

IN THE SAN FRANCISCO
SUNSHINE ORDINANCE TASK FORCE

Anonymous

v.

Paul Henderson, Diana Rosenstein,
Department of Police Accountability

Sunshine Ordinance Petition and
Complaint

Nov. 27, 2019

SOTF No.

FIRST AMENDED AND RESTATED COMPLAINT¹

I allege Respondents failed to respond to a request for public records in a timely or complete manner, failed to respond to an IDR for public records in a timely or complete manner and failed to assist in a timely or complete manner. This is about 2 requests.

FACTS OF THE CASE

I made an IDR public records request to DPA and Executive Director Paul Henderson under the CPRA and Sunshine Ordinance on November 14, 2019, requesting various records requests that DPA had made to SFPD. I also made a 7-day request under SFAC 67.21(c) for quantity, form, and nature of responsive records. Respondents acknowledged the request on Nov. 14 and asserted a non-IDR timeline. However, they failed to provide the 7-day statement by Nov. 21, nor did they assert a 14-day extension by the 10-day deadline of Nov. 24. (Appendices 1 and 2).

Furthermore, I made a separate IDR and non-IDR on November 23, 2019. As of November 27, 2019 no response to the IDR at all had been received (Appendix 3).

ALLEGATIONS

1. Violations of SF Admin Code 67.21(c) - failure to assist in a timely or complete manner

I made a request for a statement under SF Admin Code 67.21(c) on Nov. 14. Because 67.21(c) dictates a seven day deadline for this statement, without any extensions, Respondent's failure to provide any such statement by Nov. 21 is unlawful.

¹ I filed this complaint originally on Nov. 27. Realizing that I had two requests outstanding to the DPA, I withdrew the original complaint and refiled this single combined amended complaint for both requests in order to conserve SOTF resources.

2. Violations of SF Admin Code 67.21(b)/67.25 - incomplete or untimely response

Because the Respondents asserted a non-IDR timeline, a substantive response OR a notice of 14-day extension was due in 10 days on Nov. 24. No response was received by Nov. 27. The law requires rolling responses if requested. I requested a rolling response. No records have been provided to us.

On the 2nd request, an IDR and non-IDR was made on Nov. 23. The Respondent was required to respond in some fashion by Tuesday Nov. 26 (since Nov 23 was a Saturday). No response has been received by Nov. 27.

3. Violations of SF Admin Code 67.26, 67.27 - more than minimal withholding, failure to cite justification for withholding with clear reference to statute or case law

Because no records have been provided as of this complaint, but records may be provided after filing the complaint but before SOTF judges the complaint, I reserve the right to allege withholding public parts of records without justification.

REQUEST FOR RELIEF

Please find that the Respondents violated SF Admin Code sections 67.21, 67.25, 67.26, and/or 67.27, determine that some or all of the records or portions thereof withheld or not yet disclosed are public, and issue all appropriate orders.

Respectfully submitted,

ANONYMOUS

Complainant/Petitioner

APPENDIX 1 -
Nov. 14, 2019 request

Immediate Disclosure Request - DPA Records

Sent: **Thursday, November 14, 2019 12:22 PM**

From: **Anonymous arecordsrequestor@protonmail.com**

To: **paul.henderson@sfgov.org paul.henderson@sfgov.org**

DPA and Executive Director Paul Henderson,

This is an Immediate Disclosure Request under the Sunshine Ordinance and CPRA to the above-named agencies and individuals:

1. The 303 document requests made by DPA to SFPD in 2019 third quarter (the "Requests" described in Para 2 here:
https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/PoliceCommission111319-DPA_SFPDProtocolReport3rdQ2019.pdf), including all emails, letters, memos, orders, attachments, exhibits, all in their original electronic format or in .EML or in .MSG format, including all non-exempt metadata and headers. Printing and scanning of electronic records will be appealed.
2. Every response received by DPA from SFPD to the Requests including but not limited to the 6 untimely responses and the 4 denials, including all emails, letters, memos, orders, attachments, exhibits, all in their original electronic format or in .EML or in .MSG format, including all non-exempt metadata and headers. Printing and scanning of electronic records will be appealed.
3. Every record received in response to each of the Requests, including all emails, letters, memos, orders, attachments, exhibits, all in their original electronic format or in .EML or in .MSG format, including all non-exempt metadata and headers. Printing and scanning of electronic records will be appealed.

Please provide only those requests without fees.

