

Supervisor of Records
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco CA 94102
supervisor.records@SFCITYATTY.ORG
sent via email to Supervisor of Records

Our ref.
#79117

Date
2019-09-06

RE: SF Sunshine Ordinance petition against Mayor, ref req 79117

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)

This is a new petition under SF Admin Code (SFAC) 67.21(d). As before, while there is some overlap with prior petitions, this request has certain new issues. You may reference our petitions of May 15 and August 27 regarding calendar formats/metadata and calendar information beyond SFAC 67.29-5, but, where relevant, those requests are explicitly made below in the context of this specific petition.

I have numbered the determinations I request #1 through #8 and they are set off from the text for your convenience. I ask that you carefully consider whether *any part* of the records so far withheld from us are public.

Please note that, within 10 days, if you determine that any records or parts thereof are public, you have a non-discretionary duty to immediately order their disclosure.¹ I do not wish to negotiate further with the Mayor's Office - please issue all appropriate orders, and provide me a copy along with the determination.

As you may know the Mayor's Office argued at the SOTF Complaint Committee regarding non-Prop G or "unofficial" calendars.

To avoid any of these arguments regarding Proposition G put forth by the Mayor's Office regarding my earlier calendar requests, on August 21, 2019, I requested from the Mayor under the Sunshine Ordinance

¹"Upon the determination by the supervisor of records that the record is public, the supervisor of records *shall immediately order* the custodian of the public record to comply with the person's request." (SFAC 67.21(d), emphasis mine)

and CPRA²:

"1. an electronic copy, (in the original electronic format, or alternatively in a format specified as "A" below, for all items held electronically, and a scanned copy for any physical papers), with all calendar item headers, email addresses, invitations (including but not limited to indications of who sent the invite and when), acceptances/declinations by guests, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's *prospective/expected* calendar or schedule, with all expected events/items, from August 26 to Sept 3, 2019 (inclusive). We are specifically requesting ALL calendar/scheduling items for the Mayor, whether the Mayor herself possesses them or her staff, whether they are labeled "Prop G" or not, and whether they are on a computer or in physical form (such as a diary, a physical calendar on a wall, etc.). If any of the Mayor's staff uses any invitation/guestlist tracking systems on behalf of the Mayor (such as Outlook's invite mechanism), those calendars are also included within the scope of this request. Furthermore, we request that a City of San Jose v Superior Court (2017) search be performed of the Mayor, her chief of staff (and deputy chiefs), and all personal/secretarial/administrative assistants, such that each such official either provide all records responsive to this request present on their personal accounts/devices/property (solely to the extent the record or portion thereof relates to the public's business), or provide a declaration/affidavit that no such records exist. All such affidavits are also requested.

2. an electronic copy, (in the original electronic format, or alternatively in a format specified as "A" below, for all items held electronically, and a scanned copy for any physical papers), with all calendar item headers, email addresses, invitations (including but not limited to indications of who sent the invite and when), acceptances/declinations by guests, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's *past* calendar or schedule, with all events/items, from August 5 to August 16, 2019 (inclusive). We are specifically requesting ALL calendar/scheduling items for the Mayor, whether the Mayor herself possesses them or her staff, whether they are labeled "Prop G" or not, and whether they are on a computer or in physical form (such as a diary, a physical calendar on a wall, etc.). If any of the Mayor's staff uses any invitation/guestlist tracking systems on behalf of the Mayor (such as Outlook's invite mechanism), those calendars are also included within the scope of this request. Furthermore, we request that a City of San Jose v Superior Court (2017) search be performed of the Mayor, her chief of staff (and deputy chiefs), and all personal/secretarial/administrative assistants, such that each such official either

²1 also stated:

"We remind you of your obligations to provide electronic records in any format we request them in as long as either you hold them in that format, the format is available to you, or the format is easy to generate (Admin Code 67.21(l)). Therefore, calendars exported in the .ics, iCalendar, or vCard formats ("A") with all non-exempt headers, metadata, attachments, etc. are our desired formats. Such formats are easily exportable from Google Calendar, Microsoft Outlook, Microsoft Exchange or other common calendaring/email systems. However, if you choose to convert electronic calendar items, for example, to PDF or printed format, to easily redact them, you must ensure that you have preserved the full content of the original calendar item record (as specified in requests 1 and 2), which contains many detailed headers beyond the ones generally printed out. If you provide PDFs or printed items with only a few of the headers or lacking attachments/images, and therefore withhold the other headers/attachments without justification, you may be in violation of SF Admin Code 67.21, 67.26, 67.27, Govt Code 6253(a), 6253.9, and/or 6255, and we may challenge your decision. We *do not* waive the requirement of 67.21(l) discussed above, and are merely instructing you to preserve information even if you provide to us the undesirable PDF format.

For physical calendar items, scanning to PDF format is acceptable.

Note that it is implausible that there would be no prospective scheduling information for upcoming events the Mayor must attend to, even though Prop G requires no such calendar be kept. All calendars you keep re: the public's business are public records.

