79182-05441065@requests.muckrock.com (Anonymous requestor)
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SUNSHINE ORDINANCE TASK FORCE
Room 244 - Tel. (415) 554-7724; Fax (415) 554-7854
1 Dr. Carlton B. Goodlett Place
San Francisco CA 94102
sent via email to Task Force

Our ref.
#19095

Date
2019-09-11

RE: SF Sunshine Ordinance Complaint against City Atty, ref 19095

To Whom It May Concern:

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 rebuttal to Respondent City Attorney's Sept. 10, 2019 response.

The chief contention of the Respondent is that email and calendaring systems are not "enterprise systems" within Gov Code 6270.5. While the Respondent describes these systems as Outlook, I will continue to call them "email and calendaring systems" because I believe the Respondent may also use other similar systems like Microsoft Exchange and want those disclosed if they in fact exist. I do not know for certain whether Respondent uses a local Microsoft Outlook, a cloud-based Microsoft Outlook, cloud-based Microsoft Office 365, a city-operated Microsoft Exchange server, cloud-based Microsoft Exchange service, and/or more than one of these. The e-mail headers of e-mails sent by Respondent to me in responding to these requests strongly suggests their email and calendaring systems include these other systems as well. All must be disclosed.

Gov Code 6270.5 reads in relevant part:

> (c) For purposes of this section:
>
> (1) "Enterprise system" means a software application or computer system that collects, stores, exchanges, and analyzes information that the agency uses that is both of the following:
>
> (A) A multidepartmental system or a system that contains information collected about the public.
> (B) A system of record.

> (2) "System of record" means a system that serves as an original source of data within an agency.

Respondent fails to admit or deny our allegation (Complaint, p. 5, bullet 3) that the systems in question are "system[s] of record." Your Task Force should therefore take that as proven. Therefore, all we must prove is the preamble of 6270.5(c)(1) and *either* half of the disjunction of 6270.5(c)(1)(A).

Systems in question do "analyze" information

Respondent denies that the preamble of 6270.5(c)(1) applies because "our office's Outlook system contains emails, but it does not also 'analyze' them." (Response, p. 1, bullet 1). This is false. First, obviously email and calendar systems, like Outlook, collect, store, and exchange email and calendar invites/events.

Oxford dictionaries[1] define "analyze" as: "Examine methodically and in detail the constitution or structure of (something, especially information), typically for purposes of explanation and interpretation." Remember that we must prove that the *system* analyzes information, not that the Respondent *uses the system* to analyze information. Microsoft Outlook, Exchange, and similar systems certainly "analyze" information for at least one of the following reasons:

1. they identify spam messages. Identification of spam requires "examin[ing] methodically and in detail" each message. Spam detection algorithms in such systems perform statistical analysis of the headers and body of the email (i.e. "the constitution or structure" of the messages). (See regarding Microsoft: Xie, Yinglian, et al. "Spamming botnets: signatures and characteristics." *ACM SIGCOMM Computer Communication Review* 38.4 (2008): 171-182.; and generally: Stern, Henry. "A Survey of Modern Spam Tools." *CEAS*. 2008; Tang, Yuchun, et al. "Fast and effective spam sender detection with granular svm on highly imbalanced mail server behavior data." *2006 International Conference on Collaborative Computing: Networking, Applications and Worksharing*. IEEE, 2006).

2. they build search indices to allow users to search the messages. Building a search index generally requires "examin[ing] methodically and in detail" the headers and body content to build what is known as a "reverse index" which stores in a large table a pointer from each word in the email (for example) to the email itself. (See generally: Hamilton, James R., and Tapas K. Nayak. "Microsoft SQL server full-text search." *IEEE Data Eng. Bull.* 24.4 (2001): 7-10; Brin, Sergey, and Lawrence Page. "The anatomy of a large-scale hypertextual web search engine." *Computer networks and ISDN systems* 30.1-7 (1998): 107-117.)

3. they route messages to the correct recipient. This requires "examin[ing] methodically" the To, Cc, and Bcc headers of the message.

[1] `https://www.lexico.com/en/definition/analyze` retrieved Sept. 11, 2019. Lexico.com is the exclusive online publication of the Oxford English dictionaries.

Systems in question are "multidepartmental," "contain[] information collected about the public" or both

You only need to find that the systems are one of these types of systems in order to find that they are enterprise systems and must be disclosed.

Systems in question are "multidepartmental"

Respondents deny that the systems are "multidepartmental" because "users from other City departments do not have access to the City Attorney's Outlook system." First, this depends on the total universe of email or calendaring systems used by the Respondent. If they are also using Exchange, then the system would be used by multiple City departments, of which the Respondent's confidential *portion* may of course have tighter access controls.

