

Anonymous  
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**IN THE SAN FRANCISCO  
SUNSHINE ORDINANCE TASK FORCE**

Anonymous,  
Complainant

**Sunshine Ordinance Petition and  
Complaint**

v.

July 1, 2020

Mayor London Breed, Hank Heckel,  
and Office of the Mayor,  
Respondents

SOTF No.

20075

**FIRST AMENDED AND RESTATED COMPLAINT**

I allege Respondents responded incompletely or untimely to multiple records requests (SFAC 67.21(b)), withheld more than the minimum exempt records or portions thereof (SFAC 67.26), withheld information without a lawful justification (SFAC 67.27), and (as to Respondent Breed only) failed to maintain in a professional and businesslike manner and to disclose her correspondence (SFAC 67.29-7(a)).

This consolidated complaint is regarding:

- Parts 1 and 2 - Requests from [81856-14311352@requests.muckrock.com](mailto:81856-14311352@requests.muckrock.com) for records relating to the Mayor's parade floats, arising out of the *United States v. Nuru, et al.* investigation;
- Part 3 - Requests from [94337-59687203@requests.muckrock.com](mailto:94337-59687203@requests.muckrock.com) for records of the Mayor's office's messages with other public officials from May 25 to June 2

The burden of proof that a record or portion thereof is exempt from disclosure is on Respondents; therefore please accept every allegation as admitted by Respondents, unless explicitly denied.

**BACKGROUND**

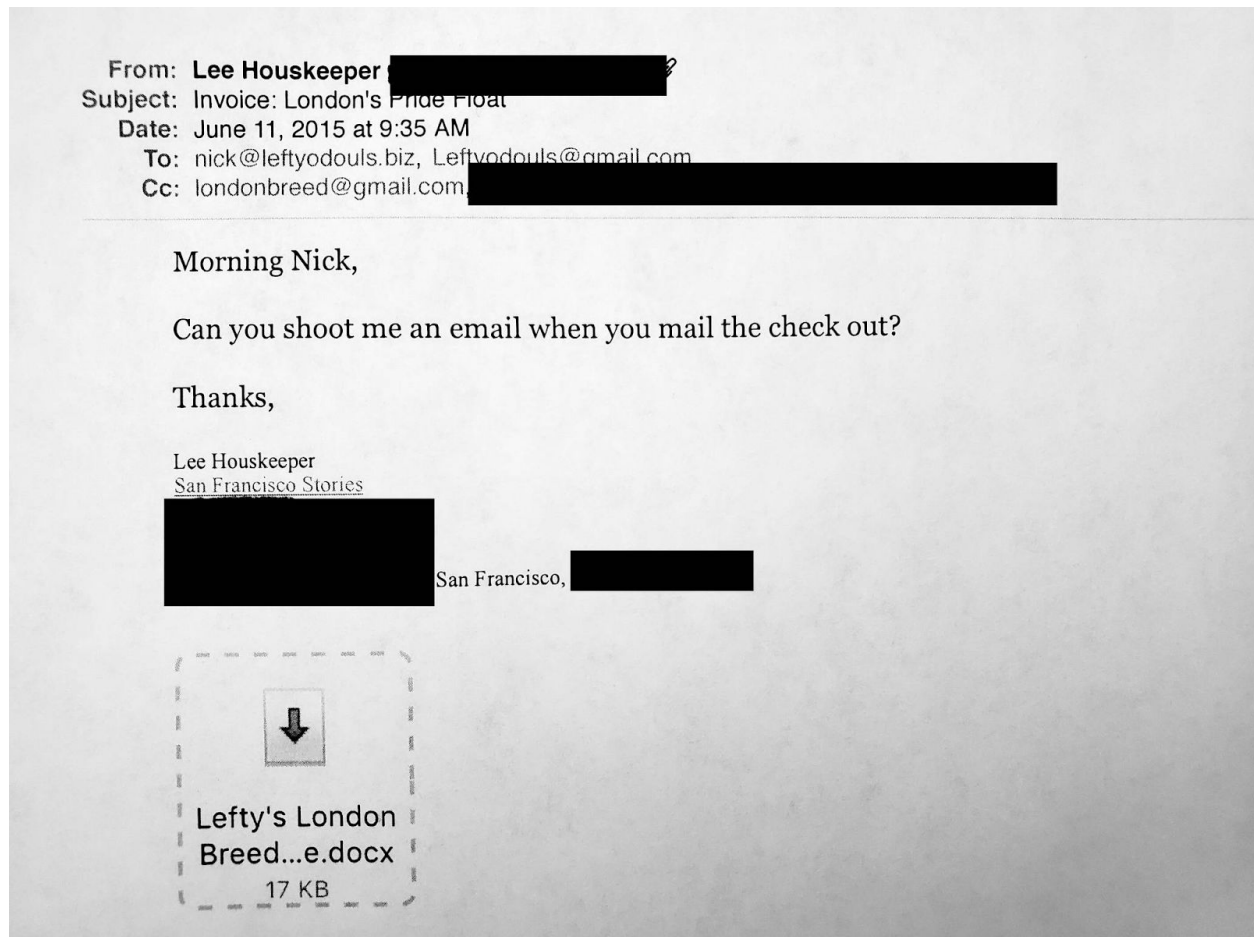
Jeff Cretan, communications director for Mayor Breed, made the following statement in a public record to a journalist investigating Breed's connections to the Nuru scandal (emphasis added):

