letter:

Mr. Bialik,

We do not have any documents which are responsive to your request.

Thanks,

Benjamin

Benjamin McCloskey

Deputy Director – Finance and Administration

Mayor's Office of Housing and Community Development

1 South Van Ness, 5th Floor

San Francisco, CA 94103

tel: 415.701.5575 fax: 415.701.5501

benjamin.mccloskey@sfgov.org

Also the following reply from the Office of Community Investment and Infrastructure
(john.daigle@sfgov.org):

Mr Bialek,

Regarding item #1: I am not sure what you are asking for. We don't have any assets that meet the description "unclaimed bonds or proceeds from bonds."

If you mean debt service paid but unclaimed by bondholders, we are not aware of any and not sure how that situation would be possible for any of our bonds. It could happen, in the days of physical bond certificates, when the bond certificate had to be physically presented to the Trustee for payment, that sometimes there would be residual unclaimed amounts payable to the holders of those unredeemed bonds. However, in the present environment, all bonds are held in the name of Depository Trust Company ("DTC") on behalf of the beneficial owners and all our debt service payments (principal and interest) are passed from the Trustee to DTC, then passed through to the beneficial owners of the bonds. Neither the Successor Agency, nor the Trustee, knows the identity of the beneficial bondholders.

I hope this has been helpful. Please let me know if I have failed to understand your request.

Thank you,

John Daigle

415-749-2471

We believe the trustees, who are acting on behalf of the City, have this information and that we are entitled to this information and are appealing to you. We've received similar replies from City agencies in the past.

The City and County of San Francisco and its Agencies (the City) issue bonds to the public through agents or trustees. In essence the City and County is borrowing money from the public to pay for projects such as parks, libraries, roads, housing. The bond trustee is acting on behalf of the City.

Bonds can take twenty or more years to mature. People set them aside and forget about them. More commonly the original bondholder has died and the heirs do not know that the deceased had the bonds. Today bonds are held in book-entry form rather than certificates. The trustees do not have a financial interest to search records to learn that a bondholder died, nor to get his or her death certificate or search and read probate files to determine who the heirs would be. All of this is very time consuming. Businesses like my own locate rightful owners of lost assets and missing heirs. We've been in business over 34 years.

In the past, the San Francisco Redevelopment Agency provided us with their list of unclaimed bonds and we successfully helped the proper claimants recover their money. Other agencies, both in California, and other states, have also sent us their list of unclaimed bonds.

The Sunshine Laws recognize "The right of the people to know what their government and those acting on behalf of their government are doing." (Chapter 67.1 (d) of the Administrative Code.

Chapter 67 of the Administrative Code, 67.1 states:

"The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and

those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.”

The public benefits in knowing about money that may be due them. Additionally the City has an obligation as a lender to repay those they borrowed from. The record of payment obligations is a public record.

Section 67.24 states:

“(f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.”

The City’s Controller’s office does issue a list of other unclaimed monies and provides that list to firms like our own.

The California Unclaimed Property Act is a State program that seeks to reunite owners of unclaimed property with their assets. Section 1502 exempts certain property held by local agencies from escheating to the State, but the interest in reuniting the owner, or heir, with their property is a proper goal.

Though the city claims not to have the records of the outstanding bondholders, the trustees, who are acting on behalf of the government, do have those records. We believe the City is required under the Sunshine Laws to obtain records of unclaimed bonds from the trustees and provide those to us, including the dates, names, last addresses and amounts due the bondholders.

We appreciate your help in this matter.

Thank you.

Sincerely,

Loren J. Bialik

Loren J. Bialik, President
Mazel Equities National Associates
445 Warren Drive, Suite #10
San Francisco, CA 94131-1045
(415)759-1662; fax: (415)759-1664



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