

**Sunshine Ordinance Task Force
Complaint Summary**

File No. 20084

Anonymous v. Harlan Kelly and the Public Utilities Commission

Date filed with SOTF: 7/13/2020

Contacts information (Complainant information listed first):

Anonymous (94992-15550486@requests.muckrock.com) (Complainant)

Harlan Kelly (HKelly@sewater.org) (Respondent)

File No. 20084: Complaint filed by Anonymous against Harlan Kelly and the Public Utilities Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 failing to respond to a records request in a timely and/or complete manner; 67.26 withholding kept to a minimum and 67.27 failing to provide justification for withholding responsive documents; 67.29-7(a) failing to maintain correspondence and records in a professional and businesslike manner.

Administrative Summary if applicable:

Complaint Attached.

Your form has a new entry.

Here are the results.

Complaint against which Department or Commission	San Francisco Public Utilities Commission
Name of individual contacted at Department or Commission	Harlan Kelly Jr.
Alleged Violation	Public Records
Sunshine Ordinance Section:	Complainant alleges Respondents responded in an incomplete manner to requests for public records (SF Admin Code 67.21(b) and Cal. Govt. Code 6253(b, c)), issued a written denial of records without identifying all persons responsible for the denial (Cal. Govt. Code 6253(d)(3)), withheld more than the minimum exempt portion of records (SFAC 67.26), withheld information without a lawful justification (SFAC 67.27), and (as to Respondent Kelly only) failed to maintain and preserve in a professional and businesslike manner her correspondence and failed to disclose all such records in accordance with the Sunshine Ordinance (SFAC 67.29-7(a)).

Please describe alleged violation

Please include complaint "SOTF-Anonymous-vs-Kelly-PUC-f.pdf"

Name

anonymous

Email

94992-15550486@requests.muckrock.com

If anonymous, please let us know how to contact you. Thank you.

94992-15550486@requests.muckrock.com

Sent via [Google Form Notifications](#)

PUC - Without waiving any rights or conceding that you have the right to demand that I do so, I have voluntarily deleted my own copy of the file `Walter redacted final.pdf` having SHA256 checksum 8254cbe0fcbd6a8a2548d3464171ccab0d386439c888959707db07fbd5f54453 - I am also filing an SOTF/Ethics/Supervisor of Records complaint against Mr. Kelly and PUC for disclosure of some or all of these messages.

SOTF:

Please file attached complaint, and provide formal notice: Anonymous (94992-15550486@requests.muckrock.com) v. Harlan Kelly, Jr and Public Utilities Commission - your webform will be filled out.

Allegations: SFAC 67.21(b), 67.26, 67.27, 67.29-7(a); Gov Code 6253(b; c; d(3))

----- Original Message -----

On Wednesday, July 8, 2020 7:03 PM, sfrecordsresearch@pm.me <sfrecordsresearch@pm.me> wrote:

I'm unsure why you are claiming attorney client privilege in this email. You are not my attorney nor am I your's; perhaps you bcc-ed Herrera's office or something.

Regardless, I'm not MuckRock, I'm just one of their many users.

Please contact MuckRock Foundation directly if you need to give their entity some sort of specific demand. I've let them know to expect your request. The request to reference is <https://www.muckrock.com/foi/san-francisco-141/inter-agency-text-messages-immediate-disclosure-request-sf-puc-94992/#comm-911729> Info@muckrock.com is their support email but I cannot represent that it is the proper avenue for such a request.

Again, *please* do inform whoever that lockbox code is about that you released it accidentally - even if MuckRock agrees now to take any copies down that it has (if any), your sharefile link was in fact accessible in the past, publicly.

Also don't forget that there are still outstanding records requests to you on the original requests.muckrock.com thread.

----- Original Message -----

On Jul 8, 2020, 5:12 PM, Public Records <PublicRecords@sfwater.org> wrote:

Dear MuckRock,

Thank you for bringing to our attention an inadvertent error in the redactions we performed for the text messages we provided you on July 6, 2020 labeled Bates numbers PUC 000175 through PUC 000219. As explained in our July 3rd email to you, we redacted from these records messages containing personal and private information that did not constitute a "public record." Although the legal basis for these redactions was proper, we now realize that the technical method we used to black out the private material did not in fact protect the private information from disclosure. That was not our intent and was an inadvertent error. The material we intended to redact contains sensitive personal information

that is protected from disclosure by Cal. Constitution Art. I, Sec. I and Section 6254(c) of the Public Records Act.

In such cases of accidental, inadvertent disclosure of private or confidential information in response to a Public Records Act request, the documents must be returned and copies destroyed if the City notifies those who have received an inadvertently disclosed record. (See *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176). The SFPUC hereby requests that MuckRock immediately destroy all copies of Bates numbers PUC 000175 through PUC 000219 in its possession and remove them from all publicly accessible locations, including the MuckRock.com website.

Please note that the version of this text exchange that we shared with you on July 6, 2020 has been removed from the Sharefile weblink and that we will be providing you with a new redacted version of this text exchange, which should be available at the following link by the end of today:

<https://sfpuc.sharefile.com/d-sabd81b687ef4187b>.

Please respond on or before Thursday July 9 at 5 pm confirming that you have destroyed and/or removed these records. Thank you for your anticipated cooperation.

SFPUC Public Records

From: sfrecordsresearch@pm.me <sfrecordsresearch@pm.me>

Sent: Tuesday, July 7, 2020 12:37 AM

To: Public Records <PublicRecords@sfgwater.org>

Subject: Released info - please check!

