

Fine Arts Museums of San Francisco; Corporation of the Fine Arts Museums; Fine Arts Museums Foundation  
Custodian of Records and/or Corporate Secretary  
50 Hagiwara Tea Garden Drive  
San Francisco CA 94118  
mpowers@famsf.org  
*sent via email*

Our ref.  
#79999

Date  
2019-09-12

**RE: SF Sunshine Ordinance request - ref #79999- Immediate Disclosure Request**

To the FAMSf, COFAM, and FAMF:

**NOTE: Please redact your responses correctly! This is a public mailbox, and all of your responses (including emails, attachments, file shares, and the disclosed records) may be automatically and instantly available to the general public on the MuckRock.com service used to issue this request (though I am not a MuckRock representative). Once you send them to us, there's no going back.**

For your convenience, I am memorializing all requests made by me between Sept. 10 and 12 in this letter. This letter supersedes those prior emails – please use the numbers below to refer to the requests.

Pursuant to the Sunshine Ordinance and CPRA, I hereby request the following records as 26 distinct Immediate Disclosure Requests from FAMSf, from COFAM, and from FAMF. They are each a separate request. Deadlines, rolling production, determination of immediacy of response, and any assertion of the so-called “rule of reason” to delay responses must apply to the volume of responses required by each request separately. If you fail to do so, I will need to send each request individually and then receive that treatment.

*Previously sent, Dated Sept. 10:*

1. all legal/contractual relationships between your agency (or the City as a whole) and Corporation of the Fine Arts Museums of San Francisco (COFAM)
2. all legal/contractual relationships between your agency (or the City as a whole) and Fine Arts Museums Foundation (FAMF)
3. all records of how city employees use IT systems owned or operated by FAMF and/or COFAM
4. all records of how city employees retain records owned, used, or prepared by the city agency, but stored on IT systems owned or operated by FAMF and/or COFAM
5. the last 10 emails from , and the last 10 emails to, Diane B. Wilsey, President, on their

official AND personal email (under City of San Jose v Superior Court (2017)) re: the public's business

6. the last 10 emails from , and the last 10 emails to, Belva Davis, Vice President, on their official AND personal email (under City of San Jose v Superior Court (2017)) re: the public's business

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*Previously sent, Dated Sept. 12:*

7. full employee directory with name, title, and email of all FAMSF employees
8. full employee directory with name, title, and email of all FAMF employees
9. full employee directory with name, title, and email of all COFAM employees
10. full officer/board/trustees directory with name, title, and email of all FAMSF officers/board/trustees
11. full officer/board/trustees directory with name, title, and email of all FAMF officers/board/trustees
12. full officer/board/trustees directory with name, title, and email of all COFAM officers/board/trustees
13. all correspondence (including all attachments, exhibits, memos, metadata, headers, emails, physical mail/notes, text, SMS, MMS, or any chat app messages, and in their original electronic format or scan of physical documents) between FAMSF\* (the asterisk here and below means this request includes each and every employee, board member, or officer in addition to the entity as a whole, and also requires a City of San Jose v Superior Court (2017) search of private property for records re: the public's business) and Robert M. Smith between Jan. 1, 2018 and Sept. 12 2019 (inclusive)
14. all correspondence (including all attachments, exhibits, memos, metadata, headers, emails, physical mail/notes, text, SMS, MMS, or any chat app messages, and in their original electronic format or scan of physical documents) between COFAM\* and Mr. Smith between Jan. 1, 2018 and Sept. 12 2019 (inclusive)
15. all correspondence (including all attachments, exhibits, memos, metadata, headers, emails, physical mail/notes, text, SMS, MMS, or any chat app messages, and in their original electronic format or scan of physical documents) between FAMF\* and Mr. Smith between Jan. 1, 2018 and Sept. 12 2019 (inclusive)
16. all correspondence (including all attachments, exhibits, memos, metadata, headers, emails, physical mail/notes, text, SMS, MMS, or any chat app messages, and in their original electronic format or scan of physical documents) between FAMSF\* and COFAM\* re: Mr. Smith or his requests/complaints, or the Sunshine Ordinance, or CPRA between Jan. 1, 2018 and Sept. 12 2019 (inclusive). Use the following case insensitive query: "smith" OR "cpa" OR "sunshine"

