## SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

Education Outreach and Training Committee		Date: May 23, 2023
	Petition/Complaint Respondent's Response Petitioner/Complainant Rebuttal Memorandum - Deputy City Attorney Petitioner/Complainant Supporting Documents Respondent Supporting Documents Public Correspondence Order of Determination Minutes Administrator's Report No Attachments	Page: 139 Page: Page
OTHER		
Completed	by: C. Leger Date	5/18/23

<sup>\*</sup>An asterisked item represents the cover sheet to a document that exceeds 25 pages.

The complete document is in the file.

### Sunshine Ordinance Task Force Complaint Summary

File No. 23036

Paul Khina v. San Francisco Municipal Transportation Agency

Date filed with SOTF: 3/22/2023

Contact information (Complainant information listed first):
Paul Khina (pkniha@gmail.com) (Complainant)
Caroline Celaya (caroline.celaya@sfinta.com); San Francisco Municipal Transportation Agency (Respondent)

File No. 23036 Complaint filed by Paul Khina against the San Francisco Municipal Transportation Agency for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.10(b) by failing to consider the appointment, employment, evaluation of performance, or dismissal of a City employee.

## Petition/Complaint

#### Leger, Cheryl (BOS)

From: Paul Kniha <pkniha@gmail.com>
Sent: Wednesday, March 22, 2023 11:14 AM

To: sanfrancisco\_23-1253-requester-notes@inbound.nextrequest.com; Celaya, Caroline

(MTA); SOTF, (BOS)

Subject: Re: Your City and County of San Francisco public records request #23-1253 has been

closed.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

#### Hi Cheryl,

This is a request to schedule the following item for a hearing under Section 10(B) for alleged violations by City officers and employees other than elected officials or department heads, and non-willful violations by elected officials or department heads. A respondent in a Section 10(B) hearing has the burden of proving, by a preponderance of the evidence, that he or she did not violate the Sunshine Ordinance. While the materials and findings of the investigation are shielded from disclosure unbtil it is completed, the answers to the following questions are subject to public disclosure: who and when commenced the investigation, what entities or persons are conducting it, when it is expected to be completed, and what kind of reporting will be generated as the result.

Below in Italics is complete communication regarding the matter:

I am confirming that we received your Public Records Request and we assigned it as PRR#23-1253. In your request, you asked for the following:

Basis for withholding public records in request #23-78 ("I don't have specific complaints from anyone outside the agency, though issues have arisen that could, at least in part, be attributed to the fact that he isn't able to work in-person. There has been a complaint from another team member"): the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

This is a request to provide all the materials related to the investigation, that may contain answers to the following questions: who and when commenced the investigation, what entities or persons are conducting it, when it is expected to be completed, and what kind of reporting will be generated as the result. While the materials and findings of the investigation are shielded from disclosure, the questions above are not.

If I misunderstood your request, please let me know immediately.

Our department will identify and compile the requested information. The Sunshine Ordinance requires departments to respond as soon as possible or within ten calendar days from receipt of any records requests. Therefore, I will contact you as soon as the responsive documents are ready and will do so on or before March 17, 2023, as permitted by San Francisco Administrative Code § 67.21(b) and California Government Code § 6253(c).

Sincerely,

Caroline Celaya Manager, Public Records Requests San Francisco Municipal Transportation Agency 1 South Van Ness Avenue, 7th floor San Francisco, CA 94103

Request Closed

Responsive records are exempt on the basis previously cited (official information privilege Cal. Evid. Code § 1040).

Basis for withholding public records in request #23-78 ("I don't have specific complaints from anyone outside the agency, though issues have arisen that could, at least in part, be attributed to the fact that he isn't able to work in-person. There has been a complaint from another team member"): the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

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Respectfully, Paul Kniha

On Tue, Mar 21, 2023 at 11:02 AM City and County of San Francisco Public Records < messages@nextrequest.com > wrote:

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

## City and County of San Francisco Public Records

# Record request #23-1253 has been closed. The closure reason supplied was:

Responsive records are exempt on the basis previously cited (official information privilege Cal. Evid. Code § 1040).

View Request 23-1253

#### Leger, Cheryl (BOS)

From:

Paul Kniha <pkniha@gmail.com>

Sent:

Wednesday, March 22, 2023 4:11 PM

To:

SOTF, (BOS)

Subject:

Re: Your City and County of San Francisco public records request #23-1253 has been

closed.

Hi Cheryl,

All communications in its original format is available here: https://sanfrancisco.nextrequest.com/requests/23-1253

Respectfully, Paul Kniha

On Wed, Mar 22, 2023 at 4:08 PM SOTF, (BOS) <sotf@sfgov.org> wrote:

Thank you Paul, but I need the communications in their original format. Please provide. Thank you.