Hi PUC,

You released to my MuckRock request 94992 a file called "Walter redacted final.pdf" at <https://sfpuc.sharefile.com/d-sfaf513caac747dcb>

In that file you had some partially obscured texts (i.e. the text messages are still visible but just have extra black rectangles on them). One of them says:

"1/19/17, 11:14 AM

The door at garage is lock can enter in house , when you open let us know we can check repair

There is a key in the lock box

The code is XXXX" (but the real number is the document)

Given that you've already released this document publicly on the Internet and on MuckRock, **please do make sure whoever this message is about is informed to ensure the lock box code isn't still being used.**

It is unclear whether any other especially sensitive information was in the PDF.

(I'm contacting you via this email instead of MuckRock regarding this specific issue since the messages on MuckRock are public).

Thanks!

1
2 Anonymou
3 94992-15550486@requests.muckrock.com

4 **IN THE SAN FRANCISCO**
5 **SUNSHINE ORDINANCE TASK FORCE**

6 ANONYMOUS¹,
7 Complainant

**Complaint and Petition for Order
of Determination**

8 v.

July 9, 2020

9 HARLAN KELLY JR. and SAN
10 FRANCISCO PUBLIC UTILITIES
11 COMMISSION

SOTF No.

Respondents

12
13 **COMPLAINT**

14 1. Complainant files this petition and complaint under the Sunshine Ordinance and
15 California Public Records Act regarding a June 11, 2020 request² to Respondents.

16 2. Complainant alleges Respondents responded in an incomplete manner to requests
17 for public records (SF Admin Code 67.21(b) and Cal. Govt. Code 6253(b, c)), issued a written
18 denial of records without identifying all persons responsible for the denial (Cal. Govt. Code
19 6253(d)(3)), withheld more than the minimum exempt portion of records (SFAC 67.26), withheld
20 information without a lawful justification (SFAC 67.27), and (as to Respondent Kelly only) failed
21 to maintain and preserve in a professional and businesslike manner her correspondence and failed
22 to disclose all such records in accordance with the Sunshine Ordinance (SFAC 67.29-7(a)).

23
24 ¹ NOTE: There are multiple distinct anonymous requesters sending requests using
25 MuckRock.com, using similar request templates and form - do not assume that the same
individual is sending all anonymous requests. Complainant is an anonymous user of MuckRock,
but does not represent MuckRock, nor any other MuckRock user, whether anonymous or not.

26 ²
<https://www.muckrock.com/foi/san-francisco-141/inter-agency-text-messages-immediate-disclosure-request-sf-puc-94992/>

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I. PUBLIC INTEREST IN DISCLOSURE

3. San Francisco prohibits the withholding of public information on the basis that the public interest in non-disclosure clearly outweighs the public interest in disclosure (SFAC 67.24(g, i)); this exemption under the CPRA is commonly known as the “catch-all exemption” or the “public-interest balancing test,” but is locally prohibited by the Sunshine Ordinance. On March 23, 2020, Mayor Breed claimed to unilaterally suspend this portion of the Sunshine Ordinance.

4. Without conceding that the Mayor’s suspension of SFAC 67.24(g, i) or any future citation by Respondents to Gov Code 6255(a) are legally valid, Complainant asserts that the public interest in disclosure of these records is significant because they may illustrate connections between City employees and subjects of an on-going federal corruption investigation.

5. The records heretofore disclosed to Complainant in the requests include Kelly’s numerous conversations with permit expediter and city contractor Walter Wong (it is unclear whether Wong is speaking as an individual or representative of his company Jaidin Consulting Group or its affiliates). On July 6, 2020, Wong pled guilty to Conspiracy to Commit Honest Services Wire Fraud and Conspiracy to Commit Money Laundering (*United States v. Wong*, 3:20-cr-00257, N.D. Cal.). Business conducted between a high-ranking city official and an admittedly-guilty city contractor is inherently of high public interest.

II. APPLICABLE LAW AND JURISDICTION

6. Both the California Public Records Act and the San Francisco Sunshine Ordinance govern Respondents’ conduct in this complaint. If they conflict, whichever provision requires Respondents to provide “faster, more efficient, or greater access to records” (Cal. Govt. Code 6253(e)) controls.

7. Respondent Harlan Kelly, Jr. is the General Manager of the Public Utilities Commission and has special, personal, responsibilities under the Sunshine Ordinance as a department head. Respondent San Francisco Public Utilities Commission is a “local agency” subject to the California Public Records Act. Both Respondents have custody of one or more public records relevant to this complaint, and all are subject to the general requirements of custodians of records under the Sunshine Ordinance and the jurisdiction of the Task Force. Note that the Sunshine Ordinance governs the conduct of “every person having custody of any public

1 record or public information” (SFAC 67.21(a)); whether or not a person has the job title
2 “Custodian of Records” is irrelevant.

3 8. SOTF rules require that “all inferences and evidence [] be viewed in the light most
4 favorable to the petitioner” (SOTF Complaint Procedure, ¶1). SOTF Chair B. Wolfe has stated
5 that “it is presumed that all documents are public records until Respondent cites that it is not and
6 that it can be withheld” and “if a record is withheld, then it is presumed it is a violation.” *Petrelis*
7 *v. Elsbernd*, SOTF 19093. Therefore, the burden of proof that a record or portion thereof is exempt
8 from disclosure is on Respondents, and this Task Force should accept every allegation below as
9 true, unless explicitly denied by Respondents.

