Date: January 3, 2012

Item No. 21 & 22
File No. 11087

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- ☒ **Lars Nyman v Department of Public Works**
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Completed by: Chris Rustom **Date:** Dec. 22, 2011

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

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

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

Sunshine Complaint
complaints
to:
sotf
11/14/2011 03:21 PM
Hide Details
From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org
Email:complaints@sfgov.org
DEPARTMENT:Department of Public Works
CONTACTED:Frank Lee
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:
DESCRIPTION:The Department of Public Works spent $229,039.80 in 2010/2011 on the Montgomery/Alta Street tree project. The project was initially budgeted for $101,625.50. I made a request under the Sunshine Ordinance to the Department of Public Works and Frank Lee (DPW's designated point man for Sunshine Ordinance requests) on October 6, 2011. In my request, I requested any document or documents that approved or authorized this project. I also requested any document or documents that approved or authorized the initial budget for $101,625.50 for this project. As of this date, October 20, 2011, Mr. Lee has not provided any such documents, nor explicitly stated there are no such documents. Mr. Lee did respond, without providing any documents, stating that "...other than..." documents he has provided to me in prior requests "...we do not have any other documents that would be responsive...". The use of "other than" implies there are documents that address my request and that he has already provided those documents to me. However, he has not - I have not received any documents from Mr. Lee that shows the approval or authorization of the project or the initial budget.
HEARING:Yes
PRE-HEARING:No
DATE:October 20
NAME:Lars Nyman

ADDRESS:
CITY:
ZIP:
PHONE:
CONTACT_EMAIL:upwardfacingdog@hotmail.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No

City and County of San Francisco

San Francisco Department of Public Works

1 Dr. Carlton B. Goodlett Place, City Hall, Room 348
San Francisco, CA 94102
(415) 554-6900 ■ www.sfdpw.org

Edwin M. Lee, Mayor
Mohammed Nuru, Interim Director

November 22, 2011

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

Subject: Sunshine Complaint #11087
Lars Nyman v Public Works

Dear Sunshine Ordinance Task Force:

We answered Mr. Nyman's October 6, 2011 Public Records Request promptly on the following day. At that time, we explained to Mr. Nyman that we had already given to him – through our previous responses to his previous records requests – the documents that were responsive to his latest request. We also explained to Mr. Nyman why there were no documents that fit some of his questions and invited him to discuss this with our staff.

Mr. Nyman did not accept our invitation to meet.

On October 13, 2011, we outlined every document that we provided to him since he began his requests. Our first response to him was on June 15, 2011. At the end of this outline was another invitation to meet and discuss.

Mr. Nyman still has not accepted our invitation to meet.

As evidence of our responses, I am attaching the October 13, 2011 email to Mr. Nyman, which also contains Mr. Nyman's record request of October 6 and our initial response on October 7.

We understand that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Please see California Government Code § 6253(b).) Our obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in our custody. (See San Francisco Administration Code § 67.20(b).) There is no requirement that our department or officers construct a document to meet the specifications of any request.

In summary, we believe that our department responded to Mr. Nyman's request properly.

Sincerely,

Frank W. Lee
Executive Assistant to the Director

Lee, Frank W

From: Lee, Frank W
Sent: Thursday, October 13, 2011 5:18 PM
To: 'Up Dog'
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Here is a summary of what we gave to you and explained to you.

On June 15, 2011, we gave to you:

- A copy of the Notice of Tree Removal that was posted; and
- 14 letters and emails that we received during the Notice of Tree Removal posting period (June 1, 2010 to June 30, 2010).

On June 27, we gave to you:

- Four emails exchanged between Dadisi Najib and Frank W. Lee on April 12, 2011.

On July 6, we gave to you:

- An April 12, 2011 email to Dadisi Najib from James DeVinny; and
- An April 12, 2011 email to Dadisi Najib, Gloria Chan, and James DeVinny from Frank W. Lee.

On August 8, we gave to you:

- The original cost estimate of $101,625.50 that was produced in September 2010

On that same August 8, we also:

- Informed you that the final actual cost of the project is being calculated; and
- Explained to you which employees discussed and determined the sending of workers to work on the project on Sunday, March 27.

On August 12, we gave to you:

- A spreadsheet showing the actual total cost ($229,039.80) and the labor hours spent; and
- Nine reasons for exceeding the original estimate ($101,625.50).

On August 26, we gave to you:

- The date of the when the itemized estimated budget or cost for the project was approved, which was September 2010;
- Documents, including sketches, related to the original estimate ($4,248.65) of the "tree support" that was also approved in September 2010;
- The name of the employee that produced the itemized estimated budget or cost for the project; and
- The name of the employee that approved that itemized estimated budget or cost for the project.

On August 29, we:

- Again, explained that the original tree support budget of $4,248.65 was approved in September 2010; and
- Explained that the final actual cost of the tree support was $23,561.