Cheryl Leger

Sunshine Administrator

Board of Supervisors

phone 415-554-7724 | fax 415-554-5163

cheryl.legen@sfgov.org | www.sfbos.org

From: Paul Kniha <pkniha@gmail.com>
Sent: Wednesday, March 22, 2023 11:14 AM

To: sanfrancisco 23-1253-requester-notes@inbound.nextrequest.com; Celaya, Caroline (MTA)

<Caroline.Celaya@sfmta.com>; SOTF, (BOS) <sotf@sfgov.org>

Subject: Re: Your City and County of San Francisco public records request #23-1253 has been closed.

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#### Hi Cheryl,

This is a request to schedule the following item for a hearing under Section 10(8) for alleged violations by City officers and employees other than elected officials or department heads, and non-willful violations by elected officials or department heads. A respondent in a Section 10(8) hearing has the burden of proving, by a preponderance of the evidence, that he or she did not violate the Sunshine Ordinance. While the materials and findings of the investigation are shielded from disclosure unbtil it is completed, the answers to the following questions are subject to public disclosure: who and when commenced the investigation, what entities or persons are conducting it, when it is expected to be completed, and what kind of reporting will be generated as the result.

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Sincerely,

Caroline Celaya Manager, Public Records Requests San Francisco Municipal Transportation Agency 1 South Van Ness Avenue, 7th floor San Francisco, CA 94103

#### Request Closed

Responsive records are exempt on the basis previously cited (official information privilege Cal. Evid. Code § 1040).

Basis for withholding public records in request #23-78 ("I don't have specific complaints from anyone outside the agency, though issues have arisen that could, at least in part, be attributed to the fact that he isn't able to work inperson. There has been a complaint from another team member"): the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

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Respectfully,

Paul Kniha

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- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

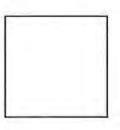
## City and County of San Francisco Public Records

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View Request 23-1253

https://sanfrancisco.nextrequest.com/requests/23-1253



Their page

"I Sund Only

Change your email settings here

## Respondent's Response

#### Leger, Cheryl (BOS)

From: Celaya, Caroline < Caroline.Celaya@sfmta.com>

**Sent:** Thursday, April 27, 2023 4:31 PM

To: SOTF, (BOS)
Cc: Paul Kniha

Subject: SFMTA response to: SOTF - Complaint Filed with the Sunshine Ordinance Task Force -

File No. 23036

Attachments: Request 23-1253 - NextRequest.pdf; SOTF File No. 23020\_Kniha\_SFMTA Response - HW

- Mar 17 2023.pdf; Attachment to SOTF File No. 23036\_Kniha\_SFMTA Response - March 7, 2023.pdf; SOTF Complaint\_Kniha\_SFMTA Response\_File No. 23036 FINAL.docx; SOTF

Complaint\_Kniha\_SFMTA Response\_File No. 23036 FINAL.pdf

SOTF:

Attached is our response to the Complaint File No. 23036

Caroline Celaya Manager, Public Records Requests

From: SOTF, (BOS) < sotf@sfgov.org>
Sent: Thursday, April 20, 2023 4:07 PM

To: Celaya, Caroline < Caroline.Celaya@sfmta.com>

Cc: Paul Kniha <pkniha@gmail.com>

Subject: SOTF - Complaint Filed with the Sunshine Ordinance Task Force - File No. 23036

#### Good Afternoon:

The San Francisco Municipal Transportation Agency has been named as a Respondent in the attached complaint filed with the Sunshine Ordinance Task Force (SOTF). In an effort to provide the SOTF information in an easy to understand format the SOTF has prepared a revised request format for responding to complaints (attached). The SOTF requests that you submit your response to our office the allegations including any and all supporting documents, recordings, electronic media, etc., to the Task Force within five (5) business days of receipt of this notice. In developing and submitting your response, please use the attached instructions, "Preparing San Francisco Sunshine Ordinance Task Force Respondents Materials," to address your defense of this complaint. This is your opportunity to provide a detailed explanation to allow the Task Force to be fully informed in considering your response prior to the meeting.

Please refer to the File Number 23036 when submitting any new information and/or supporting documents pertaining to this complaint.

Cheryl Leger

Assistant Clerk, Board of Supervisors

Tel: 415-554-7724



Click to complete a Board of Supervisors Customer Service Satisfaction form.

