

EXHIBIT A-1

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@sfcityatty.org

August 26, 2019

Sent via email (72056-97339218@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records concerning your April 20, 2019 request to the City Attorney's Office for the following:

A. an electronic copy, in the original electronic format, with all e-mail headers, metadata, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of:

A1. the e-mail message with Message-Id:
20190418173050.839.30844@f720c6d2-4be2-4478-af65-
b9b764b16768.prvt.dyno.rt.heroku.com

A2. the e-mail message with Message-Id:
<20190418173050.839.30844@f720c6d2-4be2-4478-af65-
b9b764b16768.prvt.dyno.rt.heroku.com>

A3. the e-mail message with Message-Id:
20190418173050.1.2B43534B4544D903@requests.muckrock.com

A4. the e-mail message with Message-Id:
<20190418173050.1.2B43534B4544D903@requests.muckrock.com>

A5. the e-mail message with Message-Id:
<DM5PR09MB1497363CAABBE6806E68810F80260@DM5PR09MB
1497.namprd09.prod.outlook.com>

A6. the e-mail message with Message-Id:
DM5PR09MB1497363CAABBE6806E68810F80260@DM5PR09MB1
497.namprd09.prod.outlook.com

B. an electronic copy of your internal public records policies/manuals/instructions/guidelines for the public and/or your own employees

As an alternative to producing the records in original electronic format, your request asked that the metadata from these emails be copied into a PDF. The City Attorney's Office produced PDF

Letter to Anonymous
August 26, 2019
Page 2

copies of the emails and the metadata but redacted portions of the metadata. We conclude that the City Attorney's Office responded appropriately to this request.

Under the Sunshine Ordinance (Section 67.21(d) of the Administrative Code), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so – for determining “whether the record requested, or any part of the record requested, is public.” You contend that the City Attorney's Office improperly redacted information from the metadata in its response to your request.

State law does not provide authoritative guidance on whether metadata is subject to disclosure under the Public Records Act. Assuming that it is subject to disclosure, there are proper grounds to redact it. Disclosure of the metadata associated with the original electronic files – whether by producing it in original electronic format or disclosing the metadata in some other format – may jeopardize or compromise the security of the City's computer system, and the City Attorney's Office may decline to produce the native files and additional metadata under Government Code Section 6253.9(f). *See* Gov't Code § 6254(f) (“Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.”)

If native files are produced, metadata disclosed with those files may include unique identifiers for individual computer terminals and computer servers and associated security certificates and similar information. This information is highly sensitive, as disclosing it could allow a hacker to penetrate the City's computer system, “spoof” emails and insert themselves into confidential and/or privileged discussions, or send unauthorized emails on behalf of city officials. Therefore, this information may also be withheld under Government Code Section 6254.19, which allows information security records to be withheld if disclosure “would reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system of a public agency.” Finally, given this security risk, the information may also be withheld because there is a substantial need for confidentiality that outweighs any interest the public may have in accessing this information. *See* Cal. Evid. Code § 1040; Gov't Code § 6254(k).

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-2

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

August 26, 2019

Sent via email (72902-46637773@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records concerning your May 8, 2019 request to the Mayor's Office for the following:

an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items, from April 28 to May 4, 2019 (inclusive).

In response to this request, the Mayor's Office produced the Mayor's calendar entries in PDF format from the time period at issue. The Mayor's Office explained that it provided the records in PDF format for ease of transferability and to protect the security of the original record, citing Government Code Section 6253.9.

Under the Sunshine Ordinance (Section 67.21(d) of the Administrative Code), the Supervisor of Records is responsible for determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so – for determining “whether the record requested, or any part of the record requested, is public.” You contend that the Mayor's Office improperly withheld headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images from its response to your request.

We understand that the responsive calendar entries include no email addresses, attachments, appendices, exhibits, or inline images, and thus the Mayor's Office did not improperly withhold this information.

With regard to metadata, which we understand would include headers and timestamps, we conclude that the Mayor's Office properly withheld this information.

First, you contend that the Mayor's Office should provide this information by producing the calendar entries in the “original electronic format.” But you also request that the calendar entries be exported to “.ics, iCalendar, or vCard formats.” The Public Records Act does not require the Mayor's Office to produce records in a format that it does not store them unless the Mayor's Office has used the records in the requested format or provided them in the requested format to another agency. Gov't Code § 6253.9. We understand that the Mayor's Office does not hold the records in any of these formats, and it has not used any of these formats or provided

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the records in these formats to any agency. By contrast, the Mayor's Office does store calendar entries in PDF format, and it has used that format to provide the records in the past.

Second, the Mayor's Office has determined that disclosure of the metadata associated with the original electronic files – whether by producing it in native format or disclosing the metadata in some other format – may jeopardize or compromise the security of the City's computer system. Thus the Mayor's Office may decline to produce the metadata under Government Code Section 6253.9(f). Also, the Mayor's Office has determined that metadata contained in original electronic files may include unique identifiers for individual computer terminals and computer servers and associated security certificates and similar information. This information is highly sensitive, as disclosing it could allow a hacker to penetrate the City's computer system, "spoof" emails and insert themselves into confidential and/or privileged discussions, or send unauthorized emails on behalf of city officials. Therefore the information may be withheld under Government Code section 6254.19. Given this security risk, the information may also be withheld because there is a substantial need for confidentiality that outweighs any interest the public may have in accessing this information. *See* Cal. Evid. Code § 1040; Gov't Code § 6254(k).

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-3

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@sfcityattly.org

September 5, 2019

Sent via email (76434-70600365@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records submitted on August 26, 2019, concerning a public records request to the Mayor's Office dated July 2, 2019, in which you requested various emails and other forms of electronic communications from mayoral staff. You have sought a determination from the Supervisor of Records on the following issues related to this request:

This petition is regarding, inter alia, the Office of Mayor's:

- (a) failure to provide various email in .msg format and with headers,
- (b) use of personal and/or secret communications technologies to discuss the people's business and therefore failing to preserve correspondence in a "professional and businesslike" manner (67.29-7).
- (c) use of scanned PDFs instead of text PDFs, and
- (d) lack of specificity re: redaction justification.

With regard to item (a), you have acknowledged that our "Aug. 26, 2019 response to [your] 19044 May 8 petition already reflects [this] office's position regarding (a)."

Items (b) and (c) are beyond the jurisdiction of the Supervisor of Records. The Sunshine Ordinance (Section 67.21(d) of the Administrative Code), tasks the Supervisor of Records with determining whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so – for determining "whether the record requested, or any part of the record requested, is public." With regard to item (b), you do not allege that the Mayor's Office has withheld or redacted public records responsive to your request. Instead, you allege that the Mayor's Office failed to maintain some records in a "professional and businesslike" manner in violation of Section 67.29-7 of the Sunshine Ordinance by using the Signal application. Whether the use of a particular communications technology is proper and complies with this provision of the Sunshine Ordinance is not an issue within the ambit of our responsibility under the Sunshine Ordinance. Similarly, with respect to item (c), whether the Sunshine Ordinance requires the Mayor's Office to produce a searchable PDF file is beyond the scope of our review; we do not

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view this as an allegation that the Mayor's Office improperly withheld a record or any part of a record.

Finally, with respect to item (d), we understand that the Mayor's Office has agreed to identify the legal basis for each redaction that it applied to the responsive documents. If after receiving this information, you believe that the Mayor's Office improperly relied on an exemption to redact information, please follow up with us and we will address your concern at that time.

Very truly yours,

DENNIS J. HERRERA
City Attorney

A handwritten signature in black ink, appearing to be 'BR' with a flourish, positioned above the typed name of the Deputy City Attorney.

Bradley A. Russi
Deputy City Attorney

EXHIBIT A-4

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@sfcityattly.org

September 6, 2019

Sent via email (72902-46637773@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records dated August 27, 2019, concerning a request to the Mayor's Office for calendar entries. We understand your petition to relate to your May 8, 2019 request to the Mayor's Office for:

an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's calendar, with all items, from April 28 to May 4, 2019 (inclusive).

You contend that the Mayor's Office improperly withheld responsive calendar entries that are not required to be maintained and disclosed under Section 67.29-5 of the Sunshine Ordinance (Administrative Code Section 67.29-5). Section 67.29-5 requires certain City officials to maintain a daily calendar and prescribes the information that must be recorded and disclosed in such calendar and the process for obtaining it. Separate and apart from this requirement, this Office has stated that where "an official or employee maintains a personal work calendar, it would be considered a public record, with exempt material subject to redaction." (*See City Attorney's Good Government Guide*, p. 121).

We understand that the Mayor's Office has now produced additional documents in response to your request. The Mayor's Office redacted some information from this production but did not otherwise withhold any responsive records. If you believe the Mayor's Office improperly applied redactions to this production, please specify which redactions you contest. Otherwise, we consider this petition closed.

Very truly yours,

DENNIS J. HERRERA
City Attorney

A handwritten signature in black ink, appearing to read "Bradley A. Russi".

Bradley A. Russi
Deputy City Attorney

EXHIBIT A-5



DENNIS J. HERRERA
City Attorney

BRADLEY A. RUSSI
DEPUTY CITY ATTORNEY

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

October 1, 2019

Sent via email (72056-97339218@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records concerning your August 23, 2019 request to the Department of Public Works ("DPW") for the following:

A. IMMEDIATE DISCLOSURE: an electronic copy, in the original electronic format, with all headers, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the most recent 10 emails RECEIVED BY EVERY OFFICIAL government email account of

1. Director, Public Works;
2. Director, Policy and Communications;
3. City Architect;
4. City Engineer;
5. Deputy Director for Operations;
6. Deputy Director for Financial Management and Administration;
7. (Acting) Chief Information Officer;
8. Custodian of Records
9. All persons having an Executive Assistant, Personal Assistant, Admin. Assistant or Secretary or equivalent title which report directly to the Director, Public Works

B. IMMEDIATE DISCLOSURE: an electronic copy, in the original electronic format, with all headers, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the most recent 10 emails SENT FROM EVERY OFFICIAL government email account of [[same list of titles as 1-9]]

C. regular disclosure: an electronic copy, in the original electronic format, with all headers, metadata, timestamps, attachments, appendices, exhibits, and

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inline images, except those explicitly exempted by the Ordinance, of the most recent 10 emails SENT FROM EVERY PERSONAL email account(s) of the following officials, TO/CC/BCC any City/County email address, solely to the extent that such emails are regarding the public's business and disclosable under relevant statute and case law, including but not limited to City of San Jose v Superior Court (2017). If NO such emails exist for each entry, remember you must state under Govt Code 6253(c) that there are no responsive records. [[same list of titles as 1-9]]

D. regular disclosure: an electronic copy, in the original electronic format, with all headers, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the most recent 10 emails RECEIVED BY EVERY PERSONAL email account(s) of the following officials, FROM any City/County email address, solely to the extent that such emails are regarding the public's business and disclosable under relevant statute and case law, including but not limited to City of San Jose v Superior Court (2017). If NO such emails exist for each entry, remember you must state under Govt Code 6253(c) that there are no responsive records. [[same list of titles as 1-9]]

DPW produced records responsive to your request on September 5 and September 13. (*See* <https://sanfrancisco.nextrequest.com/requests/19-3609>).

First, you contend that DPW either failed to produce public records maintained on employees' personal accounts or failed to state that it had no such responsive records. We understand DPW has now stated it has no such responsive records.