10 III. FACTS OF THE CASE

11 9. On June 11, 2020, Complainant issued an immediate disclosure request to both
12 HKelly@sfgov.org and to publicrecords@sfgov.org for, *inter alia*:

13 1. All text, email, or chat messages (including group messages, in any form or
14 application including but not limited to SMS, MMS, WhatsApp, WeChat,
15 Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or
16 received to/cc/bcc/from between Harlan Kelly Jr. and London Breed, on
17 government or personal accounts from Jan 1, 2015 and present (you must search
18 personal accounts pursuant to City of San Jose v Superior Court (2017))

19 2. All text, email, or chat messages (including group messages, in any form or
20 application including but not limited to SMS, MMS, WhatsApp, WeChat,
21 Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or
22 received to/cc/bcc/from between Harlan Kelly Jr. and Walter Wong/Jaidin
23 Consulting Group/Jaidin Associates (including but not limited to
24 jaidin@pacbell.net, jdngrp@pacbell.net, or any email address ending with
25 jaidin.net), on government or personal accounts from Jan 1, 2015 and present
26 (you must search personal accounts pursuant to City of San Jose v Superior
27 Court (2017))

28 3. All text, email, or chat messages (including group messages, in any form or
application including but not limited to SMS, MMS, WhatsApp, WeChat,
Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or
received to/cc/bcc/from between Harlan Kelly Jr. and Mohammed Nuru, on
government or personal accounts from Jan 1, 2015 and present (you must search
personal accounts pursuant to City of San Jose v Superior Court (2017))

4. All text, email, or chat messages (including group messages, in any form or
application including but not limited to SMS, MMS, WhatsApp, WeChat,
Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or
received to/cc/bcc/from between Harlan Kelly Jr. and Naomi Kelly, on

1 government or personal accounts from Jan 1, 2020 and present (you must search
2 personal accounts pursuant to City of San Jose v Superior Court (2017))

3 10. On June 11, Respondents denied the IDR timeline.

4 11. On June 22, Respondents indicated records would start being provided by July 3.

5 12. On July 2, Respondents provided some records at
6 <https://sfpub.sharefile.com/d-s9194ec992cf4e6cb> and purported redaction reasons.

7 13. On July 2, Complainant informed Respondents that they had failed to provide some
8 of the pages that they mentioned.

9 14. On July 6, Respondents provided some of the missing records via link to:
10 <https://sfpub.sharefile.com/d-sfaf513caac747dcb>

11 15. After examining one of the records disclosed by Respondents (name: “Walter
12 redacted final.pdf”, with SHA256 checksum of
13 8254cbe0fcbd6a8a2548d3464171ccab0d386439c888959707db07fbd5f54453 , the “825 PDF”),
14 Complainant noticed that Respondents had covered some of the disclosed text messages with a
15 black rectangle, but these messages were not redacted.

16 16. Because Kelly and Wong’s supposedly personal and government relationship are
17 intermingled within this single set of text messages, it is unclear which of these transactions or
18 meetings affects public business vs supposedly private business (as Respondents claim).

19 17. One of the messages concerned a code to a lockbox. Because of the appearance of
20 this message, on July 7, Complainant voluntarily, and without any obligation to do so, informed
21 Respondents of that disclosure so they could warn the subject of the message that Respondents
22 had disclosed said record publicly online (i.e. so the subject could change the lockbox code if it
23 was still being used).

24 18. On July 8, in reply to the email in Paragraph 17, Respondents sent a request to
25 Complainant’s non-MuckRock email address (but with an introduction of “Dear MuckRock”):
26 “The SFPUC hereby requests that MuckRock immediately destroy all copies of Bates numbers
27 PUC 000175 through PUC 000219 in its possession and remove them from all publicly accessible
28 locations, including the MuckRock.com website” and “Please respond on or before Thursday July
9 at 5 pm confirming that you have destroyed and/or removed these records.” Respondents appear
confused: Complainant does not represent MuckRock; as Complainant has informed Respondents

1 multiple times: Complainant is a user of MuckRock, no different than the millions of different
2 users with a Gmail.com email address that do not represent Google.

3 19. However, without waiving any of its rights, Complainant did voluntarily delete its
4 own local copy of the `825 PDF and has not included a copy of the `825 PDF with this complaint.

5 20. Respondents also provided a new file “Walter redacted final_1.pdf” at
6 <https://sfpub.sharefile.com/d-sabd81b687ef4187b> with SHA256 checksum of
7 9ef93a56f0133e77cb696bc64ba713ebb1f4bc78797216133b32e3c270594c74 (the “9EF PDF”)
8 which fully redacts most correspondence between Kelly and Wong.

9 21. Numerous other records remain pending from Respondents on this request, and
10 Complainant may amend this complaint or file further complaints for those records.

11 **IV. ALLEGED VIOLATIONS**

12 **Violation 1 - (Kelly only) Failure to disclose correspondence (SFAC 67.29-7(a))**

13 22. Kelly has a special, personal, responsibility as head of the Public Utilities
14 Commission to (1) “maintain and preserve in a professional and businesslike manner all
15 documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum,
16 invoices, reports and proposals” and (2) “disclose all such records in accordance with this
17 ordinance.” (SFAC 67.29-7(a))

18 23. Text messages, like “letters” and “e-mails,” are a form of “correspondence.” The
19 list of correspondence in the ordinance is non-exhaustive.

20 24. Kelly has failed to disclose all of his correspondence with Walter Wong.