The Legislative Research Center provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act, and the San Francisco Sunshine Ordinance, Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written

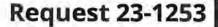
or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—imay appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

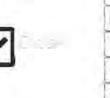
**Public Record Requests** 

### City and County of San Francisco

## Request Visibility: A Department

Switch to legacy page





#### Dates

Due

March 17, 2023

Received

March 7, 2023 via web

## Requester

A Paul Kniha

☑ pkniha@gmail.com

View email status

## Staff Assigned

#### Departments

San Francisco Municipal Transportation Agency (SFMTA)

SFMTA - Streets

SFMTA - City Attorney

Po: of contact e Celaya

## Request

Basis for withholding public records in request #23-78 ("I don't have specific complaints from anyone outside the agency, though issues have arisen that could, at least in part, be attributed to the fact that he isn't able to work inperson. There has been a complaint from another team. member"): the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

This is a request to provide all the materials related to t...

Show more

## **Timeline**

Documents

Tasks

Filter by timeline event Select an event to filter

## External Message



Requester + Staff

Hi Cheryl, This is a request to schedule the following item for a hearing under Section 10(B) for alleged violations by City officers and employees other than

#### Support staff

Annabel Lim

Christine Silva

Hank Willson

Isidro Jimenez

Leanne Nhan

Leslie Fernandez

Matthew Boyle

Misha Tsukerman

Ted Graff

### Tags

Assigned tags

No tags assigned























elected officials or department heads, and non-willful violations by elected officials or department heads. A respondent in a Section 10(B) hearing has the burden of proving, by a preponderance of the evidence, that he or she did not violate the Sunshine Ordinance. While the materials and findings of the investigation are shielded from disclosure unbtil it is completed, the answers to the following questions are subject to public disclosure: who and when commenced the investigation, what entities or persons are conducting it, when it is expected to be completed, and what kind of reporting will be generated as the result. Below in italics is complete communication regarding the matter: \*I am confirming that we received your Public Records Request and we assigned it as PRR#23-1253. In your request, you asked for the following: \* \*Basis for withholding public records in request #23-78 ( "I don't have specific complaints from anyone outside the agency, though issues have arisen that could, at least in part, be attributed to the fact that he isn't able to work inperson. There has been a complaint from another team member"): the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040. This is a request to provide all the materials related to the investigation, that may contain answers to the following questions: who and when commenced the investigation, what entities or persons are conducting it, when it is expected to be completed, and what kind of reporting will be generated as the result. While the materials and findings of the investigation are shielded from disclosure, the questions above are not.If I misunderstood your request, please let

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March 22, 2023, 11:14am by the requester via email

Public

Responsive records are exempt on the basis previously cited (official information privilege Cal. Evid. Code § 1040).

March 21, 2023, 11:01am by Caroline Celaya

## Task Completed

Staff Only

Please task staff with providing responsive records.

March 21, 2023, 11:01am by Caroline Celaya

## Q Internal Message

Staff Only

Isidro Jimenez, Annabel Lim, Hank Willson, Leanne Nhan, Matthew Boyle Reminder - response to this request was due on March 17.

March 21, 2023, 9:36am by Caroline Celaya, 9172 Manager II MTA (Staff)

## Q Internal Message

Staff Only

I have no responsive records. Ted Graff
Director of Parking, Curb Management,
Operations & Contract Admin Streets Division
Pronouns: he/him/his
[cid:image001.png@01D95804.3CF89DA0] San
Francisco Municipal Transportation Agency 1
South Van Ness Avenue San Francisco, CA
94103

[cid:image002.jpg@01D95804.3CF89DA0] [cid:image003.jpg@01D95804.3CF89DA0] [cid:image004.jpg@01D95804.3CF89DA0] [cid:image005.png@01D95804.3CF89DA0]

March 16, 2023, 12:38pm by Ted Graff (Staff) via email

## Document(s) Added

Staff Only

March 16, 2023, 12:38pm by Ted Graff

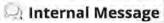
## ☐ Internal Message ^

Staff Only

Isidro Jimenez, Hank Willson, Leanne Nhan, Matthew Boyle

Friendly Reminder -Response to this request is due tomorrow, March 17.

