

IN THE SAN FRANCISCO
SUNSHINE ORDINANCE TASK FORCE

Anonymous

v.

Sgt. Brian Rodriguez #4075, Sgt. Michael
Andraychak #457, Chief William Scott,
Police Department

Sunshine Ordinance Petition and
Complaint

SFPD #P010029-120419

Dec. 4, 2019

SOTF No.

COMPLAINT¹

I allege Respondents responded to an IDR in an untimely manner (SFAC 67.25), responded incompletely (SFAC 67.21), and that documents have been withheld in full without clear reference (SFAC 67.26), to statute or court case that exempts the records (SFAC 67.27). I also allege that respondents failed to disclose and maintain and preserve in a professional and businesslike manner all documents and correspondence (SFAC 67.29-7(a)) - such allegation is made solely against Chief Scott as the department head.

KEY (NON-EXCLUSIVE) LEGAL QUESTIONS²

1. When a City (SFPD) employee is also detailed to and/or jointly works with a non-City agency, are the records of that City employee's work a "public record" or "public information" under the CPRA and/or Sunshine Ordinance?
2. Does the above determination depend on whether the City employee stores that record on a non-City-owned account?

FACTS OF THE CASE

I made an IDR public records request (Exhibit A) on Dec. 2 to Sgt. Brian Rodriguez #4075's SFGOV email address as an individual custodian of public records (i.e. his own emails) under the Sunshine Ordinance and SFPD as a local agency under CPRA, requesting specific email threads (re: forensic analysis of the seized property of the journalist raided by SFPD,

¹ SFPD designated this request P010029-120419; it is one of two distinct requests made from 84031-44127205@requests.muckrock.com . This is not about the other request, which may be subject to other complaints.

² These are merely the most important parts of the complaint but they DO NOT LIMIT the complaint itself, which is more fully specified in the entirety of the complaint.

Bryan Carmody) involving Sgt. Rodriguez from three different government email accounts known to belong to Sgt. Rodriguez.

It is believed from a distinct, prior SFPD records disclosure (Exhibit B) that Sgt. Rodriguez authored and sent a specific email message regarding city business (asking for an opinion regarding continued forensic analysis) using a non-City email address: brodriguez@rcfl.gov, which he then sent to other City employees on their SFGOV email addresses. Sgt. Rodriguez signed the email in question as follows (excerpt from Exhibit B):

Sgt. Brian Rodriguez # 4075
San Francisco Police Department
Deputy Director / TFO - Silicon Valley Regional Computer Forensics Laboratory
Desk Phone (650) 289-3012 / Cell Phone (415) 971-7223
brodriguez@rcfl.gov / brian.rodriguez@sfgov.org / brodriguez@fbi.gov

It is further believed he may have received responses from City employees to his own non-City email addresses, or sent further emails on the requested threads from the non-City email addresses. It is further believed from these same records that Sgt. Rodriguez is somehow detailed to or jointly works with the Regional Computer Forensics Laboratory (RCFL) and/or the FBI and stores emails regarding the public's business on one or more of his three email accounts. See regarding the RCFL's description³ of itself:

Employment Opportunities FAQ's

How can I apply for a position with an RCFL?

The RCFL is a cooperative partnership where law enforcement agencies detail individuals to work on a full time basis. The RCFL does not hire individuals to work in these digital evidence laboratories. Individuals who are employed by one of the Participating Agencies are eligible to apply for a position within the RCFL. Candidates are nominated by their agency with the understanding that they will detail the candidate for a specific time period (usually two years). If someone is interested in joining an RCFL, they should first seek career opportunities with the Participating Agencies at the [nearest RCFL](#).

ALLEGATIONS

1. Violations of SF Admin Code 67.25 - untimely IDR response

I emailed the IDR on Dec. 2. I should have received a response Dec. 3, the next business day. I did not. Later, I reminded SFPD of the lack of response. Sgt. Andraychak then responded on behalf of the Respondents on Dec. 4 acknowledging the request, and then later (Exhibit C) the same day declared no responsive records, and referred me to the FBI/RCFL.

³ <https://web.archive.org/web/20191205214226/https://www.rcfl.gov/frequently-asked-questions>

2. Violations of SF Admin Code 67.21 - incomplete response

I allege that when Respondent Rodriguez sent or received emails re: public business on any email account, those emails are public records. The fact that Respondent uses a non-City email address to conduct public business should not be relevant.

City of San Jose (Smith, 2017), ruling that public employees' storage of records about the conduct of public business *on personal property* does not exclude them from being public records is suggestive, but is not directly on point. Prior SOTF Order 19017 determining the SFPD's JTTF whitepaper to be public (which was supposedly "loaned" by the FBI) is also suggestive, but not directly on point. By analogy, I argue that records written by or received by a City employee, regarding City business, but *merely stored on non-City, but government property*, does not exclude those records from the definition of a "public record" or "public information" under the CPRA or Sunshine Ordinance, and they must be turned over.

