

SF Public Records Compliance Score Card

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.

Agency *

Score: 27/36

Clerk of the Board

Ms. Calvillo,
Thank you for your timely and thorough response.

We are performing checks on the Sunshine practices of various SF agencies using a standardized request, and though your agency performed well, but we believe some issues remain re: compliance with the Sunshine Ordinance/CPRA (see remainder of this document).

In lieu of the Sunshine Ordinance Task Force complaints process of hearings, findings of violations, and Order of Determination, we'd like to offer a compromise. The result of such a compromise in lieu of complaints would be a signed letter published online by the Department Head, accepting that the Department inadvertently violated certain Sunshine/CPRA provisions, but has, as of the execution of the letter, corrected its public records procedures in specified ways, along with a copy of the updated procedures document. My goal is that future requesters' full spectrum of Sunshine rights are protected even if they are not aware of them, or have the legal resources to challenge and appeal.

If you would like to negotiate such a compromise instead of going through SOTF, please let us know by email.

Sincerely,

Anonymous

Notes to the Agency

Explanations of alleged violations:

* We should be informed for each of our 7 requests whether there were any responsive records, and if any were withheld, what the justification was. Instead, you stated:

"As a disclaimer, records containing personal information, privileged information, or personnel matters may be redacted or withheld pursuant to CA Government Code 6254; Evidence Code sec. 952; Evidence Code sec. 954; Code of Civil Procedure 2018.030; Government Code 6254(c), Art. I, sec. 1; CA Const., Evidence Code sec. 1041; Evidence Code sec. 1040; Government Code sec. 6254(k); and/or Government Code sec. 6276.32."

Stating "may be redacted or withheld" doesn't tell the requester if any records were withheld, and the specific reasons. Generic lists of all justifications are not sufficient.

* For some reason, each individual meeting entry in the future or past calendars requested were not provided. See Exhibit A for an example of what the individual record view looks like. Any information visible on that view that is not visible on the view you provided is withheld information, without justification.

* Because a determination for each of our requests was not provided, it is not known whether a City of San Jose search of personal accounts was performed.

* While you did convert directly to PDF, the URLs for hyperlinks were removed. The hyperlinks are not metadata - they were typed in by some human being. Their withholding is unjustified.

* It would be clearer to include the subsection Gov Code 6254 (like (c) (f) etc.) in your citations to exemption law (though we did not count this as a violation).

* We will dispute at existing pending SOTF cases your withholding of the metadata and non-PDF formats, so we will hold complaints in abeyance for those issues, and no action is required for those issues right now.

Score Card / Alleged Violations

*This does not imply we believe the response completely met all requirements of the CPRA or Sunshine Ordinance in all cases. Instead it appears that in most cases the agency appears to have met the requirement. We do not waive any right to appeal or petition to any administrative or judicial tribunal.

	Requirement generally or usually met* or Not Applicable	VIOLATION ALLEGED	Explanation
SFAC 67.21(b) - As of the filing of the complaint, Respondents refused to respond substantively to the emailed request (regardless of reason, including but not limited to: no response at all, refusal to use email, a demand to provide my name, a demand that I use a specific form or website, etc.).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
SFAC 67.21(k) - Respondents refuse to provide records by email, and instead require me to use a website imposing terms and conditions. This is prohibited by the CPRA: "As a matter of first impression in California, we conclude that end user restrictions are incompatible with the purposes and operation of the CPRA." County of Santa Clara v. Superior Court, 170 Cal.App.4th 1301, 1334 (Cal. Ct. App. 2009)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
SFAC 67.21(k), GC 6270(a) - Respondents refuse to provide records directly, and instead require me to use solely a third-party private business to receive records.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
SFAC 67.25(a) - IDR's were sent Dec 7, 8 or 9, and deemed received on Dec 9 (Monday). Full response or a declaration of maximum deadlines was due Dec 10 (Tuesday, one business day later). Late response is a violation.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
SFAC 67.25(d) - Rolling responses were requested. The first disclosed record was untimely. Since the first request R1 is for a long-	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

past-3-business-days Prop G calendar, it should be easily provided immediately.