17. all correspondence (including all attachments, exhibits, memos, metadata, headers, emails, physical mail/notes, text, SMS, MMS, or any chat app messages, and in their original electronic format or scan of physical documents) between FAMSF\* and FAMF\* re: Mr. Smith or his requests/complaints, or the Sunshine Ordinance, or CPRA Jan. 1, 2018 and Sept. 12 2019 (inclusive). Use the following case insensitive query: "smith" OR "cpa" OR "sunshine"
18. all correspondence (including all attachments, exhibits, memos, metadata, headers, emails, physical mail/notes, text, SMS, MMS, or any chat app messages, and in their original electronic format or scan of physical documents) between FAMSF\* and the City Attorney's office\* or Sup. of Records' office\*, between Jan. 1, 2018 and Sept. 12 2019 (inclusive). I anticipate you may use Attorney-Client privilege as a shield here. However: the City has waived the privilege if you already provided any of these communications to anyone else, whether that anyone is Mr. Smith or private entities COFAM or FAMF. If you waived the privilege by providing the record to member of the public Mr. Smith, that record is now permanently a public record and you must also give it to me (Gov Code 6254.5). If FAMF or COFAM or their employees have the purportedly privileged communication (for example by including them in an email thread or cc-ing or bcc-ing or forwarding the message to them), you also have waived the privilege and must provide me the documents. If the City's argument for privilege is that the City Attorney is also representing FAMF or COFAM, then also produce records of such a contract (your MOU says no such thing) and every associated invoice (which is not protected by privilege). If no such contract exists, and the representation is provided for free by the City to these private entities, a variety of other statutes regarding use of public funds for a private purpose may be in play.
19. all correspondence (including all attachments, exhibits, memos, metadata, headers, emails, physical mail/notes, text, SMS, MMS, or any chat app messages, and in their original electronic format or scan of physical documents) between COFAM\* and the City Attorney's office\* or Sup. of Records' office\*, between Jan. 1, 2018 and Sept. 12 2019 (inclusive).
20. all correspondence (including all attachments, exhibits, memos, metadata, headers, emails, physical mail/notes, text, SMS, MMS, or any chat app messages, and in their original electronic format or scan of physical documents) between FAMF\* and the City Attorney's office\* or Sup. of Records' office\*, between Jan. 1, 2018 and Sept. 12 2019 (inclusive).
21. the SB 272/ Gov Code 6270.5 enterprise systems catalog for FAMSF you are required to create and disclose. Please provide a copy in PDF or spreadsheet format; do not provide a URL.
22. the SB 272/ Gov Code 6270.5 enterprise systems catalog for COFAM you are required to create and disclose. Please provide a copy in PDF or spreadsheet format; do not provide a URL.
23. the SB 272/ Gov Code 6270.5 enterprise systems catalog for FAMF you are required to create and disclose. Please provide a copy in PDF or spreadsheet format; do not provide a URL.
24. a record of FAMSF "transactions" for the period April 2019 to June 2019 (Q2), within the meaning of SFAC 67.29-7(c): "In any contract, agreement or permit between the City and

any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance.”

25. a record of COFAM "transactions" for the period April 2019 to June 2019 (Q2), within the meaning of SFAC 67.29-7(c)
26. a record of FAMF "transactions" for the period April 2019 to June 2019 (Q2), within the meaning of SFAC 67.29-7(c)

### **General Provisions**

I would like to remind you that you need to indicate for each request above, whether you did or did not have responsive records (separate from whether or not you withheld them). The Sunshine Ordinance requires you to indicate to me the existence or non-existence of records, regardless of whether they are exempt from disclosure.

Remember any record retained, owned, used, or prepared by your office must be included. If a city employee possesses a COFAM or FAMF document, you must disclose it. If COFAM or FAMF are holding records prepared or used by your office, you must disclose it. You also must justify each and every withholding or redaction with particularity. Use footnotes or inline markings for example.

We remind you of your obligations to provide electronic records in any format we request them in, as long that format is available to you OR easy to generate (Admin Code 67.21(l)). Therefore, emails exported in the .eml or .msg format with all non-exempt headers, metadata, attachments, etc. are best. All other documents may be provided as text .PDFs.

If you choose to convert documents, for example, to PDF or printed format (even though we have specifically requested .eml or .msg formats), to easily redact them, you must still ensure that you have preserved the full content of the original conversation record, which contains many detailed headers beyond the generally used From/To/Subject/Sent/etc.

If you send PDFs, please use only text/search PDFs, not image/scanned PDFs. You must make exact copies of records under the CPRA - do not exclude color, formatting, images, or any other content that may be lost by printing and scanning records incorrectly.

If you redact portions of the records, please specifically justify each such redaction with a legal citation (statute, ordinance, or case law). If you withhold metadata/headers, even if you don't visually redact them, you are still withholding and must justify it. If you provide PDFs or printed conversations or give us only a few of the headers or exclude attachments/images, and therefore withhold the other headers/attachments without proper 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 in court, before the Supervisor of Records, and/or the Sunshine Ordinance Task Force.

In all cases, please provide only those copies of records available without any fees. If you determine

certain records would require fees, please instead provide the required (free) notice of which of those records are available and non-exempt for inspection in-person if we so choose.

