

Date: March 25, 2008

Item No. 7

File No. 08011

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: David Waggoner vs Ethics Commission**
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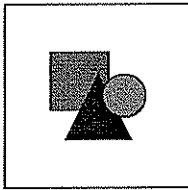
Completed by: Frank Darby

Date: March 19, 2008

***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.



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MEMORANDUM

March 14, 2008

DAVID WAGGONER v. SAN FRANCISCO ETHICS COMMISSION (08011)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

In his letter dated February 14, 2008, Complainant David Waggoner stated the following:

On November 29, 2007, David Waggoner filed an Immediate Disclosure Request with the San Francisco Ethics Commission Executive Director, John St. Croix. David Waggoner's request asked for several kinds of documents in his capacity as attorney for Tony Hall and David Waggoner specifically requested any and all documents related to the SFEC investigation of Ton Hall.

On November 30, 2007, Mr. St. Croix responded to the request and stated in a letter that the SFEC could not provide the records of the Hall investigation because the SFEC had not yet made a determination of probable cause. Mr. St. Croix also stated disclosure of information about a preliminary investigation constitutes official misconduct.

David Waggoner claims that Mr. St. Croix disclosed the existence of the Hall investigation to a reporter for the San Francisco Chronicle in August 2007. The SFEC made a probable cause determination on December 10, 2007 and the Chronicle newspaper issued an article published on December 14, 2007 which quoted Mr. Croix stating: "We believe [Tony Hall] used funds for purposes that were not legitimate and that were not for advancing his campaign and were more than likely personal in nature."

On December 14, 2007, the SFEC provided David Waggoner with some records relevant to the initial IDR but withheld other records. SFEC Chief Enforcement Officer Richard Mo stated in a letter dated December 14, 2007: "Ethics Commission Investigation and Enforcement Regulation XIII.B.1 provides '[a]fter a determination of probable cause, complaints, related documents and investigative files shall not be disclosed except as required by the California Public Records Act...' The California Public Records Act provides an exception for records pertaining to pending litigation, to which a public agency is a party. See Cal. Gov. Code §6254(b). Because the Ethics Commission is a party to this matter, Staff cannot provide you with the requested records."

Memorandum**COMPLAINANT FILES COMPLAINT:**

On July 17, 2007, Complainant David Waggoner filed a complaint against the Ethics Commission alleging that the Commission violated the Sunshine Ordinance and the State Public Records Act.

APPLICABLE STATUTORY SECTION;

1. California Constitution, Article I, Section 3 that states the general principals of public records and public meetings.
2. Sunshine Ordinance Section 67.1 that addresses Findings and Purpose.
3. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents including records in electronic format.
4. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
5. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals with justification for withholding.
6. California Public Records Act, Government Code Section 6253 deals with public records open to inspection, agency duties, and time limits.
7. California Public Records Act, Government Code Section 6255 deals with justification for withholding of records.
8. California Public Records Act, Government Code Section 6254 deals with certain records that are exempt from disclosure.
9. San Francisco City Charter Section C3.699-13 deals with Ethics commission investigative records.
10. San Francisco City Charter Article 1 Section 1.101 deals with the authority of the Charter over local ordinances.

APPLICABLE CASE CASE LAW:

none

Memorandum

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

- Complainant made a public records request for certain records that involved the Commission investigation of Tony Hall.
- The Commission disclosed some records but withheld others.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

- i. Relevant facts in dispute:** Whether the requested records are exempt from disclosure under City Charter and State Laws.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS;

none

LEGAL ISSUES/LEGAL DETERMINATIONS;

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?
- Does the City Charter require that the State Public Records Act be used in the analysis of whether Ethics Commission investigations should be disclosed rather than the Sunshine Ordinance?
- Is the Ethics Commission a party to an action such that it would be able to withhold information?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

Memorandum**CALIFORNIA STATE CONSTITUTION, ARTICLE I, SECTION 1****§1 Inalienable rights**

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004
ARTICLE I, SECTION 3****§3 Openness in Government**

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or 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.
 - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the

Memorandum

Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

SAN FRANCISCO CITY CHARTER**ARTICLE I: EXISTENCE AND POWERS OF THE CITY AND COUNTY****SECTION 1.101 RIGHTS AND POWERS**

The County of San Francisco may make and enforce all ordinance and regulation in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter.

SECTION C3.699-13 provides

The (Ethics Commission) investigation shall be conducted in a confidential manner. Records of any investigation shall be considered confidential information to the extent permitted by state law.

**ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN
FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE)
UNLESS OTHERWISE SPECIFIED**

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

Memorandum

- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

Section 6253 provides.

- 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 records 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

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the agency and shall promptly notify the person making the request of the determination and the reasons therefore....

Section 6254(b) provides for certain records that are exempt from disclosure:

Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) until the pending litigation or claim has been finally adjudicated or otherwise settled.

Section 6255 provides:

a.) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

b.) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

March 18, 2008

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

The Sunshine Ordinance Task Force
C/o The Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, California 94102

Re: Complaint 08011

Dear Members of the Sunshine Ordinance Task Force:

Regarding the above complaint, the Ethics Commission has not violated either the Sunshine Ordinance or the California Public Records Act. As I have stated to in a previous matter (complaint # 07056), the Ethics Commission's investigative records are confidential, as required by the San Francisco Charter. I refer you to my November 8, 2007 letter to the SOTF for further background on the Commission's confidentiality obligations.

With respect to the complaint currently before the SOTF, I wish to clarify three issues.

First, any documents possibly subject to Mr. Waggoner's request fall within the pending litigation exception, California Government Code section 6254(b). As explained in my November 8 letter, the San Francisco Charter prohibits disclosure of investigative files except when such disclosure is required by state law. Accordingly, if an exception exists under state law that the Commission could apply to a record, the Charter requires the Ethics Commission to claim the exception and to prevent the record's disclosure. Other exceptions provided by the Public Records Act could apply but here, the pending litigation undoubtedly applies since the Ethics Commission has initiated an administrative proceeding against Mr. Hall, and any records created for the purposes of that proceeding are protected by the pending litigation exception. *See* 71 Ops. Cal. Atty. Gen. 235 at *3 (1988) ("pending litigation" includes administrative proceedings). One of the purposes of the pending litigation exception is to prevent a litigant opposing a public entity "from taking unfair advantage of the public agency status of his or her opponent." *Fairley v. Superior Court*, 66 Cal. App. 4th 1414, 1421 (1998). Public agencies, subject to the Public Records Act and similar laws, are potentially vulnerable to records requests that would not apply to private parties. Mr. Waggoner, as counsel for a private party, is attempting simply to take advantage of the Ethics Commission's status as a public agency by pursuing this complaint. As section 6254(b) recognizes, the Ethics Commission, as a public agency, should be shielded

from such gamesmanship when it has brought an administrative proceeding against a private entity.