SFAC 67.21(k), GC 6253(c) - No determination provided whether each of our 7 requests had responsive records or not, whether any were withheld or not.



SFAC 67.21(k), GC 6253(c) - "No notice shall specify a date that would result in an extension for more than 14 days." Extension notice was for more than 14 days.



SFAC 67.21(k), GC 6253(c) - "When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available." No estimated date and time of record availability was provided.



SFAC 67.29-5(a) - A Prop G calendar (R1) must be kept and disclosed for the dept. head (elected or employee) for dates 3 or more business days in the past. Respondents did not produce one and/or may not maintain one.



SFAC 67.29-5(a) - Prop G calendar (R1) - Must contain at least the start and end times, locations, and (if not recorded) a general description for every meeting. Some of this required information was withheld and/or not maintained. If the summary view you choose to provide fails to display all of this information, that would be a violation - consider providing the entries individually.



SFAC 67.29-5(b,c) - Prop G Calendar (R1) - Required identities of meeting participants were either



withheld and/or not maintained. If the summary view you choose to provide fails to display all of this information, that would be a violation - consider providing the entries individually.

SFAC 67.21(b,k), GC 6253(c) - No response was received regarding past non-Prop G calendars (R2). Respondents must explicitly state whether responsive records exist or not, and whether any were withheld.



SFAC 67.26 - Past non-Prop G calendars (R2) were withheld in their entirety. See SOTF Order 19047. SFAC 67.26 - Past non-Prop G calendars (R2) were withheld partially. Some meetings or information about them may have been not provided. If agency fails to provide the individual meeting view as requested, that would qualify here.



SFAC 67.27 - Past non-Prop G calendars (R2) were withheld in whole or in part without justification. See SOTF Order 19047.



SFAC 67.21(b,k), GC 6253(c) - No response was received regarding future calendars (R3). Respondents must explicitly state whether responsive records exist or not, and whether any were withheld.



SFAC 67.26 - Future calendars (R3) were withheld in their entirety. See SOTF Order 18075.



SFAC 67.26 - A limited portion of future calendars (R3) were withheld, with justification, such as with the Mayor's Office. However, minimal withholding was not performed. At least some See SOTF Order 18075 and



current proceeding SOTF 19103 and SOTF 19112.

SFAC 67.26, 67.27 - Future calendars (R3) were withheld without justification. See SOTF Order 18075.



SFAC 67.27, 67.21(k), GC 6253(b) - Some records were provided in an image form or by printing and scanning electronic records, instead of directly converting (for example) to PDF format. Therefore, certain non-metadata information (ex. hyperlinks, formatting, colors, original full-quality images) was withheld without justification. Furthermore, records are not exact copies as we requested (GC 6253(b)).



SFAC 67.27, 67.21(k), GC 6253(b) - Even if documents were converted to PDFs directly, some non-metadata information (ex. hyperlinks) were withheld without justification. Furthermore, records are not exact copies as we requested (GC 6253(b)).



SFAC 67.26 - One or more entire records were withheld fully, instead of merely redacting the minimally exempt portion.



SFAC 67.26 - One or more non-metadata parts of a record were withheld incorrectly (aka, something that should not have been redacted, was redacted).



SFAC 67.26 - Redactions were not "keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article" (i.e. a general list of justifications was provided, instead).



SFAC 67.27 - Some information was withheld



without any justification whatsoever.			
SFAC 67.27 - Some information was withheld using a justification not allowed by SFAC 67.27 (for example, they are prohibited by SFAC 67.24, or they are not laws or court cases dictating exemptions or civil or criminal liability).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
SFAC 67.24 - An exemption justification was used that is prohibited in CCSF, including but not limited to drafts, public interest balancing test (or any similar exemption), or deliberative process.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
SFAC 67.21(c, k), GC 6253(c) - Incomplete response (R6/R7) - City of San Jose (2017) specifies that communications about the public business kept on personal property are still public records. Personal accounts must be searched and records provided, or Respondents must explicitly state that there are no responsive records for R6/R7.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
SFAC 67.21(c, k) - Incomplete response (R6/R7) - The scope of search for public records on personal property does not meet the requirements of San Jose. (See pending SOTF 19091, 19098)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
SFAC 67.27 - Personal property public records were withheld, without justification.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
SFAC 67.26 - Personal property public records were withheld, but they are not exempt.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
SFAC 67.21(k), GC 6254.3(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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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)."

