

Anonymous

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

May 3, 2021

### Complaint Anonymous v Carlin, et al., May 3, 2021

Sunshine Ordinance Task Force:

Please file a complaint *Anonymous v Michael Carlin, Mayara Ruski Augusto Sa, Public Utilities Commission*. Allegations: violation of CPRA Gov Code 6253(c) for failing to provide a notice of disclosable public records; SFAC §67.21 for an 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; SFAC §67.29-7(a) for failing to disclose department head communications. 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 records are public, and to order them disclosed.)

#### 1. BACKGROUND

- On April 23, 2021 via email from 111478-55598386@requests.muckrock.com to Respondent CARLIN at mcarlin@sfgov.org, I filed the following request (see Exhibit A):

“Pursuant to the CPRA and Sunshine Ordinance, I hereby request the following records:

- all records provided by your agency to the Controller’s Office for the External Affairs / Community Benefits audit, in the electronic format that you provided them to the Controller

Note that *\*you\** are not an auditor, so the auditor CPRA exemptions do not apply to you. I’m just asking for things that are your public records that you also happened to provide to the Controller. You must provide every record prepared, owned, used, or retained by your agency – which

includes any records from your contractors that happen to be in your computer systems.

Provide rolling responses (SFAC 67.25(d)). ...”

3. Respondent RUSKI AUGUSTO SA responded on behalf of PUC on April 28 indicating a timeline for response.
4. Respondent RUSKI AUGUSTO SA closed the request on April 30 stating that they had no responsive records, claiming:

“the Controller’s Office has not conducted an External Affairs / Community Benefits audit. An audit was scheduled to happen in 2019-2020. However, the audit was postponed due to the pandemic and the local emergency.”

5. I publicly tweeted Respondents’ no records response on April 30.<sup>1</sup>
6. On May 3, 2021, columnist and editor Joe Eskenazi of Mission Local publicly tweeted<sup>2</sup> the following in reply to my April 30 tweet:

“The person handling the request told me the letter I am including had not been sent their way, and they will look into this matter. Yes, there’s an audit, and yes, it is under way.” in reply to my April 30 tweet.

I believe the “person handling the request” is Respondent RUSKI AUGUSTO SA.

7. In his May 3 tweet, Eskenazi published a portion of what appears to be a March 24, 2021 letter from the Office of the Controller to Respondent CARLIN (the “Audit Letter”, Exhibit B).
8. The Audit Letter states:

“ ... the Office of the Controller’s City Services Auditor (CSA) will audit the SFPUC’s Community Benefit/Social Impact Partnership Program (program). ... CSA has engaged Sjoberg Evashenk Consulting, Inc. (SEC) to perform the audit, which is scheduled to start next month. To conduct the audit in accordance with generally accepted government auditing standards, SEC must collect sufficient information to develop an appropriate audit plan. To that end CSA requests that you desig-

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<sup>1</sup>[https://twitter.com/journo\\_anon/status/1388272775832522754](https://twitter.com/journo_anon/status/1388272775832522754) ; archived at <https://archive.ph/1F9x9>

<sup>2</sup><https://twitter.com/EskSF/status/1389318998932680704> ; archived at <https://archive.ph/uCTMp>

nate a contact in your organization from whom the auditors may obtain information for the audit. ... ”

9. Since the Audit Letter is dated March 24, it would appear at least some information had been exchanged between PUC and the Controller’s Office on an audit of the “Community Benefit/Social Impact Partnership Program” as of the date of my request on April 23.
10. At the very least, PUC likely provided the Office of the Controller “a contact in your organization” and “information sufficient to develop an appropriate audit plan” – all of which is within the scope of my request, which asked for “records” (i.e. writings about the conduct of public business, in any form).<sup>3</sup>
11. Therefore, common sense and circumstantial evidence would strongly suggest that responsive records therefore must in fact exist. See, for example, SOTF 19047, *Anonymous v Breed, et al.*, where Mayoral Compliance Officer Hank Heckel told the SOTF that no calendar information (other than the Prop G records already provided) existed, even though such additional non-Prop G records did in fact exist, and were in fact disclosable and later disclosed. As in the calendar case, I cannot prove with *certainty* that the records exist, but SOTF should not hold complainants to such a high standard of proof, because the information asymmetry between the City and the public would make such a standard essentially impossible to meet.
12. Note that I am aware of the likely existence of responsive records only because another member of the public (Eskenazi) had evidence contradicting Respondents’ response, and voluntarily published it. Otherwise, the City would have been able to get away with claiming that no records exist. At the very least, Respondents falsely stated that the Controller’s Office has not conducted an External Affairs / Community Benefits audit, and indicate such an audit was scheduled for 2019-2020 even though they had received a letter one month prior to my request informing them of the audit. Therefore, SOTF should not treat Respondents’ assertions as credible.
13. Because no records have been provided, the records have been effectively withheld in their entirety and the request has not been complied with (see *Community Youth*