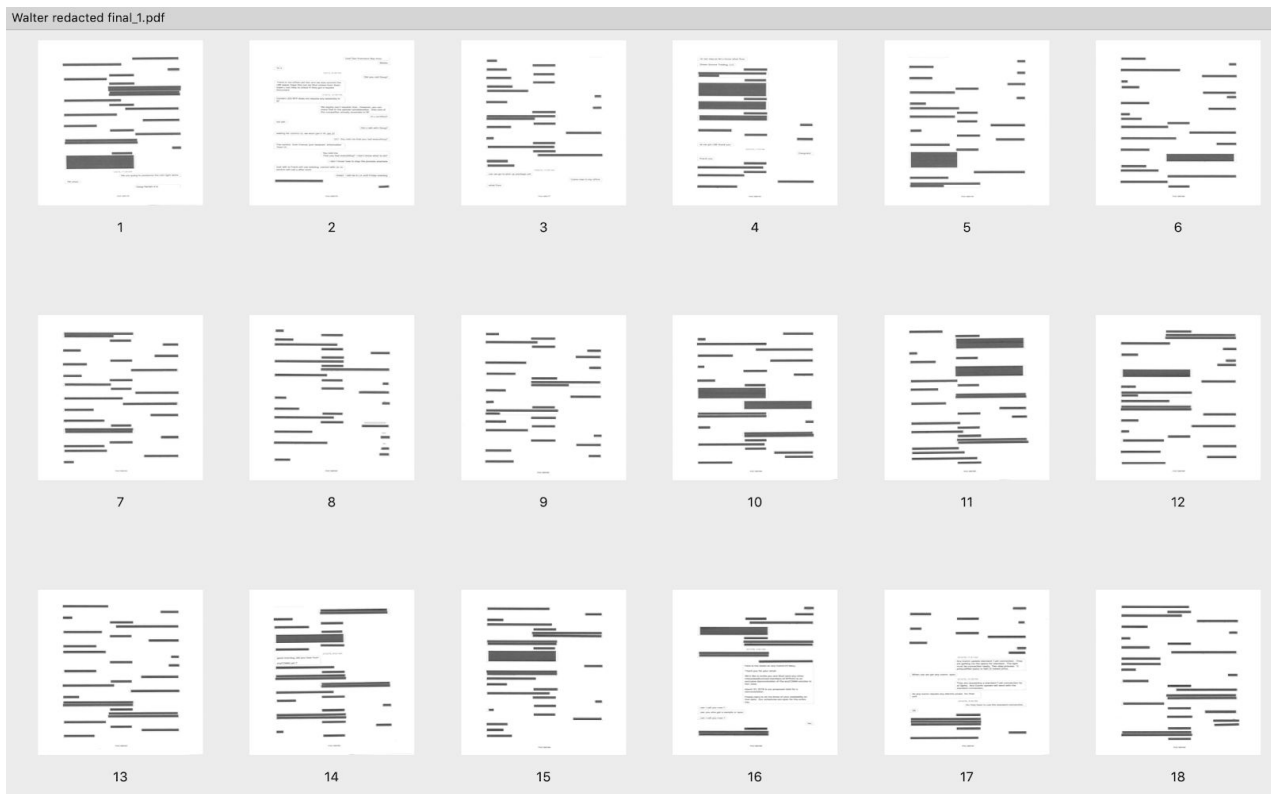
21 **Violation 2 - Failure to identify all persons responsible for denial of access (Gov Code 22 6253(d)(3))**

23 25. A written denial of access to records must “set forth the names and titles or
24 positions of each person responsible for the denial.”

25 26. Respondents signed all their responses as “SFPUC Public Records” without an
26 employee name/title, even though they denied access to one or more records (namely all the
27 withheld text messages).

28 **Violation 3 - Incomplete response to records request; unlawful and non-minimal withholding (SFAC 67.21(b), 67.26, 67.27; Gov Code 6253(b, c))**

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2 27. Numerous communications between Kelly and Wong have been withheld in their
3 entirety by Respondents. To give the Task Force a feel for the level of withholding, see
4 thumbnails of the first 18 (of 45) pages in the '9EF PDF -- nearly everything has been redacted:



16 28. The Sunshine Ordinance itself contemplates that meetings between department
17 heads (like Kelly) and persons who are substantially affected by city actions are inherently a
18 matter of public business. See for example SFAC 67.29-5(a), which not only requires disclosure
19 but goes further and mandates pro-active recording of every such meeting in a calendar that must
20 be disclosed (emphasis added):

21 The Mayor, The City Attorney, and every Department Head shall keep or cause
22 to be kept a daily calendar wherein is recorded the time and place of each
23 meeting or event attended by that official, with the exclusion of purely personal
24 or social events at which no city business is discussed and that do not take place
25 at City Offices or at the offices or residences of people who do substantial
26 business with or are otherwise substantially financially affected by actions of
27 the city. For meetings not otherwise publicly recorded, the calendar shall
28 include a general statement of issues discussed. Such calendars shall be public
records and shall be available to any requester three business days subsequent to
the calendar entry date.

29 This implies that for a meeting between Kelly and Wong to be considered purely
30 personal or social, no city business must be discussed and the meeting must not take place at a

1 City Office or the office or residence of Wong, Kelly, or anyone else that does substantial business
2 with the City (Kelly is an employee of the City and thus inherently does substantial business with
3 and is substantially financially affected by City actions; Wong is a permit expeditor and city
4 contractor and thus does substantial business and is substantially financially affected by City
5 actions). Any message discussing a meeting between Kelly and Wong must be disclosed.

6 30. Respondents cite in their July 8, 2020 request to destroy the '825 PDF that the
7 disclosed messages with black rectangles are exempt under Gov Code 6254(c) -- but to qualify
8 under this exemption these records must be "Personnel, medical, or similar files, the disclosure of
9 which would constitute an unwarranted invasion of personal privacy." But not every single
10 so-redacted message qualifies, in its entirety.

