

Anonymous

Sunshine Ordinance Task Force *and*
Supervisor of Records Dennis Herrera
San Francisco, CA
via email
Final

April 30, 2021

Complaint Anonymous v Campos, et al., April 30, 2021

Sunshine Ordinance Task Force:

Please file a complaint *Anonymous v David Campos and the Office of the District Attorney*. Allegations: violation of CPRA Gov Code 6253(c) for failing to provide a notice of disclosable public records or extension within 10 days of a request; SFAC §67.21 for an untimely and incomplete response to a records request; SFAC §67.27 for withholding information without an appropriate written legal justification; SFAC §67.26 for withholding more than the minimum exempt information. You should take as proven any allegation not specifically denied by the Respondents. (Supervisor of Records: This is also a petition under Admin Code §67.21(d) to determine in writing that any records withheld under an illegal justification are public, and to order them disclosed.)

1. BACKGROUND

- On March 21, 2021 via email from 109912-45425417@requests.muckrock.com to david.campos@sfgov.org I filed 2 records requests to the Respondents. (Full request text and lack of response thread are in Exhibit A).

“David Campos:

A (different) anonymous person brought the following SOTF complaint recently: https://sfgov.org/sunshine/sites/default/files/eotc_032321_item7.pdf#page=6

These are 2 separate requests. "The DCCC meeting" is defined as every DCCC meeting from July 19 to 23, 2020 (inclusive). You must inform me whether or not disclosable public records exist for each request below, and an explanation/justification:

- Produce all communications planning or preparing the DCCC meeting

(incl with Sup Mar, Ronen, Haney or their offices), all agenda items, all minutes, all discussions regarding the meeting either before or after the meeting took place, on any government account.

2. Produce all communications planning or preparing the DCCC meeting (incl with Sup Mar, Ronen, Haney or their offices), all agenda items, all minutes, all discussions regarding the meeting either before or after the meeting took place, on any personal account. Remember that you must produce all records on personal property about the conduct of *public* business. .. ”
3. Follow-ups were sent on March 31, April 15, and April 30, 2021.
4. Respondents have never replied in any fashion to either of these requests.
5. Because no records or response has been provided, the records have been effectively withheld^{1,2} in their entirety and the request has not been complied with.
6. The DCCC meetings were attended, as admitted by the Supervisors in SOTF 20087 *SJD Anonymous v Ronen* and its closely related complaints against Supervisors Mar and Haney, by majorities of committee(s) of the Board of Supervisors.³ However, the Supervisors argue that the meeting was not a public meeting under the Brown Act because the issues discussed were not within the subject matter jurisdiction of the Board’s committees.
7. Without conceding that the meeting was not a Brown Act public meeting, I argue that the meeting was a public meeting under the Sunshine Ordinance, which has a broader definition.
8. Unlike the Brown Act, Sunshine Ordinance Sec 67.3’s definition of a "meeting"

¹"The effect of the City’s inability or unwillingness to locate the records had the same effect as withholding requested information from the public." (*Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1425)

²"The City correctly states there is no evidence it intentionally withheld known responsive documents. At the hearing on the fee motion, even Sukumar’s attorney admitted there was no evidence City representatives acted in bad faith. However, bad faith is not the test. The effect of the City’s inability or unwillingness to locate and produce these documents until court-ordered discovery ensued after March 8, 2016, is tantamount to withholding requested information from a PRA request." (*Sukumar v. City of San Diego* (2017), 14 Cal.App.5th 451, 466; internal citations omitted)

