

IN THE SAN FRANCISCO  
SUNSHINE ORDINANCE TASK FORCE

Anonymous	Update; Offer of Compromise
v.	Dec. 13, 2019
Controller Ben Rosenfield and the Office of the Controller	SOTF No.  <b>19125</b>

**STATUS UPDATE**  
**[SFAC 67.21(b,c,k), 67.26, 67.27; CPRA Gov Code 6253(b,c)]**

I had made a Sept 13, 2019 IDR regarding the Fine Arts Museums. On Nov. 20, after various rolling productions, Respondents declared their response to my request complete. On Nov 22, I alleged that Respondents violated SFAC 67.21(b,c,k), 67.26, 67.27; CPRA Gov Code 6253(b,c). On Dec. 13, Respondents (see Exhibit A):

- Stated that they had provided all responsive emails, and some duplicate attachments were provided only once. However, two attachments were not previously provided, and have now been provided in redacted form: “FY19 Cash-Receipts Collection Point Survey\_FA” and “Cash Receipts Procedures - Admissions (review).”
- Provided clear references (via a matrix) to justifications with citations to law or case for their prior redactions as required by SFAC 67.26 and SFAC 67.27.
- Provided a legal justification<sup>1</sup> for the lack of providing non-PDF formats and the metadata information (SFAC 67.26/67.27).

As the Dec. 13 response demonstrates, Respondents had not in fact fully complied with the Sunshine Ordinance as of the completion of their response on Nov. 20 or as of the date of complaint Nov. 22. Respondents have one more issue to resolve (originally titled Allegation 3):

- Even if they want to use PDF, Respondents must produce emails/spreadsheets in a PDF format that preserves an exact copy of all non-metadata content including all (not redacted) text, attachments, hyperlinks, images, colors, and formatting so that no non-metadata information is unjustifiably withheld (SFAC 67.26, 67.27, 67.21(k), GC 6253(b)), for example, by direct conversion from Outlook/Excel/Word to PDF instead of printing out and scanning in the records. Then, they can redact the PDF as usual in Adobe Acrobat.

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<sup>1</sup> As in all other SOTF cases, I do not concede as valid any of the justifications for refusing to provide non-PDF formats or metadata. They are proceeding before the SOTF in 19105 and 19044.

## PROPOSED COMPROMISE

I have not alleged that the Respondents have intentionally or willfully (SFAC 67.34) violated the Sunshine Ordinance; nevertheless, I believe that a lack of appropriate procedures, policies, or training causes these and other Sunshine violations. Given that Respondents appear to accept the various procedural requirements of the Sunshine Ordinance, though after-the-fact of the complaint, I propose the following compromise, similar to those I have offered other departments who after-the-fact accept the procedural requirements of Sunshine:

- I would withdraw complaint SOTF 19125.<sup>2</sup>
- Respondents would publish on their website and as a public communication to SOTF, a letter addressed to myself<sup>3</sup> and signed by Controller Rosenfield, stating:
  - The Office of the Controller admits that on Nov. 20, 2019 it violated SFAC 67.21(b) by not providing all email attachments requested, SFAC 67.26 by not keying by footnote or other clear reference justifications for each redaction, SFAC 67.27 by not citing a law or court case for each redaction, and SFAC 67.26, 67.27, 67.21(k) by withholding without justification some non-exempt, non-metadata information by providing emails or other electronic records by printing and scanning them instead of converting them directly to PDF
  - As of the time of executing the letter, the Office has updated its public records procedures and policies (please include in the letter a copy of the updated procedures) to require full compliance with the Sunshine Ordinance, including but not limited to these specific issues:
    - providing in each response to a records request having any redactions, a footnote or other clear reference to the exemption justification for each redaction, instead of a general list of all justifications (SFAC 67.26),
    - production of emails in a PDF format that preserves an exact copy of all non-metadata content including all non-exempt text, attachments, hyperlinks, images, colors, and formatting so that no non-metadata information is unjustifiably withheld (SFAC 67.26, 67.27, 67.21(k), GC 6253(b)), for example, by direct conversion from Outlook/Excel/Word to PDF instead of printing out and scanning in the records
    - providing a notice within 10 days or 24 days (depending on whether an extension applies) as to whether or not the office has responsive records for each request made and the reasons for fully withholding any non-disclosable responsive documents and the name and title of the person(s) withholding the documents as appropriate (GC 6253(c,d), SFAC 67.21(b,k)),

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<sup>2</sup> In the proposed compromise, I would not waive any other rights, including but not limited to any petitions to the Supervisor of Records, or a petition for writ of mandate to Superior Court.

<sup>3</sup> Addressee information will be provided if the offer is agreed to.

- (if one does not yet exist) implementing a tracking/workflow system to ensure timely responses and follow-ups for all records requests, including those that require rolling responses over time, and
- There is no waiver by me, nor admission or commitment by Respondents, made regarding disclosure of non-PDF formats or email metadata/headers. As SOTF knows, these topics are being investigated more in depth in pending SOTF 19105 and SOTF 19044. If SOTF or a court of competent jurisdiction later finds that any metadata or non-PDF formats are disclosable public records, I will file further requests or complaints in the future for production of Respondent metadata and non-PDF formats.

In my opinion, the proposed compromise benefits both parties, and the general public:

- General public, who may not be able to advocate for or even understand their full CPRA/Sunshine rights will, by default, get a greater practical fulfillment of their pre-existing rights of public access, through improved procedures.
- Respondents avoid an Order of Determination that they violated the law.
- Both parties save time and expense of hearings.