From: Cretan, Jeff (MYR)  
Sent: Tuesday, February 18, 2020 4:51:02 PM  
To: Joe Fitzgerald Rodriguez <joe@sfmediaco.com>  
Subject: Behest Payments

This was five years ago, and we are still looking into this. Generally, taking part in Pride is a **governmental purpose**, so any requests for funds to help pay for participation in the parade would have been subject to the behest payment rules. The amount suggested on this invoice would have been under the \$5000 behest payment reporting threshold in place at the time.

While this is a bizarre claim (see the records in Exhibit B, where London Breed is listed as a party explicitly “individually,” i.e. not in her public official capacity), now that Breed’s office has decided this purpose is “governmental” to benefit from behest payment rules, they’re stuck with that position, and the records are public records subject to the Sunshine Ordinance and CPRA.

On February 18, 2020, the SF Examiner published the following record<sup>1</sup>:



<sup>1</sup> “Emails reveal another FBI suspect may have given Mayor Breed a gift.” Retrieved July 4, 2020. <https://www.sfoxaminer.com/news-columnists/move-over-nuru-emails-reveal-another-fbi-suspect-may-have-given-mayor-breed-a-gift/>

1  
2 Note Mayor Breed's personal email address<sup>2</sup> being used (while she was a Supervisor) to conduct  
3 this purportedly governmental business. Supervisor's accounting records must be retained for at  
4 least 5 years: <https://index.sfgov.org/taxonomy/term/30> (of course, tax, campaign finance, and  
5 other laws may require longer retention if they apply).

## 6 **PART 1 - 2015 PARADE FLOAT INVOICE - FEB 20 and 25 REQUESTS**

7 On February 20, 2020, we requested from the Mayor's Office:

8 Jeff Cretan, Mayor Breed, and Office of Mayor,

9 Immediate Disclosure Request

10 Please immediately provide all records of communications between Jeff Cretan and  
11 Joe Fitz with the SF Examiner between Feb 14, 2020 and present.

12 Please immediately provide the statement referenced here:

<https://twitter.com/FitzTheReporter/status/1230261332370309121>

13 Please immediately provide the email shown by the SF Examiner here:

[https://2zwmzkbocl625qdrf2qqqfok-wpengine.netdna-ssl.com/wp-content/uploads/  
14 2020/02/20607505\\_web1\\_201902-sfe-ONGUARD-breedbovis\\_3.jpg](https://2zwmzkbocl625qdrf2qqqfok-wpengine.netdna-ssl.com/wp-content/uploads/2020/02/20607505_web1_201902-sfe-ONGUARD-breedbovis_3.jpg)

15 You must search personal accounts under City of San Jose v Superior Court.

16 Remember you claimed the pride float is a governmental purpose so the record is a  
17 public record.

18 Heckel replied on Feb 24, 2020:

19 Please see the attached records responsive to your request below. These are  
20 specifically responsive to the first and second items below. Regarding the third  
21 item, we have conducted a search in the Office of the Mayor, including of any  
22 relevant personal accounts used for city business, and we have not located a copy of  
23 that email.