I do not believe Respondent Rodriguez (the individual custodian) or the SFPD (as the agency) have ever actually conducted a search of his non-sfgov.org accounts. Under SFAC 67.21, Sgt. Rodriguez is responsible for doing so; he clearly has access to these emails and must produce them.

Another way to look at it is: are the emails requested prepared, owned, retained, or used by the SFPD? At the very least, they were "prepared" and "used" by an SFPD employee (Rodriguez) which must impute to the SFPD itself.

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

No exemption justification to statute or case law has been cited as to why the email messages requested, sent or received by a City employee, would be exempt in their entirety. To be clear, the mere reference to "FOIA" does not constitute an *exemption* statute. It is possible that Respondents may in the future assert Govt Code 6254(f) re: an open investigation, but given that part of this thread was already published pursuant to a different SFPD public records request, this seems unlikely. Regardless, they did not Govt Code 6254(f) or any other exemption prior to the complaint being filed. **cite**

4. Violations of SF Admin Code 67.29-7(a) - disclose and maintain and preserve in a professional and businesslike manner all documents and correspondence

If you find violations of Allegations #1, #2, and #3, and Respondents do turn all of the requested records over, you do not need to reach this Allegation #4. However, if you find that Sgt. Rodriguez's business-related emails stored on non-City email addresses are in fact beyond the reach of disclosure for whatever reason, then you should find instead a violation

by Chief Scott of SFAC 67.29-7(a) because a member of his department, Sgt. Rodriguez, has then failed to maintain/preserve (and disclose) those emails.

REQUEST FOR RELIEF

Please find that the Respondents violated SF Admin Code 67.21, 67.25, 67.26, 67.27, and/or 67.29-7(a), determine that some or all of the records or portions thereof withheld or not yet disclosed are public records, and issue all appropriate orders. Given that these records would go to the heart of the potentially inappropriate involvement of the FBI in the Carmody raid, these records are of the highest public interest and I urge you to investigate and order their disclosure without undue delay.

Respectfully submitted,

ANONYMOUS
Complainant/Petitioner

EXHIBIT A - Dec. 2 Request

Sgt. Brian Rodriguez #4075 and the SFPD,

** NOTE: Please redact all responses correctly! This is a public email mailbox, and all of your responses (including disclosed records) may be automatically and instantly available to the general public on the [MuckRock.com](https://www.muckrock.com) FOIA service used to issue this request (though I am not a MuckRock representative). Once you send records or reply emails to us, there is no going back.
**

You, as an individual custodian of public records under the SF Sunshine Ordinance, and the SFPD, as a local agency under the California Public Records Act, are being requested to disclose copies of public records under an Immediate Disclosure Request. This request is NOT made pursuant to the federal FOIA. This request is NOT identical to the request made originally to SFPD Legal - each of the requests must be responded to separately.

Do not provide copies requiring fees - instead for fee-based copies provide the required notice of which documents are available for in-person inspection.

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)),
- unlawful use of the exemptions prohibited by SFAC 67.24, including but not limited to GC 6255, any public interest balancing test,
- redacting or withholding information whose exemption you have already waived by producing it to the public before (Gov Code 6254.5).

SFPD previously published as a public record a part of an email thread:

From: Brian Rodriguez
Sent: Tuesday, May 28, 2019 10:26 AM
To: Obidi, Joseph (POL)
Cc: Torres, Pilar (POL); Braconi, William (POL); Kwok, Sherman (SF) (FBI); Penni Price
Subject: 190149152 / Carmody / SVRCFL Lab # SV-19-0033

This is an Immediate Disclosure Request for the following. This is also a request for a distinct SFAC 67.21(c) statement (due in 7 days, without extensions) for quantity, nature, form, and existence of records responsive to each of the below requests, whether or not you consider their contents exempt.

1. All messages in the thread "190149152 / Carmody / SVRCFL Lab # SV-19-0033" including all replies and forwards and the original email in the email account brodriguez@rcfl.gov - Provide them either as a PDF format or .EML or .MSG formats. You must include all attachments, email addresses, formatting, images, and hyperlinks. If you print and scan these documents instead of directly converting them in electronic form, they will be appealed as a failure to provide an exact copy or withholding metadata without justification. We expect you, as an employee of SFPD and subject to the Sunshine Ordinance, should provide ALL of your records whether or not they are stored on SFPD, FBI, or RCFL systems.