³Sup. Ronen’s representative Amy Beinart stated on Sep. 11, 2020: “This complaint cites Supervisor Ronen’s participation in the July 23, 2020, meeting of the SF DCCC that was also attended by Supervisors Mar and Haney. While it is true that Supervisors Ronen and Mar together, as two of three members of the Rules Committee of the Board of Supervisors, meet the threshold for quorum for that Committee, there was no matter on the DCCC agenda that was under the Board of Supervisors’ (or Rules Committee’s) subject matter jurisdiction, and therefore not a violation of the Brown Act.” https://sfgov.org/sunshine/sites/default/files/eotc_032321_item7.pdf#page=23

does NOT have a subject matter jurisdiction requirement – every "congregation of a majority" of a BoS or its Committees qualifies, UNLESS it is a "regional, statewide or national conference," "meeting organized to address a topic of local community concern and open to the public," or "purely social, recreational or ceremonial occasion" (the latter 3 having a subject matter jurisdiction qualifier to be a "meeting") or two other exceptions not relevant here. The SF Democratic County Central Committee does not appear to be a conference, meeting organized to address a topic of local community concern and open to the public, or purely social. Thus all DCCC meetings having a quorum of the BoS or its committees should qualify as a Sunshine meeting of a policy body, subject to all Sunshine requirements, regardless of a subject matter jurisdiction requirement.

9. Therefore, records about that meeting are also public records and should, barring a specific cited exemption, be disclosed.
10. Respondents bear the burden of proving that the records sought are NOT public. Admin Code 67.21(g), states “In any court proceeding pursuant to this article *there shall be a presumption that the record sought is public*, and the burden shall be upon the custodian to prove with specificity the exemption which applies.”
11. **ALLEGATION 1: Violation of CPRA Gov Code 6253(c)**
12. Gov Code 6253(c) states: “Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or their designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. ...”
13. My request was sent Sunday March 21, and thus deemed received March 22. As of April 30, long after both the 10-day and 24-day-with-extension period, no determination or other reply was received.
14. **ALLEGATION 2: Violation of Admin Code 67.21**
15. Admin Code 67.21(b) states: “A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the

office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.”

16. “Custodian of a public record” is not, contrary to the City’s apparent belief, a special title that applies only to a specific person in an agency. It is defined in the ordinance as “Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record)”

17. In over one month, Campos, the person having custody of his own records, has not responded in any fashion to the request, which also constitutes an unreasonable delay.

18. ALLEGATIONS 3 and 4: Violation of Admin Code 67.27 and 67.26

19. Admin Code 67.27 requires that “Any withholding of information shall be justified, in writing, as follows: ... ”

20. Admin Code 67.26 requires the City to withhold only the minimum exempt portion of a public record so as to disclose as much else as possible. Usually, redaction is used to achieve this.

21. The Respondents’ inability or unwillingness to search for or provide the records is equivalent to withholding the records in entirety (see footnotes 1 and 2). No justification for doing so was provided.

22. REQUEST FOR RELIEF

23. Please find that Respondents violated CPRA Gov Code 6253(c), SF Admin Code 67.21, 67.26, and/or 67.27.

24. Please order disclosed all public records not yet provided.

Sincerely,

Anonymous

EXHIBIT A

From: Anonymous Journalist03/21/2021 **Subject: California Public Records Act Request: DCCC/Supervisors Secret Meeting - Immediate Disclos...**[Email](#)

David Campos:

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Thank you in advance for your anticipated cooperation in this matter.

Sincerely,

Anonymous Journalist

<https://sunshine-advocacy.gitlab.io/san-francisco-ca-us/01/log>

From: Muckrock Staff03/31/2021 **Subject: RE: California Public Records Act Request: DCCC/Supervisors Secret Meeting - Immediate Dis...**[Email](#)

To Whom It May Concern:

I wanted to follow up on the following California Public Records Act request, copied below, and originally submitted on March 21, 2021. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

From: Muckrock Staff04/15/2021 **Subject: RE: California Public Records Act Request: DCCC/Supervisors Secret Meeting - Immediate Dis...**[Email](#)

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From: Muckrock Staff

04/30/2021 

Subject: RE: California Public Records Act Request: DCCC/Supervisors Secret Meeting - Immediate Dis...

Email

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