Second, Mr. Waggoner's complaint does not dispute that the pending litigation exception properly applies to the records withheld by the Ethics Commission. His apparent argument is that since I previously stated that the investigative records concerning his client could not be disclosed prior to a finding of probable cause, I cannot claim an equally valid ground for withholding a document at a later time. That I did not offer the second reason in response to the first request does not indicate that the second rationale has no merit. As my November 8 letter sets forth, there are many valid reasons that the Ethics Commission's investigative records must not be disclosed.

Third, most of the documents sought by Mr. Waggoner's request were provided to the Ethics Commission in the first instance by his client, Tony Hall, or are otherwise currently available to Mr. Waggoner. In the course of the Ethics Commission's investigation into the complaint, Mr. Hall eventually agreed to provide many documents to the Ethics Commission. During the investigation, Mr. Hall was also deposed by the Ethics Commission's staff. Mr. Waggoner, as Mr. Hall's attorney, already has access to transcripts of those depositions. The Ethics Commission thus sees little need to provide the same documents to Mr. Waggoner in response to a Sunshine request, since he either is already in possession of those documents or can easily obtain them from his own client.

In addition, Mr. Waggoner's suggestion that I made an improper statement to the press is misleading. As the August 31, 2007 news article, Attachment C to the complaint, unequivocally states, "officials at the [Ethics] Commission would neither confirm nor deny . . . that an investigation had been launched . . ." The Ethics Commission has always refused to reveal the existence of any investigation until properly authorized by the Charter, and continues to do so.

Sincerely,

John St. Croix
Executive Director



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

November 8, 2007

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

The Sunshine Ordinance Task Force
c/o The Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, California 94102

Dear Members of the Sunshine Ordinance Task Force:

I write in response to the Sunshine Ordinance Task Force's Order of Determination regarding Complaint number 07056. The order is dated October 26, 2007, and I received it by email from the Task Force on October 30.

The Task Force concluded that the Commission violated San Francisco Administrative Code section 67.21 by declining to disclose records related to an enforcement investigation. The Task Force's decision acknowledged that the San Francisco Charter makes such records confidential except when state law requires their disclosure. The Task Force concluded that because the Ethics Commission's investigations do not serve a "law enforcement" function, the records are not exempt from disclosure under the California Public Records Act and therefore must be disclosed.

As discussed below, the Task Force's Order is based on an incomplete analysis of applicable law. The Charter prohibits disclosure of investigative files except when such disclosure is required by state law. In its formal regulations, the Ethics Commission has interpreted that Charter requirement to flatly prohibit the disclosure of Commission investigation records before the Commission makes a finding of probable cause. The Commission's regulatory interpretation – and staff's decision in this case not to disclose the requested records – finds support in the Public Records Act, which exempts from disclosure several categories of records pertaining to the Commission's investigative files as discussed further below. Thus, while I respect the Task Force's opinion, the Charter prohibits the Commission from disclosing the investigation records here.

San Francisco Charter Confidentiality Requirement

The San Francisco Charter charges the Ethics Commission with conducting investigations related to campaign finance, lobbying, conflicts of interest, and government ethics. *See* S.F. Charter § C3.699-13. The Charter provides that records of Commission investigations, unlike other records, must remain confidential:

The investigation *shall* be conducted in a confidential manner. Records of any investigation *shall* be considered confidential information to the extent permitted by state law.

See S.F. Charter § C3.699-13 (emphasis added). The Charter's use of the term "shall" is significant. That term means that the Commission lacks discretion to disclose investigative records unless state law mandates their disclosure.

The policies underlying these confidentiality requirements are so significant that any breach carries serious penalties. The Charter provides that:

[a]ny member or employee of the commission or other person who, prior to a determination concerning probable cause, discloses information about any preliminary investigation, except as necessary to conduct the investigation, shall be deemed guilty of official misconduct. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or removal of the commissioner responsible for such release.

See S.F. Charter § C3.699-13. Thus, as Executive Director of the Commission, I must take very seriously my responsibilities to maintain the confidentiality of investigative records.

The Ethics Commission and its staff must comply with the strict confidentiality requirements of the Charter, even if doing so might conflict with the mandates of the Sunshine Ordinance. As Deputy City Attorney Llorente advised the Task Force in advance of the October 23 meeting, whenever there is a conflict between the Charter and a local municipal ordinance such as the Sunshine Ordinance, the provisions of the Charter control. *See* October 16, 2007 Memorandum from Ernest H. Llorente. The Charter – which requires the Ethics Commission to maintain the confidentiality of records unless disclosure is required by state law – supersedes any conflicting provisions in the Sunshine Ordinance that would otherwise require disclosure of an investigative record.

Ethics Commission Enforcement Regulations

The Charter grants the Ethics Commission the power to adopt regulations "consistent with and related to carrying out the purposes and provisions" of the Charter related to the subject matter within the Commission's purview. S.F. Charter § 15.102. The Charter similarly grants the Ethics Commission authority to adopt regulations relating to local open meetings and public records ordinances, primarily the Sunshine Ordinance. *Id.*

Acting under that authority, the Ethics Commission's Regulations for Investigations and Enforcement Proceedings implement Charter section C3.699-13. The preamble to the regulations reiterate the importance of "[p]rotecting the privacy rights of those accused of ethics violations by maintaining the confidentiality of complaints filed with, and investigations conducted by, the Commission." See Regulations for Investigations and Enforcement Proceedings ("Regs.") § I(4). Specifically, the regulations provide that

[n]o complaint, response thereto, investigative file or information contained therein, or Commissioner and staff deliberations about complaints shall be disclosed to any person other than a respondent or respondent's representative, the City Attorney, District Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to a determination concerning probable cause. After a determination of probable cause, complaints, related documents, and investigative files shall not be disclosed except as required by the California Public Records Act (Government Code section 6250).

Regs. § XIII(B)(1) (emphasis added). When the Commission dismisses a complaint prior to a finding of probable cause, the regulations permit the Executive Director only to issue a "generic description" and "summary," and even then, the Executive Director must take care to "comply with the confidentiality requirements of the Charter." Regs. § XIII(L).

Whenever the Ethics Commission's staff receives a request for public records, we analyze whether state law requires disclosure of each potentially responsive record, as the Charter requires. In this analysis, we are guided, and typically constrained, by the regulations' binding prohibition on disclosure of any investigative records prior to a probable cause finding, except to certain parties or if necessary to conduct the investigation. Regs. § XIII(B)(1).

California Public Records Act Exemptions for Ethics Commission Investigative Records

As discussed above, the Charter permits disclosure of the Commission's investigative records *only* when state law *requires* it. In all other circumstances, the Charter prohibits any such disclosure. The California Public Records Act ("CPRA") generally requires disclosure of public records but enumerates several exceptions to the disclosure requirement. Other state statutes and decisions independent of the CPRA further restrict the public's right to inspect particular public records. Whenever one of these statutory exemptions applies to a record related to a Commission investigation, the Charter requires that the record remain confidential. The non-disclosure mandate in the Ethics Commission's Regulations for Investigations and Enforcement Proceedings is based on an analysis of these exemptions.

