

Date February 28, 2012

Item No. 17 & 18  
File No. 11091

**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LIST

**ITEMS**

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Memorandum  
Complaint submittal  
Correspondence

**OTHER**

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Completed by: Andrea Ausberry Date February 22, 2012  
Completed by: \_\_\_\_\_ Date \_\_\_\_\_

\*An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file.



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

Direct Dial: (415) 554-3914  
Email: jerry.threet@sfgov.org

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
FROM: Jerry Threet  
Deputy City Attorney  
DATE: December 28, 2011  
RE: *Nick Pasquariello v. Supervisor David Chiu (11091)*

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### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Nick Pasquariello ("Complainant") alleges that Supervisor David Chiu failed to provide public records in response to his Immediate Disclosure Request ("IDR"), made on October 19, 2011, for "complete copies of all electronic communication including but not limited to text messages, emails, and Tweets that Mr. Judson True of your staff sent, transmitted and received on his cell phone on September 27, 2011 between 8:00 a.m. and 11:59 p.m."

#### COMPLAINANT FILES COMPLAINT:

On November 4, 2011, Complainant filed this complaint against Supervisor Chiu.

#### JURISDICTION:

The Board of Supervisors is a City department subject to the provisions of the Sunshine Ordinance. Supervisor Chiu has not contested jurisdiction.

#### APPLICABLE STATUTORY SECTION(S):

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

#### APPLICABLE CASE LAW:

None

#### ISSUES TO BE DETERMINED

**Contested/Uncontested Facts:** Complainant alleges that he made an IDR on October 19, 2011, for "complete copies of all electronic communication including but not limited to text messages, emails, and Tweets that Mr. Judson True of your staff sent, transmitted and received on his cell phone on September 27, 2011 between 8:00 a.m. and 11:59 p.m." He further alleges that the fax containing the IDR "was confirmed received by Arthur (no last name given) of the

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Clerk's office at the time of the FAX." He further alleges that Supervisor Chiu has not responded to his IDR.

As of the time this memorandum was drafted, no response to the complaint from Supervisor Chiu had been provided to me.

**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:**

- Did Supervisor Chiu respond to the records request?
- If so, when did he respond and how?
- Were any records provided in response to the IDR?
- Were any responsive records withheld?
- If so, was withholding held to a minimum?
- If so, was a written justification for withholding provided to Complainant that is consistent with the Ordinance?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Has Supervisor Chiu timely responded to the public information request?
- Did Supervisor Chiu justify any withholding in accordance with the requirements of the Ordinance?
- Are Supervisor Chiu's justifications for withholding, if any, reasons allowed by the Ordinance?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

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**CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)****SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

**SEC. 67.25. IMMEDIACY OF RESPONSE.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

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**SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. 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. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

**SEC. 67.27. JUSTIFICATION OF WITHHOLDING.**

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

**CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)****SECTION 6253**

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- (c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, 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. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would

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result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.



To:sotf@sfgov.org  
Email:complaints@sfgov.org  
DEPARTMENT:Office of Supervisor David Chiu  
CONTACTED:  
PUBLIC\_RECORDS\_VIOLATION:Yes  
PUBLIC\_MEETING\_VIOLATION:No  
MEETING\_DATE:  
SECTIONS\_VIOLATED:Sec. 67.25. Immediacy Of Response  
DESCRIPTION:Failing to respond to an Immediate Disclosure Request.  
HEARING:Yes  
PRE-HEARING:No  
DATE:October 4, 2011  
NAME:Nick Pasquariello  
ADDRESS:PO Box 42791  
CITY:San Francisco  
ZIP:CA 94142  
PHONE:  
CONTACT\_EMAIL:jpk@pobox.com  
ANONYMOUS:  
CONFIDENTIALITY\_REQUESTED:No



New complaint.

N

to:

sotf

11/04/2011 12:02 PM

Hide Details

From: N <jpk@pobox.com>

To: sotf@sfgov.org

Chris Rustom,

I wish to file a complaint against Supervisor and Board President David Chiu for failing to respond to an Immediate Disclosure Request FAXED (415-554-5163) to his office October 19, 2011.

This FAX was confirmed received by Arthur (no last name given) of the Clerk's office at the time of the FAX.

Below please find a copy of that Immediate Disclosure Request.

Please confirm ASAP that you have received and logged for a future agenda of the SOTF this complaint.

I appreciate your help.

Nick Pasquariello

IMMEDIATE DISCLOSURE REQUEST

Post Office Box 42791  
San Francisco, California 94142  
October 19, 2011



Supervisor David Chiu  
President  
San Francisco Board of Supervisors  
City Hall  
San Francisco, California 94102  
(415) 554-7450  
(415) 554-7454 (FAX)

Dear Supervisor Chiu,

Would you please send me complete copies of all electronic communication including but not limited to text messages, emails, and Tweets that Mr. Judson True of your staff sent, transmitted and received on his cell phone on September 27, 2011 between 8:00 a.m. and 11:59 p.m.

Please send me complete copies of all outgoing and incoming text messages, emails and Tweets for this time period

You may mail all of these public records on a CD ROM disk to the above address.

I appreciate your help.

Yours truly,

Nick Pasquariello

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Post Office Box 42791  
San Francisco, California 94142

October 19, 2011

Supervisor David Chiu  
President  
San Francisco Board of Supervisors  
City Hall  
San Francisco, California 94102  
(415) 554-7450  
(415) 554-7454 (FAX)

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