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<sup>3</sup>Note that information provided by PUC to the contractor SEC is within the scope of my request, because, as the Audit Letter states, the audit is being conducted by the Office of the Controller’s City Services Auditor, and contractor SEC is acting as an agent for the Office of the Controller. Holding that records sent to a contractor working for an agency are not sent to the agency would defy common sense. For example, email communications intended for City employees are generally technically sent to Microsoft Corporation, which runs some of the City’s email infrastructure. Of course, Microsoft acts on behalf of the City agencies, and communications for the City stored on Microsoft servers are still City communications.

*Athletic Center v. City of National City* (2013)<sup>4</sup> and *Sukumar v. City of San Diego* (2017)<sup>5</sup>).

14. Finally, 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.”
15. **ALLEGATION 1: Violation of CPRA Gov Code 6253(c)**
16. 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. ...”
17. While Respondents did provide a timely notice, that notice is likely wrong, as responsive records do in fact exist.
18. **ALLEGATION 2: Violation of Admin Code 67.21**
19. 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

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<sup>4</sup>“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)

<sup>5</sup>“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)

ordinance.”

20. Instead of providing the records that do apparently exist, Respondents stated there were no responsive records.
21. Admin Code 67.21(1) requires that departments provide electronic records in the form requested by the requester, if such format is available to or easily generated. I requested records specifically in the form provided to the Controller’s Office (which are necessarily available to the Respondents, since they already exist), and therefore, Respondents have not completely complied with my request if they provide records in some other format.
22. **ALLEGATIONS 3 and 4: Violation of Admin Code 67.27 and 67.26**
23. Admin Code 67.27 requires that “Any withholding of information shall be justified, in writing, as follows: ... ”
24. 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.
25. The Respondents’ inability or unwillingness to search for or provide the records is equivalent to withholding the records in entirety (see footnotes 4 and 5 for citations). No justification for doing so was provided.
26. **ALLEGATION 5: Violation of Admin Code 67.29-7(a) (against CARLIN only)**
27. As department head, Respondent CARLIN must “maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.”
28. By not disclosing any of his communications responsive to my request, CARLIN violated Admin Code 67.29-7(a).
29. **ALLEGATION 6: Official Misconduct under Admin Code 67.34 (against CARLIN only)**
30. I sent my April 23, 2021 records request to CARLIN directly.
31. The Audit Letter dated March 24, 2021 was addressed to CARLIN directly.
32. Thus, CARLIN knew or should have known that PUC had in fact provided at least

some information to the Controller's Office.

33. While Respondent RUSKI AUGUSTO SA is the employee who replied to me, CARLIN cannot escape his responsibility under the Sunshine Ordinance by delegating his response. It is, after all, CARLIN who I personally sent the records request to and thus who bears the responsibility for ensuring a correct reply is sent.

**34. REQUEST FOR RELIEF**

35. Please find that Respondents violated CPRA Gov Code 6253(c), SF Admin Code 67.21, 67.26, 67.27, 67.29-7, and/or 67.34.
36. Please order disclosed all public records not yet provided.

Sincerely,

Anonymous

EXHIBIT A

**From: Anonymous Journalist**04/23/2021 **Subject: California Public Records Act Request: External Affairs/Community Benefits - SFPUC**[Email](#)

To Whom It May Concern:

Pursuant to the CPRA and Sunshine Ordinance, I hereby request the following records:

- all records provided by your agency to the Controller's Office for the External Affairs / Community Benefits audit, in the electronic format that you provided them to the Controller

Note that \*you\* are not an auditor, so the auditor CPRA exemptions do not apply to you. I'm just asking for things that are your public records that you also happened to provide to the Controller.

You must provide every record prepared, owned, used, or retained by your agency -- which includes any records from your contractors that happen to be in your computer systems.

Provide rolling responses (SFAC 67.25(d)).

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

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

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

I look forward to receiving your response to this request within 10 calendar days, as the statute requires.