### **Entity Relationships**

The requests and complaints arise out of the complex, but completely non-transparent, relationship between city agency Fine Arts Museums of San Francisco (FAMSF) and private non-profits Corporation of the Fine Arts Museums (COFAM) and Fine Arts Museums Foundation (FAMF). FAMSF is a “local agency” under the CPRA. All three entities share the same address (at least for tax purposes) from the Form 990s I can find. Are these entities truly independent, or just mechanisms to avoid public records and/or financial reporting laws?

The relationship between the entities is described as follows in their “Report of Independent Auditors”<sup>1</sup>:

COFAM is a nonprofit public benefit corporation formed in 1987 that operates most of the activities at the Fine Arts Museums of San Francisco. The COFAM Board of Trustees consists of the combined Boards of Fine Arts Museums of San Francisco and FAMF.

FAMF is a nonprofit public benefit corporation formed in 1963 that manages the Museums’ endowment, certain programs, and art acquisition funds, as well as tax-exempt bonds (and related investments) issued for the new de Young building project, which opened in 2005. The FAMF Board of Trustees (“Board”) is self-perpetuating.

The Fine Arts Museums of San Francisco consist of the de Young Museum and the Legion of Honor, and are governed by a self-perpetuating Board. The Museums collect, conserve, display, and interpret fine arts of all periods. The City and County of San Francisco (City) owns the land and buildings in which the Museums operate and most of the collections, and provides partial operating support through an in-kind contribution for their care and maintenance. COFAM and FAMF have rent-free use of the Museums, which must be operated for the benefit of the public.

In 2002, COFAM and FAMF agreed with the City to raise private funds, issue bonds, design and construct the new de Young Museum building and, consistent with the requirement that the City hold title to buildings on City property, donate the completed building to the City. COFAM and FAMF are co-obligors on the bonds. In April 2018, all outstanding bonds were redeemed at par by FAMF.

### **Public records on private entity systems**

Records stored by FAMSF on private FAMF or COFAM systems are public under the principles declared by the Supreme Court in *City of San Jose v Superior Court* (2017) regarding individual employees’ private property holding public records. The fact that two large corporations working on behalf of the City (and existing solely to work on behalf of the City) are keeping records

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<sup>1</sup>[https://www.famsf.org/sites/default/files/famsf\\_combined\\_fs\\_06-18\\_-\\_issued\\_12-14-18\\_0.pdf](https://www.famsf.org/sites/default/files/famsf_combined_fs_06-18_-_issued_12-14-18_0.pdf)

on their private property is no less an effective way to evade public records laws than individual employees doing so, especially given the fact that the Boards of the various organizations are, by contract, law, or bylaw, interlocking. The question is whether FAMSF/City prepared, owned, used or retained those documents – I argue that in various cases City employees (and thus FAMSF) are either preparing or using the records, even if they are not retaining or owning those records. Furthermore, an agent of FAMSF represented at a public SOTF hearing on Sept. 4 that the City agency uses domains, email and document servers, owned and operated by these private entities (see [https://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=95&clip\\_id=33934](https://sanfrancisco.granicus.com/MediaPlayer.php?view_id=95&clip_id=33934), audio discussion starting at 4hr 15min 01sec.).

The use of COFAM or FAMF servers to shield records from public disclosure would also violate Gov Code 6253.3: “A state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter.” and/or Gov Code 6270(a): “Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter. ...”

If FAMSF has chosen to commingle its records, funds, employees or otherwise with COFAM or FAMF, that is further evidence that all such records must be public.

### **Records improperly withheld**

I asked for “all legal/contractual relationships” between FAMSF (City) and FAMF/COFAM. I was provided a single one page MOU with no details and a defunct old lease which no longer is in effect. It stretches credulity to believe that there is a one page MOU and that is it. Gov Code 6253.31 states “Notwithstanding any contract term to the contrary, a contract entered into by a state or local agency subject to this chapter, including the University of California, that requires a private entity to review, audit, or report on any aspect of that agency shall be public to the extent the contract is otherwise subject to disclosure under this chapter.” – therefore all such contracts are public.

If that MOU is all there is, then I also allege FAMSF is violating SFAC 67.29-6 which states “When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance.” The MOU fails to require FAMF or COFAM to abide by the entire Sunshine Ordinance. SOTF hearings indicate the City might be interpreting ‘ordinance’ here to mean Section 67.29-6, and not *the Sunshine Ordinance* — that is an absurd rule of statutory interpretation; the word used would be ‘section’ if that were the case.

FAMSF would also be violating SFAC 67.29-7(c): “In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance.”

I asked for records regarding FAMSF/City employees using IT systems run by FAMF/COFAM. No records were provided. As above, an agent of FAMSF represented at a public SOTF hearing

on Sept. 4 that the City agency uses domains, email and document servers, owned and operated by these private entities (see [https://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=95&clip\\_id=33934](https://sanfrancisco.granicus.com/MediaPlayer.php?view_id=95&clip_id=33934), audio discussion starting at 4hr 15min 01sec.). These records must exist.

Sincerely,

Anonymous