

Supervisor of Records
City Hall, Room 234
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San Francisco CA 94102
supervisor.records@SFCITYATTY.ORG
sent via email to Supervisor of Records

Our ref.
#19047

Date
2019-08-27

RE: SF Sunshine Ordinance petition against Mayor, ref SOTF 19047

To the Supervisor of Records of the City and County of San Francisco:

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 August 26, 2019 you denied our May 15, 2019 petition regarding the May 8, 2019 request for production of the Mayor's calendar in original electronic format and with metadata and headers. While we dispute your conclusions with regard to electronic formats and metadata (which we will pursue before the full Sunshine Ordinance Task Force), this is *not* a request for reconsideration for those format or metadata issues.

After our May 15, 2019 petition, the Office of Mayor indicated in their response to the SOTF complaint that they had provided the full Prop G (SFAC 67.29-5) calendar, and the contours of SFAC 67.29-5's requirements were a significant part of the Mayor's argument before the SOTF Complaint Committee on Aug. 20. The designated "Prop G" calendar is the sole record disclosed by the Mayor in this case. The Complaint Committee found jurisdiction and that the records are public and sent the complaint to the full SOTF.

Therefore, this is a new SFAC 67.21(d) petition asking you to **determine whether the following are public records:**

calendar records/entries prepared, owned, used, or retained by the Office of Mayor¹ that either (a) go beyond the requirements of SFAC 67.29-5 and/or (b) are not part of the designated "Prop G" calendar

¹On government property, or on personal property subject to a *City of San Jose v Superior Court* (2017) search

For example, if the Office of Mayor prepared, owned, used, or retained any calendar entries with greater detail than their designated "Prop G" calendar - are those items public records? We argue that they are.

SFAC 67.29-5 reads:

SEC. 67.29-5. CALENDARS OF CERTAIN OFFICIALS.

(a) The Mayor, City Attorney, Treasurer, Assessor-Recorder, District Attorney, Public Defender, Sheriff, every member of the Board of Supervisors, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, either in person or by teleconference or other electronic means, with the exclusion of purely personal or social events at which no City business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the City. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date.

(b) For meetings or events with ten or fewer attendees, the calendar shall also identify the individual(s) present and organization(s) represented at the meeting or event if known by the official, unless the official is aware that the information would reveal the identity of a confidential whistleblower, would interfere with an individual's right to petition government where the individual has sought and been assured confidentiality, would disclose the attendance of members or representatives of a labor organization at a meeting to discuss matters within the scope of representation, as that term is defined in California Government Code Section 3504, would reveal personnel information not subject to disclosure, or is otherwise exempt from disclosure under State and local law.

(c) At any meeting or event with ten or fewer attendees, officials subject to subsection (a) of this Section 67.29-5 shall attempt to identify names of attendees present, and the organizations they represent; provided that an official shall not require any attendees to identify themselves, unless the official is aware that those attendees are campaign consultants registered with the Ethics Commission under Campaign and Governmental Conduct Code Article I, Chapter 5; lobbyists registered with the Ethics Commission under Campaign and Governmental Conduct Code Article II, Chapter 1; permit consultants registered with the Ethics Commission under Campaign and Governmental Conduct Code Article III, Chapter 4; Developers of Major Projects, as defined in Campaign and Governmental Conduct Code Section 3.510, if the Major Project is discussed at the meeting or event; and employees or representatives of any entity that has received a grant from or entered a contract with any City department within the previous 12 months. The official has no duty to ascertain whether any attendees fall into these categories. Within three business days after a meeting or event subject to this subsection (c), the official shall update the daily calendar to include the names of the attendees and organizations identified by or known to the official.

(d) For the purpose of calculating the total number of attendees at a meeting or event under subsections (b) and (c), an official shall not include himself or herself.

(e) The obligations imposed under subsections (b) and (c), and the obligations imposed upon members of the Board of Supervisors under subsection (a), shall not apply to meetings or events where City business is discussed only incidentally; to unplanned, casual conversations with residents; to campaign-related meetings, events, and appearances; or to meetings or events where

all attendees are employees or officers in the official's City department, which for members of the Board of Supervisors shall mean that all attendees are members of the Board of Supervisors, legislative aides, or employees of the Office of the Clerk of the Board. Officials are not in violation of subsections (b) or (c), and members of the Board of Supervisors are not in violation of subsection (a), if they have made a good faith effort to comply with their obligations thereunder.

SFAC 67.29-5 sets a minimum bar for what calendar information *must* be kept by the Mayor. But SFAC 67.29-5's instruction that "such calendars shall be public records" does not in any way make *other* calendars not public records. Public records are defined by the CPRA, Gov Code 6252(e) as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." No local ordinance can restrict or limit the CPRA's definition (local ordinances may only broaden the provisions, as the Sunshine Ordinance does in various ways), and SFAC 67.29-5 does not purport to do so.

The Office of Mayor should have to disclose all calendar records, regardless of whether they are the designated "Prop G" calendar. It would stretch credulity to believe that the Office of Mayor functions without much more detailed calendar entries than the special "Prop G" calendar which is the sole record they have disclosed in this case. Most telling, SFAC 67.29-5 only requires that the Prop G calendar be available 3 business days *after* the entry date, but obviously there would have to exist some calendar entry indicating scheduling of most events *before* the event actually occurs. How else would the Mayor or her staff know when and where to go?

Before the SOTF Complaint Committee, the Office of Mayor appeared to argue that those other calendar items aren't "official" and/or don't have a long-term retention policy. Neither of those issues are relevant. An agency's designation of a record as "official" has no bearing on whether it must be disclosed. Furthermore, any records retained at the time of the request should be disclosed, even if those records won't be kept as long as the "Prop G" calendar.

Sincerely,

Anonymous