

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.
#79999

Date
2019-09-12

RE: SF Sunshine Ordinance petition against FAMSF- #79999– Rev. 2

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, amended petition under SF Admin Code (SFAC) 67.21(d) for a written determination that records are public, regarding a Sept. 10 IDR to FAMSF, requests 1 through 4 of Exhibit A, attached. (We may complain about Sept. 10 requests 5 and 6 and the Sept. 12 requests at another time.). 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). My request was very clear to include records “from your agency, from COFAM, and from FAMF”. FAMSF is a “local agency” under the CPRA.

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

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

¹https://www.famsf.org/sites/default/files/famsf_combined_fs_06-18_-_issued_12-14-18_0.pdf

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.

I have numbered the determinations that I request #1 through #4 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.

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 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, 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.

I ask that you:

- 1. Determine that all records stored on FAMF or COFAM systems about the public's business are public records, and FAMSF must disclose them.*

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 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.

2. Determine that all such legal agreements are public records, and FAMSF must disclose them.

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. I have heard rumors that ‘ordinance’ here is being interpreted by the City 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.”

3. Determine that FAMSF is in violation of SFAC 67.29-6 and SFAC 67.29-7(c).

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, audio discussion starting at 4hr 15min 01sec.). These records must exist.

4. Determine that all records regarding FAMSF/City employees using IT systems run by FAMF/COFAM are public records, and FAMSF must disclose them.

Request for relief

There is no mootness provision in the Sunshine Ordinance: “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.” (SFAC 67.21(d), emphasis mine). Even if FAMSF supplements its responses, I would still like, and believe I am owed under the law, this written determination. You are historically very clear when you deny my petitions, and I am hoping you are equally clear when you grant my petitions, even in part, when you determine that *any part* of a withheld record is public.

Furthermore, if you determine that any records or parts thereof are public, you have a non-discretionary duty to immediately order their disclosure.² I do not wish to negotiate further with FAMSF - please issue all appropriate orders, and provide me a copy along with the written determination. Of course, if by the time the petition is responded to, you have encouraged the Mayor to turn over supplemental disclosures, perhaps no order will be necessary. However, any purported mootness of an *order* does not also allow you to not provide your *written determination*.

Note that (in addition to the numerous other remedies available to me under SFAC 67.21(e), 67.35(a), and the CPRA) SFAC 67.35(d) also allows me to institute court proceedings "if enforcement action is not taken by a city or state official 40 days after a complaint is filed" and I believe the Supervisor of Records' failure to provide all appropriate written determinations and orders required by the Sunshine Ordinance would be such a lack of enforcement action.

Your duty to grant, even in part, petitions is crucial to your role as impartial Supervisor of Records, a role your office's Mr. Côté has stated you take very seriously; the next time the public wants this same class of records or part of records they should be able to avoid the months long appeals process and point to your prior determinations, which thus can help build some "case law" in these matters.

Furthermore, merely because I have not identified a part of a record above does not mean it is not a public part of a record that it is your responsibility to identify. It is possible FAMSF will inform you of other responsive records that I have not even been made aware of.

Sincerely,

Anonymous

²"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)

EXHIBIT A

To Whom It May Concern:

** 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](https://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. **

Pursuant to the Sunshine Ordinance and CPRA, I hereby request the following records as 6 Immediate Disclosure Requests from your agency, from COFAM, and from FAMF:

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

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.

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 images.

If on the City Attorney's advice or for other reasons, you redact portions of the metadata/headers, please specifically justify each such redaction with a legal citation (statute, ordinance, or case law).

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. I have various cases proceeding before the SOTF and Sup. of Records, and intend to vigorously enforce the public's right to record disclosure.

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.

Remember you must inform us whether there are no responsive records, some fully disclosed records, some fully withheld records, or some partially disclosed/partially withheld/redacted records for each of the individual requests.

Sincerely,

Anonymous

From:

09/09/2019

Subject: Thank you for your message Re: California Public Records Act Request: Immediate Disclosure Req...

Email

Thank you for your message.

I am on a leave of absence until further notice.