Second, you contend that DPW improperly withheld native files and metadata. For the reasons articulated in our response to another one of your petitions, attached hereto as Exhibit A, we find that DPW did not improperly withhold native files or metadata.

Third, you contend that DPW improperly withheld email addresses of City employees in the To/From/Cc/Bcc headers of some emails provided in PDF format. We find that DPW did not improperly withhold information. DPW provided the records in PDF format, which we find to be reasonable and appropriate. We understand that the way in which the City's email system prints such records – and the way they appear on the screen – does not show the email addresses. You may of course request a directory of City email addresses if you so choose. Similarly, you contend that DPW withheld URL links, HTML content, certain images, and timestamp information due to the manner in which the records were printed and provided. We find that DPW did not improperly withhold this information for the same reasons.

Finally, you request that we determine whether some or part of the information in 116 different metadata headers must be disclosed. We decline to do so. DPW produced the records in PDF format and did not disclose the metadata headers, and we have already determined that this is a proper way to respond to the request. Moreover, the information contained in these fields is highly technical and without engaging in an analysis that exceeds the requirements of the Public Records Act, the information is not "reasonably segregable," further supporting DPW's method of responding to the request. *See* Gov't Code § 6253(a).

Letter to Anonymous
October 1, 2019
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For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney

A handwritten signature in black ink, appearing to read "BRUS", is positioned above the typed name of the Deputy City Attorney.

Bradley A. Russi
Deputy City Attorney

EXHIBIT A-6

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@sfcityatty.org

October 2, 2019

Sent via email (79999-25916958@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records concerning your September 10, 2019 request to the Fine Arts Museums of San Francisco ("FAMSF") for the following:

1. all legal/contractual relationships between your agency (or the City as a whole) and Corporation of the Fine Arts Museums of San Francisco (COFAM)
2. all legal/contractual relationships between your agency (or the City as a whole) and Fine Arts Museums Foundation (FAMF)
3. all records of how city employees use IT systems owned or operated by FAMF and/or COFAM
4. all records of how city employees retain records owned, used, or prepared by the city agency, but stored on IT systems owned or operated by FAMF and/or COFAM

We understand that FAMSF responded to these requests, and that it withheld one record on the basis of an exemption.

Under the Sunshine Ordinance, it is the responsibility of the Supervisor of Records to determine whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so – in the words of the Ordinance, to determine "whether the record requested, or any part of the record requested, is public." Admin. Code § 67.21(d). That is the extent of our jurisdiction.

First, you request that we determine that records on FAMF or COFAM systems concerning the public's business are public records. There is no indication that FAMSF withheld records on FAMF or COFAM systems in response to your request, and we decline to opine on the hypothetical situation that you posit.

Second, you request that we determine that all records responsive to Items 1, 2, and 4 of your request are public records. We understand that FAMSF withheld only one record responsive to these requests – an agreement between FAMSF and COFAM responsive to Item 1. FAMSF indicated that it withheld this document based on the attorney-client privilege under Section 6254(k) of the Government Code and on the basis of privacy under Section 6254(c) of the Government Code.

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The agreement at issue is a common interest agreement between FAMSF and COFAM concerning potential litigation. Under the “common interest” doctrine, a privileged communication (or attorney work product document) may be shared with a third party without resulting in a waiver of attorney-client privilege (or attorney work product protection). *Oxy Resources California LLC v. Superior Court*, 115 Cal. App. 4th 874, 888-90 (2004). A communication may qualify under this doctrine if (1) the disclosure of the communication from one party to another relates to a common interest of the attorneys’ respective clients; (2) the disclosing attorney has a reasonable expectation that the other attorney will preserve confidentiality; and (3) the disclosure is reasonably necessary for the accomplishment of the purpose for which the disclosing attorney was consulted. *Meza v. H. Muehlstein & Co., Inc.*, 176 Cal. App. 4th 969, 981 (2009).

A common interest agreement itself is covered by this doctrine, because the agreement is a communication between the respective parties and their attorneys protected by attorney-client privilege. The agreement itself also relates to the parties’ common interest in defending against potential litigation, there is a reasonable expectation that the agreement would remain confidential, and the agreement is reasonably necessary to carry out the purposes for which the attorneys were retained and consulted. Thus, we determine that FAMSF properly withheld the common interest agreement at issue. *See* Gov’t Code §§ 6254(k), 6276; Evid. Code § 954.

Moreover, to the extent the document mentioned a particular employee, FAMSF properly declined on privacy grounds to disclose the employee’s identity. *See* Gov’t Code § 6254(c).

Finally, you request a determination that FAMSF has violated Sections 67.29-6 and 67.29-7(c) of the Sunshine Ordinance. Section 67.29-6 places certain obligations on departments concerning sources of outside funding, and Section 67.29-7(c) concerns records created under certain contracts. Whether FAMSF has complied with these sections of the Ordinance is beyond the scope of our jurisdiction.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-7

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@sfcityattyy.org

October 10, 2019

Sent via email (76434-70600365@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your further petition to the Supervisor of Records concerning your requests to the Mayor's Office dated July 2, 2019 and August 22, 2019. The Mayor's Office produced records responsive to your request.

First, you contend the Mayor's Office either failed to produce public records maintained on employees' personal accounts or failed to state that it had no such responsive records. The response from the Mayor's Office, dated July 26, 2019, states: "Additionally, responsive text messages from personal devices pertaining to city business have been provided for Communications Director Jeff Cretan, Liaison to the Board of Supervisors Sophia Kittler and Compliance Officer Hank Heckel. No such responsive texts were located for the other requested custodians. Further, no responsive communications in the other electronic media named were located for the requested custodians."

Second, you contend that the Mayor's Office improperly withheld native files and metadata. For the reasons articulated in our response to another one of your petitions, attached hereto as Exhibit A, we find that the Mayor's Office did not improperly withhold native files or metadata.

Third, you contend that the Mayor's Office improperly withheld email addresses of City employees in the To/From/Cc/Bcc headers of some emails provided in PDF format. We find that the Mayor's Office did not improperly withhold information. The Mayor's Office provided the records in PDF format, which we find to be reasonable and appropriate. We understand that the way in which the City's email system prints such records – and the way they appear on the screen – does not show the email addresses. You may of course request a directory of City email addresses if you so choose. Similarly, you contend that the Mayor's Office withheld URL links, HTML content, certain images, color and formatting of documents, and timestamp information due to the manner in which the records were printed and provided. We find that the Mayor's Office did not improperly withhold this information for the same reasons.

Fourth, you contend the Mayor's Office withheld responsive email attachments without a legal basis. We understand that the Mayor's Office will produce any responsive attachments that are not exempt from disclosure, if it has not done so already.

Fifth, you contend the Mayor's Office improperly withheld a responsive text message conversation partially visible on the top of page 57 of the attachments you sent with your

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Page 2

petition. Records on personal devices that do not relate to City business are not subject to disclosure under the Public Records Act or the Sunshine Ordinance. *See City of San Jose v. Superior Court*, 2 Cal.5th 608, 618 (2017).

Finally, you request that we determine whether some or part of the information in 116 different metadata headers must be disclosed. We decline to do so. The Mayor's Office produced the records in PDF format and did not disclose the metadata headers, and we have already determined that this is a proper way to respond to the request. Moreover, the information contained in these fields is highly technical and without engaging in an analysis that exceeds the requirements of the Public Records Act, the information is not "reasonably segregable," further supporting the Mayor's Office's method of responding to the request. *See Gov't Code* § 6253(a).

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-8



DENNIS J. HERRERA
City Attorney

BRADLEY A. RUSSI
DEPUTY CITY ATTORNEY

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

October 23, 2019

*Sent via email (81242-04060798@requests.muckrock.com
72902-46637773@requests.muckrock.com)*

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records dated September 6, 2019, concerning a request to the Mayor's Office for the Mayor's calendar, and your October 7, 2019 petition also relating to a request for the Mayor's calendar. We understand your September 6, 2019 petition to relate to an August 21, 2019 request to the Mayor's Office for:

1. an electronic copy, (in the original electronic format, or alternatively in a format specified as "A" below, for all items held electronically, and a scanned copy for any physical papers), with all calendar item headers, email addresses, invitations (including but not limited to indications of who sent the invite and when), acceptances/declinations by guests, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor's *prospective/expected* calendar or schedule, with all expected events/items, from August 26 to Sept 3, 2019 (inclusive). We are specifically requesting ALL calendar/scheduling items for the Mayor, whether the Mayor herself possesses them or her staff, whether they are labeled "Prop G" or not, and whether they are on a computer or in physical form (such as a diary, a physical calendar on a wall, etc.). If any of the Mayor's staff uses any invitation/guestlist tracking systems on behalf of the Mayor (such as Outlook's invite mechanism), those calendars are also included within the scope of this request. Furthermore, we request that a City of San Jose v Superior Court (2017) search be performed of the Mayor, her chief of staff (and deputy chiefs), and all personal/secretarial/administrative assistants, such that each such official either provide all records responsive to this request present on their personal accounts/devices/property (solely to the extent the record or portion thereof relates to the public's business), or provide a declaration/affidavit that no such records exist. All such affidavits are also requested.

2. an electronic copy, (in the original electronic format, or alternatively in a format specified as "A" below, for all items held electronically, and a scanned copy for any physical papers), with all calendar item headers, email addresses, invitations (including but not limited to indications of who sent the invite and when), acceptances/declinations by guests, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by

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Page 2

the Ordinance, of the Mayor's *past* calendar or schedule, with all events/items, from August 5 to August 16, 2019 (inclusive). We are specifically requesting ALL calendar/scheduling items for the Mayor, whether the Mayor herself possesses them or her staff, whether they are labeled "Prop G" or not, and whether they are on a computer or in physical form (such as a diary, a physical calendar on a wall, etc.). If any of the Mayor's staff uses any invitation/guestlist tracking systems on behalf of the Mayor (such as Outlook's invite mechanism), those calendars are also included within the scope of this request. Furthermore, we request that a *City of San Jose v Superior Court* (2017) search be performed of the Mayor, her chief of staff (and deputy chiefs), and all personal/secretarial/administrative assistants, such that each such official either provide all records responsive to this request present on their personal accounts/devices/property (solely to the extent the record or portion thereof relates to the public's business), or provide a declaration/affidavit that no such records exist. All such affidavits are also requested.

In response to this request, the Mayor's Office produced responsive records on August 22, 2019 for Item 2 of the request, the calendar entries between August 5, 2019 and August 16, 2019. The Mayor's Office treated Item 1 as a standard public records request subject to the normal time deadlines rather than an immediate disclosure request, and later invoked an extension of time. On September 5, 2019, the Mayor's Office produced additional documents responsive to Item 2, for the time period between August 5 and August 16, 2019. The Mayor's Office applied a number of redactions to this production and identified for you the exemption applicable to each redaction. The Mayor's Office did not produce records responsive to Item 1 of the request, which sought the Mayor's prospective calendar for the period between August 26 and September 3, 2019, citing Section 6254(f) of the Government Code.

Your October 7, 2019 petition relates to a separate immediate disclosure request dated October 4, 2019, for the Mayor's prospective calendar for October 21 through October 28. The Mayor's Office withheld all records, citing Section 6254(f) of the Government Code.