Provide requests in rolling fashion.

Justify each and every withholding or redaction with clear reference to statute or case law.

Please provide records via email or publish them publicly to your website.

All records your agency retained, owned, used, or prepared are public records under the CPRA that you must disclose unless explicitly exempt, even if they are communications of records of other agencies as well.

This is also a SFAC 67.21(c) request for a statement for the nature, quantity, and form of all records responsive to 1, 2, or 3, including purportedly exempt records, which must be answered in 7 days without extensions.

All violations of the Sunshine Ordinance will be immediately appealed to the SOTF, Supervisor of Records, and/or Superior Court.

NOTE: Nothing herein is legal, IT, or professional advice of any kind. 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 public records.

Sincerely,

Anonymous

APPENDIX 2 –
Sole Nov. 14, 2019 DPA letter

Immediate Disclosure Request - DPA records

Received: **Thursday, November 14, 2019 2:11 PM**

From: **Rosenstein, Diana (DPA)** diana.rosenstein@sfgov.org

To: **arecordsrequestor@protonmail.com arecordsrequestor@protonmail.com**

Dear Record Requestor,

We received your emailed request, dated November 14, 2019, for immediate disclosure of the following records:

1. The 303 document requests made by DPA to SFPD in 2019 third quarter (the "Requests" described in Para 2 here:

https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/PoliceCommission111319-DPA_SFPDProtocolReport3rdQ2019.pdf), including all emails, letters, memos, orders, attachments, exhibits, all in their original electronic format or in .EML or in .MSG format, including all non-exempt metadata and headers. Printing and scanning of electronic records will be appealed.

2. Every response received by DPA from SFPD to the Requests including but not limited to the 6 untimely responses and the 4 denials, including all emails, letters, memos, orders, attachments, exhibits, all in their original electronic format or in .EML or in .MSG format, including all non-exempt metadata and headers. Printing and scanning of electronic records will be appealed.

3. Every record received in response to each of the Requests, including all emails, letters, memos, orders, attachments, exhibits, all in their original electronic format or in .EML or in .MSG format, including all non-exempt metadata and headers. Printing and scanning of electronic records will be appealed.

We cannot treat this as an immediate disclosure request because it is not, "simple, routine, or otherwise readily answerable request." Admin. Code 67.25(a). Rather, it is e extensive, demanding, and voluminous. Thus, the maximum deadlines under the Public Records Act and the Sunshine Ordinance for responding to a request apply. Admin. Code § 67.25(a).

Thank you,

Diana Rosenstein

Attorney

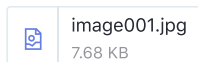


(T) 415-241-7750

(F) 415-241-7733

<http://sfgov.org/dpa/>

This communication, along with any attachments, is covered by federal and state laws governing electronic communications and may contain confidential and legally provided information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use, or copying of this message is strictly prohibited. If you have received this communication in error, please reply immediately to the sender and/or delete this message. Thank you.



APPENDIX 3

Nov. 23, 2019 request (no response received)

Paul Henderson and DPA,

** Note that all of your responses (including disclosed records) may be automatically and instantly available to the public on the [MuckRock.com](https://muckrock.com) FOIA web service used to issue this request (though I am not a MuckRock representative). Redact your responses correctly - once you send them to us there is no going back. **

This is a new Immediate Disclosure Request under the San Francisco Sunshine Ordinance and the CPRA, made on November 23, 2019, to Paul Henderson as an individual custodian of public records and to the Department of Police Accountability as a public agency.

Of the requests below, four (1a, 6, 8, and 9) are being made as immediate disclosure requests, and the others under regular Sunshine deadlines. Because you are specifically required to keep and disclose an SFAC 67.29-5 (aka "Prop G") calendar, you must be able to provide at least that immediately.

This is also an SFAC 67.21(c) request for statements of quantity, nature, existence, and form (even if content is exempt) for each of #1a,b,c, 2, 3, 4a,b,c,d, 5,6,7,8,9 -- you must provide these statements within 7 days without any form extension. For the quantity of #1, I am asking for the the number of events/meetings, each of which is a record being requested.

All records must be provided in rolling fashion (SFAC 67.25). If you use a web portal, you must publish all records open without login or terms and conditions; or you may provide records as attachments. You may not impose any conditions on me beyond than those of the CPRA (including any conditions that I must use a private entity's website which imposes terms and conditions).

