

October 11, 2020

Dennis Herrera
Attn. General Government Team
City Attorney/Supervisor of Records
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Via email to supervisor.records@sfcityatty.org

RE: SFPD Request P008260-071519

Supervisor of Records Dennis Herrera,

This is an SFAC 67.21(d) petition against the SFPD. Please determine, in writing, within 10 days, whether each of the contested records or parts of records enumerated below are public, and order their disclosure.

On Oct. 7, 2020, in *SOTF 19098 Anonymous v. SFPD*, the Sunshine Ordinance Task Force unanimously (with the support of the new commissioners) ruled against SFPD in this request on four violations:

- SFAC 67.21(b) for failing to provide copies of electronic records by printing and scanning them instead,
- 67.21(k) (which requires complying with the CPRA), by failing to search for all personally-held public records within the scope of *City of San Jose v. Superior Court (2017)*,
- 67.26 by withholding partially text message records namely the *To* and *From* of each message and also by withholding all email metadata namely email headers, and
- 67.26 (again) by failing to key each redaction with a footnote or other clear reference to a justification.

I present three issues for you to determine:

- ISSUE 1. On Oct. 8, 2020, SFPD admitted that there were in fact “responsive documents that he sent from his personal email to his SFgov email” for two of the custodians (then-DC Admin., and Commander Admin.). You previously stated on Nov. 12, 2019 that this *City of San Jose* issue was beyond your jurisdiction. However, SFAC 67.21(d), which describes your jurisdiction, applies not only when records or parts thereof are withheld, but instead states “If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public.” In failing to search for and provide all personally-held public records pursuant to *City of San Jose*, SFPD failed to comply or incompletely complied with my request. You must determine that these personally-held records about the conduct of public business are public and order them disclosed. As of this petition filing they have not been disclosed. Determining whether or not a record about the conduct of public business but stored on personal property is a public record falls squarely within 67.21(d).
- ISSUE 2. In the same Oct. 8 email, SFPD stated that three of the custodians for this July 2019 request are no longer with SFPD. It appears the SFPD is refusing to provide *San Jose* records for those custodians and/or did not retain them when I made the request last year. However, per your Good Government Guide, even if there is no general retention requirement for such records, once I requested them they must be retained by SFPD: “Even if a document does not meet the definition of “record” for retention purposes, if the department receives a public records request for the document, it may not destroy it or otherwise dispose of it.” (Good Govt Guide, p. 124). You must determine that the records for the then-Directors of Public Policy,

Communication, and IT are public and order them disclosed. The SFPD may have made it impossible for it to now lawfully comply with my request due its unlawful handling of my request last year (i.e. by not retaining the responsive records when I requested them), but that does not absolve you of the responsibility to issue a written determination of whether the records are public.

ISSUE 3. Determine that the *To* and *From* for text messages is public, and order that information disclosed. Here is an example of the text message records that they provided in a “Tab Separated Value” database format. Note the columns of various metadata and also content. The “To” and “From” columns - indicating which government official is speaking to which other official - are not exempt under any law, and SFPD has in fact provided the To and From in response to other text message requests.

ThreadId	MessageId	Date (UTC)	Network	Message Type	AttachmentCount	Body
2854114307	6459506228	7/15/19 19:29	AT&T	Message 0	0	""Chief... FYI ONLY.. I'm leaving at 2:30pm for a DMV appointment in Daly City. I'm applying for that REAL ID as my CDL expires on Aug 1, 2019.👍""
2854114307	6459600652	7/15/19 19:49	AT&T	Message 0	0	""Got it. Hopefully you won't be waiting to long. ""
2854114307	6459988492	7/15/19 23:18	AT&T	Message 0	0	""I'm finally done with applying for my REAL ID.. sooo crazy here at the Daly City DMV!!! See you tomorrow Chief!!🙄🙄""
2854114307	6459988497	7/15/19 23:18	AT&T	Message 0	0	""I'm finally done with applying for my REAL ID.. sooo crazy here at the Daly City DMV!!! See you tomorrow Chief!!🙄🙄""
2855989828	6459496351	7/15/19 19:24	AT&T	Message 0	0	""I saw your target and knew we were in trouble. Good shooting! But beware, I'm on your heals.""
2855989828	6459506242	7/15/19 19:29	AT&T	Message 0	0	""LOL, thank you. With my eye sight these days the distance shooting is a challenge. ""
2855989828	6459507264	7/15/19 19:31	AT&T	Message 0	0	""Obviously a challenge you overcome.""
2856065950	6459006418	7/15/19 15:47	AT&T	Message 0	0	""FYI I went to the Lake by mistake. Going to the Airport now. I may be late ""
2863928440	6459938034	7/15/19 22:54	AT&T	Message 0	0	""S: Other (Suspicious Package) - Oracle Park (3rd St/Berry St) Current Time: 15:53:58 UPDATED -Notification Status: Update REDACTED 6254(F) GC OPEN INVESTIGATION AND/OR RECORD OF INTELLIGENCE""
2876610504	6460172256	7/16/19 0:22	AT&T	Message 0	0	""Chief tomorrow we will be assisting Concord PD in serving an arrest and search warrant on a REDACTED 6254(F) GC OPEN INVESTIGATION AND/OR RECORD OF INTELLIGENCE""
2876610504	6460172258	7/16/19 0:22	AT&T	Message 0	0	""Chief tomorrow we will be assisting Concord PD in serving an arrest and search warrant on a REDACTED 6254(F) GC OPEN INVESTIGATION AND/OR RECORD OF INTELLIGENCE""
2876610504	6460172257	7/16/19 0:23	AT&T	Message 0	0	""Copy""
2876610504	6460174676	7/16/19 0:24	AT&T	Message 0	0	""Copy. Thanks""

Note that your prior “reasonable segregation” arguments have no bearing on this request. I issued a request for a copy of a record, not for inspection of a record in person. Only inspections of records are held to a “reasonable segregation” standard - which, as you cited, is in Gov Code 6253(a), not 6253(b, c) which apply to requests for copies. This is common sense - when inspecting a record in person redaction is not possible, but it is on a copy. Your own Good Government Guide teaches that these are separate rights which may be invoked (pg. 92). In fact, given that the City has clearly easily redacted small portions of these databases (note above the redaction “REDACTED 6254(F) GC OPEN INVESTIGATION” replacing some parts of the messages), your “reasonable segregation” arguments would not hold water *even if it was relevant (which it is not)*, as the To/From columns were clearly “segregated” from the other ones already (by deleting them).

Sincerely,

Anonymous

NOTE: Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature (signature.asc attachment), if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the government all be disclosable public records.