March 16, 2023, 11:53am by Caroline Celaya, 9172 Manager II MTA (Staff)





Staff Only

All, I have no response records. Sid, Ill discuss with you at our 12p 1-1. Let me know if you have questions. Ted Graff Director of Parking, Curb Management, Operations & Contract Admin Streets Division Pronouns: he/him/his [cid:image001.png@01D951A4.9014D0F0] San Francisco Municipal Transportation Agency 1 South Van Ness Avenue San Francisco, CA 94103

[cid:image002.jpg@01D951A4.9014D0F0] [cid:image003.jpg@01D951A4.9014D0F0] [cid:image004.jpg@01D951A4.9014D0F0] [cid:image005.png@01D951A4.9014D0F0]

March 8, 2023, 9:58am by Ted Graff (Staff) via email

## Document(s) Added

Staff Only

March 8, 2023, 9:58am by Ted Graff



Requester + Staff

I am confirming that we received your Public Records Request and we assigned it as PRR#23-1253. In your request, you asked for the following:

Basis for withholding public records in request #23-78 ("I don't have specific complaints from anyone outside the agency, though issues have arisen that could, at least in part, be attributed to the fact that he isn't able to work inperson. There has been a complaint from another team member"): the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

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Sincerely,

#### **Caroline Celaya**

Manager, Public Records Requests

San Francisco Municipal Transportation Agency

1 South Van Ness Avenue, 7th floor

San Francisco, CA 94103

March 7, 2023, 6:49pm by Caroline Celaya, 9172 Manager II MTA (Staff)

## Task Created

Staff Only

Please task staff with providing responsive records.

Assigned to: Matthew Boyle

March 7, 2023, 6:49pm by Caroline Celaya

## Support Staff Added

Staff Only

Hank Willson Leanne Nhan Matthew Boyle Ted Graff

March 7, 2023, 5:40pm by Caroline Celaya

## 

Staff Only

Added: SFMTA - Streets, SFMTA - City Attorney.

March 7, 2023, 5:40pm by Caroline Celaya

## Support Staff Added

Staff Only

Annabel Lim Isidro Jimenez Leslie Fernandez Misha Tsukerman

March 7, 2023, 5:40pm by Caroline Celaya

## **Support Staff Added**

Staff Only

Christine Silva

March 7, 2023, 10:27am (auto-assigned)

## Department Assignment

Public

San Francisco Municipal Transportation Agency (SFMTA)

March 7, 2023, 10:27am (auto-assigned)

## Request Visibility

Staff Only

Department-Only

March 7, 2023, 10:27am (auto-assigned)

## Request Opened

Public

Request received via web

March 7, 2023, 10:27am by Paul Kniha

FAQS HELP PRIVACY TERMS



March 17, 2023

#### VIA E-MAIL

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

RE: SUNSHINE ORDINANCE TASK FORCE, FILE NO. 23020

Dear Mr. Yankee,

The San Francisco Municipal Transportation Agency (SFMTA) is in receipt of the complaint filed by Paul Kniha against the SFMTA for allegedly violating Section 67.21 of the San Francisco Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code), by failing to respond to a public records request in a timely and/or complete manner.

The SFMTA denies all allegations.

Below are the questions listed in the Task Force's instructions for responding to complaints (*Preparing San Francisco Sunshine Ordinance Task Force Response Packets*) and the SFMTA's responses thereto.

1. What was the original request you received?

23-78: This is the request for Public Information, please see details below.

In an email from Hank Willson to MJ Johnson and Rochelle Hooker subject "RE: First Week Check In - P. Kniha" Hank mentions "I don't have specific complaints from anyone outside the agency, though issues have arisen that could, at least in part, be attributed to the fact that he isn't able to work in-person. There has been a complaint from another team member".

The request is to provide all records available regarding the complaint, including but not limited to the original complaint, the response and all subsequent communications between Hank Willson, the person who submitted the complaint and all other people that received, forwarded to or handled the complaint, including emails, typed or written notes, chat messages and meeting notes from all meetings when the complaint has been discussed.

2. What records have you provided in response to the request, and on what date did you provide them?

None.

- 3. What method did you use to locate these records?
  - a. The name and job title of the person who performed the search:
     Hank Willson, Policy Manager for Parking and Curb Management at the SFMTA.

b. The method and search terms utilized:

Hank Willson searched through his Outlook calendar, emails, Teams messages and text messages for records responsive to this request.

Hank Willson searched through his files for any records or notes relating to the subject of this request.

The devices, forms of communication, and/or systems that were searched:

Devices searched include MTA-issued computer and personal mobile phone. Responsive records would not have been generated using any other devices, forms of communication, and/or systems.

c. The dates of these searches:

Approximately January 5-9, 2023 and February 24, 2023.

d. Copies of communications used to conduct the search (such as emails to staff directing them to conduct a search, IT tickets/queries, etc.):

None. Hank Willson conducted the search for records on his own; responsive records were generated by or sent to Hank Willson.

e. Any other information that will help us understand your search methods:
 Hank Willson saves all emails regarding Mr. Kniha in various MS Outlook subfolders, and his calendar contains a record of meetings attended.

