

SUNSHINE ORDINANCE TASK FORCE  
Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco CA 94102  
sotf@sfgov.org  
*sent via email to Supervisor of Records*

Your ref.  
#19089

Date  
2019-09-06

**RE: SF Sunshine Ordinance complaint against City Atty, ref SOTF 19089**

To the Supervisor of Records of the City and County of San Francisco:

**NOTE: Every response you send or provide (including all responsive records) may be automatically and immediately visible to the general public on the MuckRock.com web service used to issue this request.** (I am not a representative of MuckRock)

On September 6, I received Respondents' September 5 response to my 19089 complaint. I reply below.

As a cursory matter, I object to their captioning of the complaint as "Anonymous (MuckRock News) v. Office of the City Attorney." I have a muckrock.org email address no different than you may have a gmail.com or msn.com email address; you would not be a representative of Google or Microsoft merely by being their customer, and in the same vein I am not a representative of MuckRock.

Primarily, the ordinance (SFAC 67.21(d)) says in relevant part (emphasis mine): "The supervisor of records *shall inform* the petitioner, as soon as possible and *within 10 days*, of its determination whether the record requested, or any part of the record requested, is public." This is a non-discretionary duty<sup>1</sup> of the Supervisor of Records. Not only does the Respondent have to "inform" the petitioner in 10 days, but if it is "possible" to reply earlier, they must also do that. I don't allege that a shorter than 10-day response was possible

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<sup>1</sup>The Court of Appeal instructs: "'Shall' is construed as mandatory where failure to follow the statutory command has a result of substantial consequence. (Thomas v. Driscoll, supra, 42 Cal. App. 2d 23, 25-26; County of San Diego v. Milotz, 119 Cal. App. 2d Supp. 871, 881 [260 P.2d 282]; Ward v. Fremont Unified Sch. Dist., 276 Cal. App. 2d 313, 322 [80 Cal. Rptr. 815]; Karbach v. Board of Education, 39 Cal. App. 3d 355 [114 Cal. Rptr. 84].)" (Palos Verdes Peninsula Unified School District v Felt (1976) [55 Cal. App. 3d 162]). Because an order from the Supervisor of Records may be enforced at Superior Court (SFAC 67.21(f)), the Supervisor's failure to provide a timely determination has substantial consequences, since petitioners are deprived of their right to enforce such an order until the Supervisor actually makes it.

here. Interpreting 'shall' as non-mandatory in the context of the Sunshine Ordinance completely nullifies the voters' demand of government transparency as local agencies may run rough-shod over deadlines, exemption limitations, and more.

Finally, all of this would be forgivable if in fact the Respondent has actually done some more in depth analysis of the various kinds of metadata involved. The Sunshine Ordinance and the CPRA require that withholding be limited solely to the exempt portions of the record. Sadly, as you can see in Respondents' Exhibit A, the final analysis is nothing more than the short, generic argument that has been given repeatedly in these metadata cases.

I was hoping that given their discussion of consulting with IT staff and the enormous time it took to respond to the petition that the Respondent would actually consider the full universe of metadata in these records, analyze each such item with IT/legal staff, and determine in good faith that *some* non-empty subset of this metadata was in fact public, as it obviously is. Respondent is required to identify "any part of the record" that is public, SFAC 67.21(d) above. Respondents did not do so, either here (re: 19047) nor in their similarly long-delayed response to 19044 re: email metadata.

Sincerely,

Anonymous