

IN THE SAN FRANCISCO
SUNSHINE ORDINANCE TASK FORCE

Anonymous

v.

Sheriff Vicki Hennessy, James Wilson,
Office of Sheriff

Complaint

Dec 18, 2019

SOTF No.

COMPLAINT
[SFAC 67.25, 67.27, 67.24]

I allege Respondents failed to respond to an immediate disclosure request in a timely and complete manner. I made on Dec 7, 2019 an IDR for the Sheriff's 1 week of past calendars, 1 week of future calendars, 10 govt emails, and 10 emails about public business from personal accounts (if any, subject to *City of San Jose*). I also requested rolling responses and exact copies on the same day. Response was due Dec. 10 (Tuesday) as all IDRs were deemed received no later than Dec. 9 (Monday). I reminded the Respondent on Dec. 14. They responded on Dec. 18 with no records but a letter.

Most egregiously, Respondents cited a laundry list of plainly unlawful exemptions. If a person without understanding of the Sunshine Ordinance received Respondents' letter, they could easily have been silenced into accepting these prohibited withholdings of information. Respondents have a special responsibility as a law enforcement agency to correctly state the law.

From	To
84168-39742724@requests.muckrock.com	sheriff@sfgov.org (Sheriff)

ALLEGATIONS

**1. Violations of SF Admin Code 67.25 -
failure to respond in a timely and complete manner**

An immediate disclosure request was made Dec 7 (Saturday), deemed received Dec 9 (Monday). No response was received by Dec. 10 (Tuesday). Initial response was given Dec. 18.

2. Violations of SF Admin Code 67.24(h) - unlawful use of deliberative process privilege

Respondents stated (emphasis mine) "Moreover, we will not produce documents exempt from disclosure under the **deliberative process privilege**. See Times Mirror Co. V. Superior Court (1991) 53 Cal.3d 1325." This citation is prohibited by SF Admin Code 67.24(h): "Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure."

3. Violations of SF Admin Code 67.24(g, i) - unlawful use of public interest balancing test

Respondents stated (emphasis mine) "No documents will be produced where "the **public interest served by not disclosing the record clearly outweighs the public interest by the disclosure** of the record" under California Government Code section **6255**." This citation is prohibited by SF Admin Code 67.24(i): "Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance." and 67.24(g): "Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance." Respondents also stated (emphasis mine) "Furthermore, as we review your Requests, we may discover other applicable privileges and/or exemptions under Government Code sections 6254, **6255**, 6256 or other applicable state or federal laws, and we reserve all rights to assert those at any time."

4. Violations of SF Admin Code 67.24(a) - unlawful use of draft exemption

SFAC 67.24(a)(1) severely restricts the CPRA's draft exemption. Yet Respondents claim "No preliminary drafts or memorandum not normally kept in the ordinary course of business will be produced pursuant to California Government Code section 6254(a)." That is unlawful. Instead, pursuant to SFAC 67.24(a), only a subset is exempt and everything else must be minimally withheld (SFAC 67.26).

**5. Violations of SF Admin Code 67.27 -
unlawful use of prohibited and non-existent exemptions**

SFAC 67.27 generally prohibits use of exemptions prohibited by SFAC 67.24 (see above allegations, which are incorporated by reference herein). However, Respondents went further and cited non-existent laws (emphasis mine): “Furthermore, as we review your Requests, we may discover other applicable privileges and/or exemptions under Government Code sections 6254, 6255, **6256** or other applicable state or federal laws, and we reserve all rights to assert those at any time.” There is no Gov Code 6256.

REQUEST FOR RELIEF

Please find that the Respondents violated SF Admin Code sections 67.25, 67.24, and 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.

