

Date: September 23, 2008

Item No. 5a.
File No. 08033a

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Charles Pitts v. DHS**
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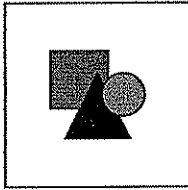
Completed by: Frank Darby

Date: September 17, 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.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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

MEMORANDUM

November 16, 2007

CHARLES PITTS v. THE DEPARTMENT OF HUMAN SERVICES (08033)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On June 10, 2008, Complainant Charles Pitts made an Immediate Disclosure Request to Dariush Kayhan of the Human Services Department.. In that request, Charles Pitts requested all documents regarding the closing of Ella Hill Hutch Center , the copy of the contract of Ella Hill Hutch and the Next Door Center at 1001 Polk Street. On that same day, Pamela Tebo from the office of the Executive Director of Human Services issued a letter stating that under the provisions of section 67.28(c) of the Sunshine Ordinance the cost of copying the documents is 10 cents a page and the contract pages for both contracts are 50 pages each. The total cost for copying the documents is at least \$10.00. Ms. Tebo also suggested a viewing of the original documents and that Charles Pitts contact her to make arrangements.

COMPLAINANT FILES COMPLAINT

On June 19, 2008, Charles Pitts filed a complaint against the Department of Human Services alleging that the response to the IDR was not timely and that the Department "set up a wall" to impede to release of information and did not provide information on how and where to pay for information.

JURISDICTION

Based on the allegations of the complaint and the sections of the Ordinance stated below, the Task Force has jurisdiction to hear this matter. In addition the parties in this case do not contest jurisdiction.

APPLICABLE STATUTORY SECTIONS:

1. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents including records in electronic format.

Memorandum

2. Sunshine Ordinance, San Francisco Administrative Code Section 67.21-1 addresses the policy regarding the use and purchase of computer systems.
3. Sunshine Ordinance, San Francisco Administrative Code Section 67.25 deals with Immediate Disclosure Requests.
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. Sunshine Ordinance, San Francisco Administrative Code Section. 67.28 deals with fees for duplication.
7. California Public Records Act, Government Code Section 6253 deals with public records open to inspection, agency duties, and time limits.
8. California Public Records Act, Government Code Section 6255 deals with justification for withholding of records.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

The parties agree to the following facts:

- Charles Pitts made an Immediate Disclosure Request for certain public records under the control of the Department of Human Services.
- On the same day as the IDR, Pamela Tebo issued a letter to Charles Pitts providing the estimated cost for copying the records and offering inspection of the records.

Memorandum

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

Whether the Department of Human Services complied with the Immediate Disclosure Request.

2. QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

a.). none.

3. LEGAL ISSUES/ LEGAL DETERMINATIONS:

- Were sections of the Sunshine Ordinance (Section 67.21 or 67.25), Brown Act, and/or Public Records Act were violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

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

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

Section 67.21 addresses general requests for public documents.

This section provides:

- a.) Every person having custody of any public record or public information, as defined herein, ... shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- b.) A custodian of a public record shall as soon as possible and within **ten days** (emphasis added) following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.
- c.) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.
- ...
- k.) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act Government Code Section 6250 et seq.) In particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.

Memorandum

1.) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

Section 67.25 provides:

- a.) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.
- b.) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requestor shall be notified as required by the close of business on the business day following the request.
- c.) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.
- d.) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall

Memorandum

produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected.

Section 67.28 provides:

a.) No fee shall be charged for making public records available for review.

...

c.) For documents assembled and copied at the order of the requester, unless a special fee as been established pursuant to subdivision of (d) of this section, a fee not to exceed 10 cents a page may be charged, plus postage.

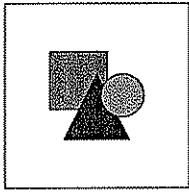
The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

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



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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

September 3, 2008

Nick Goldman, Chair
Members of the Complaint Committee

Re: Charles Pitts (08033) v. the Department of Human Services

Dear Chair Goldman 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 Charles Pitts against the San Francisco Department of Human Services.