For acquisitions related matters, please contact Lexi Paulson
at lpaulson@famsf.org (mailto:lpaulson@famsf.org)

For board of trustee related matters, please contact Melissa Powers
at mpowers@famsf.org (mailto:mpowers@famsf.org)

Kind regards,

Skot Jonz

Executive Assistant and Project Assistant

Fine Arts Museums of San Francisco

San Francisco, CA 94118

p 415.750.2635

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Skot Jonz

Executive Assistant and Project Assistant

Fine Arts Museums of San Francisco

de Young | Legion of Honor

Golden Gate Park | 50 Hagiwara Tea Garden Drive

San Francisco, CA 94118

p 415.750.2635 | sjonz@famsf.org | (mailto:sjonz@famsf.org) famsf.org (<http://famsf.org>)

From: Anonymous Person

09/10/2019

Subject: RE: California Public Records Act Request: Immediate Disclosure Request - FAMSF/COFAM/FAMF ...

Email

To Whom It May Concern:

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Pursuant to the Sunshine Ordinance and CPRA, I hereby request the following records as 6 Immediate Disclosure Requests from your agency, from COFAM, and from FAMF:

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

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.

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.

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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. I have various cases proceeding before the SOTF and Sup. of Records, and intend to vigorously enforce the public's right to record disclosure.


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.

Remember you must inform us whether there are no responsive records, some fully disclosed records, some fully withheld records, or some partially disclosed/partially withheld/redacted records for each of the individual requests.

Sincerely,

Anonymous

From: Fine Arts Museums Of San Francisco

09/11/2019 

Subject: Re: California Public Records Act Request: Immediate Disclosure Request - FAMSF/COFAM/FAMF ...

[Email](#)

Dear Sir/Madam,

The Fine Arts Museums of San Francisco received your Immediate Disclosure Request, dated September 7, 2019, on September 10, 2019. You have requested the following records:

"Pursuant to the Sunshine Ordinance and CPRA, I hereby request the following records as 6 Immediate Disclosure Requests from your agency, from COFAM, and from FAMF:

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"

On behalf of the City Department, the Fine Arts Museums of San Francisco (FAMSF), please find attached the document responsive to request 1 and 2 (FAMSF Board Resolution of January 2018). The FAMSF does not have records responsive to requests 3 and 4.

As for records request 5 and 6, although you labeled your requests as an Immediate Disclosure Request, it is not "simple, routine, or otherwise readily answerable," as is required by San Francisco Administrative Code Section 67.25(a). For this reason, FAMSF is treating your IDR as a standard public records request, subject to the normally applicable 10 days response time, with a possible extension. Accordingly, FAMSF will be in touch with you regarding these records no later than September 20, 2019. However, FAMSF will endeavor to fulfill your request as soon as possible.

Thank you,

On behalf of FAMSF,
Melissa Powers
Manager of Board Relations and Special Projects

Fine Arts Museums of San Francisco
de Young
Legion of Honor

Golden Gate Park | 50 Hagiwara Tea Garden Drive | San Francisco, CA 94118
p 415.750.3690
e mpowers@famsf.org | famsf.org



FAMSF Board Resolution (1.25.18)

[Download](#)

From: Anonymous Person

09/11/2019

Subject: RE: California Public Records Act Request: Immediate Disclosure Request - FAMSF/COFAM/FAMF ...

[Email](#)

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I want to be certain I understand your response. The entirety of ALL contracts between the City agency and COFAM or FAMF is a 1-page memorandum of understanding with no detail whatsoever? There are literally no other legal agreements?

I here are literally no other legal agreements:

From: Fine Arts Museums Of San Francisco

09/11/2019

Subject: Re: California Public Records Act Request: Immediate Disclosure Request - FAMSF/COFAM/FAMF ...

Email

Dear Sir/Madam,

Your request was interpreted to capture current, legal agreements.

However, I am attaching a 2002 agreement between CCSF, through the FAMSF Board of Trustees, and FAMF, which is no longer effective.

Thank you,

On behalf of FAMSF,

Melissa Powers

Manager of Board Relations and Special Projects

Fine Arts Museums of San Francisco

de Young

Legion of Honor

Golden Gate Park | 50 Hagiwara Tea Garden Drive | San Francisco, CA 94118

p 415.750.3690

e mpowers@famsf.org | famsf.org



Facilities GroundLease - 2002

Download

From: Anonymous Person

09/12/2019

Subject: RE: California Public Records Act Request: Immediate Disclosure Request - FAMSF/COFAM/FAMF ...