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

ATTACHMENT 1

Anonymous
84168-39742724@requests.muckrock.com
December 18, 2019

OFFICE OF THE SHERIFF
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE
ROOM 456, CITY HALL
SAN FRANCISCO, CALIFORNIA 94102

Via email to james.b.wilson@sfgov.org,
james.quanico@sfgov.org, luigi.cauteruccio@sfgov.org, paul.varni@sfgov.org

Retired Deputy Wilson #1093 and Office of Sheriff,

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). 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 disclosable public records.

Thank you for your Dec. 18, 2019 response (Exhibit A) to our Dec. 7 IDR pursuant to the Sunshine Ordinance/CPRA, which was due Dec. 10, and which we reminded you about on Dec. 14.

We will contest much of your response before the Sunshine Ordinance Task Force, Supervisor of Records, and/or courts of competent jurisdiction.

First, 2 weeks of calendars and 10-20 emails cannot take 7 weeks to produce. Nearly identical requests were made of most city agencies. Many agencies produced these in less than 48 hours. We will contest this as an untimely response.

Second, you stated "*Moreover, we will not produce documents exempt from disclosure under the deliberative process privilege. See Times Mirror Co. V. Superior Court (1991) 53 Cal.3d 1325.*" Your citation is prohibited by SF Admin Code 67.24(h): "Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any

document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure."

Third, you stated "*No documents will be produced where "the public interest served by not disclosing the record clearly outweighs the public interest by the disclosure of the record" under California Government Code section 6255.*" Your citation is prohibited by SF Admin Code 67.24(i): "Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance." and 67.24(g): "Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance."

Fourth, you failed to make an initial response to an Immediate Disclosure Request within 1 business day (due Dec. 10). (SF Admin Code 67.25(a,b))

Fifth, you stated "*Furthermore, as we review your Requests, we may discover other applicable privileges and/or exemptions under Government Code sections 6254, 6255, 6256 or other applicable state or federal laws, and we reserve all rights to assert those at any time.*" As stated above your citation to Gov Code 6255 is prohibited by local law. Furthermore, your citation to non-existent Gov Code 6256 is prohibited by SF Admin Code 67.27 since this law Gov Code 6256 simply doesn't exist.

Please consult with your Deputy City Attorneys regarding your claims.

Respectfully,

ANONYMOUS

Requestor/Complainant

EXHIBIT A



OFFICE OF THE SHERIFF CITY AND COUNTY OF SAN FRANCISCO

1 DR. CARLTON B. GOODLETT PLACE
ROOM 456, CITY HALL
SAN FRANCISCO, CALIFORNIA 94102



VICKI L. HENNESSY
SHERIFF

12/18/2019
PRA-2019-124

MuckRock News
Dept MR 84168
Somerville, Ma 02144-2516

To Whom It May Concern,

Pursuant to California Government Code section 6253(c), we are writing in response to your request dated 12/07/2019 and received on 12/09/2019, that you sent to the San Francisco Sheriff's Office under the California Public Records Act. We are submitting this response within the ten-day period for response set out in Government Code section 6253(c). All requests are limited only to records maintained in the normal course of business and that are in the San Francisco Sheriff's Office custody and control.

Please note we will not produce records which are privileged or otherwise exempt from disclosure pursuant to California Government Code section 6254(k). This includes documents protected by the attorney-client privilege, attorney work product, and official information privileges.

No preliminary drafts or memorandum not normally kept in the ordinary course of business will be produced pursuant to California Government Code section 6254(a). Records concerning real estate appraisals for pending acquisitions are also exempt from disclosure under California Government Code section 6254(h).

We will not produce documents that are subject to copyright protections, contain trade secrets, and/or proprietary and/or confidential information. See California Government Code sections 6253.9, 6254(k), 6254.9; California Evidence Code section 1060.

Moreover, we will not produce documents exempt from disclosure under the deliberative process privilege. See *Times Mirror Co. V. Superior Court* (1991) 53 Cal.3d 1325.