11 31. Text messages are not personnel or medical files.

12 32. Therefore, the only remaining exemption is for "similar files, the disclosure of
13 which would constitute an unwarranted invasion of personal privacy."

14 33. Moreover, because of the minimal withholding requirement in San Francisco
15 (SFAC 67.26), only the minimal portions of all Wong/Kelly communications that are "similar" to
16 "personnel" and "medical" files and would constitute an "unwarranted" invasion of personal
17 privacy should be redacted/withheld.

18 34. For example, Kelly's family information (except information regarding Kelly's
19 wife City Administrator Naomi Kelly's work on behalf of the City, which is also public business
20 by definition, which was in fact the subject of at least one of the now-redacted messages), personal
21 lockboxes, and medical/health information could be redacted, while disclosing everything else.

22 35. Furthermore, this Task Force should not consider disclosure of any records about
23 transactions, meetings, and/or agreements between Wong and Kelly to constitute "unwarranted"
24 invasion of personal privacy. Given that Wong has pled guilty to crimes relating to a federal
25 investigation of corruption in San Francisco, there is a legitimate public interest in understanding
26 what influence, if any, Wong has had on the City's business through its public officials, including
27 Kelly.

28 36. Finally, as SFAC 67.21(g) instructs: "In any court proceeding pursuant to this
article there shall be a presumption that the record sought is public, and the burden shall be upon
the custodian to prove with specificity the exemption which applies." Respondents will have to
prove for each and every text message that the record is in fact not a public record, and moreover

1 that *no part* is public (otherwise, the public part would have to be disclosed).
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5 **V. REQUEST FOR RELIEF**

6 37. Complainant requests the Task Force (and/or other relevant adjudicatory bodies
7 including the Supervisor of Records and Ethics Commission) examine the original unredacted
8 records *in camera* to determine whether or not all of Respondents' claimed withholdings are
lawful and minimal.

9 38. Complainant requests the Task Force to determine that some or all of the records or
10 portions thereof withheld from disclosure or not yet disclosed are public and order Respondents to
disclose them.

11 39. Complainant requests the Task Force find Respondents violated:

- 12 a. SF Admin Code 67.21(b) and Cal. Govt Code 6253(b, c) for responding to the
- 13 requests in an incomplete manner;
- 14 b. Cal. Govt Code 6253(d)(3) by failing to identify all persons responsible for denying
- 15 access to records;
- 16 c. SF Admin Code 67.26 for withholding more than the minimum exempt portion of
- 17 records;
- 18 d. SF Admin Code 67.27 for not providing a lawful justification for withholding
- 19 information;
- 20 e. (as to Kelly only) SF Admin Code 67.29-7(a) for not disclosing Kelly's
- 21 correspondence.

22 40. Complainant requests that the Task Force issue all appropriate orders and refer
23 Respondents to the District Attorney, Attorney General (SFAC 67.21(e)), and Ethics Commission
24 (SFAC 67.30(c)) if Respondents refuse to disclose every public record or portion thereof
25 responsive to Complainant's requests.

26 Respectfully submitted,

27 ANONYMOUS

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EXHIBIT A

From: Anonymous Person

06/11/2020 

Subject: California Public Records Act Request: Inter-Agency Text Messages - Immediate Disclosure Request (SF PUC)

[Email](#)

Public Utilities Commission and Harlan Kelly Jr.:

Below are new Immediate Disclosure Requests (SF Admin Code 67.25(a)) directed to your agency and its department head. Your response is required by June 12, 2020. Rolling records responses are requested (SFAC 67.25(d)) if you are unable to immediately produce records. Exact copies of every responsive record are requested (Gov Code 6253(b)) - do not: provide mere URLs, print and scan electronic records, convert native files to PDFs, or provide black and white versions of any color images. Provide only copies of records not requiring fees and in-person inspection of all other records (GC 6253).

1. All text, email, or chat messages (including group messages, in any form or application including but not limited to SMS, MMS, WhatsApp, WeChat, Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or received to/cc/bcc/from between Harlan Kelly Jr. and London Breed, on government or personal accounts from Jan 1, 2015 and present (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))
2. All text, email, or chat messages (including group messages, in any form or application including but not limited to SMS, MMS, WhatsApp, WeChat, Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or received to/cc/bcc/from between Harlan Kelly Jr. and Walter Wong/Jaidin Consulting Group/Jaidin Associates (including but not limited to jaidin@pacbell.net, jdngroup@pacbell.net, or any email address ending with jaidin.net), on government or personal accounts from Jan 1, 2015 and present (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))
3. All text, email, or chat messages (including group messages, in any form or application including but not limited to SMS, MMS, WhatsApp, WeChat, Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or received to/cc/bcc/from between Harlan Kelly Jr. and Mohammed Nuru, on government or personal accounts from Jan 1, 2015 and present (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))
4. All text, email, or chat messages (including group messages, in any form or application including but not limited to SMS, MMS, WhatsApp, WeChat, Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or received to/cc/bcc/from between Harlan Kelly Jr. and Naomi Kelly, on government or personal accounts from Jan 1, 2020 and present (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))

For text messages: While the phone numbers are not needed, the following must be preserved: the timestamps, the textual content, attachments, and images, and also ALL sender and recipient names (including groups). Pursuant to SF Admin Code 67.21(l), which requires you to use any electronic format that we request, please provide the records in spreadsheet format. For an example of the format of the response, see SFPD Chief Scott's prior response here: https://cdn.muckrock.com/foia_files/2020/04/14/Text_Messages_Breed_Scott_Redacted.pdf and clearly referenced redaction justifications here: https://cdn.muckrock.com/foia_files/2020/04/14/ChiefOfficeResponse201.pdf (though I do not concede all of them are appropriate redactions) . Please provide rolling responses, starting with the most recent records going backwards. Messages to/from before your current department head became the department head must still be provided.

