

Date: August 24, 2010

Item No. 9

File No. 10013

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Nick Pasquariello v Department of Technology**
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Completed by: Chris Rustom

Date: August 19, 2010

***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.

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
June 14, 2010

DATE THE DECISION ISSUED
May 25, 2010

NICK PASQUARIELLO V BAY AREA VIDEO COALITION (10013)

FACTS OF THE CASE

Nick Pasquariello ("Complainant") alleges that he made an Immediate Disclosure Request ("IDR") to Ken Ikeda at the Bay Area Video Coalition (BAVC) for all contracts, grantee bids, responses to Requests for Proposals ("RFPs") and all other records of communication between the City and persons or entities seeking contracts, and that as of April 5, 2010, he had received no response.

COMPLAINT FILED

On April 5, 2010, Complainant filed this Sunshine Complaint against "the Department of Technology (Bay Area Video Coalition)"

HEARING ON THE COMPLAINT

On May 25, 2010, Mr. Pasquariello presented his case before the Task Force. BAVC was represented by Krisana Hodges. Barry Fraser, an analyst with the Department of Technology, also was present.

Mr. Pasquariello told the Task Force that he appeared before the Task Force three months ago because BAVC failed to respond to his letter asking it to explain its policy of scanning driver's licenses. BAVC, he said, receives public money and the residents of the City and County of San Francisco have the right to know how the organization is spending it. Steve Zeltzer said he also had requested documents from BAVC and had not received a response. BAVC should be subject to rules that other contractors with the City have to follow, he said. This is especially important when there is a decline in the number of users of the station. He said there were 130 producers before and now only 50 people make use of it. He wanted to know where the money was going if fewer people were making use of it. A member of the public claimed he saw numerous items being given away when the station closed in late 2009. The public has the right to know what was given away, he said. A female speaker said Mr. Pasquariello needs to ascertain for himself how the money was being spent and if the services are being provided in compliance with the contract it has

ORDER OF DETERMINATION

signed with the City.

Ms. Hodges said the contract with the City stipulates that only the contract and its application documents are subject to disclosure under Section 67.24(e). There are no other provisions, she said. The document that Mr. Pasquariello wants was available online through the Department of Technology. Administrative Code 12L, she said, calls for open board meetings, which it holds, and that there are no complaints against BAVC for not holding open meetings as required. The other requirements mentioned in 12L have not been requested. She said tried to contact Mr. Pasquariello several times but that he has not responded.

Mr. Fraser said the department received one faxed request for documents on December 16, 2009, and the department responded to it the next day. Since then, he said, the department has not received anything from Mr. Pasquariello. He offered to help the Task Force resolve the issue and said he was also prepared to talk to Mr. Pasquariello to see what additional documents he wanted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that BAVC violated the Ordinance.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that BAVC violated Section 67.21(b) for untimely response and Section 67.26 for withholding. BAVC shall release the records requested within five business days of the issuance of this Order and appear before the Task Force on June 22, 2010.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on May 25, 2010, by the following vote: (Cauthen / Washburn)

Ayes: Cauthen, Washburn, Wolfe, Chan, Johnson, Williams

Noes: Snyder, Knoebber, Knee



Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Nick Pasquariello, Complainant
Krisana Hodges & Barry Fraser, Respondents



Krisana Hodges
<krisana@hodgeslaw.net>
08/17/2010 02:38 PM

To SOTF <sotf@sfgov.org>
cc
bcc
Subject

Krisana Hodges, Esq.
krisana@hodgeslaw.net
415.648.4647 (office) • 415.734.0994 (cell)

Begin forwarded message:

From: Krisana Hodges <krisana@hodgeslaw.net>
Date: August 10, 2010 1:16:06 PM PDT
To: sotf@sfgov.org
Cc: jpk@pobox.com, Barry Fraser <Barry.Fraser@SFGOV.ORG>, Ron.Vinson@sfgov.org, Ken Ikeda <ken@bavc.org>, Jennifer Gilomen <jennifer@bavc.org>
Subject: SOTF Hearing Today on Complaint 10013 (Nick Pasquariello vs Dept. of Technology/BAVC)

I write in the hope that we all may avoid burdening the parties and the Task Force with a hearing on Complaint 10013 later this afternoon.

I spoke with Mr. Rustom, the SOTF clerk, this morning. Mr. Rustom confirmed that the hearing today is for the limited purpose of determining if Nick Pasquariello received all of the documents he requested in his original Complaint 10013. I believe this matter has already been addressed. At the original hearing on Complaint 10013, Mr. Pasquariello confirmed that he did not require additional documents from BAVC related to complaint #10013. Accordingly, there is no outstanding document request related to Complaint 10013 for the Task Force to resolve this afternoon.

Mr. Pasquariello has filed several complaints against BAVC and the Department of Technology. To be clear about the difference between the complaints and the subject matter of the hearing today, the rest of my email summarizes these different complaints and explains the status of each. As you can see, there are no pending requests under Complaint 10013 for the parties to report on this afternoon. I expect that Complaints

10034 and 10035 are also resolved, but I wait for the clerk's confirmation regarding their status. Regardless of their status, Complaints 10034 and 10035 are not related to the subject matter scheduled this afternoon.

Background on Complaint 10013, scheduled for this afternoon.