No documents will be produced where “the public interest served by not disclosing the record clearly outweighs the public interest by the disclosure of the record” under

California Government Code section 6255. Additionally, no documents will be produced if they contain personnel, medical, private, confidential, or similar files. Disclosure of these types of documents would constitute an unwarranted invasion of personal privacy under California Government Code section 6254(c) and/or the Health Insurance Portability and Accountability Act of 1996. If any of the records you are requesting are the subject of ongoing litigation and/or pending investigations, and/or are law enforcement investigatory records, such records are exempt from production. See Government Code sections 6254 (b), (f).

In addition, no documents or records will be produced to the extent such a production would violate California Penal Code §§ 832.7, 832.8, 11076, California Civil Code § 129, California Welfare and Intuitions Code §§ 827, 828, 831, California Business and Professions Code § 805, or California Evidence Code § 1043.

Furthermore, as we review your Requests, we may discover other applicable privileges and/or exemptions under Government Code sections 6254, 6255, 6256 or other applicable state or federal laws, and we reserve all rights to assert those at any time.

At this time, the Sheriff's Office is in the process of determining if any records are responsive, non-exempt documents in regards to your request. After a review, we will have a cost estimate for you (if any), and upon receipt of payment from you (if required), we will produce further non-exempt records. If deemed necessary, we may have to produce records on a rolling basis, and the County reserves the right to do so. At this time, we anticipate it will take approximately 7 weeks due to the holidays and the complexity of the request to complete this transaction. You should expect receipt of your request no later than 01/31/2020.

Please contact me if you have any questions. As always, the County reserves all rights.

Sincerely,

Retired Deputy James Wilson 1093
SFSO-Central records and Warrants

Cc: Assistant Sheriff Katherine Johnson

Phone: 415 554-7225 Fax: 415 554-7050
Website: sfsheriff.com Email: sheriff@sfgov.org

ATTACHMENT 2

From: Anonymous Person

12/07/2019

Subject: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Request (SF Sheriff)

Email

To Whom It May Concern:

Attached is an Immediate Disclosure Request (SF Admin Code 67.25(a)).
Your response is required by Dec. 10, 2019. Rolling records responses are requested (67.25(d)).

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](https://www.muckrock.com) FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). 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



IDR-20191207-SHERIFF.pdf

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From: Anonymous Person

12/07/2019

Subject: RE: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Request (SF Sheriff)

Email

RE: the DEC 7 IMMEDIATE DISCLOSURE REQUEST from this email address

Please note: "Exact copies" are requested for all records pursuant to CPRA Gov Code 6253(c). Please email all records, or publish them to your own website/portal (as long as the URL is accessible without any login), or upload them and publish them to [MuckRock.com](https://www.muckrock.com) directly using the auto-generated link in the footer below. Do not physically mail any records.
Provide only those copies available without fees - if you believe certain copies require fees, instead provide the required notice of which records are available for in-person inspection.

Your response is still required by Dec. 10, 2019. Rolling records responses were requested (67.25(d)).

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](https://www.muckrock.com) FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). 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

From: Anonymous Person

12/14/2019 

Subject: RE: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Request (SF Sheriff)

Email

We haven't heard back about an IDR sent Dec. 7. Response was due Dec. 10. Please check your email from Dec. 7 for an attachment named `IDR-20191207-SHERIFF.pdf`

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](https://www.muckrock.com) FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). 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.

From: San Francisco Sheriff's Department

12/18/2019 

Subject: PRA-2019-124

Email

Please see above response to your request.

Retired Deputy James Wilson #1093
San Francisco Sheriff's Department
850 Bryant St. Rm 460
Central Records And Warrants
(415)553-1443



PRA-2019-124

 Download

From: Anonymous Person

12/18/2019 

Subject: RE: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Request (SF Sheriff)

Email

Hello,

Thank you for your response. See our attached reply.

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](https://www.muckrock.com) FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). 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 disclosable public records.