24 The "third item" is for the SF Examiner-published pride float email invoice seen above. No  
25 records responsive to the third subrequest were provided.

26 Therefore we followed up on Feb 25, 2020:

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27 <sup>2</sup> This personal gmail address for Breed is also documented in other public records, such as pg 72 of  
28 <https://sfbos.org/ftp/uploadedfiles/bdsupvrs/communications/2013/130066.pdf>

1  
2 Immediate Disclosure Request

3  
4 Thank you for the PDF emails.

5 For #3, your denial is carefully worded ("relevant personal accounts used for city  
6 business"), so I am going to phrase my request in a way that avoids any  
7 wiggle-room:

8 4. all emails in the thread "Invoice: London's Pride Float" (i.e. with that subject or  
9 its replies or forwards) from the account londonbreed at gmail dot com , as  
10 purported to exist here:

11 [https://2zwmzkbocl625qdrf2qqgfok-wpengine.netdna-ssl.com/wp-content/upload](https://2zwmzkbocl625qdrf2qqgfok-wpengine.netdna-ssl.com/wp-content/uploads/2020/02/20607505_web1_201902-sfe-ONGUARD-breedbovis_3.jpg)  
12 [s/2020/02/20607505\\_web1\\_201902-sfe-ONGUARD-breedbovis\\_3.jpg](https://2zwmzkbocl625qdrf2qqgfok-wpengine.netdna-ssl.com/wp-content/uploads/2020/02/20607505_web1_201902-sfe-ONGUARD-breedbovis_3.jpg) - You  
13 have stated this is a governmental purpose so if it exists, it must be provided.

14 5. all emails in the thread "Invoice: London's Pride Float" (i.e. with that subject or  
15 its replies or forwards) from any London Breed SFGOV email account - You  
16 have stated this is a governmental purpose so if it exists, it must be provided.

17 NOTE: Supervisors must retain accounting records for ~5 years. 5 years would be  
18 June 2020. <https://index.sfgov.org/taxonomy/term/30>

19 Either the answer is you have responsive records or you don't. A denial that isn't  
20 clear will be appealed. This should plainly be answerable in an IDR.

21  
22 This request was also denied on Feb 25, 2020 by Heckel:

23 We have performed a search, including a San Jose search, for the email you  
24 originally requested with the subject line "Invoice: London's Pride Float", and for the  
25 related emails sought in items 4 and 5 below. We have not located any responsive  
26 records.

27 **Relief requested, part 1**

28 Please:

- 29 1. determine the invoice and email of the 2015 thread "Invoice: London's Pride Float" a  
30 public record, and order disclosure of the same by London Breed, via her personal email  
31 address [londonbreed@gmail.com](mailto:londonbreed@gmail.com) , and
- 32 2. find Breed in violation of SF Admin Code 67.21(b) for refusing to provide records she has  
33 custody of from her personal account pursuant to *City of San Jose v Superior Court (2017)*,  
34 and/or,

- 1
- 2
- 3 3. find Breed in violation of SF Admin Code 67.29-7(a) for failing to maintain, preserve, and
- 4 disclose her correspondence if she failed to retain the record (Breed was required to retain
- 5 the records for at least 5 years and Feb 25, 2020 was within 5 years of June 11, 2015).

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## **PART 2 - OTHER PARADE FLOAT RECORDS - FEB 21 REQUEST**

On February 21, 2020, we requested from the Mayor's Office:

Immediate Disclosure Request for all records ever retained by London Breed or her staff for any parade float. You must search personal accounts under City of San Jose v Superior Court.

Remember you claimed the pride float is a governmental purpose so these records are a public record.

