

Anonymous

Attn. General Government Team  
Supervisor of Records  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
*via email*

March 11, 2021

## **Petition under SF Admin Code § 67.21(d)**

Supervisor of Records Dennis Herrera:

This is a petition under SF Admin Code 67.21(d) to determine in writing that the redacted portions of the attached exhibits and of the attachment on page 7 of the Melanie records are public and order them disclosed. It continues to challenge various previously-unappealed parts of the PUC's response to the June 11, 2020 request from this email address. You may wish to consider it as part of the prior-filed March 2 and March 9 petitions re: overly-redacted Kelly-Breed messages, and March 9 petition re: overly-redacted Naomi Kelly-Harlan Kelly messages, as long as you make determinations on all challenged records. The Melanie record has been redacted voluntarily by us to remove a phone number which was published by PUC itself.

As we have already proven via prior petitions, the PUC previously unlawfully redacted certain text messages between Harlan Kelly Jr. and Walter Wong. Moreover, the PUC has admitted as such in its Feb 22, 2021 letter (in which it also re-released a new version of mostly-unredacted Kelly-Wong texts) and via DCA Jon Givner's letter of March 8, 2021. The PUC apparently violated the law because it allowed Harlan Kelly Jr. to control the redaction of his own records without any oversight by the PUC itself – which also was apparently then and remains now the policy and practice of the City, pursuant to your long-standing advice to the City re: your interpretation of *City of San Jose v. Superior Court*. However, as you discuss in your memo interpreting, the City is always ultimately responsible

for the actions and judgments of its employees in such matter.

Given Kelly's prior mis-redaction of the Walter Wong texts to protect sensitive-but-disclosable communications, there is no reason to believe that the redactions made in the attached text messages were then or are currently lawful, and each must be justified under a specific provision of the law.

Furthermore, a copy of the attachment on page 7 of the Melanie records must be produced as required by Admin Code 67.21. This tiny, compressed, printed and scanned version is unreadable and thus withholds its textual content, which is precisely why we have successfully previously argued that such production does not even constitute a "copy" of the underlying record (see SOTF decisions 19098 *Anonymous v Police Department*, 19131 *Anonymous v Cisneros*).

On March 10, 2021, you asserted a right to simply refuse to issue determinations to petitions filed pursuant to Admin Code 67.21(d). It is telling that you have decided to do so as we have continued to successfully uncover violations of the law by City agencies and officials, including both by yourself personally and your office (see SOTF decisions 19108 *Anonymous v Herrera*, 19044 *Anonymous v Office of the City Attorney*, 19120 *Anonymous v Office of the City Attorney*).

If you refuse to review the records and issue a determination and order if needed, you will be violating Admin Code 67.21(d) yourself and potentially aiding your City clients in violating the law as a direct result of willfully refusing to perform your own legally-mandated duties.

The City has throughout its history, whether by declaring war on the Sunshine Ordinance Task Force or on successful transparency advocates themselves, attempted to neuter the Sunshine Ordinance to prevent disclosure of all lawfully-disclosable public information which may be unfriendly to senior officials' political prospects. Yet the public has the right to know

whether its representatives conduct the public business in the interest of the public or in their private interest.

As such advocates become more successful, your office appears to consider them a threat to your control over the City's public records regime, instead of treating us fairly as petitioners in a proceeding where you act in a quasi-judicial role. There is no doubt I file numerous petitions – and those petitions and complaints have forced the City to become significantly more compliant with the Sunshine Ordinance, which can be seen by the additional disclosures your office causes agencies to provide in response to my petitions and the nearly entirely successful series of complaints I have won at the SOTF.

As long as the City continues to violate the law – apparently often due to your deputies' poor advice or training – no ethical option exists other than to continue to petition and appeal for complete, timely, and lawful disclosure, without exception.

Sincerely,

An Anonymous Independent Journalist