We respond to the issues you have raised as follows:

In your September 6 petition, you request that we determine that the Mayor's Office violated the Sunshine Ordinance by not producing native files or metadata. Those issues are addressed in our response to the prior petition you submitted on the same topic, attached hereto as Exhibit A.

In your September 6 petition, you request a determination that the Mayor's Office violated the Sunshine Ordinance by declining to produce records in response to Item 1 concerning the Mayor's prospective calendar. You request a similar determination in your October 7 petition. The Mayor's Office properly declined to produce these records. Disclosure of the Mayor's prospective whereabouts raises obvious security concerns for her, and the California Supreme Court has endorsed the withholding of such records concerning a high-level government official. *See Times Mirror Company v. Superior Court*, 53 Cal.3d 1325 (1991) (Governor not required to release daily calendar due to security concerns). In *Times Mirror*, the court noted that disclosure of the calendar "would constitute a potential threat to the Governor's safety, because the information . . . will enable the reader to know in advance and with relative precision when and where the Governor may be found . . ." *Id.* at 1346 (quotation marks omitted). While the court based its conclusion in that case on Government Code Section 6255, we conclude that Section

Letter to Anonymous
October 23, 2019
Page 3

6254(f), regarding security records, also provides a proper basis to withhold the records in question. The San Francisco Police Department (“SFPD”) provides the Mayor’s security, and her prospective calendar may reflect input from the SFPD concerning security issues. And the prospective calendar is at times consulted by the SFPD in order to plan security measures regarding the Mayor. Additionally, the future calendar entries are protected under Evidence Code Section 1040 – the official information privilege – and are therefore exempt from disclosure under Government Code Section 6254(k). In light of security concerns, the Mayor’s Office holds the Mayor’s future calendar entries in confidence, and the necessity of preserving confidentiality to protect the Mayor’s wellbeing outweighs the need for public disclosure. See Evid. Code § 1040; *County of Los Angeles v. Superior Court*, 82 Cal. App. 4th 819, 834-35 (2000).

In your September 6 petition, you request a determination that the Mayor’s Office improperly withheld “recurrence” metadata. Our understanding is that for some of the calendar entries the Mayor’s Office produced, there is an indication that a particular appointment recurs due to an icon that appears on the printed page. We conclude that the Mayor’s Office did not improperly withhold information concerning recurrence of these events by producing the records in PDF format. As the court in *Times Mirror* recognized, disclosure of such information could allow an individual “intent on doing harm” to “use such information to discern patterns of activity.” *Id.* at 1346. Thus, the Mayor’s Office could have properly redacted any indication of recurrence under the basis discussed in the preceding paragraph, and it did not improperly withhold the details about the recurrences that you contend should be disclosed.

Finally, in your September 6 petition, you contest a number of redactions that the Mayor’s Office applied to the records on the basis of Section 6254(f), particularly information at the top of each calendar entry, some of such redactions follow the acronym “SID.” As mentioned, the Mayor has a security detail staffed by SFPD officers. That detail is part of SFPD’s Special Investigation Division, or SID. We understand that the information redacted in each of the instances you have cited in your petition relates to the Mayor’s security detail. Thus, the Mayor’s Office properly redacted it under Section 6254(f).

For the foregoing reasons, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-9

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@sfcityattly.org

November 12, 2019

Sent via email (72056-97339218@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records concerning your July 2, 2019 request to the San Francisco Police Department ("SFPD"), which is attached as an exhibit to your petition. The request sought emails and other forms of electronic communication such as text messages and chat files in original electronic format for a number of high-ranking SFPD employees. SFPD produced records in PDF format, applying redactions under Section 6254(f) of the Government Code concerning investigatory and security records, and Section 6254(c) of the Government Code regarding privacy.

Under the Sunshine Ordinance, it is the responsibility of the Supervisor of Records to determine whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so – in the words of the Ordinance, to determine "whether the record requested, or any part of the record requested, is public." Admin. Code § 67.21(d). That is the extent of our jurisdiction. We do not generally address other issues relating to a department's response to a public records request. As noted below, a number of the issues you have raised in your petition are beyond the jurisdiction of the Supervisor of Records. Our failure to address these issues does not in any instance imply a negative judgment regarding SFPD's handling of your public records request.

We respond to the issues you have raised in your petition as follows:

"1. Respondents violated SFAC 67.21(b) — The request was made via e-mail to SFPD on July 2, 2019. The initial responses were sent July 15, 2019. They were due July 12, 2019. Email trail is in Exhibit A."

This issue is outside the scope of our jurisdiction.

"2. Respondents violated SFAC 67.21(k), incorporating Gov Code 6253(c) — As of July 26 (24 days, with all extensions, after July 2), Respondents failed to 'determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor.' It is unclear whether as of filing this complaint Respondents have completed this

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November 12, 2019
Page 2

process, although they may have provided the determination finally on Sept. 3."

This issue is outside the scope of our jurisdiction.

"3. Respondents violated SFAC 67.21(l) and/or Gov Code 6253.9(a); and must disclose the .eml or .msg, or original email records — The request asks for the records in their original format, or to use .eml or .msg format. .eml or .msg formats are 'easily generated' via simple file export by major brand email systems. Furthermore, Respondents were warned that, if contrary to our request, they would use PDFs, they should use searchable or text PDFs instead of image PDFs. Respondents do appear to have used searchable or text PDFs, but did not provide .eml, .msg, or the original format."

For the reasons articulated in our response to another one of your petitions, attached hereto as Exhibit A, we find that SFPD did not improperly withhold native files or metadata.

"4. Respondents violated SFAC 67.21(k), incorporating Gov Code 6253(b); and must disclose exact (redacted) copies — Disclosed email records lack the original color, hyperlinks, images, metadata, email addresses, and other parts of records. In addition, at least in the case of Cmdr Daryl Fong, the actual emails requested were not disclosed. Instead Fong's emails were forwarded first and those forwarded emails were disclosed instead. Forwarding an email creates a new email record, with completely different headers and metadata. I want Fong's original emails, like many of the other custodians (partially) disclosed."

We find that SFPD did not improperly withhold information. SFPD provided the records in PDF format, which we find to be reasonable and appropriate.

"5. Respondents violated SFAC 67.26; and must justify all redactions with footnote or clear reference — General redaction justifications are insufficient. They must be made with particularity pointing out which redactions match to which justifications."

This issue is outside the scope of our jurisdiction. Regardless, we understand that SFPD has now identified for you the basis for each redaction.

"6. Respondents violated SFAC 67.27; and must justify its failure to provide original formats or .eml or .msg — No justification was provided."

To the extent this allegation concerns SFPD's purported failure to provide a justification for not providing original formats or .eml or .msg, this issue is outside the scope of our jurisdiction. To the extent this allegation challenges SFPD not providing original formats or .eml or .msg, for the reasons articulated in our response to another one of your petitions, attached hereto as Exhibit A, we find that SFPD did not improperly withhold native files.

Letter to Anonymous
November 12, 2019
Page 3

“7. Respondents violated SFAC 67.26 and 67.27; and must provide metadata, which are public parts of records, and/or justify its failure to provide metadata in general — No justification was provided. Respondents failed to even indicate that the metadata had in fact been withheld.”

To the extent this allegation concerns SFPD’s purported failure to provide a justification for not providing metadata, or purported failure to indicate that metadata had not been provided, the issues are outside the scope of our jurisdiction. To the extent this allegation challenges SFPD’s not providing metadata, for the reasons articulated in our response to another one of your petitions, attached hereto as Exhibit A, we find that SFPD did not improperly withhold native files or metadata.

“8. Respondents violated SFAC 67.26 and 67.27; and must provide city employee email addresses in the messages, which are public parts of records — Email addresses in the From/To/Cc/Bcc were withheld in at least the emails of Sutton, Tiffany (POL), Stevenson, David (POL), McEachern, Greg (POL), Francisco Da Costa, and others. No justification was provided. Respondents failed to indicate that the email addresses had in fact been withheld.”

To the extent this allegation concerns SFPD’s purported failure to justify not providing email addresses, the issue is outside the scope of our jurisdiction. To the extent this allegation challenges SFPD’s not providing email addresses, we find that SFPD did not improperly withhold information. SFPD provided the records requested in PDF format, which we find to be reasonable and appropriate. We understand that the way in which the City’s email system prints such records – and the way they appear on the screen – does not show the email addresses. You may of course request a directory of City email addresses if you so choose.

“9. Respondents violated SFAC 67.26 and 67.27; and must provide hyperlinks in the messages and attachments, which are public parts of records — Hyperlinks were withheld in at least the emails of Sutton, Tiffany (POL), McEachern, Greg (POL), and others and in the attachment of Chief Scott’s “Implementation Memo - Executive Directive to Support People of All Gender Identities” and others. No justification was provided. Respondents failed to indicate that the hyperlinks had in fact been withheld. By printing some messages and scanning them, the hyperlinks have been withheld.”

To the extent this allegation concerns SFPD’s purported failure to justify not providing hyperlinks, the issue is outside our jurisdiction. SFPD has stated that it produced web pages for the hyperlinks contained in its document production. To the extent SFPD missed any such links, SFPD is willing to provide you the web address or a PDF of the webpages that are not exempt from disclosure if you identify which links you are interested in seeing.

“10. Respondents violated SFAC 67.21(k), incorporating CPRA, as interpreted judicially in City of San Jose v Superior Court (2017); and must provide all records on personal accounts/devices that are “about the conduct of public business,” which are public records — Sgt. Andraychak requested custodians turn over only a subset of all records deemed public under City of San Jose v Superior Court (2017). Andraychak told custodians: “If you do not use your

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Page 4

personal email and/or mobile phone for work purposes, you would not have any responsive documents for items 2 and 3 below. ” and “IF you do not use any of these accounts for work related purposes, please reply to that effect.” That is not what the precedent requires; instead the Supreme Court held “when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act (CPRA or Act).” (emphasis mine) Communications about the conduct of public business is a wider universe of records than what Andraychak requested. Some custodians may not use their accounts for “work purposes” or “work related purposes” but may have still have communications “about the conduct of public business.” The custodians must be instructed to search for all such records, and provide a determination of whether or not such records exist, whether or not they are exempt. For example, a custodian may not personally use their phone for work purposes, but a coworker may still send to their personal phone a text message about the conduct of public business. Such recipient must still search for and disclose such record.”

This issue is outside our jurisdiction, as it concerns SFPD’s process for collecting records responsive to your request. Regardless, there is no reason to conclude, based on this allegation, that SFPD improperly withheld records relating to City business on SFPD employees’ personal accounts.

“11. Respondents violated SFAC 67.26 and 67.27; and must provide names of email headers in the messages, which are public parts of records — Email header names were withheld in all emails. No justification was provided. Respondents failed to indicate that the header names had in fact been withheld. Withholding header names is analogous to withholding the name of a form field “Social security number” instead of just redacting the SSN itself.”