Do not destroy or discard any responsive records - we will appeal all withholdings or Sunshine violations. Remember Mr. Kelly has an obligation to maintain in a professional and businesslike manner their correspondence and release them as public records (SF Admin Code 67.27-9(a)); and we will cross-check your responses with all other parties to ensure you have not destroyed or withheld records improperly.

Your non-exhaustive obligations:

- All withholding of any information must be justified in writing (SFAC 67.27).
- All withholdings by masking or deletion (aka redactions) must be keyed by footnote or other clear reference to the specific justification for that redaction, and only the minimal exempt portion of any record may be withheld (SFAC 67.26).
- You must respond to emailed requests (SFAC 67.21(b)).
- You must notify us of whether or not responsive records exist and/or were withheld for each below request (Gov Code 6253(c), 6255(b)).
- You must state the name and title of each person responsible for withholding any information (Gov Code 6253(d)).
- Do not impose any end-user restrictions upon me (Santa Clara Co. vs Superior Ct, 170 Cal.App 4th 1301); so if you use a third-party website like NextRequest to publish records, please make them completely public without any login or sign-in.

Your agency must do all of the above things in your response, and you cannot wait until we file complaints.

***** We have no duty to, and we will not again, remind the City of its obligations. Instead, we will file complaints for every Sunshine Ordinance or CPRA violation. We will continue to file complaints until the City's procedures are modified to fully comply with the Sunshine Ordinance and CPRA, without caveat or exception. *****

Thank you for your anticipated cooperation in this matter.

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.

Sincerely,
Anonymous

From: Anonymous Person

06/11/2020 

Subject: RE: California Public Records Act Request: Inter-Agency Text Messages - Immediate Disclosure Request (SF PUC) Email

MR. KELLY: This was also sent to the Public Records email, and is being sent directly to you so you do not destroy responsive records:

Public Utilities Commission and Harlan Kelly Jr.:

Below are new Immediate Disclosure Requests (SF Admin Code 67.25(a)) directed to your agency and its department head. Your response is required by June 12, 2020. Rolling records responses are requested (SFAC 67.25(d)) if you are unable to immediately produce records. Exact copies of every responsive record are requested (Gov Code 6253(b)) - do not: provide mere URLs, print and scan electronic records, convert native files to PDFs, or provide black and white versions of any color images. Provide only copies of records not requiring fees and in-person inspection of all other records (GC 6253).

1. All text, email, or chat messages (including group messages, in any form or application including but not

limited to SMS, MMS, WhatsApp, WeChat, Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or received to/cc/bcc/from between Harlan Kelly Jr. and London Breed, on government or personal accounts from Jan 1, 2015 and present (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))

2. All text, email, or chat messages (including group messages, in any form or application including but not limited to SMS, MMS, WhatsApp, WeChat, Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or received to/cc/bcc/from between Harlan Kelly Jr. and Walter Wong/Jaidin Consulting Group/Jaidin Associates (including but not limited to jaidin@pacbell.net, jdngpr@pacbell.net, or any email address ending with jaidin.net), on government or personal accounts from Jan 1, 2015 and present (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))

3. All text, email, or chat messages (including group messages, in any form or application including but not limited to SMS, MMS, WhatsApp, WeChat, Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or received to/cc/bcc/from between Harlan Kelly Jr. and Mohammed Nuru, on government or personal accounts from Jan 1, 2015 and present (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))

4. All text, email, or chat messages (including group messages, in any form or application including but not limited to SMS, MMS, WhatsApp, WeChat, Signal, Instagram, Twitter, Facebook, Hangouts, Skype, Teams) sent or received to/cc/bcc/from between Harlan Kelly Jr. and Naomi Kelly, on government or personal accounts from Jan 1, 2020 and present (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))

For text messages: While the phone numbers are not needed, the following must be preserved: the timestamps, the textual content, attachments, and images, and also ALL sender and recipient names (including groups). Pursuant to SF Admin Code 67.21(l), which requires you to use any electronic format that we request, please provide the records in spreadsheet format. For an example of the format of the response, see SFPD Chief Scott's prior response

here: https://cdn.muckrock.com/foia_files/2020/04/14/Text_Messages_Breed_Scott_Redacted.pdf and clearly referenced redaction justifications

here: https://cdn.muckrock.com/foia_files/2020/04/14/ChiefOfficeResponse201.pdf (though I do not concede all of them are appropriate redactions) . Please provide rolling responses, starting with the most recent records going backwards. Messages to/from before your current department head became the department head must still be provided.

Do not destroy or discard any responsive records - we will appeal all withholdings or Sunshine violations. Remember Mr. Kelly has an obligation to maintain in a professional and businesslike manner their correspondence and release them as public records (SF Admin Code 67.27-9(a)); and we will cross-check your responses with all other parties to ensure you have not destroyed or withheld records improperly.

Your non-exhaustive obligations:

- All withholding of any information must be justified in writing (SFAC 67.27).
- All withholdings by masking or deletion (aka redactions) must be keyed by footnote or other clear reference to the specific justification for that redaction, and only the minimal exempt portion of any record may be withheld (SFAC 67.26).
- You must respond to emailed requests (SFAC 67.21(b)).
- You must notify us of whether or not responsive records exist and/or were withheld for each below request (Gov Code 6253(c), 6255(b)).
- You must state the name and title of each person responsible for withholding any information (Gov Code 6253(d)).
- Do not impose any end-user restrictions upon me (Santa Clara Co. vs Superior Ct, 170 Cal.App 4th 1301); so if you use a third-party website like NextRequest to publish records, please make them completely public

without any login or sign-in.

