



Sunshine Ordinance Task Force
Via Email: sotf@sfgov.org, cheryl.leger@sfgov.org

May 17, 2021

RE: Follow Up to SFPUC’s Response to Sunshine Ordinance Task Force Complaint File No. 21053

Dear Honorable Members of the Task Force,

I write in response to the email that the “Anonymous Records Requestor” (the Complainant) sent to the Sunshine Ordinance Task Force on Wednesday May 12, 2021 with the subject line, “*PUC and its attorneys are lying to SOTF.*” In that email, the Complainant claims that the San Francisco Public Utilities Commission (SFPUC) misstated the law in its written response to Complaint No. 21053 that SFPUC submitted to the Task Force on May 12, 2021. Specifically, Complainant alleges that the California Government Code provisions that prohibit disclosure of certain records of a city or county auditor prohibit only disclosure by the auditor itself, and not by any other city agency.

California Government Code Sections 26908.5(b) (county auditor) and 36525(b) (city auditor) each provide:

(b) All books, papers, records, and correspondence of an auditor pertaining to his or her work are public records subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 and shall be filed at any of the regularly maintained offices of the auditor. However, none of the following items or papers of which these items are a part may be released to the public by the auditor or his or her employees:

(1) Personal papers and correspondence of any person providing assistance to the auditor when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and that correspondence shall become public records if the written request is withdrawn or upon the order of the auditor.

- London N. Breed**
Mayor
- Sophie Maxwell**
President
- Anson Moran**
Vice President
- Tim Paulson**
Commissioner
- Ed Harrington**
Commissioner
- Newsha Ajami**
Commissioner
- Michael Carlin**
Acting
General Manager



(2) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed.

(3) Papers, correspondence, or memoranda pertaining to any audit that has been completed, which papers, correspondence, or memoranda are not used in support of any report resulting from the audit.

The obvious purpose of subsection (b)(2) above is to protect the confidentiality of the auditor's working files for "any audit not completed." Nevertheless, Complainant argues that subsection (b) should be mechanically read to prohibit only the auditor or the auditor's employees from revealing audit records, given the phrase "none of the following items or papers of which these items are a part may be released to the public *by the auditor or his or her employees.*" (Emphasis added.) The public records request at issue in this Complaint asked for all records that the SFPUC has provided to the auditor for purposes of the pending SFPUC Community Benefits/Social Impact Program audit. As we explained in our May 12 response to this Task Force, if SFPUC were to provide records responsive to this request, it would necessarily reveal the contents of the auditor's working files for an "audit not yet completed." Such an outcome would be contrary to the plain meaning and purpose of Sections 26908.5(b)(2) and 36525(b)(2).

To read subsection (b)(2) of these provisions as Complainant urges would be to render the provisions meaningless. Any member of the public could do an end-run around the statutory protection of auditor working files simply by submitting a public records request to an agency that is not the auditor's office but is participating in the audit (in this case, the SFPUC). In other words, under Complainant's reasoning, any city/county employee who does not work in the auditor's office is free to reveal confidential auditor files simply because of not being an employee of the auditor. California courts have repeatedly instructed that, if possible, statutes are not to be interpreted in a manner that would render a statutory provision at odds with the statutory purpose or cause absurd results. (See *Torres v. Parkhouse Tire Serv., Inc.* (2001) 26 Cal.4th 995, 1003 (courts "must select 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 interpretation that would lead to absurd consequences" (quoting *Wilcox v. Birtwistle* (1999) 21 Cal.4th 973, 977-978).)

However, we do agree with the Complainant on one important point: "Merely because a record is also part of an audit does not transform the original nonexempt record into an exempt record." As we explained in our May 12 response to the Task Force, "Although SFPUC cannot disclose at this time the records we have transmitted to SEC and/or the City Services Auditor for the pending audit, Anonymous may, as an alternative, submit a request to SFPUC for records defined by

subject matter – for example, records pertaining to the SFPUC’s Community Benefits and/or Social Impact Partnership Program.” Unlike auditor files which may not be disclosed under State law, SFPUC’s records regarding the Community Benefits/Social Impact Partnership Program are public records generally subject to disclosure, except to the extent particular records or parts of records might be subject to applicable exemptions. Accordingly, Anonymous is free to submit a public records request targeted to that subject matter.

We appreciate the opportunity to respond and clarify this matter. Thank you for your time and consideration.

Sincerely yours,

A handwritten signature in blue ink that reads "Michael P. Carlin". The signature is written in a cursive style with a large initial "M" and "C".

Michael P. Carlin
Acting General Manager

cc: Mark de la Rosa, Acting Director of Audits, Office of the Controller
City Attorney’s Office Supervisor of Records
Anonymous Complainant