2. All messages in the thread "190149152 / Carmody / SVRCFL Lab # SV-19-0033" including all replies and forwards and the original email in the email account brian.rodriguez@sfgov.org - Provide them either as a PDF format or .EML or .MSG formats. You must include all attachments, email addresses, formatting, images, and hyperlinks. If you print and scan these documents instead of directly converting them in electronic form, they will be appealed as a failure to provide an exact copy or withholding metadata without justification. We expect you, as an employee of SFPD and subject to the Sunshine Ordinance, should provide ALL of your records whether or not they are stored on SFPD, FBI, or RCFL systems.

3. All messages in the thread "190149152 / Carmody / SVRCFL Lab # SV-19-0033" including all replies and forwards and the original email in the email account brodriguez@fbi.gov - Provide them either as a PDF format or .EML or .MSG formats. You must include all attachments, email addresses, formatting, images, and hyperlinks. If you print and scan these documents instead of directly converting them in electronic form, they will be appealed as a failure to provide an exact copy or withholding metadata without justification. We expect you, as an employee of SFPD and subject to the Sunshine Ordinance, should provide ALL of your records whether or not they are stored on SFPD, FBI, or RCFL systems.

Sincerely,
Anonymous

EXHIBIT B pg 1 - Excerpt of prior disclosure in a **different** records request (P8985 - responsive 4.pdf) that provides evidence for existence of the records requested in **this** case

From: [Torres, Pilar \(POL\)](#)
To: [Moser, Bob \(POL\)](#)
Cc: [Obidi, Joseph \(POL\)](#)
Subject: Fw: 190149152 / Carmody / SVRCFL Lab # SV-19-0033
Date: Tuesday, May 28, 2019 10:49:48 AM

Chief Moser,

Can you provide some direction regarding Sgt. Rodriguez's email?

Also, there are other loose odds and ends that need to be addressed regarding Sgt. Obidi's case. We will not do anything further without your direction.

Thank you,

Lieutenant Pilar E. Torres #597
San Francisco Police Department
Investigative Services Detail
1245 3rd Street
San Francisco, Ca. 94158
Desk- 415.882.8425
Cell- 415.638.0366

From: Brian Rodriguez <brodriguez@rcfl.gov>
Sent: Tuesday, May 28, 2019 10:26 AM
To: Obidi, Joseph (POL)
Cc: Torres, Pilar (POL); Braconi, William (POL); Kwok, Sherman (SF) (FBI); Penni Price
Subject: 190149152 / Carmody / SVRCFL Lab # SV-19-0033

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Joe-

In light of all the stuff going on with this case, we have not gone any further with this first request with the two laptops. All that happened here is that I forensically imaged both laptops and Penni prepared to process them. We stopped once we heard the evidence was being picked up. As you know, all submitted evidence was returned to SFPD on 5/20/19. Nothing at all was done on the second request (SV-19-0033-2) with the tower PC and loose

EXHIBIT B pg 2 - Excerpt of prior disclosure in a **different** records request (P8985 - responsive 4.pdf) that provides evidence for existence of the records requested in **this** case

HDDs - a written report is forthcoming detailing that.

I do have a question on this first request (with the two laptops)...since I forensically imaged both laptops, we have a couple of options:

- 1) Close our exam (which hasn't really started) and return the master copy tape (containing the forensic images of the laptops) along with a written report in case you/someone wants to examine these laptops for evidence at a later date.
- 2) Close our exam (which hasn't really started) and DESTROY the master copy tape (containing the forensic images of the laptops), which means the laptops can never be examined unless they are seized from the subject again.
- 3) Hold - since we have forensic images of the two laptops (only) and wait for further instruction to possibly examine them.

Please advise!

Thanks!

B-Rod

Sgt. Brian Rodriguez # 4075
San Francisco Police Department
Deputy Director / TFO - Silicon Valley Regional Computer Forensics Laboratory
Desk Phone (650) 289-3012 / Cell Phone (415) 971-7223
brodriguez@rcfl.gov / brian.rodriguez@sfgov.org / bdrodriguez@fbi.gov

This communication contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents or attachments are not to be distributed outside your agency.

EXHIBIT C – Substantiative Response, Dec 4

Attention Anonymous:

You sent a request directly to Sgt. B. Rodriguez. In the future, please file your requests with the SFPD Legal Division.

With respect to this request, there are nor responsive documents in Sgt. Rodriguez's sfgov email account.

For fbi.gov or rcfl.gov emails, you will have to file a FOIA with the USDOJ/FBI. SFPD is not the custodian or records for these accounts.