To the extent this allegation concerns SFPD’s purported failure to justify not providing email header names, the issue is outside our jurisdiction. You similarly requested in other petitions that we determine whether some or part of the information in metadata headers must be disclosed. We declined to do so, and we stand by that determination. SFPD produced the records in PDF format and did not disclose the metadata headers, and we have already determined that this is a proper way to respond to the request. Moreover, the information contained in these fields is highly technical and without engaging in an analysis that exceeds the requirements of the Public Records Act, the information is not “reasonably segregable,” further supporting SFPD’s method of responding to the request. *See Gov’t Code § 6253(a).*

“12. Respondents violated SFAC 67.26 and 67.27; and must provide values of email headers in the messages, which are public parts of records — Email header values were withheld in all emails. No justification was provided. Respondents failed to indicate that the header values had in fact been withheld. I ask that you determine one or more of the following headers are public parts of records and order their disclosure:”

To the extent this allegation concerns SFPD’s purported failure to justify not providing email header values, the issue is outside our jurisdiction. You similarly requested in other

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November 12, 2019
Page 5

petitions that we determine whether some or part of the information in metadata headers must be disclosed. We declined to do so, and we stand by that determination. SFPD produced the records in PDF format and did not disclose the metadata headers, and we have already determined that this is a proper way to respond to the request. Moreover, the information contained in these fields is highly technical and without engaging in an analysis that exceeds the requirements of the Public Records Act, the information is not "reasonably segregable," further supporting SFPD's method of responding to the request. See Gov't Code § 6253(a).

"13. Respondents violated SFAC 67.26 and 67.27; and must provide the identity of the sender and recipient of each text message — While much of the metadata was provided, sender or recipient identities were withheld in all emails. No justification was provided. Respondents failed to indicate that the identities had in fact been withheld. I believe all the records are from official cell phones, and so there is no privacy issue. Even if official cell phone numbers may be exempt, the text message records would indicate the name of who sent or received each message. Metadata would also indicate whether each message was sent by the custodian, or received by the custodian, regardless of whether the identity is shown."

We do not understand the issue you have raised with respect to the electronic communications you have attached to your supplemental petition. You contend the identities of the sender and recipient of these messages have been withheld. But the top of each page indicates an SFPD officer or employee (e.g., "CDR_MTA_T_Ewins_x", Commander Ewins), and at least some of the messages indicate a sender (e.g., Nancy Stockwell). If you are seeking some of these messages in some other format that will indicate the recipient or sender, we suggest you contact SFPD to follow up.

"14. Respondents violated SFAC 67.26; and must justify all text message redactions with footnote or clear reference — While some of the redactions cite law, others just say ex. 'XXXX'."

To the extent this allegation concerns SFPD's purported failure to provide a justification for every text message redaction, the issue is outside our jurisdiction. To the extent this allegation may challenge text message redactions, SFPD properly redacted the information you have identified above. The information redacted on pages 16, 17, and 22 is private information properly redacted under Section 6254(c) of the Government Code. The information on page 29 was properly redacted as relating to a law enforcement investigation under Section 6254(f).

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-10

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@sfcityattly.org

November 19, 2019

Sent via email (81411-90616367@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records concerning your October 8, 2019 request to the City Attorney's Office for the City Attorney's calendar from September 30, 2019, to October 7, 2019.

Under the Sunshine Ordinance, it is the responsibility of the Supervisor of Records to determine whether a City department has withheld a record, or any part of a record, without a lawful basis for doing so – in the words of the Ordinance, to determine “whether the record requested, or any part of the record requested, is public.” Admin. Code § 67.21(d). That is the extent of our jurisdiction. Our failure to address any issue alleged in your petition but outside our jurisdiction does not in any instance imply a negative judgment regarding the handling of your public records request by the City Attorney's Office.

First, you contend that the City Attorney's response did not disclose the place of each meeting under Section 67.29-5(a) of the Administrative Code. This allegation does not involve the department's decision to withhold or redact a part of a record, and it is outside the scope of the jurisdiction of the Supervisor of Records.

Second, you contend the City Attorney's Office withheld “additional non-Prop G scheduling information” without stating that such information was withheld or providing a basis to withhold it. The City Attorney only maintains one calendar, and the City Attorney produced the requested entries from that calendar to you in response to your request. The calendar does not include information such as the identity of particular clients or the particular topics discussed, due to the attorney-client privilege and work product privilege. And to the extent you contend this request called for other documents or emails concerning the scheduling of meetings, the City Attorney's Office responded to you on October 18, 2019, indicating that it had no responsive records. Because the City Attorney's Office did not withhold or redact any documents responsive to your request, there is nothing for the Supervisor of Records to determine.

Letter to Anonymous
November 19, 2019
Page 2

Finally, you contend that the City Attorney's Office improperly withheld "individual meeting items." The calendar items maintained for the City Attorney's calendar contain no additional information beyond what was disclosed to you. Again, because the City Attorney's Office did not withhold or redact any documents responsive to your request, there is nothing for the Supervisor of Records to determine.

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-11

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

BRADLEY A. RUSSI
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November 26, 2019

Sent via email (81412-71801448@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records dated October 23, 2019, concerning a request to the San Francisco Police Department ("SFPD") for the Chief of Police's calendar. Specifically, you requested:

1a). **IMMEDIATE DISCLOSURE:** an electronic copy of the department head's *prospective/expected* calendar or schedule, with all expected events/items, from Oct 21 to Oct 28, 2019 (inclusive). Calendar items must include (but are not limited to): the exact start and end time of the meeting, the location, the title, all invitees and whether they accepted or not, attachments, inline images, if they exist in the record. We are specifically requesting ALL calendar/scheduling items, individually, for the department head, whether the department head themselves possesses them or their staff, whether they are labeled "Prop G" or not, and whether they are on a computer or in physical form (such as a diary, a physical calendar on a wall, etc.). You are welcome to virtually print/export each item (not the summary view) directly to .PDF form in Outlook and redact them. Do not cutoff information like long text that does not fit on the screen - that would be unjustified withholding. In order to ensure immediacy of disclosure, in this and only this request, .ics format and headers are NOT specifically requested (though you are welcome to provide them if it can be provided immediately). Do NOT physically print and re-scan records

1b). **IMMEDIATE DISCLOSURE:** an electronic copy of the department head's calendar or schedule, with all events/items, from Sep 30 to Oct 7, 2019 (inclusive). Calendar items must include (but are not limited to): the exact start and end time of the meeting, the location, the title, all invitees and whether they accepted or not, attachments, inline images, if they exist in the record. We are specifically requesting ALL calendar/scheduling items, individually, for the department head, whether the department head themselves possesses them or their staff, whether they are labeled "Prop G" or not, and whether they are on a computer or in physical form (such as a diary, a physical calendar on a wall, etc.). You are welcome to virtually print/export each item (not the summary view) directly to .PDF form in Outlook and redact them. Do not cutoff information like long text that does not fit on the screen - that would be unjustified withholding. In order to ensure immediacy of disclosure, in this and only this request, .ics format and headers are NOT specifically requested

Letter to Anonymous
November 26, 2019
Page 2

(though you are welcome to provide them if it can be provided immediately).
Do NOT physically print and re-scan records.

2. **REGULAR DISCLOSURE:** If the department head or any of the department head's staff uses any invitation/guestlist tracking systems on behalf of the department head (such as Outlook's invite mechanism OR regular emails), those items are included within the scope of this request #2, for the date range in #1. In order to ensure rapid disclosure, in this and only this request, particular formats and headers are NOT specifically requested (though you are welcome to provide them if it can be provided rapidly).

3. **REGULAR DISCLOSURE:** Furthermore, I request that a *City of San Jose v Superior Court* (2017) search be performed of the department head, their senior-most deputy, their chief of staff (or equivalent, and deputy chiefs), and all personal/secretarial/administrative assistants, such that each such official either provide all records responsive to #1 that are present on their personal accounts/devices/property (solely to the extent the record or portion thereof relates to the public's business), or provide a declaration/affidavit that no such records exist. All such affidavits are also requested. In order to ensure rapid disclosure, in this and only this request, particular formats and headers are NOT specifically requested (though you are welcome to provide them if it can be provided rapidly).

On October 23, 2019, SFPD produced the Chief's calendar for September 30-October 7. On October 29, 2019 and on November 5, 2019, SFPD provide further responses. SFPD produced additional items from the Outlook calendar, applied redactions, and identified the basis for such redactions. With regard to your request for prospective calendar entries, SFPD declined to disclose such documents due to the potential security risk disclosure would pose to the Chief of Police, on the basis of Section 6254(f) of the Government Code and Section 1040 of the Evidence Code.

We determine that SFPD properly responded to your request. If you contest specific redactions, please identify the redactions you believe were improperly applied and provide a basis for why you believe such information is public. We find that SFPD properly declined to produce the prospective calendar entries to protect the Chief's security. See Gov't Code §§ 6254(f), 6254(k); Evid. Code § 1040; *Times Mirror Company v. Superior Court*, 53 Cal.3d 1325 (1991).

For the foregoing reasons, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-12

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

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

December 12, 2019

Sent via email (80695-54486849@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records concerning your September 20, 2019 request to the City Attorney's Office for communications concerning former Public Defender Jeff Adachi and related topics.

Your petition seeks a determination that metadata and email headers as well as native email files are public. For the reasons stated in the determination attached hereto as Exhibit A, we find that the City Attorney's Office is not required to produce metadata and native email files.

Next, you contend that the City Attorney's Office improperly withheld responsive documents held by Deputy City Attorney Alicia Cabrera. We have confirmed that this is not the case.

Finally, you contest various redactions the City Attorney's Office applied to its production. The City Attorney's Office responded to each of your allegations in its response to your identical petition to the Sunshine Ordinance Task Force attached hereto as Exhibit B. We conclude that the City Attorney's Office has properly withheld the redacted information that has not been disclosed to you on the bases asserted in its response to your request and in Exhibit B.

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney

A handwritten signature in black ink, appearing to be "BR" or similar initials, written over a horizontal line.

Bradley A. Russi
Deputy City Attorney

EXHIBIT A-13



DENNIS J. HERRERA
City Attorney

BRADLEY A. RUSSI
DEPUTY CITY ATTORNEY

Direct Dial: (415) 554-4645
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December 17, 2019

Sent via email (80239-52834911@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records received on November 12, 2019, and supplemented on December 3, 2019, concerning your September 11, 2019 request to the San Francisco Police Commission ("Commission"), for various communications concerning former Public Defender Jeff Adachi and related topics. The Commission has provided multiple responses to your request. We respond to the remaining issues raised in your petition as follows:

Item 1 – Redactions and Withholdings

1.2 Document 56a properly withheld based on the attorney-client privilege and attorney work product doctrine. Gov't Code §§ 6254(k), 6276.04; Evid. Code § 954; Code of Civil Pro. § 2018.030.

Document 56b properly withheld based on the attorney-client privilege and attorney work product doctrine. Gov't Code §§ 6254(k), 6276.04; Evid. Code § 954; Code of Civil Pro. § 2018.030.

Document 70b properly withheld as a peace officer personnel record. Gov't Code § 6254(c), (k); Penal Code §§ 832.7, 832.8.

Document 70c properly withheld as a peace officer personnel record. Gov't Code § 6254(c), (k); Penal Code §§ 832.7, 832.8.

1.3 Document 56d properly withheld on the basis of the attorney-client privilege and attorney work product doctrine. Gov't Code §§ 6254(k), 6276.04; Evid. Code § 954; Code of Civil Pro. § 2018.030. It was also properly withheld as a peace officer personnel record. Gov't Code § 6254(c), (k); Penal Code §§ 832.7, 832.8. The redaction of the title of the document was proper as a peace officer personnel record. Gov't Code § 6254(c), (k); Penal Code §§ 832.7, 832.8.