Over the course of years, the City Attorney's Office repeatedly has advised the Ethics Commission that several different exemptions in state law apply to records related to Commission investigations. As an example, I am attaching to this letter a June 27, 2005 memorandum from the City Attorney's Office to members of the Ethics Commission setting forth the most commonly applicable exemptions requiring non-disclosure of Ethics Commission records. We have used this advice to guide our review of files whenever we determine how to respond to requests for public records.

At its October 23, 2007 meeting, the Task Force analyzed only one of the several applicable statutory exceptions – California Government Code section 6254(f) – and determined that it did not apply to Ethics Commission investigations. The discussion at the Task Force – and the written analysis in the meeting's agenda packet – focused primarily on section 6254(f), an exception to the CPRA that allows agencies to withhold investigatory records compiled for "correctional, law enforcement or licensing purposes." The Task Force concluded that the Ethics Commission does not perform a "law enforcement" function and therefore that withholding the records could not be justified under the "law enforcement" exception. As I expressed at that meeting, I disagree with the Task Force's analysis and conclusion. But more importantly, the Task Force failed to analyze several other statutory exemptions in state law that apply to many Ethics Commission investigative records, and that apply to the records in this case. For example:

- *Private information and other constitutionally-protected records:* California Government Code section 6254(k) provides that documents may be exempt from disclosure if the United States Constitution, California Constitution or other laws prohibit their disclosure. Records in Ethics Commission files sometimes contain private information about complainants, respondents, witnesses and other persons. Disclosure of such information may violate those individuals' rights to personal privacy or association protected under the federal and state constitutions. See Cal. Const., Art. I, § 1. In addition, California Government Code section 6254(c) provides statutory protection for the confidentiality of personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy. See Cal. Gov't Code § 6254(c).
- *Privileged communications:* Documents protected by the attorney-client privilege are exempt from disclosure. See Cal. Gov't Code § 6254(k); Cal. Evid. Code § 954. Our investigators work closely with the City Attorney's Office, and investigative records often contain confidential communications between Commission staff and counsel.
- *Identity of confidential whistleblowers:* Records that reveal the identity of persons complaining to the City about illegal acts are also exempt. See Cal. Gov't Code § 6254(k); Cal. Evid. Code § 1041. See also S.F. City Charter § F1.107(c) (recognizing the need to protect the confidentiality of whistleblowers and to protect from retaliation City officers and employees who file a complaint with or provide information to the Ethics Commission).
- *Official information privilege:* Records that reveal information gathered by the Commission under assurances of confidentiality are exempt under the official information privilege if the public interest in nondisclosure outweighs the public interest in disclosure. See Gov't Code § 6254(k); Cal. Evid. Code § 1040.
- *Deliberative process:* The CPRA also authorizes an agency to withhold records when the requested materials would expose the agency's decision-making process and discourage candid discussion, undermining the agency's ability to perform its investigatory and prosecutorial function. See Cal. Gov't Code § 6255; *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325 (1991). This exception, commonly known as the deliberative process privilege, protects records that reflect deliberative or policymaking processes. See *Wilson v. Superior Court*, 51 Cal. App. 4th 1136 (1996). Because investigations almost always raise legal and policy issues involving local law and the

Commission's authority, many of the records in the Ethics Commissions files reflect the staff's deliberative processes.

- *Records for which public interest in non-disclosure clearly outweighs public benefit of disclosure:* California Government Code section 6255 permits an agency to withhold a record if the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. See Cal. Gov't Code § 6255; *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal. 4th 1065, 1071 (2006). There are at least six distinct factors that favor non-disclosure of records related to Ethics Commission investigations. *First*, because of the sensitive and often high-stakes nature of the charges underlying many ethics complaints, individuals charged with misconduct have an interest in maintaining confidentiality at least until the Commission decides whether the complaint has merit. These individuals commonly are candidates or elected officials, and the public disclosure of an investigation sometimes can be damning to their reputations and political careers regardless of the investigation's ultimate outcome. The Ethics Commission has recognized as much by designing its regulations to protect "the privacy rights of those accused of ethics violations." Regs. § I(4). *Second*, complainants similarly often have an interest in not being publicly identified. In our experience, complainants – who are sometimes colleagues, political allies or opponents of the respondents – often fear retribution for filing complaints. *Third*, for similar reasons, witnesses contacted or investigated by staff also often wish to remain anonymous to the extent allowed by law. Investigative records often refer to witnesses or contain information that make witnesses reasonably identifiable. *Fourth*, frequent disclosure of complaint-related information prior to findings of probable cause may undermine the integrity of the Ethics Commission and encourage the filing of frivolous complaints. Because the mere fact of an Ethics Commission investigation can be notable, political adversaries might use publicly disclosed records of ongoing or confidentially dismissed complaints as political weapons. *Fifth*, disclosure sometimes reveals facts to individuals under investigation that can undermine staff's investigations, depriving staff of critical investigative tools before they have contacted relevant witnesses. *Sixth*, disclosing staff notes and internal memoranda regarding investigations may reveal investigative techniques and priorities that will undermine the Commission's ability to manage effective investigations.

These six factors implicate a number of interests, including the dignitary and reputational interests of people who are involved one way or the other in a Commission investigation. In combination, these factors highlight the nexus between maintaining the confidentiality of investigations and conducting effective investigations. This, of course, is precisely the type of interest the Charter recognizes in Section 15.102, in authorizing the Commission to adopt rules and regulations "consistent with and related to carrying out the purposes of this Charter and ordinances related to campaign finances, conflicts of interest, lobbying, campaign consultants, and government ethics."

Whenever any of these exemptions apply to a particular record, the Ethics Commission cannot disclose the record. Exercising its power under the Charter, the Ethics Commission has adopted regulations concluding that prior to a finding of probable cause, state law never requires disclosure of investigation records. Regs. § XIII(B)(1). Even after a finding of probable cause, Commission staff must engage in a careful analysis to determine whether a particular record should be disclosed. *Id.* Violations of that mandate are punishable as official misconduct and can result in termination of employment.

My staff has examined the records requested by the complainant here, as it examines the records potentially responsive to every request, and has determined that the Charter, the Commission's regulations, and one or more of the exceptions under state law require non-disclosure of the particular records that we have withheld. Our review of records is always specific and thorough, focusing on whether state law requires disclosure.

Please be assured that the Commission is committed to the principles of public transparency that underlie the Sunshine Ordinance. Commission staff spends hundreds of hours annually reviewing potentially responsive documents, and we have provided hundreds of documents in response to various requests while declining to disclose those that, based on particularized analysis, we cannot disclose under the Charter, the regulations and the CPRA. We applied the same document-by-document review in this case, and will continue to do so in the future.

Please feel free to contact me if you have any questions.