Regards,

Michael Andraychak #457

Sergeant of Police

Officer in Charge - Media Relations Unit

San Francisco Police Department

1245 - 3rd Street, 6th Floor

San Francisco, CA 94158

(415) 837-7395

Regular Days Off: Fri, Sat, Sun

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

San Francisco Police Department

PRA Office

1245 3rd Street

SF, CA 94158

December 2, 2019

This is a follow up to a previous request:

Sgt. Brian Rodriguez #4075 and the SFPD,

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

You, as an individual custodian of public records under the SF Sunshine Ordinance, and the SFPD, as a local agency under the California Public Records Act, are being requested to disclose copies of public records under an Immediate Disclosure Request. This request is NOT made pursuant to the federal FOIA. This request is NOT identical to the request made originally to SFPD Legal - each of the requests must be responded to separately.

Do not provide copies requiring fees - instead for fee-based copies provide the required notice of which documents are available for in-person inspection.

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)),
- unlawful use of the exemptions prohibited by SFAC 67.24, including but not limited to GC 6255, any public interest balancing test,
- redacting or withholding information whose exemption you have already waived by producing it to the public before (Gov Code 6254.5).

SFPD previously published as a public record a part of an email thread:

From: Brian Rodriguez
Sent: Tuesday, May 28, 2019 10:26 AM
To: Obidi, Joseph (POL)
Cc: Torres, Pilar (POL); Braconi, William (POL); Kwok, Sherman (SF) (FBI); Penni Price
Subject: 190149152 / Carmody / SVRCFL Lab # SV-19-0033

This is an Immediate Disclosure Request for the following. This is also a request for a distinct SFAC 67.21(c) statement (due in 7 days, without extensions) for quantity, nature, form, and existence of records responsive to each of the below requests, whether or not you consider their contents exempt.

1. All messages in the thread "190149152 / Carmody / SVRCFL Lab # SV-19-0033" including all replies and forwards and the original email in the email account brodriguez@rcfl.gov - Provide them either as a PDF format or .EML or .MSG formats. You must include all attachments, email addresses, formatting, images, and hyperlinks. If you print and scan these documents instead of directly converting them in electronic form, they will be appealed as a failure to provide an exact copy or withholding metadata without justification. We expect you, as an employee of SFPD and subject to the Sunshine Ordinance, should provide ALL of your records whether or not they are stored on SFPD, FBI, or RCFL systems.

2. All messages in the thread "190149152 / Carmody / SVRCFL Lab # SV-19-0033" including all replies and forwards and the original email in the email account brian.rodriguez@sfgov.org - Provide them either as a PDF format or .EML or .MSG formats. You must include all attachments, email addresses, formatting, images, and hyperlinks. If you print and scan these documents instead of directly converting them in electronic form, they will be appealed as a failure to provide an exact copy or withholding metadata without justification. We expect you, as an employee of SFPD and subject to the Sunshine Ordinance, should provide ALL of your records whether or not they are stored on SFPD, FBI, or RCFL systems.

3. All messages in the thread "190149152 / Carmody / SVRCFL Lab # SV-19-0033" including all replies and forwards and the original email in the email account bdrodriguez@fbi.gov- Provide them either as a PDF format or .EML or .MSG formats. You must include all attachments, email addresses, formatting, images, and hyperlinks. If you print and scan these documents instead of directly converting them in electronic form, they will be appealed as a failure to provide an exact copy or withholding metadata without justification. We expect you, as an employee of SFPD and subject to the Sunshine Ordinance, should provide ALL of your records whether or not they are stored on SFPD, FBI, or RCFL systems.

Sincerely,

Anonymous

Filed via MuckRock.com

E-mail (Preferred): 84031-44127205@requests.muckrock.com

Upload documents directly: https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAIhqR2FqwIRG0aqqbkhsFkpyI%3A1ibt7D%3AP2a4YPmwpQ1aJ8w2aopctZkRtIs&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Fsan-francisco-police-department-367%252Fcarmody-forensics-emails-sfpd-immediate-disclosure-request-84031%252F%253Femail%253Dbrian.rodriguez%252540sfgov.org

san-francisco-police-department-367%252Fcarmody-forensics-emails-sfpd-immediate-disclosure-request-84031%252F%253Femail%253Dbrian.rodriguez%252540sfgov.org

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News

DEPT MR 84031

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On Dec. 2, 2019:

Subject: California Public Records Act Request: Carmody Forensics Emails (SFPD) - Immediate Disclosure Request

RE: Carmody Forensics Emails (SFPD) - Immediate Disclosure Request

To Whom It May Concern:

** NOTE: Please redact all responses correctly! This is a public email mailbox, and by replying, you will publish all of your responses (including disclosed records) automatically and instantly to the general public on the MuckRock.com FOIA service used to issue this request (though I am not a MuckRock representative). Once you send records or reply emails to us, there is no going back. **

SFPD previously published as a public record a part of an email thread (attached):