BACKGROUND

On June 10, 2008, Complainant Charles Pitts made an Immediate Disclosure Request ("IDR") with Dariush Kayhan of the Department of Human Services ("DHS"). Charles Pitts in his IDR request all documents regarding the closing of Ella Hill Hutch Center and a copy of the contract of Ella Hill Hutch and the Next Door Shelter on 1001 Polk Street. On June 10, 2008, Pamela Tebo of the Office of the Executive Director responded to the IDR with a letter that stated that each contract with attachments total 50 pages and that copying of these documents would require payment of \$10.00 plus postage. Ms. Tebo offered to produce the documents for inspection at a date and time mutually convenient for Charles Pitts and her.

COMPLAINT

On June 19, 2008, Charles Pitts filed a complaint against DHS alleging violations of the Sunshine Ordinance.

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 and 67.25) of the Ordinance.

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.

Letter to the Complaint Committee
Page 2
September 3, 2008

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 and Section 67.25 covers Immediate Disclosure Requests. CPRA Section 6253 generally covers Public Records Requests.

In this case, Charles Pitts made an IDR and DHS responded the same day. Charles Pitts alleges that DHS did not respond in timely fashion, set up a wall for those trying to get information and did not provide information on how and where to pay for information. Based on the allegations, the Task Force has jurisdiction to hear this complaint and will determine whether DHS violated the Ordinance and/or the Public Records Act.



05-19-2008 RCVD

SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission

Department of Human Services

Name of individual contacted at Department or Commission

DARLUS H KAYHAN

Alleged violation public records access

Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section _____

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

did not get info and/or in timely fashion
setup "wall" to get information
no information provided how and/or where to pay for information

Do you wish a public hearing before the Sunshine Ordinance Task Force? yes no

(Optional)¹

Complainant Name CHARLES PITTS

Address SAN FRANCISCO, CA 94164

Telephone No. 1-415-

E-Mail Address _____

Date 9/19/2008

[Signature]

Signature

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE IS SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. COMPLAINANTS CAN BE ANONYMOUS AS LONG AS THE COMPLAINANT PROVIDES A RELIABLE MEANS OF CONTACT WITH THE SOTF (PHONE NUMBER, FAX NUMBER, OR E-MAIL ADDRESS).

IMMEDIATE DISCLOSURE REQUEST

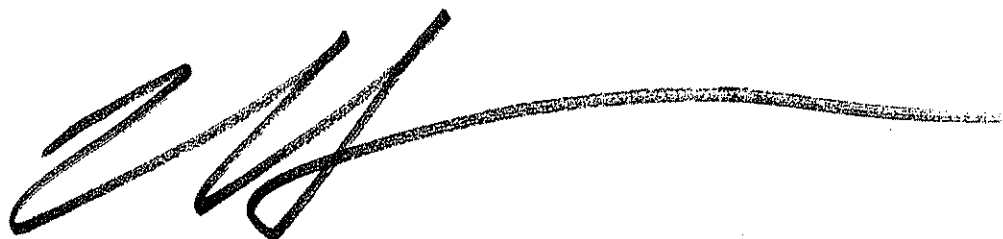
SAN FRANCISCO SUNSHINE ORDINANCE SAN FRANCISCO ADMINISTRATIVE CODE 67.25.A

June / 10 / 2008


Dariush Kayhan

I am requesting
All documents regarding
The closing of Ella hill hutch
And I want a copy of the contract of
ella hill hutch
and
next door /1001 polk
all parts of it

RECEIVED
CCSF/DHS
2008 JUN 10 AM 8:17



1-415 

Charles Pitts
P.O. Box 
San Francisco Ca, 94164



Gavin Newsom, Mayor

Department of Human Services
Department of Aging and Adult Services

Trent Rhorer, Executive Director

June 10, 2008

Charles Pitts
P.O. Box [REDACTED]
San Francisco, California 94164

Dear Charles,

I am writing in response to your public records request in which you seek copies of the contracts the Human Services Agency has with Ella Hill Hutch and 1001 Polk (Next Door) shelters.