In Complaint 10013, Mr. Pasquariello requested proposals, bids and contracts between the Department of Technology and all parties seeking contracts related to public access. At the hearing, the parties and the task force established that these documents were available online through the Department of Technology website. In addition, representatives from the Department of Technology attended the hearing and spoke directly with Mr. Pasquariello, and agreed to coordinate with him directly so that he received copies of the requested documents. When I asked Mr. Pasquariello what documents he wanted from BAVC related to this complaint, he said that he did not require any additional documents from BAVC.

Accordingly, BAVC was left with no pending request for documents related to Complaint 10013, and Mr. Pasquariello did not contact me after the hearing to request any documents from BAVC related to Complaint 10013.

Complaints 10034 & 10035 are unrelated to Complaint 10013.

Since filing Complaint 10013, I understand that Mr. Pasquariello has submitted several additional document requests to the Department of Technology, and I understand the Department has responded to each one. Nonetheless, there are two complaints pending before the Task Force related to these later requests. Complaints 10034 and 10035, filed by Nick Pasquariello against the Department (of Technology and BAVC respectively, concern information unrelated to the documents at issue in Complaint 10013. The subject matter of these complaints is not scheduled to be addressed by the task force this afternoon. In addition, BAVC has provided the information requested, resolving any issues related to these complaints.

Pending SOTF Complaint 10034 relates to Mr. Pasquarillo's request that the Department of Technology produce contracts between BAVC and one of BAVC's web-based software service providers. When the Department did not respond to that request within two business days, Mr. Pasquariello filed Complaint 10034 against the Department. That same day, the Department responded to Mr. Pasquariello that his request had been accidentally misdirected, causing the short delay in response, and that the Department did not have any documents responsive to the request.

Mr. Pasquariello sent a similar letter to BAVC, requesting contracts between BAVC and

its web-based software service provider. BAVC responded to Mr. Pasquariello with a letter directing Mr. Pasquariello to the web-based service provider's contract. A few days later, Mr. Pasquariello filed Complaint #10035 against BAVC, again seeking these contracts. I responded to Complaint 10035 with a copy of my letter to Mr. Pasquariello responding to his request and a short statement requesting either (i) the Complaint be removed because all information had already been provided, and/or (ii) a jurisdictional review the Complaint prior to Hearing.

Because the information at issue in Complaints 10034 and 10035 has been provided, BAVC has requested that these complaints be removed from the Task Force calendar. Regardless, the subject matter at issue in Complaints 10034 & 10035 is different from subject matter of Complaint 10013.

Action Requested

Given that there are no outstanding document requests related to Complaint 10031, BAVC respectfully requests that the Task Force hearing today to follow up on outstanding information requests related to Complaint 10031 be taken off calendar this afternoon.

Thank you for your time and attention to this matter.

Krisana Hodges

Krisana M. Hodges, Esq.
HODGES LAW OFFICE
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This email and attachments may contain private, confidential or privileged material for the sole use of its intended recipient. If you are not the intended recipient, please notify me immediately and permanently delete this email and its attachments.

On Aug 6, 2010, at 4:56 PM, sotf@sfgov.org wrote:

This is a reminder that a hearing is scheduled with the Compliance and Amendments Committee of the Sunshine Ordinance Task Force regarding the above titled complaint, to review the status of and to ascertain compliance

with the Task Force's Order of Determination.

Date: Tuesday, August 10, 2010

Location: City Hall, Room 406

Time: 4:00 p.m.

Complainants: Your attendance is required at this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

To access the agenda please click on the link below. Then click on the associated item number to access the packet material related to your item.

<http://www.sfbos.org/index.aspx?page=10910>

Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
OFC: (415) 554-7724
FAX: (415) 554-7854
SOTF@sfgov.org

Begin forwarded message:

From: Krisana Hodges <krisana@hodeslaw.net>
Date: August 10, 2010 11:55:29 AM PDT
To: SOTF <SOTF@sfgov.org>
Subject: Fwd: SOTF hearing reminder: #10013_Nick Pasquariello vs Dept. of Technology

Mr. Rustom,

Below is my email to you inquiring about this matter from last week. I did not receive a response. When I sent this email, I did not fully understand which complaint we were scheduled to address. Were you able to process BAVC's request to postpone the hearing today?

In a few minutes, I am sending you an email based on our phone conversation earlier this morning directly focused on this complaint.

Thank you,

Krisana

Krisana Hodges, Esq.
krisana@hodeslaw.net
415.648.4647 (office) • 415.734.0994 (cell)

Begin forwarded message:

From: Krisana Hodges <krisana@hodeslaw.net>
Date: August 6, 2010 5:08:02 PM PDT
To: sotf@sfgov.org
Subject: Re: SOTF hearing reminder: #10013_Nick Pasquariello vs Dept. of Technology

Given that BAVC is not named in this complaint, is BAVC needed for this hearing? BAVC's Ken Ikeda will not be able to attend on August 11th. He has been able to attend all of the prior hearings, but each one has been postponed at the last minute by Mr. Pasquariello. If BAVC is needed, we respectfully request that the hearing be continued. If there is a specific process for making this request, will you please send me instructions or direct me to where I can find them?

Thank you for all of your time and attention to this matter.

Sincerely,

Krisana Hodges

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