

SUNSHINE ORDINANCE TASK FORCE

Room 244

1 Dr. Carlton B. Goodlett Place

San Francisco CA 94102

sotf@sfgov.org

sent via email

Your ref.

#19047

Date

2019-06-03

RE: SF Sunshine Ordinance Complaint against Office of Mayor, ref 19047

To the Sunshine Ordinance Task Force:

NOTE: Every response you send or provide (including all responsive records) may be automatically and immediately visible to the general public on the MuckRock.com web service used to issue this request. (I am not a representative of MuckRock)

On May 11, 2019, I filed a Sunshine Ordinance complaint with your Task Force against the Office of the Mayor, Mayor London Breed, Hank Heckel, and sent a copy to the Mayor's office by email as a courtesy.

On May 14, 2019, Cheryl Leger, Assistant Clerk, Board of Supervisors captioned my complaint *19047, Anonymous v. Mayor London Breed and Hank Heckel, Office of the Mayor* and requested from the Office of the Mayor a response within 5 business days.

On May 21, 2019, Mr. Heckel on behalf of the Mayor filed their response. A rebuttal to the Mayor's response follows below.

1. Prop. G does not limit the portions of calendars that are disclosable public records

- a) Respondents argue that all (1999) Prop. G (SF Admin Code Sec. 67.29-5) information was disclosed (Response pg. 2) and in the "Prop G format" (Response pg. 1). However, SF Admin Code Sec. 67.29-5 merely sets the *minimum* requirements for what calendar

information *must* be kept by the Mayor (and other specified officials). It in no way excludes other information from being disclosed, and does not alter the definition of “public records” under the Sunshine Ordinance or CPRA in anyway. If the Mayor’s office in fact prepares, owns, uses, or retains any additional calendar or scheduling information (in paper or electronic format) re: the Mayor’s calendar beyond the requirements of SF Admin Code Sec. 67.29-5, “relating to the conduct of the public’s business,” those records or portion thereof would also be public records, and must be disclosed unless specifically exempt under the CPRA/Sunshine Ordinance.

- b) Respondents argue “The *Prop G* calendar maintained by the Office of the Mayor does not use the invite feature of the Outlook calendar to invite and record attendees” (Response pg. 2, emphasis mine). The disclosed record itself is labeled “PropG, Mayor (MYR).” It is unclear whether there is some other (non-Prop G) calendar maintained by the Mayor’s office. Our request was for, *inter alia*, “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, ...” Therefore either the Mayor’s office should declare that it has no other records responsive to our request (i.e. the Mayor keeps no more detailed calendar information other than Prop. G information, which is difficult to believe) or state that all other such records are exempt from disclosure, with specific justification. The fact that information is not part of Prop. G/SF Admin Code Sec. 67.29-5 is not a justification for exemption. Furthermore, Prop. G (SF Admin Code Sec. 67.29-5) does not specify any format for calendar information. Neither SF Admin Code Sec. 67.29-5 nor any other provision of the Sunshine Ordinance can be interpreted in a way that would reduce my rights under the state-wide CPRA or conflict with it. To the extent that Respondents argue that *only* Sec. 67.29-5 calendar information is public, such argument would violate the CPRA.
- c) Respondents argue no “substantiative information” has been withheld (Response pg. 1, 2). The CPRA and Sunshine Ordinance do not permit public agencies to determine for themselves what information is “substantiative.” These laws concern themselves with the records only, and let the public decide for itself what records are important. However, I also argue why the information I seek is important below.

2. Metadata is not categorically exempt from disclosure

- a) As background, while not binding upon your Task Force, consider this note from League of California Cities’ “The People’s Business”¹:

Agencies that receive requests for metadata or requests for records that include metadata should treat the requests the same way they treat all other requests for electronic information and disclose nonexempt metadata.

It also points out that “evolving law in other jurisdictions has held that local agency

¹Retrieved June 3, 2019. April 2017. League of California Cities. “The People’s Business.” Page 14.
<http://www.cacities.org/Resources/Open-Government/THE-PEOPLE%E2%80%99S-BUSINESS-A-Guide-to-the-California-Pu.aspx>

metadata is a public record subject to disclosure unless an exemption applies”² (see *Lake v. City of Phoenix*, (2009) 218 P.3d 1004, 1008; *O’Neill v. City of Shoreline* (2010) 240 P.3d 1149, 1154; *Irwin v. Onondaga County* (2010) 895 N.Y.S.2d 262, 268.).