Sincerely,

John St. Croix
Executive Director

Cc: Members of the Ethics Commission

Enclosure

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March 18, 2008

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Rm 244
San Francisco, CA 94102-4689

Dear Sunshine Ordinance Task Force:

I am writing to provide additional information regarding the complaint I filed against San Francisco Ethics Commission ("SFEC") Executive Director John St. Croix ("St.Croix"), and Chief Enforcement Officer Richard Mo ("Mo"), dated February 14, 2008.

I. St. Croix's Initial Refusal to Provide Records

St. Croix declined to provide records of the investigation of my client, Tony Hall, because "the Commission has not yet made a determination of probable cause" (See letter from St. Croix to David Waggoner, dated November 30, 2007).

In a letter from St. Croix to the Sunshine Ordinance Task Force, dated November 8, 2007, regarding another case in which St. Croix has refused to provide records, St. Croix cited Regulations for Investigations and Enforcement Proceedings § XIII(B)(1)¹ ("Regulations"):

No complaint, response thereto, investigative file or information contained therein, or Commissioner and staff deliberations about complaints shall be disclosed to any person *other than a respondent or respondent's representative*, the City Attorney, District Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to a determination of probable cause. (emphasis added).

In the context of the current complaint, Tony Hall is the respondent and I am his representative. I requested the records on November 29, 2007. SFEC did not vote to find probable cause until December 10, 2007. The purpose of the regulation is protect the

¹ Regulations § XIII(B)(1) implements San Francisco Charter Section C3.699-13(a).

privacy of the *accused*². The regulation expressly allows disclosure of an investigatory file to a respondent.

St. Croix's rationale would make sense if a third party had requested the records. A finding of probable cause publicly discloses what had previously been a confidential matter. Thus, disclosure of records to third parties prior to a finding of probable cause – while the investigation itself still remains confidential – is prohibited to protect the privacy of the accused. But in this case, the accused, Mr. Hall, was denied access to records relating to his own investigative file prior to the probable cause hearing, thereby denying him of procedural due process.

II. St. Croix's Unlawful Statements to the Press

Regulations § XIII(B)(2) provide:

In addition to the prohibition on ex parte communications stated in Section XIII subsection A, Commissioners and Commission staff are prohibited, prior to a final determination on the merits of a complaint, from engaging in oral or written communications regarding the merits of a complaint or enforcement action with any person or entity unless the communication is necessary for the conduct of the investigation or enforcement action.
(emphasis added)

As I mentioned in my initial letter of complaint, St. Croix engaged in unlawful communications with the press on two separate occasions³. Both violate Regulations § XIII(B)(2). As St. Croix's first communication to the press about the case occurred prior to the finding of probable cause, it constitutes official misconduct pursuant to San Francisco Charter § C3.699-13. St. Croix intentionally denied Mr. Hall access to his own file, but willingly provided inflammatory statements to the press, in violation of the law.

III. Mo's Refusal to Provide Records

In his letter dated December 14, 2007, Mo indicated that California Government Code § 6254(b) ("6254(b)") precluded "staff"⁴ from releasing the requested records. Unlike St. Croix, Mo did not mention any finding of probable cause.

6254(b) provides that nothing in the *California Public Records Act* ("PRA") shall be construed to require the disclosure of "[r]ecords pertaining to pending litigation to which the public agency is a party ... until the pending litigation or claim has been finally adjudicated or otherwise settled." (emphasis added)

² As St. Croix wrote in his November 8, 2007, letter: "The preamble to the regulations reiterate the importance of '[p]rotecting the privacy rights of those accused of ethics violations by maintaining the confidentiality of complaints filed with, and investigations conducted by, the Commission.' See Regulations for Investigations and Enforcement Proceedings § I(4)."

³ On August 31, 2007, and again on December 14, 2007.

⁴ Both St. Croix and Mo refer to themselves in the third person in their correspondence.

It is important to note 6254(b) indicates the PRA may not *require* the disclosure of records pertaining to pending litigation. On the other hand, PRA § 6253(e) provides: “Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.”

In fact, local law (67.24(b)(i-iii)), does in fact require the disclosure of the requested records. San Francisco Sunshine Ordinance § 67.24(b)(i-iii) (“67.24(b)(i-iii)”) provides:

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or *any communication otherwise concerning* the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, *any San Francisco governmental ethics code*, or this Ordinance. (emphasis added)

Thus, 6254(b) by its own language does not conflict with 67.24(b)(i-iii), and PRA § 6253(e) expressly provides that local law may require greater disclosure of records than the PRA. Consequently, 67.24(b)(i-iii) controls. Because the requested records are presumably communications concerning a San Francisco ethics code, SFEC is required to produce the requested records.

If it is accepted that every SFEC investigation is equivalent to “pending litigation,” and the only law governing the release of the investigatory records is 6254(b), then the SFEC could argue in every case they bring against anyone that 6254(b) protects them from having to give any records to respondents. The logical consequence would mean reputations can be destroyed and careers ended simply by filing an anonymous complaint. The accused would have no right to know the identity of his or her accuser; no right to examine the evidence until the last possible minute, if at all; and no right to prepare an adequate defense. Rather, the accused would be left to respond to murky allegations emanating from mysterious sources with no access to the evidence assembled against him or her. In the court of public opinion, with the official mouthpiece of the city’s ethics commission free to pronounce the accused guilty in the city newspapers, the reputation of the accused is already effectively destroyed or damaged beyond repair by the time he or she gets a full hearing and an opportunity to confront the accuser, examine all of the evidence, and present anything resembling a coherent defense.

Even if 6254(b) were applicable, the California State Constitution and California case law narrow the exemption significantly. California State Constitution Article 1, Declaration of Rights, § 3(b)(2) provides: “A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly

construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.”

The courts have provided further guidance in interpreting 6254(b):

1. Section 6254's “exemptions are to be narrowly construed, and the government agency opposing disclosure bears the burden of proving that one or more apply in a particular case.” *County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819, 825, 98 Cal.Rptr.2d 564 (*County of Los Angeles*).

Mo has not offered any proof as to why any exemption applies in this case. Interestingly, in a prior case in which I represented another individual before the San Francisco Ethics Commission, Mo *did* provide the investigatory file. In the current case, Mo has provided some documents related to the investigation but not all of them. Thus, it would appear that the method of disclosure by the SFEC staff is not related to legal exemptions per se, but rather to personal preference and arbitrary choice.

2. “The term ‘records pertaining to pending litigation’ is a broad term that on its face would suggest that all records in a public entity's possession relating to litigation are protected from disclosure. However, because of the narrow construction given to section 6254's exemptions, cases interpreting the section 6254(b) pending litigation exemption have, based upon the facts of those particular cases, given it a more restricted reading.” *Board of Trustees of California State University v. Superior Court* (2005) 132 Cal.App.4th 889, 34 Cal.Rptr.3d 82 (*Board of Trustees*).