Documents 75b, 75c, and 75d properly withheld as peace officer personnel records. Gov't Code § 6254(c), (k); Penal Code §§ 832.7, 832.8.

1.4 Document 75e properly withheld as a peace officer personnel record. Gov't Code § 6254(c), (k); Penal Code §§ 832.7, 832.8.

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December 17, 2019
Page 2

1.5 This allegation does not concern the withholding or redaction of a record on the basis of an exemption and it is therefore beyond the jurisdiction of the Supervisor of Records.

1.11 Redactions proper on the basis of personal privacy. Gov't Code § 6254(c).

1.13 Redactions proper on the basis of personal privacy. Gov't Code §§ 6254(c); 6254.3(b)(1).

1.18 Redactions proper on the basis of personal privacy. Gov't Code §§ 6254(c); 6254.3(b)(1).

1.19 Redactions proper on the basis of personal privacy. Gov't Code §§ 6254(c); 6254.3(b)(1).

1.21 Document 56c properly redacted as a peace officer personnel record. Gov't Code § 6254(c), (k); Penal Code §§ 832.7, 832.8.

1.23 Document 66 properly redacted on the basis of personal privacy. Gov't Code § 6254(c).

Document 67 properly redacted on the basis of personal privacy. Gov't Code § 6254(c).

Document 69 properly redacted on the basis of personal privacy. Gov't Code § 6254(c).

Document 72 properly redacted on the basis of personal privacy. Gov't Code § 6254(c).

1.24 Document 70a properly redacted as a peace officer personnel record. Gov't Code § 6254(c), (k); Penal Code §§ 832.7, 832.8.

1.25 We do not understand the nature of your complaint. The version of the document we have seen includes redactions of the names of three attachments. These redactions were proper as peace officer personnel records. Gov't Code § 6254(c), (k); Penal Code §§ 832.7, 832.8.

1.26 Document 75a properly redacted as a peace officer personnel record. Gov't Code § 6254(c), (k); Penal Code §§ 832.7, 832.8.

1.31 We do not understand the nature of the dispute. The redactions to Document 109 were proper on the basis of personal privacy. Gov't Code § 6254(c).

Item 2 – Unjustified Withholding

You appear to contend that there are redactions for which the Commission has not provided a basis. If you would like us to consider such redactions, please identify which ones remain outstanding.

Letter to Anonymous
December 17, 2019
Page 3

Item 3 – Incomplete Response

The Commission has now affirmed that it did not withhold records.

Item 4 – Format of Production

This issue is beyond the jurisdiction of the Supervisor of Records.

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-14

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

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December 19, 2019

Sent via email (84500-13253092@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records received on December 18, 2019, concerning your request to the Department of Human Resources ("DHR") for the Human Resource Director's calendar entries and email messages.

You contest DHR's decision to withhold one email message on the basis of Section 6254(p)(2) of the Government Code, which exempts from disclosure records that "reveal a local agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under that chapter." DHR stated in its response that the record it withheld "consists entirely of labor relations information" covered by this exemption.

DHR subsequently provided you further clarification of the basis for this withholding in an email dated December 19, 2019:

DHR's reliance on the exemption in Government Code section 6254(p)(2) is appropriate. DHR recognizes that Administrative Code section 67.24(h) prohibits the City from withholding a record "based on a 'deliberative process' exemption..." However, section 6254(p)(2) is a labor relations exemption, not a deliberative process exemption. The Legislature established the labor relations exemption to allow public employers such as the City to exempt specified labor relations records from disclosure. This exemption reflects the Legislature's recognition of the importance for some degree of confidentiality to allow public sector employers to meaningfully prepare for and engage in labor relations activities and otherwise meet their obligations under the Meyer-Milias-Brown Act, Government Code section 3500, et seq., to promote harmonious public sector labor relations. The Sunshine Ordinance does not prohibit the City from relying on this labor relations exemption.

In addition, although section 6254(p)(2) mentions the phrase "deliberative processes," that is simply one term among many mentioned in the exemption, which allows a public employer to withhold records that reflect its labor relations "deliberative processes, impressions, evaluations,

Letter to Anonymous
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Page 2

opinions, recommendations, meeting minutes, research, work products, theories, or strategy....” In this case, while DHR relies on the exemption as a whole, and is not required to specify application of the exemption in greater detail, largely DHR withheld the record in question because it reflects evaluation and strategy related to City labor relations.

We have reviewed the record at issue, and we fully agree with DHR’s justification for withholding it based on Government Code Section 6254(p)(2). The Sunshine Ordinance recognizes that the City may rely on a “specific permissive exemption” in the Public Records Act unless the Ordinance forbids relying on that exemption. Admin. Code § 67.27(a). Section 6254(p)(2) is a specific permissive exemption in the Public Records Act; and the Ordinance does not forbid relying on it. It follows, therefore, that DHR properly invoked it.

While Section 67.24(h) of the Administrative Code prohibits the City from withholding a record “based on a deliberative process exemption, either as provided by California Public Records Act Section 6255 or any other exemption,” we agree with DHR that Section 6254(p)(2) is not a deliberative process exemption. It is a labor relations exemption. The exemption does not require any balancing to determine its applicability. And in this case, while DHR relies on the exemption as a whole, and is not required to specify application of the exemption in greater detail, the record in question largely reflects evaluations and strategy related to City labor relations.

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-15



DENNIS J. HERRERA
City Attorney

BRADLEY A. RUSSI
DEPUTY CITY ATTORNEY

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

January 24, 2020

Sent via email (83876-31149286@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petitions to the Supervisor of Records concerning your request to the Department of Police Accountability ("DPA") dated November 28, 2019, seeking peace officer personnel records that are now public under Senate Bill 1421. You filed a petition dated December 18, 2019, and a petition dated December 23, 2019, contesting DPA's responses to your request. The December 18 petition seeks a determination that the redactions DPA applied to Case 168-01 were improper. The December 23 petition seek a determination that DPA improperly withheld and improperly redacted information from Case 441-12. We have reviewed Case 168-01 and Case 441-12 and find that DPA lawfully redacted and withheld information from both case files.

December 18, 2019 Petition

In Case 168-01, DPA properly redacted information on the following bases:

1. Confidentiality of peace officer personnel records not subject to disclosure under Penal Code § 832.7(b) (Government Code § 6254(k), Penal Code §§ 832.7(a), 832.8, Cal. Const. Art. I, Sec. 1; Government Code § 6254(c)), including information you identify in Items 2.a, 2.b, 2.g, 2.h, 2.j, 2.l, 2.q, 2.s, 2.t, 2.u, 2.x, 2.y, 2.z;
2. Penal Code Section 832.7(b)(5) (Government Code § 6254(k), Penal Code § 832.7(b)(5)), such as information identifying witnesses and complainants or potentially leading to the identity of such individuals, personal data or information, and private information, including information you identify in Items 2.c, 2.d, 2.e, 2.f, 2.g, 2.k, 2.n, 2.o, 2.p, 2.q, 2.r, 2.s, 2.t, 2.u, 2.v, 2.w, 2.aa;
3. Official information privilege (Government Code § 6254(k), Evidence Code § 1040), including information you identify in Items 2.i, 2.m, 2.p;
4. Criminal offender record information and information derived from the California Law Enforcement Telecommunication System (Government Code § 6254(k), Penal Code §§ 11105, 11145, 13100 et seq.).

DPA properly withheld medical records (Government Code § 6254(k), Penal Code § 832.7(b)(5), Cal. Const. Art. I, Sec. 1; Government Code § 6254(c)), and documents constituting criminal offender record information and information derived from the California Law

Letter to Anonymous
January 24, 2020
Page 2

Enforcement Telecommunication System (Government Code § 6254(k), Penal Code §§ 11105, 11145, 13100 et seq.).

December 23, 2019 Petition

In Case 441-12, DPA properly redacted information on the following bases:

1. Confidentiality of peace officer personnel records not subject to disclosure under Penal Code § 832.7(b) (Government Code § 6254(k), Penal Code §§ 832.7(a), 832.8, Cal. Const. Art. I, Sec. 1; Government Code § 6254(c)), including information you identify in Items 3.b, 3.c, 3.d, 3.k, 3.l, 3.m;
2. Penal Code Section 832.7(b)(5) (Government Code § 6254(k), Penal Code § 832.7(b)(5)), such as information identifying witnesses and complainants or potentially leading to the identity of such individuals, personal data or information, and private information, including information you identify in Items 3.a, 3.b, 3.e, 3.g, 3.j, 3.n;
3. Official information privilege (Government Code § 6254(k), Evidence Code § 1040);
4. Criminal offender record information and information derived from the California Law Enforcement Telecommunication System (Government Code § 6254(k), Penal Code §§ 11105, 11145, 13100 et seq.), including the information you identify in Item 3.f, 3.n; and
5. Attorney-client privilege and attorney work product doctrine (Government Code §§ 6254(k), 6276.04, Evidence Code § 954, Code of Civil Procedure § 2018.030).

DPA properly withheld medical records (Government Code § 6254(k), Penal Code § 832.7(b)(5), Cal. Const. Art. I, Sec. 1; Government Code § 6254(c)), documents constituting criminal offender record information and information derived from the California Law Enforcement Telecommunication System (Government Code § 6254(k), Penal Code §§ 11105, 11145, 13100 et seq.), and documents protected by attorney-client privilege and attorney work product doctrine (Government Code §§ 6254(k), 6276.04, Evidence Code § 954, Code of Civil Procedure § 2018.030).

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-16

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@sfcityattly.org

February 7, 2020

Sent via email (83876-31149286@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your third petition to the Supervisor of Records concerning your request to the Department of Police Accountability (“DPA”) dated November 28, 2019, seeking peace officer personnel records that are now public under the amendments to Section 832.7 of the Penal Code (“Section 832.7”) enacted through Senate Bill 1421 (2018) (“SB 1421”). Your first two petitions challenged all the redactions and withholdings related to two case files DPA produced. In our determination on those petitions, we found DPA did not unlawfully redact or withhold any information from those files.

You now contend that DPA is legally prohibited from redacting or withholding information for any reason not articulated in Section 832.7. In our response to your first two petitions, we determined that DPA properly relied on exemptions available under the California Public Records Act (“CPRA”), such as Government Code Section 6254(k), which exempts from disclosure records made confidential by other provisions of state law like the attorney-client privilege, the official information privilege, and protections applicable to criminal offender record information. We reaffirm our determination that SB 1421 did not abrogate all other exemptions available under the CPRA with regard to records made public by that bill. The California Court of Appeal for the First District recently agreed with this view. *See Becerra v. Superior Court*, Case No. A157998 (Jan. 29, 2020), available at: <https://www.courthousenews.com/wp-content/uploads/2020/01/Becerra-v.-FAC.pdf>.