- b) Respondents argue that they do not index metadata as records, do not generally search metadata, and (this Administration) have not provided them in the past (Response pg. 3). The Mayor’s failure to index and in the past search for or provide metadata has no bearing on whether they are, under the Sunshine Ordinance or CPRA, in fact, public records. Furthermore, the Office of the Mayor (under Mayor Lee) did provide, for example, certain metadata (i.e. From, To, Sent, and Subject headers) in response to e-mail records request³. Calendars and emails are not identical, and I do not concede that those few headers constitute sufficient disclosure (and in fact argue as much under a separate parallel SOTF complaint 19044, *Anonymous v. Dennis Herrera, Elizabeth Coolbrith*), but it is the case that *some* metadata has in fact been disclosed by the Office of the Mayor in the past.
- c) Respondents argue that metadata could create security risks or disclose privileged information (Response pg. 3). Respondents cite certain articles regarding hacking of the City of Atlanta systems (Response Attachment pp. 12–19), however the article itself does not seem to argue that such breaches were caused by disclosure of metadata. It is however the case that *certain* headers and similar could in fact create security risks, but this is not a blanket reason to withhold *all* headers or metadata.
- d) There are ways for the Mayor (and other City agencies) to both meet their requirements under the Sunshine Ordinance, CPRA, and California Constitution while protecting the City’s security. One proposal I made in 19044, *Anonymous v. Dennis Herrera, Elizabeth Coolbrith* was⁴:

the City Attorney publishes an opinion that in its independent legal judgment, and in good faith consultation with information technology security experts, that all e-mail header names are non-exempt and at least the following e-mail header values (in addition to body, attachments and inline images) [Date, Sender, Message-Id, To, From, Subject, Mime-Version, Content-Type, Return-Path, Cc, Bcc, X-Envelope-From, Thread-Topic, Thread-Index, Sender, References, In-Reply-To, X-Originatororg, Delivered-To, X-Forwarded-To, X-Forwarded-For] are in fact not automatically exempt from disclosure (unless the specific [sic] content is exempt);

A similar process can be used for calendar items and electronic records in general: that the City consult with IT security experts and provide uniform policies on which headers/metadata are genuinely exempt due to security concerns and directing that others can be safely released.

²Ibid.

³See for example <https://www.muckrock.com/foi/san-francisco-141/ed-lee-emails-52899/>

⁴My May 17, 2019 follow-up to SOTF 19044, pg. 3, https://cdn.muckrock.com/outbound_request_attachments/Anonymous_2859385/72056/SF-Email-Appeal-72056-SOTF-19044-corrected-a.pdf

- e) Respondents argue it is “necessary to withhold metadata that describes unique identifiers for individual computer terminals and computer servers and associated security certificates and similar information.” (Response pg. 3) To the extent that means IP addresses and certificate private keys are exempt under the Sunshine Ordinance, I do not disagree. I am not sure how certificate private keys could be stored in calendar items.
- f) To the extent that metadata could include attorney-client privilege, work product privilege, identity of a confidential whistleblower or protected health information (Response pg. 3), that concern exists for the non-metadata “body” of any record as well. It is routinely redacted and handled correctly by City agencies, and it should be no different for metadata. In *SOTF 19044, Anonymous v. Dennis Herrera, Elizabeth Coolbrith* for example, the City Attorney disclosed a redacted version of an email I requested by printing the entire record with all headers and then redacting the ones they felt were exempt from disclosure⁵. I argued⁶ in *19044* that this disclosure remains insufficient due to the specifics of the headers not disclosed, but it shows that a process is possible.