In this case, Mr. Hall, a career public servant, has been accused of wrongdoing by anonymous complainants. Mr. Hall has been subjected to character assassination by unknown accusers, based on unknown evidence, in a manner that has defied logic. There is absolutely NO public harm in providing the requested records. Indeed, Mr. Hall possesses every right, grounded in the United States and California Constitutions, as well as in the Bill of Rights, to be given all information being used to prosecute and persecute him, which would allow Mr. Hall to prepare an adequate defense to the unfair, unfounded, and absurd accusations being leveled at him. The exemption cited by Mo was not created for the distorted purpose for which Mo is using it. The restricted reading of 6254(b) proffered by the courts is at strong odds with Mo's capricious use in this case. Such use is reminiscent of the approach used by the Spanish Inquisition and the British Star Chamber.

3. “A document is protected from disclosure under the pending litigation exemption only if the document was specifically prepared for use in litigation.” *County of Los Angeles, supra*, 82 Cal.App.4th at p. 830, 98 Cal.Rptr.2d 564.

Mo has refrained from revealing what if any documents are being withheld because they were “specifically prepared for use in litigation.” It appears Mo is willing to strategically release documents to harm Mr. Hall, but not to provide him any access to evidence that may exonerate him. But even if Mo has withheld documents specifically prepared for

use in litigation, 67.24(b)(i-iii) still requires the disclosure of such records, as discussed above.

4. A public entity may refuse to disclose only those documents it prepared for its own use in pending litigation. “The construction we give to ‘pending litigation,’ which focuses on the purpose of the document, serves to protect documents created by a public entity for its own use in anticipation of litigation, which documents it reasonably has an interest in keeping to itself until litigation is finalized. In this way, a litigant opposing a public entity is prevented from taking unfair advantage of the public agency status of his or her opponent.” *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1421-22, 78 Cal.Rptr.2d 648.

This further limitation on the exemption indicates that only documents which an agency itself created for its own use may be withheld. Again, Mo has not identified any documents that fit this category. And again, even if such documents were so identified, 67.24(b)(i-iii) still requires their disclosure.

5. While attorney-client privileged and attorney work product are protected from disclosure by 6254(b), deposition transcripts are not typically protected. *Board of Trustees, supra*, 132 Cal.App.4th at p. 901, 34 Cal.Rptr.3d 82.

Deposition transcripts are documents that record attorneys’ questions and deponents’ answers. In that regard, agency lawyers or other employees may well have had a role in the creation of the transcripts, but they are nonetheless *not* protected from disclosure. Similarly, declarations and/or interview notes also amount to documents that are the result of a question and answer process. Like deposition transcripts, declarations and interview notes are not covered by the 6254(b) exemption. St. Croix and Mo should disclose any such documents. Even if declarations and interview notes were covered by 6354(b), 67.24(b)(i-iii) still requires their disclosure.

6. “Despite the broad language of section 6254(b), cases applying the litigation exemption to various factual scenarios have given it a narrow interpretation, indicating that the pending litigation exception would only protect documents (1) that the agency prepared; (2) for its own use in litigation; and (3) that it had an interest in not disclosing until after the litigation has finalized.” *Board of Trustees, supra*, 132 Cal.App.4th at p. 898, 34 Cal.Rptr.3d 82.

St. Croix and Mo bear the burden of proving: 1) how every document related to the investigation of Mr. Hall meets an exemption; and 2) why the document would not still be covered by 67.24(b)(i-iii). If St. Croix and Mo maintain that there are documents which meet the test set out in the *Board of Trustees* case, and that 67.24(b)(i-iii) is not applicable, they should make an offer of proof to the Sunshine Ordinance Task Force. The Task Force should then decide which records, if any, are protected from disclosure. In the alternative, all of the records related to the Hall investigation should be made available to the Task Force for an in-camera review to determine which records are exempt.

The refusal to provide the records is only the latest in a long series of actions by St. Croix and Mo exhibiting a lack of professional courtesy in the entire history of this case, the most recent being opposition to Task Force jurisdiction over the complaint, apparently a first in the history of the two agencies. For his part, Mr. Hall made all of his campaign records available to Mo on three separate occasions in 2005 and 2006. On each occasion, Mr. Hall and his attorneys cooperated fully. Yet, Mo and St. Croix have sought on various occasions to vilify Mr. Hall and his representatives.

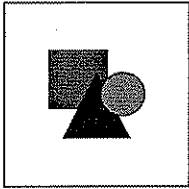
We respectfully request that the SOTF recognize, protect, promote, and support the basic fairness of our request for information and documents in the possession of the powerful SFEC that should, as a matter of right, be provided to Mr. Hall forthwith. Thank you again for your time and attention to this matter, and please contact me directly with any questions or concerns.

Sincerely,

/s/ David Waggoner

David Waggoner
Attorney for Tony Hall

cc: Tony Hall
Peter A. Bagatelos, Esq.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

March 3, 2008

Sue Cauthen, Chair
Members of the Complaint Committee

Re: David Waggoner v. Ethics Commission (08011)

Dear Chair Cauthen and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of David Waggoner against the San Francisco Ethics Commission.

BACKGROUND

In his letter dated February 14, 2008, Complainant David Waggoner stated the following:

On November 29, 2007, David Waggoner filed an Immediate Disclosure Request with the San Francisco Ethics Commission Executive Director, John St. Croix. David Waggoner's request asked for several kinds of documents in his capacity as attorney for Tony Hall and David Waggoner specifically requested any and all documents related to the SFEC investigation of Ton Hall.

On November 30, 2007, Mr. St. Croix responded to the request and stated in a letter that the SFEC could not provide the records of the Hall investigation because the SFEC had not yet made a determination of probable cause. Mr. St. Croix also stated disclosure of information about a preliminary investigation constitutes official misconduct.

David Waggoner claims that Mr. St. Croix disclosed the existence of the Hall investigation to a reporter for the San Francisco Chronicle in August 2007. The SFEC made a probable cause determination on December 10, 2007 and the Chronicle newspaper issued an article published on December 14, 2007 which quoted Mr. Croix stating: "We believe [Tony Hall] used funds for purposes that were not legitimate and that were not for advancing his campaign and were more than likely personal in nature."

On December 14, 2007, the SFEC provided David Waggoner with some records relevant to the initial IDR but withheld other records. SFEC Chief Enforcement Officer Richard Mo stated in a letter dated December 14, 2007: "Ethics Commission Investigation and Enforcement Regulation XIII.B.1 provides '[a]fter a determination of probable cause, complaints, related documents and investigative files shall not be disclosed except as required by the California Public Records Act...' The California Public Records Act provides an exception for records pertaining to pending litigation, to which a public agency is a party. See Cal. Gov. Code

Letter to the Complaint Committee
Page 2
March 3, 2008

§6254(b). Because the Ethics Commission is a party to this matter, Staff cannot provide you with the requested records."