SB 1421 amended Section 832.7 to remove the confidentiality restrictions over specific categories of peace officer personnel records relating to several types of officer misconduct. Section 832.7(b) provides that such records are not confidential and shall be made public pursuant to the Public Records Act notwithstanding Section 6254(f) of the Government Code or “any other law.” In *Becerra*, the court found that the state could rely on an exemption outside Section 832.7 – in that case, Government Code Section 6255, which is part of the CPRA – because the Legislature in enacting SB 1421 indicated an intent “to preserve, not override, the CPRA but for its investigatory files exemption (Gov. Code § 6254(f)).” *Id.* at 19. Interpreting the phrase “or any other law,” the court noted that “only those provisions of law that conflict with section 832.7(b) – not . . . every provision of law – are inapplicable.” *Id.* (citation and internal quotation marks omitted). Because the only CPRA exemption explicitly referenced is Section 6254(f), the court noted that “it seems unlikely that the Legislature contemplated the clause as encompassing other CPRA exemptions.” *Id.* at 20. And the court found no evidence in

Letter to Anonymous
February 7, 2020
Page 2

the legislative history to support an intent to abrogate other exemptions under the CPRA. *Id.* at 21-22.

Section 832.7(b)(5) identifies specific types of information that must be redacted from records now public under Section 832.7(b). But for the reasons the court articulated in *Becerra*, a public agency may still rely on other exemptions available under the CPRA that do not conflict with Section 832.7. The exemptions DPA relied on and we found proper in our prior determination – the attorney-client privilege, the official information privilege, and the confidentiality of criminal offender record information – do not conflict with Section 832.7(b), and we reaffirm that DPA properly redacted and/or withheld information on these grounds.

DPA File No. 40-15

In your petition, you contest all the redactions and withholding in File No. 40-15. We have reviewed the file and find that DPA properly redacted information on the following bases:

1. Confidentiality of peace officer personnel records not subject to disclosure under Penal Code § 832.7(b) (Government Code § 6254(k), Penal Code §§ 832.7(a), 832.8, Cal. Const. Art. I, Sec. 1; Government Code § 6254(c));
2. Penal Code Section 832.7(b)(5) (Government Code § 6254(k), Penal Code § 832.7(b)(5)), such as information identifying witnesses and complainants or potentially leading to the identity of such individuals, personal data or information, and private information;
3. Official information privilege (Government Code § 6254(k), Evidence Code § 1040);
4. Criminal offender record information and information derived from the California Law Enforcement Telecommunication System (Government Code § 6254(k), Penal Code §§ 11105, 11145, 13100 et seq.).

DPA properly withheld medical records (Government Code § 6254(k), Penal Code § 832.7(b)(5), Cal. Const. Art. I, Sec. 1; Government Code § 6254(c)), and documents constituting criminal offender record information and information derived from the California Law Enforcement Telecommunication System (Government Code § 6254(k), Penal Code §§ 11105, 11145, 13100 et seq.).

For the reasons stated above, your petition is denied.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Bradley A. Russi
Deputy City Attorney

EXHIBIT A-17

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@sfcityatty.org

March 10, 2020

Sent via email (76434-70600365@requests.muckrock.com)

Re: Petition to Supervisor of Records

To Whom It May Concern:

This letter responds to your petition to the Supervisor of Records received on January 4, 2020, concerning your request to the Mayor's Office dated August 26, 2019. The Mayor's Office produced records responsive to your request with redactions based on the attorney-client privilege, identity of informer privilege, and personal privacy. The Mayor's Office has indicated that it did not withhold any records. We conclude that the Mayor's Office properly redacted the records. See Gov't Code §§ 6254(c), 6254(k), 6276.04; Evid. Code §§ 950, 1041; Cal. Const. Art. I, Sec. 1. You withdrew the other aspect of the petition concerning WhatsApp photos.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Bradley A. Russi
Deputy City Attorney

EXHIBIT A-18



DENNIS J. HERRERA
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 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 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 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 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_Seun_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 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 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 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 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

EXHIBIT B-1

Subject: RE: Offer to Withdraw SOTF 20007 / Violation Ruling in SOTF 19108
Date: Friday, February 7, 2020 at 4:30:54 PM Pacific Standard Time
From: Coolbrith, Elizabeth (CAT) on behalf of CityAttorney <cityattorney@SFCITYATTY.ORG>
To: 'Anonymous' <arecordsrequestor@protonmail.com>, CityAttorney <cityattorney@SFCITYATTY.ORG>
CC: Cote, John (CAT) <John.Cote@sfcityatty.org>
Attachments: image001.jpg, image003.jpg, image004.jpg

Yes, we will include the general statement of issues as well. Both will be part of our prop G calendar process going forward.

Thanks,



Elizabeth A. Coolbrith

Paralegal

Office of City Attorney Dennis Herrera

(415) 554-4685 Direct

www.sfcityattorney.org

Find us on: [Facebook](#) [Twitter](#) [Instagram](#)

From: Anonymous <arecordsrequestor@protonmail.com>
Sent: Thursday, February 6, 2020 4:25 PM
To: CityAttorney <cityattorney@SFCITYATTY.ORG>
Cc: Cote, John (CAT) <John.Cote@sfcityatty.org>
Subject: RE: Offer to Withdraw SOTF 20007 / Violation Ruling in SOTF 19108

What about the "(for meetings not otherwise publicly recorded) the general statement of issues discussed" part?

And is this a binding commitment on behalf of Mr. Herrera?

NOTE: 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 (signature.asc attachment), 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 government all be disclosable public records.

Sincerely,

Anonymous

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

On Thursday, February 6, 2020 4:22 PM, CityAttorney <cityattorney@SFCITYATTY.ORG> wrote:

Thank you for your message. We have appreciated the SOTF's feedback and will be making it our practice to include the locations in each prop g calendar entry going forward.

Thanks,



Elizabeth A. Coolbrith

Paralegal

Office of City Attorney Dennis Herrera

(415) 554-4685 Direct

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Find us on: [Facebook](#) [Twitter](#) [Instagram](#)

From: Anonymous <arecordsrequestor@protonmail.com>

Sent: Wednesday, February 5, 2020 11:57 PM

To: CityAttorney <cityattorney@SFCITYATTY.ORG>; Cote, John (CAT) <John.Cote@sfcityatty.org>

Subject: Offer to Withdraw SOTF 20007 / Violation Ruling in SOTF 19108

City Attorney Dennis Herrera,

As Mr. Cote knows, SOTF found tonight (in SOTF 19108) the City Attorney himself (but not Elizabeth Coolbrith nor the Office of the City Attorney as an agency) violated SFAC 67.29-5 for not recording in the Prop G calendar the places and (for meetings not otherwise publicly recorded) the general statement of issues discussed. (As was noted by various SOTF members during the hearing: a general 'City Hall' note would not be sufficient, nor is answering questions after-the-fact about meetings because it does not serve the historical purpose of **recording** this information in the Prop G Calendar.)

I am willing to withdraw the similar SOTF 20007 (Prop G calendar violations proven over a much longer time period) IF:

- your most recent Prop G calendars starting with Feb 6 comply completely with the 67.29-5 requirements (which I will verify starting 3 business days after Feb 6, 2020),
- I get the signed SOTF Order 19108 in hand, and
- Mr. Herrera specifically agrees in a signed letter (or signed by his representative and under Herrera's name) to comply with SFAC 67.29-5 and to waive any kind of challenge to SOTF Order 19108.

If you are amenable to the above, please let me know. I don't need two hearings and two sets of violations if you are willing to comply, without caveats or word-games, with this one. I'm sure SOTF will monitor your compliance whenever 19108 circles back to Compliance committee.

SFAC 67.29-5 appears to be an extremely simple requirement that almost every other agency head does correctly (including with names or numbers of their City Hall rooms), and that you advise the rest of the City to do in your Good Govt Guide (which, even when it supports my position, has no legal authority), and I hope you can simply comply exactly as stated.

NOTE: 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 (signature.asc attachment), 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 government all be disclosable public records.

Sincerely,

Anonymous

EXHIBIT B-2

Office of the Mayor
City & County of San Francisco



VIA EMAIL

Anonymous
arecordsrequestor@protonmail.com

March 4, 2020

Re: Whatsapp Records

Dear Anonymous:

This letter relates to issues raised regarding certain messages in the WhatsApp platform that were responsive to your request, characterized as an electronic communications audit from July of 2019, under the reference number 76434-70600365@requests.muckrock.com.

Specifically, we provided records responsive to that request from Communications Director Jeff Cretan that were messages in WhatsApp concerning an event with the Department of Emergency Management. You later sought certain embedded photos from those messages. We have provided those photos.

This letter is to confirm that 1) we in the Mayor's Office possess the ability to retain and disclose as public records WhatsApp records that pertain to city business, including all attachments and inline images, that are maintained on the devices of Mayor's Office staff, including Jeff Cretan's device and that 2) it will continue to be our practice to maintain such WhatsApp records in accordance with applicable retention polices and periods as set out in state and local record retention law and the Mayor's Office records retention policy and to disclose such records as appropriate in response to records requests pursuant to the Public Records Act and the Sunshine Ordinance.

If you have any questions about these or similar records, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hank Heckel".

Hank Heckel
Compliance Officer
Office of the Mayor
City and County of San Francisco

CC: San Francisco Sunshine Ordinance Task Force

EXHIBIT B-3

From: Murase, Emily (WOM)
To: SOTF, (BOS)
Cc: "Herschell Larrick"; Anonymous
Bcc: Sacco, Carol (WOM); brad.russi@sfgov.org
Subject: DOSW: Response to File No. 20043
Date: Friday, March 6, 2020 9:44:00 AM
Attachments: [Exhibit 1 FW SOTF, Please File New Complaints for Prop G calendars 20200212.pdf](#)
[Exhibit 2 20043 Complaint 20200212.pdf](#)
[Exhibit 3 EM Calendar 11-13-2019 item 3b.pdf](#)
[Exhibit 4 20191113 CDOSW Strategic Planning - Workshop Pre-Read vF.pdf](#)
[Exhibit 5 EM Calendar 11-12-2019 item 4.pdf](#)
[Exhibit 6 Parallel Event applications due Nov 15!.pdf](#)
[Exhibit 7 EM Calendar 11-12-2019 item 3.pdf](#)
[Exhibit 8 COSW Meeting Agenda 11202019 FINAL.pdf](#)
[Exhibit 9 APPENDIX-20043-F.pdf](#)



EMILY M. MURASE
3-6-2020

Importance: High

To the Sunshine Task Force,

I am writing in response to the allegations in File No. 20043. On February 12, 2020, Executive Management Assistant Herschell Larrick received an electronic copy of the attached complaint (Exhibit 1). The Sunshine Task Force forwarded the complaint to me on March 2, 2020 (Exhibit 2). I did a review of these calendar entries by conducting an electronic search by date. I see that my entries did not fully comply with Prop G requirements. I am providing meeting subject matter below, and, to remediate the situation, will go back in my calendar to supply a description of content and will do so for future calendar items (I will be leaving my position on 3/20/20). All relevant documents have been provided and are labeled as "Exhibits."

1. https://cdn.muckrock.com/foia_files/2019/12/23/EM_Calendar_11-13-2019_item_3b.pdf
(Exhibit 3)

Check-in w/Carrie Schwab Pomerantz: I made myself available to answer questions about the Commission's draft strategic plan (Exhibit 4). The Commission's strategic planning meeting was scheduled for November 20, 2019, a week after this call.

2. https://cdn.muckrock.com/foia_files/2019/12/23/EM_Calendar_11-12-2019_item_4.pdf
(Exhibit 5)

David Hytha and Nicole Gordon called me to ask for technical assistance on how to participate in the NGO Forum of the UN Commission on the Status of Women. DOSW has presented at the NGO Forum for the past 10 years. The deadline for submissions was November 15 (Exhibit 6).