4. Did you withhold any information or documents from the requester prior to the filing of the complaint?

Yes.

If yes, explain what documents were withheld and why. Drawing primarily on the Sunshine Ordinance, provide any supporting argument or evidence that each exemption in fact applies.

Paul Kniha was provided the following basis for withholding: the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

Did you provide written justification for all withholding of information prior to the filing of the complaint? If yes, attach evidence.

Yes. See attached email from Caroline Celaya sent to the Sunshine Ordinance Task Force and Paul Kniha on March 7, 2023.

5. Did you redact any information from the documents prior to the filing of the complaint?

N/A

If yes, explain what information you redacted and why. Drawing primarily on the Sunshine Ordinance, provide any supporting argument or evidence that each exemption in fact applies.

N/A

Did you provide a written justification keyed to each instance of redaction prior to the filing of the complaint? If yes, attach the original keyed justifications provided to the requester (if any), and any new keyed justifications for each redaction. Drawing primarily

N/A

6. At the time the request was made, did you search employee personal property (such as mobile phones and computers) for responsive records about the conduct of public business?

Yes-personal mobile phone.

If yes, describe your method for conducting this search. If appropriate, provide supporting documentation in your packet.

See response to #3 above.

No other personal property was used to discuss Mr. Kniha.

- 7. At the time the request was made, did you request relevant records from contractors your agency has funded, managed or hired?
  - No. Contractors would not have any responsive records.

If yes, describe how you communicated this request. Provide supporting documentation in your packet, including communications to and from the contractor.

N/A

8. Are there any known responsive records that you have yet to review for potential redaction and disclosure to the respondent?

No.

If yes, provide the approximate quantity and timeline of future expected disclosures.

N/A

#### Willson, Hank

From: Celaya, Caroline

Sent: Tuesday, March 7, 2023 9:57 AM

To: SOTF, (BOS)
Cc: Paul Kniha

Subject: RE: [External Message Added] City and County of San Francisco public records request #

23-78

Staff informs me that records were withheld for the following reason.

Basis for withholding: the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

#### **Caroline Celaya**

Manager, Public Records Requests



Office 415-646-2556
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103



From: SOTF, (BOS) <sotf@sfgov.org>
Sent: Friday, February 24, 2023 4:02 PM

To: Celaya, Caroline < Caroline. Celaya@sfmta.com>

Subject: FW: [External Message Added] City and County of San Francisco public records request #23-78

Hello Caroline: I received this email from a Petitioner who says he did not receive his records. Any word from you would be appreciated. Thank you.

Cheryl Leger
Sunshine Administrator
Board of Supervisors
phone 415-554-7724 | fax 415-554-5163
cheryl Leger Wasfgov.org | www.sfbos.org

From: Paul Kniha < <a href="mailto:com">com</a>> Sent: Monday, February 20, 2023 2:40 PM

To: Leger, Cheryl (BOS) < <a href="mailto:cheryl.leger@sfgov.org">cheryl.leger@sfgov.org</a>

Subject: Fwd: [External Message Added] City and County of San Francisco public records request #23-78

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Cheryl, this is another complaint.

Respectfully, Paul Kniha

From: Paul Kniha < pkniha@gmail.com > Date: Tue, Jan 24, 2023 at 4:51 PM

Subject: Fwd: [External Message Added] City and County of San Francisco public records request #23-78

To: SOTF, (BOS) <sotf@sfgov.org>

#### Cheryl,

Please see below my original request, and the response from the SFMTA highlighted. I find it very hard to believe, that the Agency has received a complaint, that was serious enough to be mentioned in the discussion of potentially firing a person, and yet it generated no records of any kind. Someone had to submit the complaint, someone had to investigate it, reach out to other staff or higher-level managers, respond to the person that complained, and take some action against the person who was the subject of the complaint. I suspect that Hank Willson has withheld the materials from the public records disclosure, and I would like to take present this matter at the hearing. Thank you.

#### Request Closed

Respectfully,

After reviewing our records, the SFMTA has determined that the agency does not have any records responsive to your request.

Please do not hesitate to contact us if you have further questions on this matter. Thank you for your consideration.

Sincerely,
Caroline Celaya
Manager, Public Records Requests
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103
January 13, 2023, 4:07pm by Caroline Celaya

Paul Kniha	
w. A. T. David.	
Forwarded message	the facility of the second of
From: City and County of San Eran	cisco Dublic Docorde Zellanast (Albaytean) act com

Date: Thu, Jan 5, 2023 at 2:58 PM

Subject: [External Message Added] City and County of San Francisco public records request #23-78

To: <pkniha@gmail.com>

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

## City and County of San Francisco Public Records

## A message was sent to you regarding record request #23-78:

I am confirming that we received your Public Records Request and we assigned it as PRR#23-78. In your request, you asked for the following:

• This is the request for Public Information, please see details below.