Your agency must do all of the above things in your response, and you cannot wait until we file complaints.

***** We have no duty to, and we will not again, remind the City of its obligations. Instead, we will file complaints for every Sunshine Ordinance or CPRA violation. We will continue to file complaints until the City's procedures are modified to fully comply with the Sunshine Ordinance and CPRA, without caveat or exception. *****

Thank you for your anticipated cooperation in this matter.

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.

Sincerely,
Anonymous

From: Public Utilities Commission

06/11/2020 

Subject: RE: California Public Records Act Request: Inter-Agency Text Messages - Immediate Disclosure Request (SF PUC) [Email](#)

Dear MuckRock News,

Thank you for your public records request. Due to the COVID-19 pandemic, the Mayor has issued supplementary orders suspending select provisions of the Sunshine Ordinance which will affect how soon you may receive responsive documents. This memo<<https://www.sfwater.org/modules/ShowDocument.aspx?documentID=15142>> provides details.

We have forwarded your request the appropriate staff and will provide an update including a potential timeline within 10 days.

Best regards,
SFPUC Public Records

From: Public Utilities Commission

06/22/2020 

Subject: Public Record Request submitted June 11, 2020 - Communications between Harlan L. Kelly Jr. and various others [Email](#)

We are in receipt of your request dated June 11, 2020. We have identified records responsive to your request and are proceeding to review them for any necessary redactions or withholding. We have not yet completed our search for or review of responsive records. As explained in the attached memo, per emergency orders of the Mayor, the City's time to produce records in response to PRA requests has been extended during the emergency. We are providing this initial response within 10 days in accordance with those orders. Based on the volume and nature of the documents, we plan to provide initial documents by July 3, 2020. We will provide additional documents on a rolling basis thereafter.

SFPUC Public Records

Suzanne Gautier

Suzanne Gautier

Manager, Communications and Public Outreach

External Affairs

San Francisco Public Utilities Commission

525 Golden Gate Avenue, 12th Floor

San Francisco, CA 94102

Phone - 415-513-2529

Email - sgautier@sfgwater.org <<http://www.sfgwater.org/>>

Note: I am working remotely until further notice



Public Records Memo - Final 3-30-20

View

Embed

Download

From: Public Utilities Commission

07/02/2020

Subject: RE: California Public Records Act Request: Inter-Agency Text Messages

Email

Dear Muckrock News

Please access documents responsive to your June 11 request below.

<https://sfpuc.sharefile.com/d-s9194ec992cf4e6cb>

Please do so within a week as the link will expire.

With regard to the PDFs we are providing that contain text messages (Bates Stamp #s 161-219), please be advised that all of the redactions in those PDFs are of text messages that do not contain "information relating to the conduct of the public's business" and therefore do not constitute "public records" responsive to your request. (Cal. Gov. Code § 6252(e); see also *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 626 ("Any personal information not related to the conduct of public business . . . can be redacted from public records that are produced or presented for review." (citing Cal. Gov. Code § 6253(a)); City Attorney memorandum dated March 24, 2017 titled "Public Records on Personal Electronic Devices, available at <https://www.sfcityattorney.org/legalopinions/>).

With regard to the email messages we are producing today at Bates Stamp #220-260, as indicated in these documents, we have redacted on privacy grounds personal email addresses, personal telephone numbers, dates and places of birth, personal identification numbers, and gender pursuant to California Government Code section 6254, subdivisions (c) and (k) and Article I, section 1, of the California Constitution. (See also San Francisco Administrative Code § 67.1(g)).

Finally, we have redacted from the email titled, "Night Noise permit requirements" (Bates Stamp #234-235) content constituting privileged and confidential attorney-client communications. (See, Cal. Gov. Code § 6254(k) (providing an exemption for records protected from disclosure under federal or state law, including provisions of the Evidence Code relating to privilege; Cal. Evid. Code § 954 (communications between attorneys and their clients are privileged); Cal. Gov. Code § 6276.04 (cross-referencing the attorney-client and attorney work product privileges); S.F. Admin. Code § 67.21(k)).

We are responding to your request on a rolling basis and expect to be producing additional responsive records next week.

Please be advised that we are responding to your records request on behalf of the SFPUC only, and only as to records that are within the SFPUC's possession. Each City department receives, searches, and responds to public records requests on behalf of its own department, not Citywide. Accordingly, you may wish to also

public records requests on behalf of its own department, not Citywide. Accordingly you may wish to also contact the Department of Public Works, the City Administrator's Office, and/or the Mayor's Office, as those departments and offices may also have records responsive to your request.

Best regards,
SFPUC Public Records

From: Anonymous Person

07/03/2020 

Subject: RE: California Public Records Act Request: Inter-Agency Text Messages - Immediate Disclosure Request (SF PUC) [Email](#)

Thank you - MuckRock staff will hopefully get the files within the week. If not, we will need to request you extend the deadline.

However, I think files may be missing. You mentioned for example text messages in Bates 161-219. But I only received Bates 161-168. Where are the rest?

I also didn't receive I assume what is Bates 001 thru 160. Was there a mistake in uploading?