Please provide only those copies of records available without any fees. If you determine certain records would require fees, please instead provide the required notice of which of those records are available and non-exempt for inspection in-person if we so choose."

provide all records responsive to this request present on their personal accounts/devices/property (solely to the extent the record or portion thereof relates to the public's business), or provide a declaration/affidavit that no such records exist. All such affidavits are also requested. "

FIRST SUBSTANTIATIVE RESPONSE

On August 22, Mayor's Office released a redacted, image PDF ("Release A") of the Prop G calendar responsive to #2 (Exhibit A attached to the enclosing email), and withholding native formats and metadata pursuant to their interpretation of Govt Code 6253.9(a)(1) and Govt Code 6253.9(f) and 6254.19, respectively. I ask that you:

1. Determine that the native file of the Release A calendar is a public record; and
2. Determine that the metadata in the Release A calendar is a public part of a record;

though I suspect you will re-iterate your office's position in SOTF 19047 (your reply of Aug. 27 to our petition of May 15). I continue to object to those determinations. It is your responsibility to determine if "any part" of the record is public - surely there is some metadata that is non-exempt and public. Some examples will be illustrated below.

SECOND SUBSTANTIATIVE RESPONSE

On September 5, Mayor's Office (see Exhibit B in the enclosing email):

- rejected our request #1, stating:

Please note that information responsive to Item 1 of your request is being withheld pursuant to the security procedures information exemption of Cal. Gov. Code 6254(f).
- released another redacted, image PDF ("Release B") of the Mayor's Calendar (not the Prop G calendar) responsive to #2 (Exhibit C attached to the enclosing email)
- enumerated specific exemptions for certain redactions to the foregoing PDF

Records responsive to request 1 improperly withheld; GC 6254(f) inapposite.

First, the rejection of request #1 is plainly wrong. The *entirety* of the Mayor's future schedule (future at the time of request, but past at the time of the Sept. 5 response) cannot possibly be confidential law enforcement investigatory records under GC 6254(f). Mayor's Office claims that records responsive to request #1 is withheld under a "security procedures information exemption" of 6254(f). This exemption does not even exist for the Mayor's Office.³ The Mayor's Office is not "the office of the Attorney General [or] the Department of Justice, the Office of Emergency Services [or] any state or local police agency" so the first clause re: security procedures does not apply. Furthermore a calendar cannot be "investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes." This is an extreme and inappropriate stretch of the words of the statute. 6254(f) simply does not apply.

³6254(f) reads in relevant part:

"(f)Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes."

At the very least (but not only) a calendar showing the times of those supposedly exempt law enforcement investigation meetings (which is a generous interpretation of the Mayor's justification) with the titles, names, and such redacted must be public. Therefore I ask that you:

- 3. Determine that the calendar records requested in item 1 of our August 21 request are public.*

Native formats; metadata, in general

Second, we will re-iterate our requests for determination that the Release B should be released in native format and with metadata.

- 4. Determine that the native file of the Release B calendar is a public record; and*
- 5. Determine that the metadata in the Release B calendar is a public part of a record;*

Recurrence metadata

In fact, we can plainly see the presence of non-exempt metadata being improperly withheld in this specific Release B. Note the "circle with arrows" icons on pages 1, 2, 5, 6, 7, 8, and 9 of Release B. Microsoft Outlook uses such icons to represent the recurrence or non-recurrence of certain meetings (i.e. how often these meetings happen, once a week, month, etc.). The actual native entries and/or metadata would indicate those recurrence details. No exemption justified the withholding of this part of the record, and Mayor's Office did not justify it in their list of justifications. Therefore, please:

- 6. Determine that the event recurrence information in the Release B calendar is a public part of a record.*

Inapposite use of GC 6254(f) in Release B

Finally, Mayor's Office has withheld numerous parts of Release B itself under GC 6254(f). Specifically, their justifications list (other exemptions elided):

- August 8th top of page - security procedures information redacted pursuant to Cal. Gov. Code 6254(f).
- August 8th 1:30 PM - security procedures information redacted pursuant to Cal. Gov. Code 6254(f).
- August 9th top of page - security procedures information redacted pursuant to Cal. Gov. Code 6254(f).
- August 10th top of page - security procedures information redacted pursuant to Cal. Gov. Code 6254(f).
- August 11th - security procedures information redacted pursuant to Cal. Gov. Code 6254(f).
- August 12th top of page - security procedures information redacted pursuant to Cal. Gov. Code 6254(f).
- August 13th top of page - security procedures information redacted pursuant to Cal. Gov. Code 6254(f).

- August 14th top of page - security procedures information redacted pursuant to Cal. Gov. Code 6254(f).
- August 15th top of page - security procedures information redacted pursuant to Cal. Gov. Code 6254(f).
- August 16th top of page - security procedures information redacted pursuant to Cal. Gov. Code 6254(f).

As explained earlier, the Mayor's Office simply does not have the cloak of 6254(f) available to it. The "top of page" redactions appears to be labeled "SID" – I am not aware of the meaning of this term. The "August 8th 1:30 PM" redaction again appears not to be a correct 6254(f) withholding – it is a meeting with a city Supervisor. Therefore I ask that you

- 7. Determine that one or more of the redacted "top of page"/SID data is a public part of a record. and*
- 8. Determine that the redacted August 8th 1:30 PM information is a public part of a record.*

I look forward to your response within 10 days.

Sincerely,

Anonymous