3. https://cdn.muckrock.com/foia_files/2019/12/23/EM_Calendar_11-12-2019_item_3.pdf
(Exhibit 7)

Check-in w/Shokooh Miry: We discussed the November 20 strategic planning meeting agenda (Exhibit 8).

On March 12, the Task Force forwarded to me a new Appendix-20043-F (Exhibit 9) with three new requests for clarification:

4. **Subject:** Check-in w/Breanna Zwart, 11/12/19, 9:15-9:30 AM
We discussed the November 20 strategic planning meeting agenda (Exhibit 8).

5. **Subject:** Tara Gamboa-Eastman, Office of Assemblymember Phil Ting, 11/12/19, 12-12.50 pm.

Tara was a former Policy Fellow at the Department on the Status of Women. I sought her perspective on working with Policy Fellows in our office.

6. **Subject:** Mayor Breed's Monthly Department Head Meeting, 11/13/19, 9:30-10:30 am.

Welcome to newly elected officials: Mayor London Breed, Sheriff Paul Miyamoto, District Attorney Chesa Boudin, Public Defender Mano Raju.

Please let me know if you require any additional information, and thank you and "Anonymous" for helping to make government more transparent, an important endeavor.

Emily

Emily M. Murase, PhD
Director
San Francisco Department on the Status of Women
25 Van Ness Ave, Ste 240
San Francisco, CA 94102
Tel. 415.252.2571
www.sfgov.org
Preferred pronouns: *she, her*.

Announcement: After 15 years as Director of the San Francisco Department on the Status of Women, I will be leaving my position effective March 20, 2020. Would love to see you at my farewell reception on March 19, 5-7 pm. RSVP [here](#).

EXHIBIT B-4



CITY AND COUNTY OF SAN FRANCISCO
POLICE DEPARTMENT
 HEADQUARTERS
 1245 3RD Street
 San Francisco, California 94158



LONDON N. BREED
 MAYOR

WILLIAM SCOTT
 CHIEF OF POLICE

March 9, 2020

Via email 84740-21808729@requests.muckrock.com

San Francisco, CA

RE: Public Records Request, dated December 30, 2019, Reference # P010342-123019

Dear Anonymous,

The San Francisco Police Department (SFPD) received your Public Records Act request, dated December 27, 2019.

You requested, "IMMEDIATE DISCLOSURE REQUEST - Dec 26, 2019 - Re: Carmody forensics contracts Pursuant to the CPEA and SF Sunshine Ordinance

This is an Immediate Disclosure Request (SFAC 67.25(a)) for the records numbered below. An initial response is required by Dec. 30, 2019. Please provide only those records not requiring fees - and a required notice of in-person inspection of fee-based records. We request exact copies (Gov Code 6253(b)) and rolling responses if needed (SFAC 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 FOIA service used to issue this request and various services that mirror those documents for analysis and research by journalists and the general public (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 government all be disclosable public records.

Please read carefully the exact wording of my request and follow the Sunshine Ordinance and CPRA precisely. You are specifically requested to follow each of the Sunshine provisions, and we will appeal or petition every violation, including but not limited to:

- * any untimely or incomplete response (SF Admin Code 67.21, 67.25),
- * failure to maintain all records in a professional or businesslike manner (SF Admin Code 67.29-7)
- * 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 67.21W),
*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. If you publish records using a web portal, please provide public URLs that do not require login.

Requests are as follows. Please prioritize them as below - #1 is most important and most specific. If we find what we're looking for in an earlier request, we may be able to cancel the later requests.

- 1.all MOUs, "Contract Correspondence", "Contract Payment Records", and "Contracts/Agreements" (which terms are specified in SFPD's retention policy' to be retained at least 2 years) that are or were in effect, dated, sent, or received at any time between May 1, 2019 and present that mention in any way SFPD Sgt. Brian Rodriguez #4075 (you must provide responsive records regardless of whether your agency is or is not a party if your agency prepared, owned, retained, or used the record)
- 2.all MOUs, "Contract Correspondence", "Contract Payment Records", and "Contracts/Agreements" that are or were in effect, dated, sent, or received at any time between May 1, 2019 and present where at least one party or signatory is the Regional Computer Forensics Laboratory or Silicon Valley Regional Computer Forensics Laboratory or any of its/their employees, agents, or officers (you must provide responsive records regardless of whether your agency is or is not a party if your agency prepared, owned, retained, or used the record)
- 3.all MOUs, "Contract Correspondence", "Contract Payment Records", and "Contracts/Agreements" that are or were in effect, dated, sent, or received at any time between May 1, 2019 and present that mention in any way Regional Computer Forensics Laboratory, RCFL, Silicon Valley Regional Computer Forensics Laboratory, or SVRCFL (you must provide responsive records regardless of whether your agency is or is not a party if your agency prepared, owned, retained, or used the record)
- 4.all MOUs, "Contract Correspondence", "Contract Payment Records", and "Contracts/Agreements" (which terms are specified in SFPD's retention policy to be retained at least 2 years) that are or were in effect, dated, sent, or received at any time between May 1, 2019 and present that mention in any way "Carmody" (you must provide responsive records regardless of whether your agency is or is not a party if your agency prepared, owned, retained, or used the record)
- 5.all MOUs, "Contract Correspondence", "Contract Payment Records", and "Contracts/Agreements" that are or were in effect, dated, sent, or received at any time between May 1, 2019 and present where at least one party or signatory is the Federal Bureau of Investigation, US Department of Justice, or any of its/their employees, agents, or officers (you must provide responsive records regardless of whether your agency is or is not a party if your agency prepared, owned, retained, or used the record)"

On December 30, 2019, SFPD provided you with responsive records to item no. 2 of your request.

On January 3, 2020. SFPD received your request, as follows:

"This is a follow up to request number P010342-123019:

This is a further request for Sgt. Rodriguez's signed SVRCFL "certification record(s)" pursuant to Section IX-D of the MOU (if you don't consider that covered by original request #1)."

As for your request for the following:

1. You requested, "all MOUs, 'Contract Correspondence', 'Contract Payment Records', and 'Contracts/Agreements' (which terms are specified in SFPD's retention policy' to be retained at least 2 years) that are or were in effect, dated, sent, or received at any time between May 1, 2019 and present that mention in any way SFPD Sgt. Brian Rodriguez #4075 (you must provide responsive records regardless of whether your agency is or is not a party if your agency prepared, owned, retained, or used the record).

...This is a follow up to request number P010342-123019:

This is a further request for Sgt. Rodriguez's signed SVRCFL "certification record(s)" pursuant to Section IX-D of the MOU (if you don't consider that covered by original request #1),"

On January 13, SFPD responded to item nos. 1 through 4 of your request.

On January 27, SFPD produced responsive records for item 5 of your request.

On February 13, SFPD informed you that we had identified a responsive MOU with the FBI that is responsive but is not subject to disclosure under Government Code § 6254(f), which exempts from disclosure records of complaints to, investigations conducted by, intelligence information or security procedures of, and investigatory or security files compiled by local police agencies and Government Code § 6254(k). Section 6254(k) allows exemption of "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to provisions of the Evidence Code relating to privilege."

On February 14, you filed a complaint with the SOTF, asking to determine whether or not SFPD should disclose the MOU.

Upon further review of the arguments raised, SFPD is releasing the MOU with the FBI. The responsive record is included in this correspondence. Please note, redactions of signatures have been made in these materials on the basis of privacy, pursuant to Section 6254(c) of the Public Records Act (California Government Code sec. 6254(c)) and Article I, sec. 1 of the California Constitution because disclosure of this information would constitute an unwarranted invasion of privacy.

Thank you for your courtesy in this regard.

Sincerely,



Lt. R. Andrew Cox #287
Officer in Charge
Risk Management - Legal Division

EXHIBIT C-1

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
October 24, 2019**

DATE DECISION ISSUED
October 2, 2019

CASE TITLE – Anonymous v. Mayor London Breed, Hank Heckel and the Office of the Mayor
File No. 19047

FACTS OF THE CASE

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

Complaint filed by Anonymous against Mayor London Breed, Hank Heckel and the Office of the Mayor for allegedly violating Administrative Code, (Sunshine Ordinance) Sections 67.21 and 67.26 and 67.27 and Government Code (CPRA) 6253.9, 6253, and 6255, by failing to respond to a request for public records in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On August 20, 2019, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that he requested the Mayor's calendar including the metadata. Anonymous stated that the Mayor's calendar is considered a public record which should have been provided. Anonymous stated that the City Attorney memo disputed what kind format of the calendar is in. Anonymous stated that metadata and headers are important to the works of an investigative journalist. Anonymous stated that he wants to know who actually invited the Mayor to meetings and events and that information can be provided in metadata.

Hank Heckel (Mayor's Office) (Respondent), provided a summary of the department's position. Mr. Heckel stated that the Mayor's office received the IDR on May 8 and responded on May 9. Mr. Heckel stated that the Mayor's Office provided their Prop G calendar which included event times, general attendees and the nature of the event. Mr. Heckel stated that all information was provided in pdf format to avoid compromising the integrity of the record. Mr. Heckel stated

that those records did not provide email addresses of invitees, conference call numbers and dial information which is subject to privilege. Mr. Heckel stated that the Mayor's Office relies on advices provided by the Information Technology Department and the City Attorney's Office regarding metadata. Mr. Heckel stated that there are security risks associated with providing this information.

The Committee found that the SOTF has jurisdiction, find that the requested records are public and referred the matter to the SOTF for hearing.

On October 20, 2019, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous provided an overview of the submitted presentation. Anonymous stated that the Office of the Mayor refused to provide documents in the requested format and metadata, objected to the redactions to the calendar and stated that the ICS version of the calendar was not provided. Anonymous stated that the Office of the Mayor did not provide the Mayor's non-Prop G or 2nd calendar account until months later, and those non-Prop G calendars are public records.

Hank Heckel (Mayor's Office) and Michael Makstman (Chief Information Security Officer) (Respondent), provided a summary of the department's position. Mr. Heckel referenced California Government Code, Sections 6252.9(f) and 6254.19, and Sunshine Ordinance, Section 67.21(l). Mr. Heckel stated that the format requested is not easily generated and would also create a security risk. Mr. Makstman provided information regard metadata and possible security risks.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that Mayor London Breed, Hank Heckel and the Office of the Mayor violated Administrative Code (Sunshine Ordinance), Section(s) 67.21, 67.26 and 67.2.

DECISION AND ORDER OF DETERMINATIONS

On October 2, 2019, Member Yankee, seconded by Member Cate, moved to find that Mayor London Breed, Hank Heckel and the Office of the Mayor violated Administrative Code (Sunshine Ordinance), Sections 67.21, 67.26 and 67.27, by failing to provide records in a timely and/or complete manner, keep withholdings to a minimum, and justify the withholding of records.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Martin, LaHood, Cate, Hyland, J. Wolf, B. Wolfe

Noes: 0 - None

Absent: 2 - Cannata, Chopra

Excused: 2 - Tesfai, Hinze

A handwritten signature in black ink, appearing to read 'Bruce Wolfe', written in a cursive style.