Sincerely,

Anonymous Journalist

**From: Public Utilities Commission**04/28/2021 **Subject: California Public Records Act Request: External Affairs/Community Benefits - SFPUC**[Email](#)

Dear Requester,

Thank you for your public records request. Due to the COVID-19 pandemic, the Mayor has issued supplementary orders suspending select provisions of the Sunshine Ordinance which will affect how soon you may receive responsive documents. This [memo<https://www.sfwater.org/modules/ShowDocument.aspx?documentID=15142>](https://www.sfwater.org/modules/ShowDocument.aspx?documentID=15142) provides details.


We have forwarded your request to the appropriate staff and will provide an update including a potential timeline within 10 days of your request.

Best Regards,

Mayara Ruski Augusto Sa

SFPUC Public Records Senior Analyst



**From: Public Utilities Commission****04/30/2021** **Subject: RE: California Public Records Act Request: External Affairs/Community Benefits - SFPUC****Email**

Dear Requestor,

The SFPUC has conducted a diligent search and we found no records responsive to your request. Therefore, we consider your request closed.

Please note that the Controller's Office has not conducted an External Affairs / Community Benefits audit. An audit was scheduled to happen in 2019-2020. However, the audit was postponed due to the pandemic and the local emergency.

Best Regards,

Mayara Ruski Augusto Sa  
SFPUC Public Records Senior Analyst

# EXHIBIT B



**OFFICE OF THE CONTROLLER**  
CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield  
Controller

Todd Rydstrom  
Deputy Controller

March 24, 2021

Mr. Michael Carlin  
Acting General Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 13th Floor  
San Francisco, CA 94102

Dear Mr. Carlin:

In accordance with the requirements of the Charter of the City and County of San Francisco, including Appendix F and city codes, and as part of the Public Integrity Audits & Assessments at the San Francisco Public Utilities Commission (SFPUC), the Office of the Controller's City Services Auditor (CSA) will audit the SFPUC's Community Benefit/Social Impact Partnership Program (program). The audit will assess the appropriateness and effectiveness of SFPUC's governance and oversight of the program, including evaluating the community benefits criteria used in the selection process and reviewing SFPUC's social impact partners' program outcomes. The audit scope and objective are preliminary and may be adjusted during the audit based on the results of the audit work.

CSA has engaged Sjoberg Evashenk Consulting, Inc., (SEC) to perform the audit, which is scheduled to start next month. To conduct the audit in accordance with generally accepted government auditing standards, SEC must collect sufficient information to develop an appropriate audit plan. To that end CSA requests that you designate a contact in your organization from whom the auditors may obtain information for the audit.



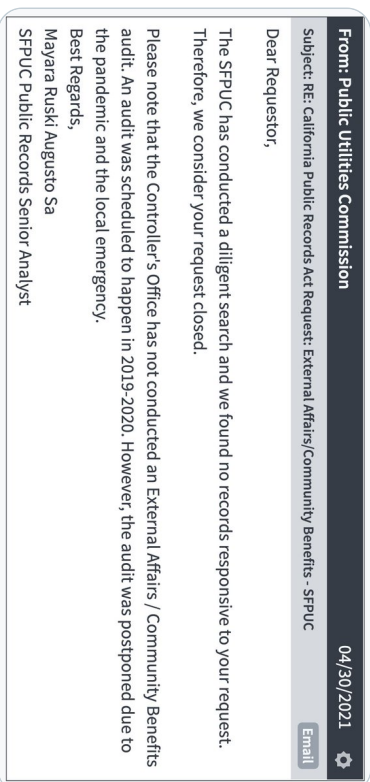
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Anon "Your Petition is Denied" Journo @journo\_anon · Apr 30 ...  
I requested: "all records provided by your agency to the Controller's Office for the External Affairs / Community Benefits audit." PUC today responded "no responsive records".... because apparently the audit hasn't even started: [muckrock.com/foi/san-franci...](https://muckrock.com/foi/san-franci...)



Joe Eskenazi @ESKSF

Replying to @journo\_anon

The person handling the request told me the letter I am including had not been sent their way, and they will look into this matter.

Yes, there's an audit, and yes, it is under way.



OFFICE OF THE CONTROLLER  
CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield  
Controller  
Todd Rydstrom  
Deputy Controller

March 24, 2021

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Anon "Your Petition is Denied" @journo\_anon

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CA Constitution Art 1 Sec 3(b)(1) "... the writings of public officials and agencies SHALL BE OPEN to public scrutiny." Not a lawyer, not legal advice.

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