

Date: March 8, 2011

Item No. 2

File No. 11003

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

- Matt Smith against the District Attorney's Office**
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Completed by: Chris Rustom

Date: March 4, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



<complaints@sfgov.org>
02/15/2011 09:06 AM

To <sotf@sfgov.org>
cc
bcc

Subject Sunshine Complaint

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:District Attorney's Office

CONTACTED:Erica Derryck

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:67.26

DESCRIPTION:I have requested records from the office of District Attorney Kamala Harris consisting of Archdiocese of San Francisco files detailing allegations, and responses to allegations, of clergy abuse, reaching as far back as 75 years. Her deputies have responded to this request by stating that all the information I requested was withheld to protect the identity of victims. (See attached)

HEARING:Yes

PRE-HEARING:No

DATE:2/14/2011

NAME:Matt Smith

ADDRESS:185 Berry St. Suite 380

CITY:San Francisco

ZIP:

PHONE:536-814

CONTACT_EMAIL:Matthew.smith@sfweekly.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

3/4/2011

Matt Smith
SF Weekly
185 Berry St. Suite 3800
Matthew.smith@sfweekly.com
DIRECT DESK LINE: 415-536-8143
FAX 415-777-1839

JULY 16, 2010

DEAR SUNSHINE ORDINANCE TASK FORCE,

I AM WRITING TO RE-ITERATE A COMPLAINT I SENT THROUGH THE TASK FORCE FS ELECTRONIC COMPLAINT FORM JUNE 21, 2010. I HAVE NOT REVISED THAT COMPLAINT, AND DO NOT WISH TO RE-START THE CLOCK ON MY JUNE 21 COMPLAINT. HOWEVER, I HAVE NOT HEARD BACK FROM THE TASK FORCE SINCE THEN, AND AM SENDING NOW A PHYSICAL VERSION OF THE COMPLAINT IN CASE MY INITIAL COMPLAINT WAS SOMEHOW LOST.

THE FOLLOWING IS AN EXPLANATION OF WHAT I BELIEVE TO BE VIOLATIONS OF SAN FRANCISCO SUNSHINE ORDINANCE SEC. 67.26 BY THE OFFICE OF SAN FRANCISCO DISTRICT ATTORNEY KAMALA HARRIS, THROUGH ACTIONS OF HER DEPUTIES PAUL HENDERSON AND ELLIOT S. BECKELMAN, AND HER SPOKESWOMAN ERICA DERRYCK.

I have requested records from the office of District Attorney Kamala Harris consisting of Archdiocese of San Francisco files detailing allegations, and responses to allegations, of clergy abuse, reaching as far back as 75 years.

Her deputies have responded to this request by stating that all the information I requested was withheld to protect the identity of victims.

The San Francisco Sunshine Ordinance provides clear instructions for public officials in a situation such as this, where the withholding of some truly private information may be required. The instructions are not blanket concealment.

Rather, the heading for SEC. 67.26 of the ordinance is titled: "WITHHOLDING KEPT TO A MINIMUM." The section says private information "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."

Therefore, I believe that the task force should find that the San Francisco District Attorney's office has violated the letter and spirit of the ordinance.

A summary of my attempts to obtain public information from the District Attorney's office follows:

On April 19, 2010, just as controversy was heating up over the Vatican's role in the global sex abuse scandal, I made a public records request for materials that can be summarized as: records received in 2002 by the District Attorney's office from the Archdiocese of San Francisco pertaining to allegations of sexual abuse by priests. The contents of these records are of great public interest because experts on Catholic Clergy abuse believe they contain information key to understanding the church hierarchy's role covering up abuse.

On April 21 I received a response from Deputy District Attorney Paul Henderson stating the following: "The documents you have requested are included in District Attorney investigation files. District Attorney investigation files cannot be disclosed in response to a records request. District Attorney investigation files are not subject to the California Public Records Act or the San Francisco Administrative Code. All District Attorney records are maintained confidential, even after an investigation has concluded."

3/4/2011

I shared Henderson's arguments with California Newspaper Publishers Association legal counsel Jim Ewert. "That's flatly untrue," Ewert said. The District Attorney's office "can release them if they want to. But they have decided not to."