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Anonymous (Petitioner/Complainant)
Hank Heckel, Office of the Mayor (Respondent)

EXHIBIT C-2

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
March 28, 2020**

DATE DECISION ISSUED
January 21, 2020

CASE TITLE – Anonymous v. Dennis Herrera and the Office of the City Attorney
File No. 19044

FACTS OF THE CASE

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 19044: Complaint filed by Anonymous against Dennis Herrera and the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 61.26, 61.27, Government Code Sections 6253, 6253.9 and 6255, by failing to respond to a public records request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On August 20, 2019, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Anonymous (Petitioner) testified via telephone and provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that they requested all emails with metadata from Elizabeth Coolbrith (Office of the City Attorney) and on April 24, 2019, was provided those records not in their original format and without metadata. Anonymous stated that the Respondent refused to provide the information contained in the metadata citing confidentiality. Anonymous stated that metadata is very important to investigative journalists and that he wants the requested documents in their original format. Anonymous stated that he is also claiming a timeliness violation.

John Cote (Office of the City Attorney) (Respondent), provided a summary of the department's position. Mr. Cote stated that metadata can subject the City to proprietary information and cited California Government Code Sections 6253.9(f) and 6254.19. Mr. Cote stated that to make this disclosure would reveal vulnerabilities on the technology system of City Attorney. Mr. Cote stated that the City Attorney is relying on the advice from the information technology

professional and stated that metadata can reveal security related information that is highly sensitive and could possibly lead to a cyberattack.

Action: Moved by Member Cate, seconded by Member Cannata, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing. The Complaint Committee requested that the City Attorney's IT Professional also be present at the SOTF Hearing.

The Complaint Committee referred the matter to the SOTF. On October 2, 2019, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that headers cannot be redacted and that the requested information in the metadata is not a security issue. Anonymous noted the failure of the Supervisor of Records to respond in a timely manner.

John Cote (Office of the City Attorney) and Michael Makstman (Chief Information Security Officer) (Respondent), provided a summary of the department's position. Mr. Cote referenced the Office of the City Attorney's written response. Mr. Cote noted that California Government Code, Sections 6259(f) and 6254.19, allows for the withholding/redaction of metadata to for security purposes and to prevent the release of privileged information. Mr. Cote stated that metadata is created by a machine and not a city employee. Mr. Makstman stated that the exposure of metadata may expose the Information Technology system/security.

Deputy City Attorney Peder Thoreen provided information and responded to questions from the SOTF.

Chair B. Wolfe referenced information regarding metadata and stated that the issue of metadata should be reviewed by the Technology Committee in order to develop standards for releasing metadata and develop criteria for future complaints. Chair B. Wolfe ordered that all complaints regarding metadata be delayed and referred to the Technology Committee.

On January 21, 2020, the SOTF held a hearing to review the merits of the petition/complaint.

Member Yankee stated that the IT Committee met and discussed metadata and decided that it is a public record and that there is not a blanket exemption that can be claimed for all metadata. Member Yankee stated that if there is a need to redact or withhold specific portions of metadata, that should be cited as would be for any matter before the SOTF.

Chair B. Wolfe stated the SOTF is picking up discussion of the complaint after the discovery process and before rebuttals.

John Cote (Office of the City Attorney) (Respondent), provided a summary of the department's position. Mr. Cote stated that there are security risks to the email metadata possess when redacting. Mr. Cote directed the SOTF to 67.21(l) regarding production of electronic data and noted that the easily generated language shows that voters recognized the need for practical limits in dealing with electronic data formats. Mr. Cote stated that 6253(a) of the Public Records Act under which exempt and nonexempt information need to be reasonably segregable. Mr. Cote stated that there are multiple steps and time-consuming processes to redact metadata. Mr. Cote stated that there are also security risks and possible human error associated with the burden of redacting information along with possible serious consequences from a mistake. Mr. Cote stated that producing metadata is burdensome and not required under Sunshine.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that this complaint is about a specific document located on page 518 of the agenda packet. Anonymous stated that the document was provided after the Complaint was issued. Anonymous stated that metadata is like a table which has names and values which may not be sensitive. Anonymous stated that before computers when a document was received by the City Clerk, it was date and time stamped which was the record. Anonymous stated there are violations of 67.21 for not providing a complete response, 67.26 for nonminimal withholding and 67.27 for not providing justification for withholding.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Chair B. Wolfe summarized the Respondent's position that the production of metadata is difficult to extract and voluminous. Chair B. Wolfe stated that this matter will start the process of developing a base line going forward. Chair B. Wolfe stated that he has been unable to locate previous cases regarding metadata. Chair B. Wolfe stated the headers from servers and email applications are 99% identical because there are provisions set up that are standard formats. Chair B. Wolfe stated that each City department has IT personnel and that if this had been a concern, the issue would have arisen years ago. Chair B. Wolfe stated that metadata is a public domain. Chair B. Wolfe stated that while not necessarily specified in the California Public Records Act or the Sunshine Ordinance, because it is part of the document, the matter is related to redactions. Chair B. Wolfe stated that many municipalities have created their own policies. Chair B. Wolfe cited the *Smith v. San Jose* case.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that City Attorney's Office violated Administrative Code (Sunshine Ordinance), Sections 67.21 (b) by failing to provide the requested records in a timely and/or complete manner, 67.26, by failing to keep withholding to a minimum, and 67.27 by failing to provide justification for withholding.

DECISION AND ORDER OF DETERMINATIONS

On January 21, 2020, Moved by Member Yankee, seconded by Member Martin, to find that City Attorney's Office violated Administrative Code (Sunshine Ordinance), Sections 67.21(b) by failing to provide the requested records in a timely and/or complete manner, 67.26, by failing to keep withholding to a minimum, and 67.27 by failing to provide justification for withholding.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Martin, J. Wolf, LaHood, Hinze, Hyland, B. Wolfe
Noes: 0 - None
Absent: 1 - Tesfai


Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Anonymous (Petitioner/Complainant)
John Cote, City Attorney's Office (Respondent)

EXHIBIT C-3

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
March 28, 2020**

DATE DECISION ISSUED
February 5, 2020

CASE TITLE – Anonymous v. Office of the Mayor (File No. 19091)

FACTS OF THE CASE

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 19091: Complaint filed by Anonymous against Mayor London Breed, the Office of the Mayor, Hank Heckel, Sean Elsbernd, Andres Power, Andrea Bruss, Marjon Philhour, Jeff Cretan, Sophia Kittler for allegedly violating Administrative Code, (Sunshine Ordinance) Sections 67.21, 67.26, 67.27 and 67.29-7, by failing to respond to a request for public records in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On October 15, 2019, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that records were withheld without providing justification and that a violation of Sunshine Ordinance, Section 67.29-7, occurred for failing to maintain records as records from the application 'WhatsApp' could not be provided. Anonymous requested that the portion of his complaint regarding metadata be divided out and that the remainder of the complaint move forward (Allegation No. 4 SFAC67.21(I)/CPRA Gov Code 6253(b) and No. 8 SFAC 67.26). (Metadata portion of complaint divided into File No. 19109 and will be scheduled before the Information Technology Committee.)

Hank Heckel, Office of the Mayor (Respondent) provided a summary of the department's position. Mr. Heckel stated that a search was conducted of all requested media, including email and text messages, and all responsive records were provided. Mr. Heckel stated that individuals are not required to provide affidavits or written declarations regarding the search for records on personal devices.

Action: Moved by Chair Martin, seconded by Member Cate, to find that the SOTF has jurisdiction, find that the requested records are public, and referred the matter to the SOTF for hearing.

On February 5, 2020, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that some attachments to certain documents were not provided until 5-6 months after the request submitted. Anonymous stated that the Respondent did not provide a reason for redactions in a timely manner and disputes the legal authority for withholdings and redactions.

Hank Heckel, Mayor's Office (Respondent), provided a summary of the department's position. Mr. Heckel noted that the request was voluminous but over 1000 records were provided in a timely manner. Mr. Heckel stated that they have been in contact with Anonymous for over 6 months to provide records and workout issues with the requests. Mr. Heckel stated that the majority of the requested records were provided in a timely manner and they continue to work to provide the missing attachments.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the Office of the Mayor violated Administrative Code (Sunshine Ordinance), Section 67.21(b) by failing to respond to a request for public records in a timely manner.

DECISION AND ORDER OF DETERMINATIONS

Action: Moved by Member Martin, seconded by Vice Chair J. Wolf, to find that the Office of the Mayor violated Administrative Code (Sunshine Ordinance), Section 67.21(b), by failing to respond to a request for public records in a timely manner.

The motion PASSED by the following vote:

Ayes: 6 - Hyland, Hinze, LaHood, J. Wolf, Martin, B. Wolfe
Noes: 1 - Yankee
Absent: 1 - Tesfai



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Anonymous (Petitioner/Complainant)
Hank Heckel, Office of the Mayor (Respondent)

EXHIBIT C-4

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
March 28, 2020**

DATE DECISION ISSUED
February 5, 2020

CASE TITLE – Anonymous v. City Attorney Dennis Herrera (File No. 19108)

FACTS OF THE CASE

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 19108: Complaint filed by Anonymous against City Attorney Dennis Herrera, Elizabeth Coolbrith and the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.25, 67.27, 67.29-5, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner, failing respond to a public records request in a timely manner and/or complete manner. Failing to justify withholding of records and failing to maintain a Proposition G Calendar.

HEARING ON THE COMPLAINT

On November 26, 2019, the Compliance and Amendments Committee acting in its capacity to hear petitions/complaints heard the matter.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that the City Attorney's Office should maintain a Prop G calendar and a Non-Prop G calendar. Anonymous stated that the Prop G calendar should have been provided timely and was not. Anonymous stated that City Attorney does not maintain a Non-Prop G calendar. Anonymous maintains that the Respondent did not respond in a timely manner. Anonymous stated that upon review of the calendars submitted by the City Attorney, there were no time or location entries which is a violation. Anonymous stated that the City Attorney's Office did not provide legal justifications for not including this information in their response.

City Attorney's Office (Respondent), was unavailable for the hearing.

Action: Moved by Member Wolfe, seconded by Member Hinze, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing.

On February 5, 2020, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that on October 8, 2019, a request was submitted for City Attorney Herrera's calendar and what was received appears to be incomplete. Anonymous stated that the locations of the meetings were not listed in the calendar or the generic location of City Hall was listed.

John Cote, Office of the City Attorney (Respondent), provided a summary of the department's position. Mr. Cote noted the many requests were submitted by Anonymous in the same timeframe and described the various requests types. Mr. Cote stated that the request was received on October 8, 2020, a request for extension was requested on October 9, 2020, due to the need to consult with other city departments, and the response was provided on October 15, 2020. Mr. Cote stated that clarification regarding meeting location was provided via email and that the City Attorney does not have other calendars.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that City Attorney Dennis Herrera violated Administrative Code (Sunshine Ordinance), Section 67.29-5, by failing to note the location of meetings on the calendar and failing to note the issues to be discussed on the calendar.

DECISION AND ORDER OF DETERMINATIONS

Action: Moved by Member Yankee, seconded by Member Martin, to find that City Attorney Dennis Herrera violated Administrative Code (Sunshine Ordinance), Section 67.29-5, by failing to note the location of meetings on the calendar and failing to note the issues to be discussed on the calendar.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Hyland, Hinze, LaHood, J. Wolf, Martin, B. Wolfe
Noes: 0 - None
Absent: 1 - Tesfai

Bruce Wolfe, Chair
Sunshine Ordinance Task Force



cc. Anonymous (Petitioner/Complainant)
Dennis Herrera (Respondent)