Here's what I got:

Sink hole at 110 Alta Street 1_Redacted for Privacy.pdf
Drawing of Fire Hydrant Location_Redacted for Privacy.pdf
MLB1_Redacted.pdf
Night Noise Permit requirements_Redacted for Privacy ACP.pdf
Sewage Issue on 865 Market St_Redacted for Privacy.pdf
3 street lights are out of order on Stockton & Jackson streets _Redacted for Privacy.pdf
2401 Broadway_Redacted for Privacy.pdf
Bell and snow flake_Redacted for Privacy.pdf
Itinerary -California.pdf
letter is ready for pick up_Redacted for Privacy.pdf
Node specifications_Redacted for Privacy.pdf
Revised invitation for Vice Governor_Redacted for Privacy.pdf
Revised invitation_July 24_Redacted for Privacy.pdf
street lights are out of order on Stockton & Jackson streets._Redacted for Privacy.pdf
The 9th Annual Chinatown Ping Pong Festival_Redacted for Privacy.pdf
Vice governor Ye Zhenqin of Guangdong Province and the delegation (2)_Redacted for Privacy.pdf
1317 20th Avenue Water Department Work Order Issued letter_Redacted for Privacy.pdf
Bell Shaped and Snowflake LED.pdf
Revised invitation for Vice Governor (1)_Redacted for Privacy.pdf
Sink hole at 110 Alta Street_Redacted for Privacy.pdf
Sunset Boulevard Greenway Project - Funding Problems with SFPUC_Redacted for Privacy.pdf
Sunset Boulevard Greenway Project - Funding Problems with SFPUC_Redacted for Privacy.pdf
Vice governor Ye Zhenqin of Guangdong Province and the delegation_Redacted for Privacy.pdf
叶贞琴副省长Name list_Nov visit_Redacted for Privacy.pdf
Drawing of Fire Hydrant Location 1_Redacted for Privacy.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

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.

Sincerely,
Anonymous

From: Public Utilities Commission

07/07/2020

Subject: RE: [REDACTED]RE: California Public Records Act Request: Inter-Agency Text Messages - Immediate Disclosure Request...

Email

Dear Muckrock News,

Apologies and thanks for letting us know. Please use this link for Bates numbers 161 to 219.

<https://sfpuc.sharefile.com/d-sfaf513caac747dcb>

Please note that it will expire in 7 days.

Bates 001 through 160 are under review and will be provided once they are ready.

Thanks for your patience.

SFPUC Public Records

From: Anonymous Person

07/07/2020

Subject: RE: California Public Records Act Request: Inter-Agency Text Messages - Immediate Disclosure Request (SF PUC)

Email

Public Utilities Commission and Harlan Kelly Jr.:

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://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.

You appear to have partially obscured some of the text messages between Harlan Kelly Jr. and Walter Wong, but the text of some of those records is still visible in "Walter redacted final.pdf". It's unclear why these communications - regarding meetings, contracting, and travel between the two persons, have been partially obscured - they are neither completely redacted nor plainly visible as they have black rectangles on top of them, but they remain part of the record.

Therefore, below are new Immediate Disclosure Requests (SF Admin Code 67.25(a)) directed to SFPUC and Harlan Kelly Jr. Your response is required by July 8, 2020. Rolling records responses are requested (SFAC 67.25(d)) if you are unable to immediately produce records. Exact copies of every responsive record are requested (Gov Code 6253(b)) - do not: provide mere URLs, print and scan electronic records, convert native files to PDFs, or provide black and white versions of any color images. Provide only copies of records not requiring fees and in-person inspection of all other records (GC 6253).

1. All calendar entries of any kind, with all details, invitee lists, attachments, and metadata, for Harlan Kelly Jr. for any meetings or travel with Walter Wong (including but not limited to jaidin@pacbell.net, jdngrp@pacbell.net, or any email address ending with jaidin.net) (you must search

personal accounts pursuant to City of San Jose v Superior Court (2017)); see also SOTF 19047 Anonymous v. Breed

2. All payments made by Harlan Kelly Jr. to Walter Wong/Jaidin Consulting Group/Jaidin Associates/affiliated companies (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))

3. All payments made by Walter Wong/Jaidin Consulting Group/Jaidin Associates/affiliated companies to Harlan Kelly Jr. (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))

4. All contracts between Walter Wong/Jaidin Consulting Group/Jaidin Associates/affiliated companies and Harlan Kelly Jr. (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))

Please provide rolling responses, starting with the most recent records going backwards. Messages to/from before your current department head became the department head must still be provided.

Do not destroy or discard any responsive records - we will appeal all withholdings or Sunshine violations. Remember Mr. Kelly has an obligation to maintain in a professional and businesslike manner their correspondence and release them as public records (SF Admin Code 67.27-9(a)); and we will cross-check your responses with all other parties to ensure you have not destroyed or withheld records improperly.

Your non-exhaustive obligations:

- All withholding of any information must be justified in writing (SFAC 67.27).
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- You must respond to emailed requests (SFAC 67.21(b)).
- You must notify us of whether or not responsive records exist and/or were withheld for each below request (Gov Code 6253(c), 6255(b)).
- You must state the name and title of each person responsible for withholding any information (Gov Code 6253(d)).
- Do not impose any end-user restrictions upon me (Santa Clara Co. vs Superior Ct, 170 Cal.App 4th 1301); so if you use a third-party website like NextRequest to publish records, please make them completely public without any login or sign-in.

Your agency must do all of the above things in your response, and you cannot wait until we file complaints.

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Thank you for your anticipated cooperation in this matter.

Sincerely,

Anonymous

From: Anonymous Person

07/07/2020 

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2. All payments made by Harlan Kelly Jr. to Walter Wong/Jaidin Consulting Group/Jaidin Associates/affiliated companies (you must search personal accounts pursuant to City of San Jose v Superior Court (2017))
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Sincerely,

Anonymous