In an email from Hank Willson to MJ Johnson and Rochelle Hooker subject "RE: First Week Check In - P. Kniha" Hank mentions "I don't have specific complaints from anyone outside the agency, though issues have arisen that could, at least in part, be attributed to the fact that he isn't able to work in-person. There has been a complaint from another team member".

The request is to provide all records available regarding the complaint, including but not limited to the original complaint, the response and all subsequent communications between Hank Willson, the person who submitted the complaint and all other people that received, forwarded to or handled the complaint, including emails, typed or written notes, chat messages and meeting notes from all meetings when the complaint has been discussed.

If I misunderstood your request, please let me know immediately.

Our department will identify and compile the requested information. The Sunshine Ordinance requires departments to respond as soon as possible or within ten calendar days from receipt of any records requests. Therefore, I will contact you as soon as the responsive documents are ready and will do so on or before January 17, 2023, as permitted by San Francisco Administrative Code § 67.21(b) and California Government Code § 6253(c).

Sincerely,

#### **Caroline Celaya**

Manager, Public Records Requests San Francisco Municipal Transportation Agency 1 South Van Ness Avenue, 7th floor San Francisco, CA 94103

View Request 23-78

https://sanfrancibus.newirequest.com/requests/23-78

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April 27, 2023

#### VIA E-MAIL

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

RE: Sunshine Ordinance Task Force, File No. 23036

Dear Mr. Yankee

The San Francisco Municipal Transportation Agency (SFMTA) is in receipt of the complaint filed by Paul Kniha against the SFMTA for allegedly violating Section 67.10(b) of the San Francisco Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code). It is unclear if Mr. Kniha cited to this section of the Sunshine Ordinance in error as this section is not actionable and may not form the basis of a complaint to the Sunshine Ordinance Task Force. Section 67.10(b) states in relevant part that a "policy body may, but is not required to, hold closed sessions" to "consider... evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing." (emphasis added). Because the decision to hold a hearing is vested within the discretion of the agency, it cannot be a violation of Section 67.10(b) for the agency to choose not to hold such a hearing.¹ Because the SFMTA is not required by Section 67.10(b) to ever hold a hearing, its decision not to hold a hearing cannot be a violation of Section 67.10(b).

Construing Mr. Kniha's complaint liberally based on the communications he attached to his complaint between himself and SFMTA employee Caroline Celaya, he may be attempting to claim that the SFMTA violated the Sunshine Ordinance by improperly invoking the "official information" privilege when it withheld certain records. In the interest of saving the Task Force the time of requiring Mr. Kniha to refile his complaint, the remainder of this response addresses this argument.

<sup>&</sup>lt;sup>1</sup> Additionally, assuming Mr. Kniha is asserting that the SFMTA Board should have held a hearing regarding his dismissal, the Board is not vested with the authority to consider the dismissal of SFMTA 9172 Manager II, Color Curb Manager, as that authority is vested with the Director of Transportation. Thus, even if alleged violations of Section 67.10(b) could form the basis of a complaint to the Sunshine Task Force generally, it would still be inapplicable to Mr. Kniha's dismissal.



The SFMTA denies all allegations.

Below are the questions listed in the Task Force's instructions for responding to complaints (*Preparing San Francisco Sunshine Ordinance Task Force Response Packets*) and the SFMTA's responses thereto.

What was the original request you received?

PRR#23-1253. Basis for withholding public records in request #23-78 ("I don't have specific complaints from anyone outside the agency, though issues have arisen that could, at least in part, be attributed to the fact that he isn't able to work in-person. There has been a complaint from another team member"): the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

This is a request to provide all the materials related to the investigation, that may contain answers to the following questions: who and when commenced the investigation, what entities or persons are conducting it, when it is expected to be completed, and what kind of reporting will be generated as the result. While the materials and findings of the investigation are shielded from disclosure, the questions above are not.

2. What records have you provided in response to the request, and on what date did you provide them?

This complaint is similar to Sunshine Ordinance Task Force File No. 23020 where Mr. Kniha makes the same request. Specifically, since this complaint may be focusing on the claim that the SFMTA improperly withheld information, no search was performed for withheld information related to original request PRR#23-1253.