COMPLAINT

On February 20, 2008, Complainant David Waggoner filed a complaint against the Ethics Commission alleging that the Commission violated the Sunshine Ordinance for its failure to disclose the investigative records involving Tony Hall.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. The allegations are covered under 67.21 of the Ordinance. The Ethics Commission has the requested documents but asserts statutory exemptions from the City Charter, State Government, and Evidence Code Sections to justify withholding of certain information. The Task Force has jurisdiction over the complaint and the Task Force will have to determine whether the statutory exemptions cited by the Commission apply to the facts of this case.

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents.

San Francisco Charter Section C3.699-13 deals with Ethics Commission investigations.

California Government Code Section 6254 deals with exemptions of particular records.

In this case David Waggoner as attorney for Tony Hall filed an Immediate Disclosure Request for any and all records involving the investigation of Tony Hall. The Commission released some records but not others. The non-disclosure was based on cited statutory authority. The Task Force has jurisdiction over the complaint and the Task Force will have to determine whether the statutory exemptions cited by the Commission apply to the facts of this case.



<complaints@sfgov.org>
02/20/2008 03:27 PM

To <soft@sfgov.org>
cc
bcc
Subject Sunshine Complaint

Submitted on: 2/20/2008 3:27:38 PM

Department: Ethics Commission

Contacted: John St. Croix and Richard Mo

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated:

Description: Refusal to provide the requested records of the Hall investigation.

Hearing: Yes

Date: February 20, 2008

Name: David Waggoner

Address: 3937 17th Street

City: San Francisco

Zip: 94114

Phone: 415-305-7708

Email: dpwaggoner@gmail.com

Anonymous:

User Data

Client IP (REMOTE_ADDR) : 172.31.2.150
Client IP via Proxy (HTTP_X_FORWARDED_FOR) :

David Waggoner • Attorney at Law
3937 17th Street
San Francisco, CA 94114
T (415) 305-7708 / F (510) 540-0403
dpwaggoner@gmail.com

February 14, 2008

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

Letter of Complaint

Dear Sunshine Ordinance Task Force:

I am writing to file a formal complaint against San Francisco Ethics Commission (“SFEC”) Executive Director, John St. Croix, and Chief Enforcement Officer, Richard Mo. The relevant facts are as follows:

On November 29, 2007, I filed a request for documents (attachment A) by letter to the SFEC Executive Director, John St. Croix. My request asked for several kinds of documents. I filed the request in connection with my representation of Tony Hall. I specifically requested any and all documents related to the SFEC investigation of Mr. Hall. Mr. St. Croix responded to my request in a letter dated November 30, 2007 (attachment B). St. Croix stated SFEC could not provide the records of the Hall investigation because the SFEC had not yet made a determination of probable cause. St. Croix also stated disclosure of information about a preliminary investigation constitutes official misconduct.

However, Mr. St. Croix had already disclosed information about the investigation to a reporter for the San Francisco Chronicle in August 2007. In an August 31, 2007, article (attachment C), the reporter, Wyatt Buchanan, wrote: “But when asked whether the commission had decided to delay releasing information about the investigation into Hall’s finances until after the November election, Executive Director St. Croix said that was ‘a very plausible scenario.’” In making the comment, St. Croix illegally confirmed the existence of the investigation.

The SFEC made a probable cause determination on December 10, 2007. In a Chronicle article (attachment D) published on December 14, 2007, Mr. St. Croix, speaking in his official capacity, provided the following quote to reporter, Cecilia Vega: “We believe [Tony Hall] used funds for purposes that were not legitimate and that were not for advancing his campaign and were more than likely personal in nature.” The Chronicle published a “clarification” (attachment E) the following day to indicate St. Croix was speaking “only of the conclusion reached by the commission staff members who

investigated the matter, not members of the commission's oversight panel who will render judgment in the case."

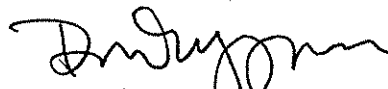
In any event, SFEC has provided me with some records relevant to my initial request. However, in a letter dated December 14, 2007 (attachment F), Chief Enforcement Officer Richard Mo, stated: "Ethics Commission Investigation and Enforcement Regulation XIII.B.1 provides that '[a]fter a determination of probable cause, complaints, related documents, and investigative files shall not be disclosed except as required by the California Public Records Act....' The California Public Records Act provides an exception for records pertaining to pending litigation, to which a public agency is a party. *See* Cal. Gov. Code s. 6254(b). Because the Ethics Commission is a party to this matter, staff cannot provide you with the requested records."

Thus, Mr. St. Croix illegally disclosed information about the investigation to a reporter. But when Mr. Hall's own counsel requested to view the evidence against him, SFEC staff rebuffed the request on the basis that a determination of probable cause had not been made. When the probable cause determination was made, SFEC staff concocted a new reason to deny access to the files. The second denial came with a sucker punch, as Mr. St. Croix elected to use his esteemed position to provide a highly prejudicial and inflammatory quote to the press. Apparently, Mr. St. Croix interpreted the public probable cause determination as a license to go after Mr. Hall in the press while still denying him basic due process rights.

In several instances over the past two years of the SFEC's belabored investigation of Mr. Hall, Mr. St. Croix and Mr. Mo have demonstrated bias, unethical behavior, and prejudicial conduct. The manner of the investigation suggests political motivation, personal aggrandizement, misuse of the enforcement process, waste of public assets, resources, and time, and a misapplication of the law to deny Mr. Hall his clear, unmistakable, and Constitutional right to know the accusers and evidence against him and to be able to mount a full and adequate defense.

I respectfully request an investigation into the refusal of Mr. St. Croix and Mr. Mo to provide the requested records of the Hall investigation. Thank you for your time and attention to this matter, and please contact me directly with any questions or concerns.

Sincerely,



David Waggoner
Attorney for Tony Hall

IMMEDIATE DISCLOSURE REQUEST

David Waggoner
Attorney at Law
3937 17th Street
San Francisco, CA 94114
(415) 305-7708

FILED

07 NOV 29 PM 1:50

SAN FRANCISCO
ETHICS COMMISSION

November 29, 2007

BY _____

John St. Croix, Executive Director
Ethics Commission City and County of San Francisco
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

Re: Ethics Complaint No. 24-050928

Dear Mr. St. Croix:

Peter Bagatelos and I are representing Tony Hall in the above referenced matter. Pursuant to the California Public Records Act, Government Code Section 6250, and the San Francisco Sunshine Ordinance, San Francisco Administrative Code Section 67.1, I hereby request immediate disclosure of the following records in their original format:

1. Any and all documents, paper or electronic, without limitation, relating to Ethics Complaint No. 24-050928;
2. Any complaints, anonymous or otherwise, redacted if necessary, relating to Ethics Complaint No. 24-050928;
3. All documents regarding the Commission's policy regarding surplus funds;
4. All records of Commission fines or penalties for violation of California Government Code section 84211;
5. All records of Commission fines or penalties for violation of California Government Code section 89510;
6. All records of Commission fines or penalties for violation of California Government Code section 89512;
7. All records of Commission fines or penalties for violation of California Government Code section 89516(d);
8. All records of Commission fines or penalties for violation of San Francisco Campaign and Governmental Conduct Code section 1.106;
9. All records of Commission fines or penalties for violation of San Francisco Campaign and Governmental Conduct Code section 1.122;
10. All records of Commission fines or penalties for violation of San Francisco Campaign and Governmental Conduct Code section 1.122(b)(ii);
11. All records of Commission fines or penalties for violation of San Francisco Campaign and Governmental Conduct Code section 1.170(f).