Harris' predecessor Terence Hallinan, who forced the Archdiocese to turn over the records in 2002, and who pursued cases against priests before his office was barred from proceeding by expired statutes of limitations, told me he saw no reason to keep the files secret: "Obviously, those things should be made public," he told me.

I wrote to Harris' office citing Ewert's analysis, and also mentioned Hallinan's statement. Harris' spokeswoman, Erica Derryck, changed course from the office's previous false statement that Harris' files enjoy a blanket exemption from public records law.

Darrick said Harris' office would retrieve and review the files to determine whether there were any I could view. Derryck memorialized her promise to do this in a letter to me and SF Weekly's managing editor Will Harper. Following half a dozen phone conversations and as many e-mail exchanges, Derryck said she would contact me on May 24 to report on files I might be able to view. Not hearing from her, I called her again, almost seven weeks after my initial request. She said she was still working on it. I heard nothing more.

On June 2, we published a column about my attempts to view these records.

It can be found here:

<http://www.sfweekly.com/2010-06-02/news/a-secrecy-fetish/>

The column suggested Harris had a policy that can be summarized as: "When in doubt, keep secrets."

In the comments section of the web version of the column, deputy district attorney Elliot S. Beckelman wrote a note saying that it was under his advice that the records be concealed.

He acknowledged in the note that "The investigation of the Archdiocese ended years ago."

This means that there is no possibility that release of the records would compromise an investigation, prosecution or other act of law enforcement.

This fact is important, because law enforcement exemptions from public records requirements generally hang on the idea that law enforcement activities or objectives might be undermined by the release of records. In stating investigations closed long ago, Beckelman made a point of noting there exists no such assertion here.

Rather, Mr. Beckelman said the records were concealed due to "the need to protect the privacy of the victims."

Given that it is commonplace and routine in the public-records arena to redact information that could compromise privacy, Mr. Beckelman seems to be saying that the District Attorney's office simply does not want to expend the time, effort and expense involved in redacting private victims' information from the archdiocese files.

As such, Beckelman and Harris are in direct violation of SEC. 67.26. of the San Francisco Sunshine Ordinance, which reads as follows:

"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."

I urge the Sunshine Task Force to demand that Harris office commence the work of redacting victims information and other legitimately private portions from the Archdiocese files, and subsequently make them available to me.

Kindly,

Matt Smith

3/4/2011

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE DISTRICT ATTORNEY



KAMALA D. HARRIS
District Attorney

Paul Henderson
Chief of Administration

DIRECT DIAL: (415) 553-1845
E-MAIL: Paul.Henderson@sfgov.org

February 28, 2011

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: *Complaint Number 11003*

To the members of the Sunshine Ordinance Task Force:

On February 17, 2011, the San Francisco District Attorney's Office (SFDA) received notice of the above-referenced complaint. This letter serves as a response to these allegations.

On April 19, 2010, the Complainant requested "all records associated with the investigation(s) into allegations of sexual abuse of Father Greg Ingels. Additionally, I wish to review records received by the District Attorney's office from the Archdiocese of San Francisco pertaining to allegations of sexual abuse by priests. In particular, I wish to review documents received during and around 2002 obtained from the Archdiocese of San Francisco pertaining to church records relevant to allegations of sexual abuse. Please do not interpret my request for records obtained in 2002 from the Archdiocese as in any way limiting my request for records pertaining to Ingles, or other Archdiocese records relating to sex abuse allegations in possession of the District Attorney's office."

On April 21, 2010, the Respondent provided the attached response, declining to provide the requested records and explaining the basis for this position.

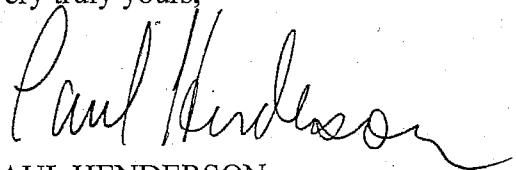
The District Attorney's position is grounded in the California Public Records Act and supported by *Rivero v. Superior Court*, (1997) 54 Cal. App. 4th 1048, in which the court explicitly held that neither the California Public Records nor the San Francisco Sunshine Ordinance compels disclosure of district attorney investigation files. In reaching this conclusion, the Court found that investigation and prosecution of state criminal laws are statewide concerns, not municipal affairs; accordingly, conflicting local ordinances – and specifically the Sunshine Ordinance – must yield to state law.