- 3. What method did you use to locate these records?
  - a. The name and job title of the person who performed the search:
     N/A
  - b. The method and search terms utilized:

N/A

The devices, forms of communication, and/or systems that were searched:

c. The dates of these searches:



N/A

d. Copies of communications used to conduct the search (such as emails to staff directing them to conduct a search, IT tickets/queries, etc.):

N/A

e. Any other information that will help us understand your search methods:

N/A

4. Did you withhold any information or documents from the requester prior to the filing of the complaint?

Yes.

If yes, explain what documents were withheld and why. Drawing primarily on the Sunshine Ordinance, provide any supporting argument or evidence that each exemption in fact applies.

In response PRR request #23-78, Paul Kniha was provided the following basis for withholding: the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

In response to PRR#23-1253, Paul Kniha was providing the following: Responsive records are exempt on the basis previously cited (official information privilege Cal. Evid. Code § 1040).

Did you provide written justification for all withholding of information prior to the filing of the complaint? If yes, attach evidence.

Yes.

- 1) See attached email from Caroline Celaya sent to the Sunshine Ordinance Task Force and Paul Kniha on March 7, 2023.
- 2) See SOTF File No. 23020 Kniha SFMTA Response March 17, 2023
- See communication from Caroline Celaya sent to Paul Kniha on March 21, 2023, Request 23-1253 – NextRequest PDF
- 5. Did you redact any information from the documents prior to the filing of the complaint?

N/A



If yes, explain what information you redacted and why. Drawing primarily on the Sunshine Ordinance, provide any supporting argument or evidence that each exemption in fact applies.

N/A

Did you provide a written justification keyed to each instance of redaction prior to the filing of the complaint? If yes, attach the original keyed justifications provided to the requester (if any), and any new keyed justifications for each redaction. Drawing primarily

N/A

6. At the time the request was made, did you search employee personal property (such as mobile phones and computers) for responsive records about the conduct of public business?

N/A

If yes, describe your method for conducting this search. If appropriate, provide supporting documentation in your packet.

7. At the time the request was made, did you request relevant records from contractors your agency has funded, managed or hired?

N/A

If yes, describe how you communicated this request. Provide supporting documentation in your packet, including communications to and from the contractor.

N/A

8. Are there any known responsive records that you have yet to review for potential redaction and disclosure to the respondent?

No.

If yes, provide the approximate quantity and timeline of future expected disclosures.

N/A



April 27, 2023

#### VIA E-MAIL

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

RE: Sunshine Ordinance Task Force, File No. 23036

Dear Mr. Yankee

The San Francisco Municipal Transportation Agency (SFMTA) is in receipt of the complaint filed by Paul Kniha against the SFMTA for allegedly violating Section 67.10(b) of the San Francisco Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code). It is unclear if Mr. Kniha cited to this section of the Sunshine Ordinance in error as this section is not actionable and may not form the basis of a complaint to the Sunshine Ordinance Task Force. Section 67.10(b) states in relevant part that a "policy body may, but is not required to, hold closed sessions" to "consider . . . evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing." (emphasis added). Because the decision to hold a hearing is vested within the discretion of the agency, it cannot be a violation of Section 67.10(b) for the agency to choose not to hold such a hearing. Because the SFMTA is not required by Section 67.10(b) to ever hold a hearing, its decision not to hold a hearing cannot be a violation of Section 67.10(b).

Construing Mr. Kniha's complaint liberally based on the communications he attached to his complaint between himself and SFMTA employee Caroline Celaya, he may be attempting to claim that the SFMTA violated the Sunshine Ordinance by improperly invoking the "official information" privilege when it withheld certain records. In the interest of saving the Task Force the time of requiring Mr. Kniha to refile his complaint, the remainder of this response addresses this argument.

San Francisco Municipal Transportation Agency

1 South Van Ness Avenue, 72 Floor

San Francisco, CA 94103

SFMTA com

<sup>&</sup>lt;sup>1</sup> Additionally, assuming Mr. Kniha is asserting that the SFMTA Board should have held a hearing regarding his dismissal, the Board is not vested with the authority to consider the dismissal of SFMTA 9172 Manager II, Color Curb Manager, as that authority is vested with the Director of Transportation. Thus, even if alleged violations of Section 67.10(b) could form the basis of a complaint to the Sunshine Task Force generally, it would still be inapplicable to Mr. Kniha's dismissal.



The SFMTA denies all allegations.

Below are the questions listed in the Task Force's instructions for responding to complaints (*Preparing San Francisco Sunshine Ordinance Task Force Response Packets*) and the SFMTA's responses thereto.

What was the original request you received?