If Respondents agree, they are requested to inform the Complainant before noon on Dec. 17, 2019, prior to the SOTF meeting that evening.

I look forward to an efficient resolution that maximizes the public's right of access, pursuant to the law. Having in each department head, a strong ally of sunshine rather than an adversary, is beneficial for all. If Respondents do not wish to compromise, I intend to proceed to the full Task Force for findings of violations of the law and all associated Orders of Determination.

**NOTE:** Please be certain you have properly redacted all of your responses. Once you send them to us, there is no going back. The email address sending this request is a publicly-viewable mailbox. All of your responses (including all responsive records) may be instantly and automatically available to the public online via the MuckRock.com FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). The author is an adversarial party against the City. Nothing herein is legal, IT, or professional advice of any kind, and the City should consult its own advisors. 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, 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 City all be disclosable public records.

Respectfully submitted,  
 ANONYMOUS  
 Complainant/Petitioner

**Exhibit A - Dec 13, Respondents supplementary response**

Hello Anonymous:

We have received your questions which are listed here:

1. Which attachments did you provide or withhold? For example: 3 listed on pg 1, 7 on pg 2, 1 on pg 4, 1 on pg 5, 7 on pg 8, 1 on pg 10. The request specifically requested all attachments.
2. There are dozens of redactions throughout your responses. You are required by law (SFAC 67.26) to provide a clear reference to a justification for each and every redaction or full document withheld, and (SFAC 67.27) you must use a statute or case law dictating exemption.
3. You were requested to provide documents in specified electronic format. Why have you printed and scanned these documents, thus failing to provide an exact copy of the records? No legal justification has been provided.

Thank you for the feedback on your request. Here is our response:

1) We provided all responsive emails to you. We also provided the documents that were attached to the provided emails. Some attachments were listed multiple times throughout the emails, but were the same documents so duplicate versions of the identical attachments were not provided. This might explain your confusion when you write: "3 listed on pg 1, 7 on pg 2, 1 on pg 4, 1 on pg 5, 7 on pg. 8." For example, the 7 attachments listed on page two are the same attachments listed on page 8. To make this easier to understand we are including a matrix of the attachments under item #2. In our review of all the emails and attachments, we did discover two missing spreadsheets. They are attached and are entitled: FY19 Cash-Receipts Collection Point Survey\_FA and Cash Receipts Procedures - Admissions (review).

Sunshine Complaint -19125						
Data Elements				Legal Requirements		Standards & Recommended Practices
Attachment Name	Document Title	Data Categories	Reason	State Legal Citation	Federal Legal Citation	Global Legal Citation
Cash Handling Procedures	MVS Leadership Cash Handling Policy	Geographical Locations of Cash Deposits, Deposit Schedules	Safety / Security of workers	Cal. Evid. Code § 1040		
Cash Payment Type examples	Close Drawer - Legion Admissions	Usernames	Security of logins	Cal. Gov. Code Secs. 6254.19		
Deposit Slip	Deposit Ticket	Bank Account Number - Destination Account Number	Banking Information Security	CA Consumer Privacy Act of 2018 (AB375) [Civil Code: 1798.100-1798.198]	GLBA FISMA NIST 800-60	EU-US Privacy Shield ISO 27001 PCI DSS
2017-06-30 Bank Recon	Bank Reconciliation for Month of June 2017	Bank Account Number - Destination Account Number	Banking Information Security	CA Consumer Privacy Act of 2018 (AB375) [Civil Code: 1798.100-1798.198]	GLBA FISMA NIST 800-60	EU-US Privacy Shield ISO 27001 PCI DSS
2017-06-30 Bank Recon	Bank Reconciliation for Month of June 2017	Check numbers	Banking Information Security	CCPA	GLBA FISMA	EU-US Privacy Shield PCI DSS
admissions cash receipts_001	Admission Payment Calculation Procedures	Geographical Locations of Cash Deposits, Deposit Schedules	Safety / Security of workers	Cal. Evid. Code § 1040		
FY19 Cash-Receipts Collection Point Survey_FA	Collection Point Survey	Merchant Account IDs	Safety / Security of workers	Cal. Evid. Code § 1040		
FY19 Cash-Receipts Collection Point Survey_FA	Collection Point Survey	Geographical Locations of Cash Deposits, Deposit Schedules	Safety / Security of workers	Cal. Evid. Code § 1041		
Cash Receipts Procedures - Admissions (review)	Cash Receipts Procedures - Admissions (review) - 12	Geographical Locations of Cash Deposits, Deposit Schedules	Safety / Security of workers	Cal. Evid. Code § 1040		

2) The timeline of your request corresponded with a Cash Handling Audit, conducted by the Controller's Office Audit Division. The redactions made to the documents related to Cash Handling were made to maintain the security of the cash handling procedures at FAMSF's locations. See the matrix below for the legal justifications for the redactions.

3) The PDF of the documents are the original and are unmodified beyond the redactions. These records are being produced in a PDF format and the requested metadata is being withheld to protect the integrity and security of the original record and to avoid the unwarranted disclosure of data that could pose a risk to the city's systems and network and/or the inadvertent disclosure of exempt confidential or privileged information. See Cal. Gov. Code 6253.9 (a)(1), (f) and 6254.19.

Best,

The Office of the Controller