

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

February 27, 2012

DATE THE DECISION ISSUED

January 3, 2012

LARS NYMAN v DEPARTMENT OF PUBLIC WORKS (CASE NO. 11087)

FACTS OF THE CASE

Complainant Lars Nyman alleges that the San Francisco Department of Public Works ("DPW") has not adequately responded to his October 6, 2011 request for public information related to the approval or authorization of the Montgomery/Alta Street tree project.

COMPLAINT FILED

On November 14, 2011, Lars Nyman filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that DPW violated the public information and public records provisions of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On January 3, 2012, Lars Nyman appeared before the Task Force and presented his complaint. DPW was represented by its Director's Executive Assistant Frank Lee, who presented the response.

On October 6, 2011, Mr. Nyman requested from DPW any documents related to the approval or authorization of both the Montgomery/Alta Street tree project and the initial budget for that project. This request was made in follow-up to his previous request for documents related to the approval of the final cost of \$229,039.80, an amount over the original budget of \$101,625.50. Mr. Nyman made the follow-up request at issue in this complaint after DPW told him that no documents exist related to approval of costs over the original budget because that approval was given verbally.

Mr. Nyman stated that Mr. Lee told him no documents exist that are responsive to his current request for the initial approval of the project itself other than those provided in response to previous requests. Mr. Nyman alleged that no documents related to the initial project approval have ever been provided. He stated Mr. Lee offered to arrange for him to meet with DPW staff to discuss the project but that he preferred to receive a response in writing. He further stated that Mr. Lee provided him with the names of DPW staff involved in the project but not with their contact information.

Mr. Lee stated DPW had previously provided all responsive documents to Mr. Nyman. He stated that he had confirmed with DPW staff that the approval of costs over the initial estimate was done verbally, and, therefore, no documents exist related to that approval. He repeated his offer to arrange for Mr. Nyman to meet with DPW staff to review and discuss specific information relative to his requests.

Mr. Lee also described details of his search for responsive documents. Upon further questioning by the Task Force, Mr. Lee stated that he did not know if records exist related to initial approval or authorization of the project itself, including approval of the posting of the notice of tree removal. He further stated he believed such a request would constitute a new records request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that a request for documents related to initial approval of the project itself is not a new request because Mr. Nyman's October 6, 2011 email to DPW at issue in this complaint specifically requests that information. The Task Force further found that Mr. Nyman's request for any initial approval documents is logically inclusive of approvals or instructions to post notices of tree removal, one of the initial steps of the project.

Based on Mr. Lee's admission that he does not know if records exist related to the initial approval or authorization of the project itself, including approval of the initial budget and notices of tree removal, the Task Force found that DPW had not fully responded to Mr. Nyman's request as required by Sunshine Ordinance Section 67.21(e). Based on statements by Mr. Nyman and documents presented for the hearing, the Task Force further found that DPW had not assisted Mr. Nyman in identifying records available or provided him with contact information for appropriate project staff upon learning he wanted to receive his responses in writing as required by Sunshine Ordinance Section 67.21(c).

DECISION AND ORDER OF DETERMINATION

The Task Force finds DPW in violation of Sunshine Ordinance Sections:

67.21(c) for failure to assist Mr. Nyman in identifying the existence, form, and nature of available records related to initial approvals and authorizations of the project and for failure to provide contact information for appropriate DPW staff; and

67.21(e) for providing an incomplete response to the request for public records regarding initial approval and authorization of the project.

DPW shall research the existence of public records and information related to the initial approval or authorization of both the project itself and the initial budget for the project, release the requested records within 5 business days of the issuance of this Order of Determination, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00pm in Room 406. The Committee shall monitor compliance with this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 3, 2012, by the following vote: (Wolfe/West - 7/1/2)

Ayes: 7 - Knee, Manneh, Washburn, Costa, Wolfe, West, Johnson

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Lars Nyman, Complainant
Frank Lee, Executive Assistant, Department of Public Works, Respondent
Mohammed Nuru, Interim Director, Department of Public Works, Respondent
Jerry Threet, Deputy City Attorney