3. Respondents should disclose calendars in their native formats

- a) Respondents argue the iCalendar format would be a native file of the whole calendar (Response pg. 4). I agree, and that would be a record responsive to my request. Metadata would in fact have need to be redacted appropriately (see 2f above). Respondents argue the .ics format is not typically used or maintained by them (Response pg. 4). However, the ‘.ics’ format *is* another name for the iCalendar format.⁷ I used both names in my request since they may not be familiar terms.
- b) Respondents argue that they do not hold “the *Prop G* calendar in an iCalendar, .ics or Vcard format” (emphasis mine, Response pg. 3). First, as argued in my Part 1, I have never requested only the *Prop G* calendar – all calendar information for the Mayor, in any format, for the days requested are responsive public records. Second, while Respondents may neither “hold” nor make copies for themselves or other agencies in iCalendar or vCard formats, it is difficult to believe that the only format Respondents hold calendar records is in PDF – this would be impractical to edit and use on a day-to-day basis. My request was for “an electronic copy, in the original electronic format” of the calendar. From the appearance of the disclosed partial calendar record, it appears the Respondents use Microsoft Outlook and/or Exchange for their Calendars. Microsoft Outlook/Exchange certainly do not “hold” calendar data in PDF formats. I did suggest .ics, iCalendar, or vCard as potential formats, as they are well-known or standardized formats. If anything, the concern about security risks should be lower using, for example, iCalendar, since it is publicly defined as a standard in IETF RFC 5545 (<https://tools.ietf.org/html/rfc5545> – as subsequently amended by RFCs 5546, 6868, 7529, 7953, 7986). Using the native formats does not preclude Respondents from redacting that specific information which is exempt under the Sunshine Ordinance.

⁵See https://cdn.muckrock.com/foia_files/2019/05/17/4-18-19_Email_Received_Redacted.pdf

⁶My May 17, 2019 follow-up to SOTF 19044, pp. 2–3, https://cdn.muckrock.com/outbound_request_attachments/Anonymous_2859385/72056/SF-Email-Appeal-72056-SOTF-19044-corrected-a.pdf

⁷<https://en.wikipedia.org/wiki/ICalendar>

4. **Respondents failed to justify their withholding adequately.** On May 9, 2019, Respondents cited Cal. Gov. Code 6253.9(a)(1) and Cal. Gov. Code 6253.9(f) as reasons to provide PDF formats as opposed to the original electronic format. They addressed solely the format issue. They provided us no determination whether the metadata/headers I requested existed and did not state they were withholding it (SF Admin Code 67.21(b), Govt Code 6253(c)), and they did not justify doing so (SF Admin Code 67.27). Furthermore, SF Admin Code 67.26 states in relevant part:

Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article.

If Respondents wished to withhold metadata/headers they should have printed it out in PDF format (since they prefer PDF), redacted the specific portions, and justified each redaction. If any non-“Prop G” calendar records do in fact exist (something I do not believe has been determined), Respondents did not address their existence or withholding in their response, either.

5. **Metadata and native formats include information that is both non-exempt and important.** San Francisco does not permit its agencies to use the public interest balance exemption (SF Admin Code 67.24(g,i)), however, I thought it would be useful to explain why non-exempt metadata and native formats may be useful to the public. Native formats allow the public to easily search, index, import, and analyze information about the public business; PDFs create an additional barrier to making this information universally accessible as they are not optimized for calendar storage. Metadata that does not put the City at risk for security breaches and is not otherwise exempt include information such as which event attendees accepted/rejected an invite, when an invite was created, when it was sent or received, who actually sent it (the Mayor, vs. her subordinates), which party initiated the calendar invite and more. Metadata can help answer common investigative and journalistic questions including “who knew what, and when did they know it?”

I respectfully ask that your Task Force find the Respondents did violate the Sunshine Ordinance through their May 9, 2019 response to my records request, that Respondents continue to do so, and direct the Respondents to:

1. Disclose all other calendar records (in whatever form, whether Prop G or not Prop G) in the date range requested.
2. Disclose all metadata/header names and all values except those values specifically exempt (regardless of the format used).
3. Produce the calendar records (including both the Prop G records previously disclosed in PDF form, and any new calendar items they disclose) in their native electronic format (or another format like iCalendar if it preserves those metadata).

Item 1 should be performed even if your Task Force finds all metadata categorically exempt and does not find that the Respondents are required to produce records in their original electronic format. Per our original request: "Please provide only those copies of records available without any fees. If you determine certain records would require fees, please instead provide the required notice of which of those records are available and non-exempt for inspection in-person if we so choose."

I hope that the complaint is now ripe for consideration by your Task Force or a committee thereof. As it would be difficult for me to be physically present at any in-person hearings, and in order to maintain my anonymity, I would appreciate the opportunity to be heard via conference call (telephone, Google Hangouts, Skype, etc.) if needed. Since this e-mail mailbox is completely public, I can send an email from a private address to retrieve conference call connection information if it is available.

Sincerely,

72902-46637773@requests.muckrock.com (Anonymous requestor)