Please read carefully the exact wording of my request. Please follow the Sunshine Ordinance and CPRA precisely as I am auditing your agency's public records regimen. As the City is aware, every violation of the Sunshine Ordinance or CPRA will be appealed immediately, including:

- any untimely or incomplete response, failure to provide records in a rolling fashion as soon as they are available, or failing to indicate whether you have responsive records or not for each request and whether you withheld any records for each request (SFAC 67.21, 67.25, Gov Code 6253(c)),
- withholding more than the minimum exempt portion of any record (SFAC 67.26),
- failure to justify with "clear reference" to an exemption statute or case law for each and every redaction or withholding, including any so-called 'metadata' (SFAC 67.26, 67.27),
- failure to provide "exact copies" of records (Gov Code 6253(b)),
- failure to provide the "electronic format in which [you] hold[] the information" (Gov Code 6253.9),
- failure to provide any "easily generated" format that we requested (SFAC 67.21(l)),
- refusing to provide the quantity of exempt records (SFAC 67.21(c)),
- redacting or withholding information whose exemption you have already waived by producing it to the public before (Gov Code 6254.5).

Definitions:

"Department Head" is Paul Henderson.

"Other Individual Custodians" is all Operations Manager(s), Sarah Hawkins, Diana Rosenstein, Tinnetta Thompson, Stephanie Wargo-Wilson, Susan Gray, and Brent Begin.

"Selected Custodians" is the Department Head and Other Individual Custodians.

"Communication Apps" is EACH of: text/SMS/MMS messaging, WhatsApp, Twitter, Instagram, Signal, Facebook, Facebook Messenger, Google Hangouts, Google Talk, Microsoft Teams, Microsoft Lync, Skype, WeChat, QQ, Telegram, Discord, and any other chat or instant messaging application.

Please provide:

1a) IMMEDIATE DISCLOSURE: an electronic copy of all of the department head's calendars or schedules, with each and every event/items, from Oct 15 to Nov 15, 2019 (inclusive). Calendar items must include (but are not limited to): the exact start and end time of the meeting, the location, the title, all invitees and whether they accepted or not, description/body, attachments, inline images, if they exist in the record. We are specifically requesting ALL calendar/scheduling items, each individually, for the department head, whether the department head themselves possesses these records or their staff, whether they are "Prop G" calendars or not, and whether they are on a computer or in physical form (such as a diary, a physical calendar on a wall, etc.). You are welcome to virtually print/export each item directly to .PDF form in Outlook and redact them. Do not provide a mere summary view of the calendar daily, weekly, or monthly views - we need each and every meeting item's detailed view. Do not cutoff information like long text that does not fit on the screen - that would be unjustified withholding. In order to ensure immediacy of disclosure, in this and only this request, .ics format and headers are NOT specifically requested (though you are welcome to provide them if it can be provided immediately). Do NOT physically print and re-scan records. This request specifically includes your Prop G/Sec 67.29-5 calendars and also any other calendar record your agency retained, owned, used, or prepared, pursuant to the CPRA. Even if you are purportedly unable to provide your non-Prop G calendars immediately, you must provide your Prop G calendars immediately since 67.29-5 requires you make them available 3 business days after the calendar date, and that last requested date is Nov. 15. All calendars, whether Prop G/67.29-5 or not, that your agency prepared, owned, used, or retained re: the public's business are public records (see SOTF Order 19047; Sup. of Records response of Sept. 6; and Good Government Guide).

1b) REGULAR DISCLOSURE: an electronic copy of all of the department head's prospective/expected calendars or schedules, with all expected events/items, from Nov. 30 to Dec 31, 2019 (inclusive). Calendar items must include (but are not limited to): the exact start and end time of the meeting, the location, the title, all invitees and whether they accepted or not, description/body, attachments, inline images, if they exist in the record. We are specifically requesting ALL calendar/scheduling items, each individually, for the department head, whether the department head themselves possesses them or their staff, whether they are labeled "Prop G" or not, and whether they are on a computer or in physical form (such as a diary, a physical calendar on a wall, etc.). You are welcome to virtually print/export each item directly to .PDF form in Outlook and redact them. Do not provide a mere summary view of the calendar daily, weekly, or monthly views - we need each and every meeting item's detailed view. Do not cutoff information like long text that does not fit on the screen - that would be unjustified withholding. In order to ensure immediacy of disclosure, in this and only this request, .ics format and headers are NOT specifically requested (though you are welcome to provide them if it can be provided immediately). Do NOT physically print and re-scan records. This request specifically includes your Prop G/Sec 67.29-5 calendars and also any other calendar record your agency retained, owned, used, or prepared, pursuant to the CPRA.