As you know, the Human Services Agency strictly abides by Admin Code 67.28(c), Fees for Copies, which states, "For documents assembled and copied to the order of the requester, a department may charge no more than 10 cents per page" (plus postage).

Each contract, plus attachments, is a total of approximately 50 pages. Therefore, we would require payment of at least \$10.00 for the documents plus postage. Please let me know if you would like us to proceed with your request. These documents are available for inspection. If you would prefer to view these documents, please contact me to set up a mutually convenient time for you to stop by my office.


If you have any questions, I can be reached at (415) 557-6540.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Tebo".

Pamela Tebo
Office of the Executive Director

Pamela Tebo/DHS/SFGOV
06/27/2008 02:41 PM

To SOTF/SOTF/SFGOV@SFGOV, Chris
Rustom/BOS/SFGOV@SFGOV
Caroline Serrano/DHS/SFGOV@SFGOV, Dariush
cc Kayhan/MAYOR/SFGOV@SFGOV,
SOTF/SOTF/SFGOV@SFGOV
bcc
Subject Re: Sunshine Complaint Received: #08033_Charles Pitts vs
Human Services 

Mr. Charles Pitts has submitted a false complaint to the Sunshine Task Force.

Mr. Pitts faxed a public records request on June 10, 2008. I replied to his request that same day with the attached letter.



Pitts 6.10.08.doc

Mr. Pitts did not respond to my letter. Instead of contacting me to arrange to either stop by my office to pick up the documents or stop by my office to view the documents, Mr. Pitts contacted Mr. Rustom to file a complaint with the Sunshine Task Force. On June 24, 2008, Mr. Rustom contacted me to let me know that Mr. Pitts was trying to file a complaint against me and the Human Services Agency. Mr. Rustom also stated that Mr. Pitts wanted copies of the documents and did not want to view them first.

On June 24, 2008, I sent Mr. Pitts the following letter.



Pitts 6.24.08.doc

I still have not heard from Mr. Pitts.

I called him today. He plans to stop by my office on Tuesday, July 1, 2008 to pick up the documents.

Pamela Tebo
Office of the Executive Director
SF Human Services Agency
P.O. Box 7988
San Francisco, CA 94120
(415) 557-6540 - Phone
(415) 431-9270 - Fax
SOTF/BOS/SFGOV

City and County of San Francisco



Gavin Newsom, Mayor

Human Services Agency

Department of Human Services
Department of Aging and Adult Services

Trent Rhorer, Executive Director

June 10, 2008

Charles Pitts
P.O. Box [REDACTED]
San Francisco, California 94164

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If you have any questions, I can be reached at (415) 557-6540.

Sincerely,

Pamela Tebo
Office of the Executive Director

City and County of San Francisco

Human Services Agency

Department of Human Services
Department of Aging and Adult Services



Gavin Newsom, Mayor

Trent Rhorer, Executive Director

June 24, 2008

Charles Pitts
P.O. Box _____
San Francisco, California 94164

Dear Charles,

I am writing in response to your public records request in which you seek copies of the contracts the Human Services Agency has with Ella Hill Hutch and 1001 Polk (Next Door) shelters.

On June 10, 2008, I sent you the attached response. I have not heard back from you. Mr. Rustom, from City Hall phoned me today to inform me that you would like to pick up the documents.

As you know, the Human Services Agency strictly abides by Admin Code 67.28(c), Fees for Copies, which states, "For documents assembled and copied to the order of the requester, a department may charge no more than 10 cents per page" (plus postage).