Accordingly, the District Attorney's Office requests that the Sunshine Ordinance Task Force deny Petitioner's request based on a lack of jurisdiction.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 MAR -1 AM 9:34
BY [Signature]

If you have any questions or concerns please feel free to contact me directly. My contact information is provided above.

Very truly yours,

A handwritten signature in black ink that reads "Paul Henderson". The signature is written in a cursive style with a long, sweeping tail on the letter "n".

PAUL HENDERSON
Chief of Administration

Paul Henderson/DA/SFGOV
Sent by: Katherine Miller

04/21/2010 05:25 PM

To matthew.smith@sfweekly.com

cc Katherine Miller/DA/SFGOV@SFGOV, Brian
Buckelew/DA/SFGOV@SFGOV

bcc

Subject Response to 04/19/10 Public Record Request 

April 21, 2010

VIA EMAIL

Matt Smith
SF Weekly
Matthew.smith@sfweekly.com

RE: 04/19/10 Public Record Request

Dear Mr. Smith:

This letter is in reply to your public record request, delivered via electronic mail on April 19, 2010. You requested the following:

I wish to review all records associated with investigation(s) into allegations of sexual abuse of Father Greg Ingles. Additionally, I wish to review records received by the District Attorney's office from the Archdiocese of San Francisco pertaining to allegations of sexual abuse by priests. In particular, I wish to review documents received during and around 2002 obtained from the Archdiocese of San Francisco pertaining to church records relevant to allegations of sexual abuse. Please do not interpret my request for records obtained in 2002 from the Archdiocese as in any way limiting my request for records pertaining to Ingles, or other Archdiocese records relating to sex abuse allegations in possession of the District Attorney's office.

The documents you have requested are included in District Attorney investigation files. District Attorney investigation files cannot be disclosed in response to a records request. District Attorney investigation files are not subject to the California Public Records Act or the San Francisco Administrative Code. All District Attorney records are maintained confidential, even after an investigation has concluded. Government Code section 6254(f) recognizes this by exempting from disclosure "Records of complaints to, or investigations conducted by....any state or local police agency...." The same material is also considered to be "official information" which is privileged pursuant to Evidence Code section 1040 (and therefore exempt from disclosure pursuant to Government Code section 6254(k)), and that the public interest served by not disclosing such records outweighs the public interest served by disclosure of the records. (Government Code section 6255(a).) Proposition 59, to which you refer in your request, "does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records." (Proposition 59, as codified in the California Constitution, Article I, Section 3(b)(5)).

The reasoning for this position is further set forth at *Rivero v. Superior Court* (1997) 54 Cal. App. 4th 1048; *Williams v. Superior Court* (1993) 5 Cal. 4th 337 and California Government Code §25303. Briefly, compelled disclosure would obstruct the investigatory and prosecutorial function of the District Attorney and have a chilling effect on potential witnesses in other matters if they knew sensitive information would be subject to public review, at any time.

Accordingly, the District Attorney cannot disclose the information responsive to your request.

3/4/2011

Sincerely,

Paul Henderson
Chief of Administration
San Francisco District Attorney's Office
850 Bryant Street
San Francisco, CA 94103
paul.henderson@sfgov.org

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Katherine Miller/DA/SFGOV

Brian Buckelew/DA/SFGOV

04/21/2010 02:57 PM

To Katherine Miller/DA/SFGOV@SFGOV

cc

Subject Fw: Journalist's Request for Public Records

Brian J. Buckelew
Assistant District Attorney
Director of Legal Affairs and Public Information
Office of the District Attorney
City and County of San Francisco
850 Bryant Street, Room 322
San Francisco, CA 94103

Phone: 415.553.1383
Fax: 415.575.8815
brian.buckelew@sfgov.org

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--- Forwarded by Brian Buckelew/DA/SFGOV on 04/21/2010 02:57 PM ---



"Matthew Smith"
<Matthew.Smith@sfweekly.com>

To <brian.buckelew@sfgov.org>

3/4/2011