1c) REGULAR DISCLOSURE: the original electronic format (Gov Code 6253.9) OR an export in the "easily generated" .ICS/iCalendar format (SFAC 67.21(l)) of all records responsive to 1a and 1b. If you choose to provide records in these formats already in 1a and 1b then you do not need to provide them here.

2. REGULAR DISCLOSURE: If the department head or any of the department head's staff uses any invitation/guestlist tracking systems on behalf of the department head (such as Outlook's invite mechanism OR regular emails), such items are included within the scope of this request #2, for the date ranges in #1. In order to ensure rapid disclosure, in this and only this request, metadata is not specifically requested (though you are welcome to provide them if it can be provided rapidly). This includes any messages of accepting or denying a meeting invite or the department head sending out meeting invites (or any staff doing so on their behalf).

3. REGULAR DISCLOSURE: Furthermore, I request that a City of San Jose v Superior Court (2017) search be performed of the department head, their senior-most deputy, their chief of staff (or equivalent), and all personal/secretarial/administrative assistants, such that each such official either provide all records responsive

to #1a, #1b, and #2 that are present on their personal accounts/devices/property (solely to the extent the record or portion thereof relates to the public's business), or provide a declaration/affidavit that no such records exist. All such affidavits are also requested. In order to ensure rapid disclosure, in this and only this request, particular formats and metadata are NOT specifically requested (though you are welcome to provide them if it can be provided rapidly).

4a) REGULAR DISCLOSURE: The most recent 10 emails sent by, the most recent 10 emails received by, and the most recently created 10 emails in the Draft folder of each of the Selected Custodians' government email accounts, with all headers, metadata, attachments (in their own original electronic format), sent and received timestamps, From/To/Cc/Bcc email address, body, formatting, hyperlinks, and included images. You may provide direct EML, MSG, or PDF exports preserving all non-exempt information as long as you do not print and scan electronic record and all non-exempt information in each email is preserved.

4b) REGULAR DISCLOSURE: the original electronic format (Gov Code 6253.9) OR an export in the "easily generated" .MSG or .EML format (SFAC 67.21(l)) of all records responsive to 4a. If you choose to provide records in these formats already in 4a then you do not need to provide them here.

4c) REGULAR DISCLOSURE: The most recent 10 emails related to public business sent by, the most recent 10 emails related to public business received by, and the most recently created 10 emails related to public business in the Draft folder of each of the Selected Custodians' PERSONAL email accounts (subject to a City of San Jose v Superior Court (2017) search) in any electronic format easily generated.

4d) REGULAR DISCLOSURE: The most recent 10 conversations in *each* of the Communication Apps of each of the Selected Custodians' government accounts. Provide messages, all to/from/timestamp information, all attachments, and all embedded images/files.

4d) REGULAR DISCLOSURE: The most recent 10 conversations related to public business in *each* of the Communication Apps of each of the Selected Custodians' PERSONAL accounts (subject to a City of San Jose v Superior Court (2017) search). Provide messages, all to/from/timestamp information, all attachments, and all embedded images/files.

5. REGULAR DISCLOSURE: Provide every version, incl. all tracked changes, of every draft, proposed or final policy, memo, or order regarding SB 1421 police misconduct records disclosures.

6. IMMEDIATE DISCLOSURE: Current org chart and staff directory with name, email, and title

7. REGULAR DISCLOSURE: The last 10 public records requests received by DPA (not including this one), and all internal communication (within DPA or between DPA and any city official or employee) regarding those requests, and all external communication (including your responses and all responsive records) to or from the requestor for those requests. You may provide PDFs as long as you do not print and scan electronic records.

8. IMMEDIATE DISCLOSURE: any log, spreadsheet, or tracking mechanism used to manage Public Records requests, showing requests from Jan 1 2019 to present.

9. IMMEDIATE DISCLOSURE: the last 10 record responses DPA has provided for SB 1421 police misconduct responses. Since you should not redact more information for me than you have provided any other member of the public (Gov Code 6254.5), you should be able to immediately provide these.

Please provide only those copies of records available without any fees. If you determine certain records would require fees, please instead provide the required notice of which of those records are available and non-exempt for inspection in-person if we so choose.

I look forward to your immediate disclosure.

Sincerely,
Anonymous