Email

**** 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. ****

I have seen the various numerous arguments your agency has had with Mr. Smith before the SOTF. I have no idea why the relationship between a city agency and COFAM and FAMF is simultaneously so interlocked/complex but also completely non-transparent, and I will be taking a fresh look at forcing the city to legally turn over all public records associated with this relationship, no matter where they are, whether at the Task Force or in Superior Court.

Keep in mind you must turn over all documents prepared, owned, used, OR retained by your agency. So if the City ever prepared or used the records, you must turn them over whether or not they are owned or retained by your agency (as it appears you seem to believe FAMF/COFAM own or retain them instead of you). City of San Jose vs Superior Court (2017) is very clear that individual employees cannot shield records from disclosure by putting them on private property; there is no way that entire corporations can shield public records from disclosure by putting them on private property.

This is a further IMMEDIATE DISCLOSURE REQUEST from FAMSF, from FAMF, and from COFAM:

1. full employee directory with name, title, and email of all FAMSF employees
2. full employee directory with name, title, and email of all FAMF employees
3. full employee directory with name, title, and email of all COFAM employees
4. full officer/board/trustees directory with name, title, and email of all FAMSF officers/board/trustees
5. full officer/board/trustees directory with name, title, and email of all FAMF officers/board/trustees

6. full officer/board/trustees directory with name, title, and email of all COFAM officers/board/trustees

If any FAMSF city employee possesses any of the records about FAMF or COFAM employees/officers you must turn them over.

The relevant question is NOT what the content or topic of the records is - the only issue is whether the City prepared, owned, used, or retained the records. If any City employee has used any of this information you must turn it over.

Thanks,
Anonymous

EXHIBIT B

FINE ARTS MUSEUMS OF SAN FRANCISCO

Board of Trustees
January 25, 2018

Board Resolution 1857

Establish and Document a Memorandum of Understanding between the Fine Arts Museums of San Francisco, the Corporation of the Fine Arts Museums, and the Fine Arts Museums Foundation, Listing the Roles and Responsibilities of Each Organization

WHEREAS, The City Services Auditor Division in October 2016 recommended to “establish and document a memorandum of understanding between the Fine Arts Museums of San Francisco, the Corporation of the Fine Arts Museums, and the Fine Arts Museums Foundation, listing the roles and responsibilities of each organization”.

RESOLVED, That the board of trustees of the Fine Arts Museums of San Francisco (FAMSF) adopts the attached memorandum of understanding between the Fine Arts Museums of San Francisco (FAMSF), the Corporation of the Fine Arts Museums (COFAM), and the Fine Arts Museums Foundation (FAMF), listing the roles and responsibilities of each organization.

Memorandum of Understanding

The Fine Arts Museums of San Francisco (FAMSF) is a charitable trust department of the City and County of San Francisco (City) consisting of the de Young Museum and the Legion of Honor (the Fine Arts Museums or Museums), governed by a self-perpetuating board of trustees. In accordance with Section 5.105 of the City Charter:

“The Board is responsible for the protection and conservation of the assets of the Fine Arts Museums and for setting the public course the Museums will follow. The Board shall assure that the Museums are open, accessible and vital contributors to the cultural life of the City and County, and that the Museums’ programs bring art appreciation and education to all the people of the City and County. The Board may enter into agreements with a not-for-profit or other legal entity to develop or operate the museums and to raise and maintain funds for the museums’ support.”

The City owns the land and buildings in which the Museums operate, and most of the collections, and provides partial operating support through an annual appropriation for their care and maintenance. The annual appropriation is approved through City’s annual budget process.

The Fine Arts Museums Foundation (FAMF) is a nonprofit public benefit corporation formed in 1963 that manages the Museums’ endowment and art acquisition funds, as well as tax-exempt bonds (and related investments) issued for the new de Young Museum building, which opened in 2005. The FAMF board of trustees is also self-perpetuating.

The Corporation of the Fine Arts Museums (COFAM) is a nonprofit public benefit corporation formed in 1987 responsible to operate the Museums and to raise and maintain funds for the museums’ support. The COFAM bylaws proscribe that the board of trustees consists of the combined Boards of FAMSF and FAMF, and others as designated by the FAMSF board of trustees. The COFAM board of trustees shall approve and monitor an annual budget sufficient to meet the needs of the Museums, as supplemented by the City annual appropriation and supported by funding distributions of FAMF.

Approved by:

Fine Arts Museums of San Francisco
Corporation of the Fine Arts Museums
Fine Arts Museums Foundation