SFAC 67.29-7(a) - Department head failed to disclose and/or maintain all correspondence and other documents in a professional and business-like manner.



SFAC 67.27 - The non-exempt metadata portion of one or more records was withheld without justification.



SFAC 67.26 - The non-exempt metadata portion of one or more records was withheld, but some of the metadata withheld is not in fact exempt and must be provided.



SFAC 67.27 - The original electronic format or the requested "easily generated" format were withheld without justification.



SFAC 67.21(l), GC 6253.9 - The original electronic format or the requested format were withheld, but it is "easily generated".



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Google Forms

Exhibit A - proper production
of calendar entries as public
record by Animal Care

Alberto, Justine Eileen (ADM)

Subject: Weekly Managers' Meeting
Location: Virginia's Office

Start: Wed 1/27/2016 10:00 AM
End: Wed 1/27/2016 11:00 AM

Recurrence: Weekly
Recurrence Pattern: Occurs every Wednesday from 10:00 AM to 11:00 AM effective 1/27/2016.

Meeting Status: Meeting organizer

Organizer: Donohue, Virginia (ADM)
Required Attendees: Campbell, Deb (ADM); Alberto, Justine Eileen (ADM); O'Neill, Shari (ADM); Luchsinger, Ariana (ADM); Skeel, John (ADM)

The weekly Managers' Meeting will now be held on Wednesdays at 10:00 am.

Alberto, Justine Eileen (ADM)

Subject: Check in with Anita

Location: Virginia's Office

Start: Thu 12/19/2019 9:30 AM

End: Thu 12/19/2019 9:45 AM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Bingham, Anne (ADM)

Required Attendees: Protz, Anita (ADM); Donohue, Virginia (ADM)

Alberto, Justine Eileen (ADM)

Subject: Monthly w/Virginia Donohue & Naomi Kelly
Location: City Hall, 362

Start: Thu 4/18/2019 2:00 PM
End: Thu 4/18/2019 3:00 PM

Recurrence: Monthly
Recurrence Pattern: the third Thursday of every 1 month(s) from 2:00 PM to 3:00 PM

Meeting Status: Accepted

Organizer: Kelly, Naomi (ADM)
Required Attendees: Donohue, Virginia (ADM); Bukowski, Kenneth (ADM); Bingham, Anne (ADM)

Alberto, Justine Eileen (ADM)

Subject: Weekly Check-In with Ariana
Location: Virginia's office

Start: Thu 6/14/2018 3:00 PM
End: Thu 6/14/2018 3:30 PM

Recurrence: Weekly
Recurrence Pattern: Occurs every Thursday from 3:00 PM to 3:30 PM effective 6/14/2018.

Meeting Status: Accepted

Organizer: Bingham, Anne (ADM)
Required Attendees: Luchsinger, Ariana (ADM); Donohue, Virginia (ADM)

Alberto, Justine Eileen (ADM)

Subject: Hanukkah
Location: Jewish Religious Holidays

Start: Mon 12/23/2019 12:00 AM
End: Tue 12/24/2019 12:00 AM
Show Time As: Free

Recurrence: (none)

Organizer: Donohue, Virginia (ADM)

Categories: Holiday

Alberto, Justine Eileen (ADM)

Subject: Check in with Anita
Location: Virginia's Office

Start: Mon 12/23/2019 1:00 PM
End: Mon 12/23/2019 1:30 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Bingham, Anne (ADM)
Required Attendees: Protz, Anita (ADM); Donohue, Virginia (ADM)