ATTACHMENT A

A

1. IMMEDIATE DISCLOSURE REQUEST.

Please call me at (415) 305-7708 when the records are ready for review. It is unnecessary to copy any documents on my behalf, as I would like to review the documents first. It would be helpful if the documents can be made available in the order of the list above.

Thank you for your attention to and consideration of this request. Please contact me directly with any questions or concerns.

Respectfully,



David Waggoner
Attorney for Tony Hall



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

November 30, 2007

David Waggoner
3937 17th Street
San Francisco, California 94114

Re: Immediate Disclosure Request

Dear Mr. Waggoner:

This letter is in response to your immediate disclosure request of November 29, 2007. The responses are pursuant to the numerical order of the specific documents requested.

- 1) Pursuant to San Francisco Charter Section C3.699-13(a), disclosure of information about a preliminary investigation, prior to a determination of probable cause, except as necessary to conduct the investigation, constitutes official misconduct. The Commission has not yet made a determination of probable cause and the disclosure of these records is not necessary to conduct this investigation. Thus, staff cannot provide you with the requested records.
- 2) Redacted copies of documents responsive to this request will be available for your review on Friday, November 30, 2007, at the Commission office.
- 3) Documents regarding the Commission's policy regarding surplus funds will be available for your review at on Friday, November 30, 2007, at the Commission office. The latest version of the Campaign Finance Reform Ordinance is available on the Commission's website at www.sfgov.org/ethics.
- 4-11) Pursuant to Government Code section 6253(c) and San Francisco Administrative Code section 67.25(b), records responsive to these eight categories are voluminous and staff hereby invokes the fourteen calendar day extension. Pursuant to S.F. Administrative Code section 67.25(d), staff will make these records available on a rolling basis and will so notify you.

If you have any questions, please call me at (415) 252-3100.

Sincerely,

John St. Croix
Executive Director

ATTACHMENT B

B

SFGate.com

Tony Hall quits race for S.F. mayor, calling Newsom too entrenched

Wyatt Buchanan, Chronicle Staff Writer

Friday, August 31, 2007



Tony Hall - the best-known candidate challenging San Francisco Mayor Gavin Newsom for reelection - is pulling out of the race, citing a lack of opposition in the city to a second term for the mayor.

Hall, a former San Francisco supervisor, made that announcement on ABC 7 Thursday, two days after he qualified to receive \$50,000 in public funds for the race. Hall said he could not generate support among big-name donors.

"It's become apparent to me that there's not enough people willing to stand up and hold this mayor and his tremendous spin machine accountable for the ills that affect this city," Hall said.

When Hall filed for public funding earlier this week, by raising \$27,000 so far, he indicated that he did have some support, however.

Hall told The Chronicle that raising the cash was not easy and that he didn't know how much he could ultimately raise, "but it's clear that our support shows that this isn't just a campaign of nobodies."

The bulk of his fundraising occurred shortly before Tuesday's deadline, Hall said.

While Hall was a long shot to defeat Newsom, his exit cuts the field of challengers to 13. One of those challengers, Quintin Mecke, has picked up the endorsements of Supervisor Chris Daly and transit advocate and BART board member Tom Radulovich.

Mecke, who is the director of a city-funded public safety group that is active on homelessness, did not qualify for public campaign money. Other candidates include Chicken John Rinaldi - who was the only person beside Hall to attempt to qualify for public funds - and physician Ahimsa Sumchai.

Other candidates include a homeless taxi driver, a nudist and the owner of a sex club.

With Hall out, "Who does that leave? The Chicken Johns of the world?" said Richard DeLeon, a San Francisco State University political science professor emeritus.

Newsom "is basically running unopposed."

ATTACHMENT C

C

Newsom's campaign manager, Eric Jaye, said Hall's exit will affect the campaign, though probably not the outcome of the election.

"He was one of the last candidates left that wasn't named after a barnyard animal," Jaye said. The mayor is meeting nearly every day with voters to hear their concerns, Jaye said, and Newsom will participate in debates with the other candidates.

Hall leaves the mayor's race amid reports that the city Ethics Commission has completed an investigation into allegations that the former supervisor misused thousands of dollars in contributions to his 2004 re-election campaign.

But Marc O'Hara, Hall's campaign manager, said the commission complaint was not a factor in Hall's decision to drop out of the race.

"The violations he's accused of are completely pedestrian," O'Hara said. Hall offered to settle with the commission for an undisclosed sum but they wouldn't accept it, he said.

Some of the questionable spending reportedly includes "thank-you" dinners at pricey restaurants across the state and lawyer fees to negotiate the terms for a \$160,000-per-year city job at Treasure Island.

As is their policy, officials at the commission would neither confirm nor deny Wednesday that an investigation had been launched into allegations that Hall had misused thousands of dollars of contributions to his 2004 re-election campaign.

But when asked whether the commission had decided to delay releasing information about the investigation into Hall's finances until after the November election, Executive Director John St. Croix said that was "a very plausible scenario."

Hall has yet to officially pull his name from November's ballot. To do so, he must submit the request in writing to the city's Department of Elections by 5 p.m. today, the deadline for removal.

Chronicle staff writers Andy Ross and John Wildermuth contributed to this report. E-mail Wyatt Buchanan at wbuchanan@sfchronicle.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/08/31/BAC6RSP5H.DTL>

This article appeared on page **B - 1** of the San Francisco Chronicle

SFGate.com

Tony Hall monitor: Former S.F. supervisor to face ethics hearing

Cecilia M. Vega, Chronicle Staff Writer

Friday, December 14, 2007



Maybe it was the name of the store - The Old Red Garter - that ultimately was the red flag for the investigator looking into allegations that former San Francisco Supervisor Tony Hall illegally spent thousands of dollars in campaign funds from his 2004 re-election bid.

On a campaign finance report at the time, Hall declared that he spent \$320 in office supplies at the store. The Old Red Garter, according to its Web site, is located in Virginia City, Nev., and sells "authentic western wear for work or play."

This week, the San Francisco Ethics Commission determined there is probable cause to believe Hall violated a series of campaign finance laws while he ran for re-election in the supervisorial district that includes upscale Twin Peaks and St. Francis Wood and after he dropped out of the race.

During a closed-door meeting on Monday, the board responsible for enforcing local elections laws voted to move ahead with a hearing on the case in the coming months. If Hall is found guilty of the six charges, he could be forced to pay as much as \$240,000 in fines.