The number of pages to respond to the Ella Hill Hutch request is 69; the number of pages to respond to the Next Door Shelter request is 54. The total is 123 pages. Please contact me at your earliest convenience to set up a time to stop by my office to pick up the documents. Bring with you a check or money order payable to the Human Services Agency in the amount of \$12.30. We prefer a check or money order, but cash is acceptable.

If you have any questions, I can be reached at (415) 557-6540.

Sincerely,

Pamela Tebo
Office of the Executive Director

attachment

Pamela Tebo/DHS/SFGOV
07/03/2008 05:14 PM

To SOTF/SOTF/SFGOV@SFGOV, Chris Rustom/BOS/SFGOV@SFGOV
cc Caroline Serrano/DHS/SFGOV@SFGOV, Dariush.Kayhan@sfgov.org
bcc
Subject Fw: Sunshine Complaint Received: #08033_Charles Pitts vs Human Services

This email is a following up to my response below. As you requested, I responded within 5 days, to the false claim filed by Charles Pltts. On Tuesday, July 1, Charles stopped by my office to pick up the documents.

I am requesting that this item be removed from the agenda for two reason:


- 1) The claim Mr. Pitts filed is without merit and is false.
- 2) I will be on vacation on July 22 and I will not be available to attend the hearing.

Please let me know if you will remove this item from the agenda. Thanks -

Pamela Tebo
Office of the Executive Director
SF Human Services Agency
P.O. Box 7988
San Francisco, CA 94120
(415) 557-6540 - Phone
(415) 431-9270 - Fax

----- Forwarded by Pamela Tebo/DHS/SFGOV on 07/03/2008 05:03 PM -----

Pamela Tebo/DHS/SFGOV
06/27/2008 02:41 PM

To SOTF/SOTF/SFGOV, Chris Rustom/BOS/SFGOV
cc Caroline Serrano/DHS/SFGOV@SFGOV, Dariush Kayhan/MAYOR/SFGOV@SFGOV, SOTF/SOTF/SFGOV@SFGOV
Subject Re: Sunshine Complaint Received: #08033_Charles Pitts vs Human Services 

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Pamela Tebo
Office of the Executive Director
SF Human Services Agency
P.O. Box 7988
San Francisco, CA 94120
(415) 557-6540 - Phone
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SOTF/BOS/SFGOV

SOTF/BOS/SFGOV
Sent by: SOTF

06/27/2008 10:45 AM

To Pamela Tebo/DHS/SFGOV@SFGOV, Dariush
Kayhan/MAYOR/SFGOV@SFGOV, Caroline
Serrano/DHS/SFGOV@SFGOV

cc

Subject Sunshine Complaint Received: #08033_Charles Pitts vs
Human Services

This e-mail is to confirm that the attached complaint and support documents have been received. The Department is required to submit a response to the charges to the Task Force within five business days of receipt of this notice. Please refer to complaint number #08033 when submitting any new information and/or supporting documents pertaining to this complaint.

If the Department contests jurisdiction or if the parties request a prehearing conference a hearing will be scheduled with the Complaint Committee of the Sunshine Ordinance Task Force who will determine whether the Task Force has jurisdiction over this matter, and/or to focus the complaint or to otherwise assist the parties to the complaint.

Date: Tuesday, August 12, 2008
Location: City Hall, Room 406
Time: 4:00 P.M.

If the Department does not contest jurisdiction or if the parties don't request a prehearing conference a hearing will be scheduled with the full Sunshine Ordinance Task Force who will hear the merits of the complaint and issue a determination.

Date: Tuesday, July 22, 2008
Location: City Hall, Room 408
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.

Any support document to be considered by the Complaint Committee prior to the meeting, must be submitted by 4:00 P.M. Tuesday, August 5, 2008, if jurisdiction is contested or Tuesday, July 15, 2008, if jurisdiction is not contested.

Also, attached is the Sunshine Ordinance Task Force's complaint procedures.



1_Complaint Procedures_3-25-08_Final.pdf



08033_Complaint.pdf

Administrator
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