On September 9, we gave to you:

- Sketch of the tree base for the tree support that was actually built; and
- Sketch of the tree support and saddle, as part of the tree support, that were actually built

On that same September 9, we also:

- Explained to you how the approval of building the tree support (base, support and saddle) was made and, subsequently, why there were no documents showing this approval.

On September 12, we

- Again, stated that there were no documents showing approval of the building of the tree support.

On September 30, we

- Explained that we have no documents that shows discussions concerning "the overrun of cost of this project";
- Explained that we had already given to you the name of the employee that approved the $101,625.50 original estimate and that there were no documents because his approval was done verbally; and
- Explained that there is no approval of the final cost because the $229,039.80 expenditure was the actual cost of the entire project, not an estimate used for any approval or authorization.

On October 3, we:

- Explained that there were no documents, including any emails, that show approval and/or authorization of spending more than the original $101,625.50 cost that was verbally approved at the beginning of the project.

And, finally, on October 7, we:

- Offered to arrange a meeting between you and the employees that made the original estimate and approvals so that you could discuss any concerns you had with them.

If you find that you are missing any of the above emails or documents in your email inbox, please let me know.

There are no documents, other than what were included in the documents that we gave to you (see above), that shows or are related to the approval and/or authorization of the Montgomery/Alta Street tree project. There are no documents, other than what were included in the documents that we gave to you (see above), that are related to the approval and/or authorization of the initial budget for the Montgomery/Alta Street tree project.

If you would like to meet, please let me know.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Sunday, October 09, 2011 6:49 PM
To: Lee, Frank W
Cc: Up Dog
Subject: RE: Sunshine Ordinance request

Mr Lee,

No, I have not received any documents from your or from the Department of Public Works that address my current request - I have not received any such documents nor have I requested such documents.

I am not unclear about anything. What I am clear about is that I issued an official request under the Sunshine Ordinance of the City of San Francisco and that I did not receive a proper response.

You state that "Other than what we have already provided to you..." and "... we do not have any other documents...". Your statement and use of "other" implies there are documents that address my request. However, as I stated above, I have not received any documents from you or from the Department of Public Works that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the initial budget for the Montgomery/Alta Street tree project.

I submitted my official request under the Sunshine Ordinance of the City of San Francisco. You are obligated, under the Sunshine Ordinance of the City of San Francisco, to supply such documents and you did not. If the Department of Public Works does not have any documents that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the initial budget for the Montgomery/Alta Street tree project, you need to explicitly and clearly state so.

Consequently, I consider that you have not responded to my request under the Sunshine Ordinance of the City of San Francisco.

Sincerely,
Lars Nyman

From: Frank.W.Lee@sfdpw.org
To: upwardfacingdog@hotmail.com
CC: upwardfacingdog@hotmail.com
Date: Fri, 7 Oct 2011 19:05:47 -0700
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Other than what we have already provided to you in response to your previous requests, we do not have any other documents that would be responsive to your request, again, for documents that approves and/or authorizes the Montgomery/Alta street tree project and for documents that approves and/or authorizes the initial budget for the Montgomery/Alta street tree project.

Furthermore, I explained to you the approval method that was used and the names of the employees that produced the initial estimate and made the approval. If you are unclear about this and would like to discuss this with these employees, please let me know. I would be able to arrange a meeting for you.

Sincerely,
Frank W. Lee
Executive Assistant to the Director

Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: m m [mailto:upwardfacingdog@hotmail.com]
Sent: Thursday, October 06, 2011 10:32 AM
To: Lee, Frank W
Cc: Up Dog
Subject: Sunshine Ordinance request

Dear Mr. Lee,

In my email on 10/3/2011 to you I asked you a couple of questions. Since I have not received a response from you I am forced to submit an offical Sunshine Ordinance request to get the information.

As a background, I have tried since April 2011 to get information from you and the Department of Public Works about the Montgomery/Alta Street tree project that was performed in early 2011. You have informed me that the amount in the budget for the Montgomery/Alta Street tree project that was approved was $101,625.50. You have indicated that there are no documents showing any information or discussion about the cost overrun for this project, that there are no documents showing approval or authorization for spending beyond the initial budget for this project. In a comment, you also seem to have indicated there are no documents showing approval or authorization for the initial budget itself.

It seems somewhat surprising that there would be no documents approving or authorizing the initial budget for the project and the spending of money for this project. Since I had not issued an official request for that that information, and since I may have misunderstood your comments, to make sure I will make an official Sunshine Ordinance request to get to the bottom of this.

If there are no documents showing approval or authorization for the initial budget for the project, I am wondering if there are any documents showing approval and authorization of the project itself. Again, to get to the bottom of this I will make an official Sunshine Ordinance request below.

I am requesting documents under the Sunshine Ordinance of the City of San Francisco:

1- any documents, including emails, meeting minutes etc., that approves and/or authorizes the Montgomery/Alta Street tree project
2- any documents, including emails, meeting minutes etc., that approves and/or authorizes the initial budget for the Montgomery/Alta Street tree project

Note, the request for documents in this request is in addition to any other request I have made.
I look forward to receiving the information requested.
Sincerely,
Lars Nyman