Thank you,
Anonymous



Dec18-Sheriff-SF-84168-F.pdf

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**IMMEDIATE DISCLOSURE REQUEST - DEC. 7, 2019**

Pursuant to the CPRA and SF Sunshine Ordinance

This is an Immediate Disclosure Request (SFAC 67.25(a)) for the records numbered below. Your response is required by **Dec. 10, 2019**. Rolling records responses are requested (67.25(d)). Please provide only copies not requiring fees - and a required notice of in-person inspection of fee-based records.

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).

Please read carefully the exact wording of my request and follow the Sunshine Ordinance and CPRA precisely. Every violation will be appealed, including but not limited to:

- any untimely or incomplete response (SF Admin Code 67.21, 67.25),
- failure to provide records in a rolling fashion as soon as each is available (SF Admin Code 67.25),
- failing to indicate whether you have responsive records or not for each request below and whether or not you withheld any records for each request below (Gov Code 6253(c))
- withholding more than the minimum exempt portion of any record or withholding an entire record if any portion at all is non-exempt (SF Admin Code 67.26),
- failure to justify with a footnote or "other clear reference" to an exemption statute or case law for each and every redaction or withholding (SF Admin Code 67.26, 67.27), including any so-called 'metadata',
- failure to provide "exact copies" of records (Gov Code 6253(b)), for example, by physically printing electronic records and scanning them back in, which degrades their content and causes loss of colors, hyperlinks, metadata, and searchable text content
- 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 request below (SF Admin Code 67.21(l)),
- redacting or withholding information whose exemption you have already waived by producing it to the public before (Gov Code 6254.5),
- refusing to use email (SF Admin Code 67.21(b)), or requiring me to use a third-party service which imposes on me any terms and conditions beyond those of the CPRA (Gov Code

Requests:

1. the specific calendar required to be kept by SF Admin Code 67.29-5 (aka "Prop G calendar") for your Department Head (whether an employee or elected official, defined



pursuant to SF Charter 2A.30 para 1), with each and every meeting/item for Nov 10 - Nov 17, 2019 (inclusive). Since these dates are more than 3 business days prior to this request, you must immediately provide them. You may use any format to provide this calendar as long as it provides at least the location, exact start and end times, general description of topics, and (as required by 67.29-5) identity of meeting participants for every meeting. If all 67.29-5 information is not visible in a summary view, you must print out the individual meeting entries.

2. every meeting/entry on every calendar for your Department Head for Nov 10-17, 2019 (inclusive). This specifically includes both the SFAC 67.29-5/Prop G calendar, and all other calendar records (aka "non-Prop G" calendars) prepared, owned, retained, or used by your Department Head or agency staff (see SOTF Order 19047). Calendars and meeting entries are requested in their original electronic format or in .ICS format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, email addresses, invitees and their attendance status, recurrences, exact start/end times, locations, titles, and descriptions. Daily, weekly, or monthly summary views are non-responsive - each individual meeting entry is requested.
3. every meeting/entry on every calendar for your Department Head for future dates Dec 16-23 (inclusive). This specifically includes both the SFAC 67.29-5/Prop G calendar, and all other calendar records (aka "non-Prop G" calendars) prepared, owned, retained, or used by your Department Head or agency staff (see SOTF Order 19047). Calendars and meeting entries are requested in their original electronic format or in .ICS format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, email addresses, invitees and their attendance status, recurrences, exact start/end times, locations, titles, and descriptions. Daily, weekly, or monthly summary views are non-responsive - each individual meeting entry is requested.
4. the most recent 5 emails sent by your Department Head via their government email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses.
5. the most recent 5 emails received by your Department Head via their government email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses.



6. the most recent 5 emails relating to the conduct of public business, subject to *City of San Jose v Superior Court (Smith, 2017)*, sent by your Department Head via their personal email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses.

7. the most recent 5 emails relating to the conduct of public business, subject to *City of San Jose v Superior Court (Smith, 2017)*, received by your Department Head via their personal email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses.