

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

BRADLEY A. RUSSI  
DEPUTY CITY ATTORNEY

Direct Dial: (415) 554-4645  
Email: brad.russi@sfcityattty.org

July 31, 2020

*Sent via email (arecordsrequestor@protonmail.com)*

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your fourth petition to the Supervisor of Records concerning your records requests to the Mayor's Office dated July 2, 2019. We respond to the issues you raised as follows:

**Issue:**

On [https://cdn.muckrock.com/foia\\_files/2020/01/16/MuckRock\\_Request\\_-\\_Policy\\_Director\\_Andres\\_Power\\_1.pdf](https://cdn.muckrock.com/foia_files/2020/01/16/MuckRock_Request_-_Policy_Director_Andres_Power_1.pdf) I challenge:

- o pg. 2, 3, 6, 7, 8 - cited as "Ongoing negotiations regarding real estate and draft recommendations of the author. See Admin. Code § 67.2[4](a), (e)." (corrected from 67.25(a,e)). Respondents completely mis-understand SFAC 67.24 - which serves solely to **eliminate** in whole or in part CPRA or other exemptions. Read 67.27 - You have to point to an exemption in the CPRA or elsewhere **which is not prohibited by local law (67.24)**. Local law can **never** create exemptions that are **not** found at the state-level. 67.24(a) merely prohibits you from exempting anything **EXCEPT** draft author recommendations "not normally kept on file and would otherwise be disposed of"; but that doesn't make even those exempt under CPRA. There is no evidence that these portions of an email table would be "disposed of." And 67.24(e) in no way even implies that real estate negotiations could generally be exempt, it merely forces you to disclose them at a certain point. It doesn't and cannot make them exempt prior to that point under CPRA without a citation.
- o pg. 10-18, 26-32 - cited as "attorney-client privilege. Gov't Code § 6254(k); Evidence Code § 954; Admin. Code § 67.21(k)." Clearly the first redacted block is written by a person not in City Attorney's office. This needs to be minimally withheld to just the privileged portions.

**Response:** Regarding the first bullet point above, the Mayor's Office properly applied the redactions. See Government Code § 6254(a), Administrative Code § 67.24, *Michaelis v. Superior Court*, 38 Cal. 4th 1065 (2006), City Attorney's Good Government Guide at 114-16.

Letter to Anonymous  
July 31, 2020  
Page 2

Regarding the second bullet point above, the Mayor's Office properly redacted information based on the attorney-client privilege. *See* Gov't Code § 6254(k), Evid. Code § 954.

**Issue:**

*Pg 4 of [https://cdn.muckrock.com/foia\\_files/2020/01/16/MuckRock\\_Request\\_-\\_Liaison\\_to\\_the\\_Board\\_of\\_Supervisors\\_Sophia\\_Kittler.pdf](https://cdn.muckrock.com/foia_files/2020/01/16/MuckRock_Request_-_Liaison_to_the_Board_of_Supervisors_Sophia_Kittler.pdf) has an underlined link URL written by a human being. It cannot be lawfully withheld. Format exemptions, to the extent they apply (which I do not concede), cannot exempt the information itself. (SOTF on Jan 21 ruled email metadata at least partially disclosable but I don't have the Order in hand yet so I'm sticking with non-metadata arguments for now).*

**Response:** The Mayor's Office did not withhold information based on a legal exemption, as this complaint has to do with the format of the production. As such, this issue is beyond our jurisdiction and we decline to address it.

**Issue:**

*Pg 27-28 of [https://cdn.muckrock.com/foia\\_files/2020/01/16/MuckRock\\_Request\\_-\\_Communications\\_Director\\_Jeff\\_Cretan\\_Redacted.pdf](https://cdn.muckrock.com/foia_files/2020/01/16/MuckRock_Request_-_Communications_Director_Jeff_Cretan_Redacted.pdf) has two types of redactions: "law enforcement investigation exemption (Cal Gov. Code 6254(f)) and informer identity protections (Cal. Evidence Code 1040)" - I challenge all of the 6254(f) portions: DPW and REC are not law enforcement agencies, emails to them cannot be covered by 6254(f). Also I'm pretty sure EC 1041, not EC 1040, is informer identity. So I also challenge the supposed EC 1040 citation. (I don't think the identity has to be disclosed, but the City has to cite correct justification to legally withhold it, SFAC 67.27).*

**Response:** The Mayor's Office properly applied the redactions. *See* Government Code §§ 6254(c), 6254(f), 6254(k); Evid. Code §§ 1040, 1041; Cal. Const. Art. I, Sec. 1.

**Issue:**

*All in [https://cdn.muckrock.com/foia\\_files/2020/01/16/MuckRock\\_Request\\_-\\_Mayor\\_London\\_Breed.pdf](https://cdn.muckrock.com/foia_files/2020/01/16/MuckRock_Request_-_Mayor_London_Breed.pdf) are cited as "private contact information withheld to avoid an unwarranted breach of personal privacy. *See* Cal. Govt. Code Secs. 6254(c), 6254(k); California Constitution, Art. I, Sec. 1." I challenge:*

- o *pg. 1, 6 - is this a business email, not personal*
- o *pg. 32 - is this an official email/letterhead, not personal*

**Response:** The Mayor's Office properly applied the redactions. *See* Government Code §§ 6254(c), 6254(k); California Constitution, Art. I, Sec. 1.

**Issue:**

*All in [https://cdn.muckrock.com/foia\\_files/2020/01/16/MuckRock\\_Request\\_-\\_Chief\\_of\\_Staff\\_Sean\\_Elsbernd\\_2.pdf](https://cdn.muckrock.com/foia_files/2020/01/16/MuckRock_Request_-_Chief_of_Staff_Sean_Elsbernd_2.pdf) are cited as "private contact information withheld*

Letter to Anonymous  
July 31, 2020  
Page 3

to avoid an unwarranted breach of personal privacy. See Cal. Govt. Code Secs. 6254(c), 6254(k); California Constitution, Art. I, Sec. 1." I challenge:

- o pg. 4 - disclose per Gov Code 6254.3(b)(1) - Philhour's personal email is used for public business

**Response:** The Mayor's Office properly applied the redactions. See Government Code §§ 6254(c), 6254(k), 6254.3(b)(1); California Constitution, Art. I, Sec. 1.

**Issue:**

pg. 25 in [https://cdn.muckrock.com/foia\\_files/2020/01/16/MuckRock\\_Request\\_-\\_Chief\\_of\\_Staff\\_Sean\\_Elsbernd\\_1.pdf](https://cdn.muckrock.com/foia_files/2020/01/16/MuckRock_Request_-_Chief_of_Staff_Sean_Elsbernd_1.pdf) is cited as "private contact information withheld to avoid an unwarranted breach of personal privacy. See Cal. Govt. Code Secs. 6254(c), 6254(k); California Constitution, Art. I, Sec. 1." disclose per Gov Code 6254.3(b)(1) - Philhour's personal email is used for public business

**Response:** The Mayor's Office properly applied the redactions. See Government Code §§ 6254(c), 6254(k), 6254.3(b)(1); California Constitution, Art. I, Sec. 1.

**Issue:**

All in [https://cdn.muckrock.com/foia\\_files/2020/01/16/MuckRock\\_Request\\_-\\_Senior\\_Advisor\\_Marjan\\_Philhour.pdf](https://cdn.muckrock.com/foia_files/2020/01/16/MuckRock_Request_-_Senior_Advisor_Marjan_Philhour.pdf) are cited as "protection of information such as private email addresses, phone numbers and personal addresses to avoid an unwarranted breach of personal privacy. See Cal. Govt. Code Secs. 6254(c), 6254(k); California Constitution, Art. I, Sec. 1" . I challenge:

- o pg. 1, redaction 1 - is this a business email, not personal
- o pg. 1, redaction 2 - disclose per Gov Code 6254.3(b)(1) - Philhour's personal email is used for public business
- o pg. 21 - this image of the mayor must be provided in full color, without being cutoff. Color is information. And 3/4 of the image has been withheld.
- o pg. 35 - redactions 2 and 4. Note Philhour is himself sending public business emails using his personal email address here. Disclose per Gov Code 6254.3(b)(1)
- o pg. 46 - redaction 2 - ditto as above.
- o pg. 51, 52 - lists of news articles sent by Mason Lee. I have a right to know what those article URLs are. *Format* exemptions, to the extent they apply (which I do not concede), cannot exempt the *information* itself.

**Response:** The Mayor's Office properly applied the redactions. See Government Code §§ 6254(c), 6254(k), 6254.3(b)(1); California Constitution, Art. I, Sec. 1.

Letter to Anonymous  
July 31, 2020  
Page 4

To the extent you are contesting the format in which the documents were produced, we decline to reach that issue, as it does not involve the withholding or redacting of records based on an exemption.

**Issue:**

pg. 6 on [https://cdn.muckrock.com/foia\\_files/2020/01/16/MuckRock\\_Request\\_-\\_Deputy\\_Chief\\_of\\_Staff\\_Andrea\\_Bruss.pdf](https://cdn.muckrock.com/foia_files/2020/01/16/MuckRock_Request_-_Deputy_Chief_of_Staff_Andrea_Bruss.pdf) is challenged

**Response:** The Mayor's Office properly applied the redactions. *See* Government Code §§ 6254(c), 6254(k); California Constitution, Art. I, Sec. 1.

**Issue:**

pg. 3  
on [https://cdn.muckrock.com/foia\\_files/2019/07/26/Responsive\\_Documents\\_Re\\_MuckRock\\_Request\\_Compliance\\_Officer\\_Hank\\_Heckel\\_1.pdf](https://cdn.muckrock.com/foia_files/2019/07/26/Responsive_Documents_Re_MuckRock_Request_Compliance_Officer_Hank_Heckel_1.pdf) provide the full attached or inline image in full resolution and color

**Response:** The Mayor's Office did not withhold information based on a legal exemption, as this complaint has to do with the format of the production. As such, this issue is beyond our jurisdiction and we decline to address it.

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA  
City Attorney



Bradley A. Russi  
Deputy City Attorney