"We believe he used funds for purposes that were not legitimate and that were not for advancing his campaign and were more than likely personal in nature," Ethics Commission Executive Director John St. Croix said.

Hall vehemently denied the allegations Thursday, saying the charges are the result of the ethics officials misinterpreting elections laws and a political vendetta by Mayor Gavin Newsom.

"It's just a set-up," said Hall, whose open disdain for Newsom stems in part from the fact that the mayor coaxed him off the Board of Supervisors in 2004 by offering him a job running Treasure Island and then had him fired 15 months later. "It's a complete fabrication to politically embarrass me."

St. Croix said he is not legally allowed to discuss the details of charges against Hall.

But an announcement issued by the commission after its meeting Monday outlined the charges, which include the alleged misuse of thousands of dollars in campaign funds, in some instances to pay for expenses that were not related to his re-election bid.

ATTACHMENT D

D

Hall calls the Old Red Garter purchase "totally innocent" and says he mistakenly used the wrong credit card - one that belonged to his campaign - to buy purses for his daughters.

Once he realized the mistake, he said, he reimbursed his campaign fundraising committee. He said he thinks he issued that reimbursement check in 2006.

Hall also allegedly used campaign funds to take supporters out for at least 16 meals after he pulled out of his re-election bid to take the Treasure Island job.

Some of those meals took place at some of the region's swankier restaurants, such as the Ritz-Carlton in Half Moon Bay, where Hall racked up a \$662 tab, campaign records show.

Local ethics officials say state law allows surplus campaign funds to be spent on victory or thank-you parties within a few weeks of the election.

"There were campaign-related purchased meals, thank-you dinners, which according to state law is legal," Hall said.

However, Hall continued to use campaign money to pay for meals after he dropped out of the race.

His campaign filings for the time also show that he used campaign funds on numerous occasions to pay for gas and automobile-related costs, which according to the Ethics Commission was a violation of the state's elections law governing travel expenses.

Hall now concedes he did a poor job of keeping gas logs and would regularly use campaign funds to fill up volunteers' gas tanks.

According to the Ethics Commission, Hall allegedly also misused campaign funds to repay a \$12,000 personal loan and then misreported that loan as staff salary in his campaign filings.

Earlier this year, Hall was the biggest political name to declare a candidacy for mayor to challenge Newsom for re-election. But he dropped out of the race before the November vote, a move he attributed in part to difficulty he was having raising campaign money.

Hall said the allegations against him are "totally false" and were being fueled by Newsom, a charge a spokesman for the mayor denied on Thursday.

"It looks like Tony Hall is in some serious hot water and concocting crazy conspiracy theories isn't going to get him out of it," Newsom spokesman Nathan Ballard said. "Let's be serious. This is a guy who wants us to believe that the Red Garter sells office supplies."

E-mail Cecilia M. Vega at cvega@sfgchronicle.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/12/14/BAKUTTNRF.DTL>

This article appeared on page **B - 1** of the San Francisco Chronicle

SFGate.com**CORRECTIONS**

Saturday, December 15, 2007

Clarification: A story Friday about a campaign finance case against former San Francisco Supervisor Tony Hall contained a quotation from Ethics Commission Executive Director John St. Croix that warrants clarification. When St. Croix said, "We believe he (Hall) used funds for purposes that were not legitimate and that were not for advancing his campaign and were more than likely personal in nature," he was speaking only of the conclusion reached by the commission staff members who investigated the matter, not members of the commission's oversight panel who will render judgment in the case.

-- A review of the movie "I Am Legend" Friday in Datebook included the wrong rating. The film has an MPAA rating of PG-13 "for intense sequences of sci-fi action and violence."

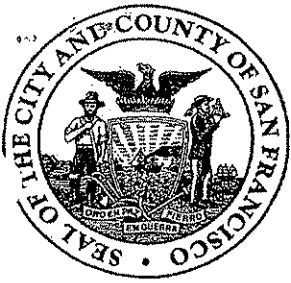
-- A headline in Friday's nation and world digest mischaracterized Garry Kasparov's campaign for the Russian presidency. Kasparov dropped his bid to succeed Vladimir Putin, who is barred from seeking another term.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/12/15/MNU0TULOR.DTL>

This article appeared on page **A - 2** of the San Francisco Chronicle

ATTN: JAMMENT E

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ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIEENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

December 14, 2007

David Waggoner
3937 17th Street
San Francisco, California 94114

Re: Immediate Disclosure Request

Dear Mr. Waggoner:

Pursuant to your immediate disclosure request of November 29, 2007 and the Ethics Commission's response of November 30, 2007, staff has located documents responsive to your request. These documents are available for your review. Please contact me to arrange a time to review these documents. The following responses correspond to the categories of documents listed in your request.

- 1) Ethics Commission Investigation and Enforcement Regulation XIII.B.1 provides that "[a]fter a determination of probable cause, complaints, related documents, and investigative files shall not be disclosed except as required by the California Public Records Act. . . ." The California Public Records Act provides an exception for records pertaining to pending litigation, to which a public agency is a party. *See* Cal. Gov. Code § 6254(b). Because the Ethics Commission is a party to this matter, staff cannot provide you with the requested records.
- 2) Copies of documents responsive to this request were made available for your review on December 3, 2007.
- 3) Copies of documents responsive to this request were made available for your review on December 3, 007.
- 4) After an exhaustive search of Commission records, staff review determined that there are no responsive documents.
- 5) After an exhaustive search of Commission records, staff review determined that there are no responsive documents.
- 6) After an exhaustive search of Commission records, staff review determined that there are no responsive documents.
- 7) After an exhaustive search of Commission records, staff review determined that there are no responsive documents.

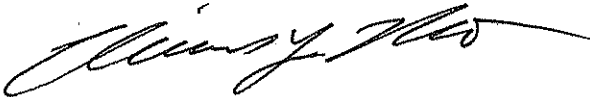
ATTACHMENT D

F

- 8) Pursuant to your December 13 telephone conversation with the Commission's Fines Collection Officer, it is our understanding that you do not want the documents regarding fines for violations of S.F. C&GCC section 1.106, as they would include copies of every fine letter ever sent by the Commission. With regards to records of penalties for violations of section 1.106, copies of responsive documents are available for your review.
- 9) Documents responsive to this request are available for your review in electronic format.
- 10) Documents responsive to this request are available for your review in electronic format.
- 11) Documents responsive to this request are available for your review in electronic format.

If you have any questions, please call me at (415) 252-3100.


Sincerely,

A handwritten signature in black ink, appearing to read "Richard Mo", with a stylized flourish at the end.

Richard Mo
Chief Enforcement Officer



John
St.Croix/ETHICS/SFGOV
02/29/2008 03:05 PM

To SOTF/SOTF/SFGOV@SFGOV
cc
Subject Re: Complaint #08011 David Waggoner v Ethics
Commission 

The SOTF does not have jurisdiction.

John St. Croix
Executive Director, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

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