However, even if a local installation of Outlook is the only such system used, it is multidepartmental because the Department of Technology likely operates the system on behalf of the City Attorney. This is strongly suggested in the headers of e-mail sent by the City Attorney's office received by any external member of the public, including myself; such e-mail includes an `X-Originating-IP` header. The American Registry for Internet Numbers, the non-profit organization responsible for officially and publicly documenting the ownership and administration of different computer networks in the United States, documents the "Registrant" of the network transmitting those emails as "San Francisco Department of Telecommunications and Information Services" and as "Administrative" and "Technical" contact is listed the City's Data Center and Operations Manager, Glacier Ybanez, who surely does not work for the City Attorney's office.

Regardless, you do not have to find that the systems are multidepartmental to require their disclosure; see below.

Systems in question do "contain information collected about the public"

Respondents deny that the systems "contain information collected about the public" because "an email is not 'information' that the City Attorney's Office has 'collected' 'about' the sender. It is a communication sent to or received from that sender." These *systems* do in fact contain information collected about the public. It is not merely the emails themselves (and calendar meeting invites and events, which the Respondent has forgotten about) which must be considered, but the *systems*.

First, communications contained by the systems are of course themselves *information*. Failing to include communication within "information" would gut the Sunshine Ordinance's requirement to provide public information on request, for example.

Second, email and calendar items contains a wide variety of *information about* the public, whether or not communications as a whole are information. For example, email and calendaring systems include at least the following information about the public:

1. the email addresses of members of the public,
2. their real names or chosen pseudonyms (i.e. "John Smith" <john.smith@example.com>)
3. their IP addresses (`X-Originating-IP` header),

4. the scores of trustworthiness generated by Microsoft deeming members of the public either spammers or not spammers,
5. whether or not the individual has accepted or declined a meeting invite,
6. their views on topics of public interest (the bodies of most such messages),
7. their phone numbers and physical addresses (often included in the body of the messages)

Not all of this may be apparent on the face of the email, but are certainly stored in the systems as metadata as discussed in numerous other complaints before your Task Force.

Finally, the question hinges on whether the information has been "collected." Oxford dictionaries define "collected"[2] as "(of individual works) brought together in one volume or edition" and "collect"[3] as "Bring or gather together (a number of things)" or "Accumulate over a period of time." That is precisely what email and calendaring systems do – they bring together *all* the various emails and meeting items and accumulate them over a period of time. Whether or not the *City Attorney's office* collects them is irrelevant; the *system* collects this information.

Statutory interpretation always favors disclosure

Respondent admits that the criteria are "broadly worded." Precisely for that reason, respondent's extra-statutory arguments fall flat because our state Constitution, the CPRA, the Sunshine Ordinance, and California Supreme Court instruct us to interpret public records laws in the way that makes the government more transparent, not less. The Court of Appeal in *City of San Jose v Superior Court (2017)* states, citing the Supreme Court (emphasis in the original opinion):

> In CPRA cases, this standard approach to statutory interpretation is augmented by a constitutional imperative. (See *Sierra Club v. Superior Court, supra,* 57 Cal.4th at p. 166.) Proposition 59 amended the Constitution to provide: "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be *broadly* construed if it furthers the people's right of access, and *narrowly* construed if it limits the right of access." (Cal. Const., art. I, § 3, subd. (b)(2), italics added.) " 'Given the strong public policy of the people's right to information concerning the people's business (Gov. Code, § 6250), and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), "all public records are subject to disclosure unless the Legislature has *expressly* provided to the contrary." ' " (*Sierra Club*, at p. 166.)

The fact that almost all City agencies, except Public Health, fail to live up to the strict requirements under the CPRA and Sunshine Ordinance by failing to include their email and calendaring systems does not matter. Your Task Force cannot allow the agencies being policed by the Sunshine Ordinance to be their own judges, and their interpretation is irrelevant. Instead, I invite you to take the guidance of the California Supreme Court above.

[2] `https://www.lexico.com/en/definition/collected` retrieved Sept. 11, 2019
[3] `https://www.lexico.com/en/definition/collect` retrieved Sept. 11, 2019

Conclusion

Email and calender systems are "enterprise systems" under GC 6270.5; they must be included in the Respondent's enterprise system catalog; and they must be disclosed as public records. I ask that the Task Force determine as such and make all appropriate orders under SFAC 67.21(e) that I may enforce at Superior Court under SFAC 67.21(f) and 67.35.

Sincerely,

Anonymous