On Feb 23, 2020, Hank Heckel declared non-IDR deadlines. On March 2, 2020 Heckel declared an extension until March 16. See Exhibit A. We voluntarily waived (solely) the timeliness requirements for the request until June 5, 2020. On June 5 (still within 5 years of the June 11, 2015 invoice email), Heckel provided the records in Exhibit B with the following explanation (which accounts for Heckel's corrected explanation on June 6):

Please see the attached records responsive to your request below. Please note that personal contact information in the email addresses and footers has been redacted to avoid an unwarranted breach of personal privacy. See Cal. Govt. Code Secs. 6254(c), California Constitution, Art. I, Sec. 1. All other redactions have been applied to communications withheld pursuant to the attorney/client privilege. See Gov't Code § 6254(k); Evidence Code § 954; Admin. Code § 67.21(k).

### **A. Remaining records must be turned over**

First, London Breed and her staff must turn over all remaining responsive records. See argument in Part 1.

### **B. City employees conducted public business on personal accounts, so email addresses cannot be redacted, Gov Code 6254.3(b)(1)**

We dispute the redaction of the email addresses of Hank Heckel, Andrea Bruss, and Marjan Philhour. As the Mayor's Office has itself claimed, the Mayor's float is a governmental purpose, and the use of the Mayor's staff in managing the float is thus the conduct of public business. If the redacted email addresses are personal, they were used to conduct public business for 2018, 2019, and 2020 - these are not one-off mistakes, this is a pattern of conduct (compare to SOTF 19091 where SOTF did not order unredacted Philhour's email address because it was seemingly for only

one public record thread). One wonders why Breed's tax-paid public employees used solely their personal email accounts to negotiate a contract with a "governmental purpose," other than to attempt to hide them from disclosure as public records. Therefore, these email addresses may not be withheld pursuant to GC § 6254.3(b)(1):

(b) (1) Unless used by the employee to conduct public business, or necessary to identify a person in an otherwise disclosable communication, the personal email addresses of all employees of a public agency shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as specified in paragraphs (1) to (4), inclusive, of subdivision (a).

**C. Attorney client privilege has been waived, if it applied at all, Evid Code 912**

We also dispute all of the attorney/client privilege redactions. The A/C privilege is not applicable for the blocks of text redacted on Ex B pages 13, 14, 15, 16, 17, 19, 42, 44, 45.

- First, it appears these supposedly privileged communications were shared with multiple parties including the opposing counterparties on the drafts and agreements; thus any privilege if it ever existed was already waived, Evidence Code § 912.
- Second, if the attorney whose communications are at issue is Heckel and he is communicating with client Breed, Heckel previously represented in writing on October 10, 2019 to us that he does not serve as an attorney for Mayor London Breed in her individual or official capacities, nor for the City and County of San Francisco.

**Relief requested, part 2**

Please:

- Determine all records ever retained by London Breed or her staff for any parade float to be public records, and order disclosure (including by un-redaction) of the same by London Breed and her staff, via both their government and personal accounts, and
- find Breed, Heckel, and the Mayor's Office in violation of SF Admin Code 67.21(b), 67.26, and/or 67.27.

**PART 3 - MESSAGES WITH OTHER PUBLIC OFFICIALS**

On June 3, 2020 we made a request from [94337-59687203@requests.muckrock.com](mailto:94337-59687203@requests.muckrock.com) for email, text, and chat messages on government and personal property (subject to City of San Jose v Superior Court (2017)) of communications between various Mayor's Office staff and other public officials, between May 25, 2020 and June 2, 2020 (see Exhibit C). As of June 27 (24 days afterward, including both the 10 day and 14 day extension period), no records had been provided, no legal justification for withholding had been provided, and no notice of determination whether or not responsive records exist and are disclosable had been provided.

**Relief requested, part 3**

Please:

- determine the records are public and order disclosure of the same by London Breed and her staff, via both their government and personal accounts, and
- find the Mayor's Office in violation of SF Admin Code 67.21(b) and/or CPRA Govt Code 6253(c).

Sincerely,

Anonymous