PRR#23-1253. Basis for withholding public records in request #23-78 ( "I don't have specific complaints from anyone outside the agency, though issues have arisen that could, at least in part, be attributed to the fact that he isn't able to work in-person. There has been a complaint from another team member"): the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

This is a request to provide all the materials related to the investigation, that may contain answers to the following questions: who and when commenced the investigation, what entities or persons are conducting it, when it is expected to be completed, and what kind of reporting will be generated as the result. While the materials and findings of the investigation are shielded from disclosure, the questions above are not.

2. What records have you provided in response to the request, and on what date did you provide them?

This complaint is similar to Sunshine Ordinance Task Force File No. 23020 where Mr. Kniha makes the same request. Specifically, since this complaint may be focusing on the claim that the SFMTA improperly withheld information, no search was performed for withheld information related to original request PRR#23-1253.

- 3. What method did you use to locate these records?
  - a. The name and job title of the person who performed the search:

N/A

b. The method and search terms utilized:

N/A

The devices, forms of communication, and/or systems that were searched:

c. The dates of these searches:



N/A

d. Copies of communications used to conduct the search (such as emails to staff directing them to conduct a search, IT tickets/queries, etc.):

N/A

e. Any other information that will help us understand your search methods:

N/A

4. Did you withhold any information or documents from the requester prior to the filing of the complaint?

Yes.

If yes, explain what documents were withheld and why. Drawing primarily on the Sunshine Ordinance, provide any supporting argument or evidence that each exemption in fact applies.

In response PRR request #23-78, Paul Kniha was provided the following basis for withholding: the "official information" privilege permits departments to shield from disclosure records of an ongoing investigation where the investigation has been undertaken with an understanding or under established procedures that witness statements and other evidence will be treated as confidential. See generally Cal. Evid. Code § 1040.

In response to PRR#23-1253, Paul Kniha was providing the following: Responsive records are exempt on the basis previously cited (official information privilege Cal. Evid. Code § 1040).

Did you provide written justification for all withholding of information prior to the filing of the complaint? If yes, attach evidence.

Yes.

- 1) See attached email from Caroline Celaya sent to the Sunshine Ordinance Task Force and Paul Kniha on March 7, 2023.
- 2) See SOTF File No. 23020 Kniha\_SFMTA Response March 17, 2023
- See communication from Caroline Celaya sent to Paul Kniha on March 21, 2023, Request 23-1253 – NextRequest PDF
- 5. Did you redact any information from the documents prior to the filing of the complaint?

N/A



If yes, explain what information you redacted and why. Drawing primarily on the Sunshine Ordinance, provide any supporting argument or evidence that each exemption in fact applies.

N/A

Did you provide a written justification keyed to each instance of redaction prior to the filing of the complaint? If yes, attach the original keyed justifications provided to the requester (if any), and any new keyed justifications for each redaction. Drawing primarily

N/A

6. At the time the request was made, did you search employee personal property (such as mobile phones and computers) for responsive records about the conduct of public business?

N/A

If yes, describe your method for conducting this search. If appropriate, provide supporting documentation in your packet.

7. At the time the request was made, did you request relevant records from contractors your agency has funded, managed or hired?

N/A

If yes, describe how you communicated this request. Provide supporting documentation in your packet, including communications to and from the contractor.

N/A

8. Are there any known responsive records that you have yet to review for potential redaction and disclosure to the respondent?

No.

If yes, provide the approximate quantity and timeline of future expected disclosures.

N/A

#### Leger, Cheryl (BOS)

From: SOTF, (BOS)

Sent: Thursday, April 20, 2023 4:08 PM

To: Celaya, Caroline (MTA)

Cc: Paul Kniha

Subject: SOTF - Complaint Filed with the Sunshine Ordinance Task Force - File No. 23036

Attachments: SOTF - Complaint Procedure 2019-10-02 FINAL.pdf; Preparing SOTF Respondent

Materials FINAL for PILOT.pdf; 23036 Complaint.pdf; Affirmation Letter 23036.pdf

#### Good Afternoon:

The San Francisco Municipal Transportation Agency has been named as a Respondent in the attached complaint filed with the Sunshine Ordinance Task Force (SOTF). In an effort to provide the SOTF information in an easy to understand format the SOTF has prepared a revised request format for responding to complaints (attached). The SOTF requests that you submit your response to our office the allegations including any and all supporting documents, recordings, electronic media, etc., to the Task Force within five (5) business days of receipt of this notice. In developing and submitting your response, please use the attached instructions, "Preparing San Francisco Sunshine Ordinance Task Force Respondents Materials," to address your defense of this complaint. This is your opportunity to provide a detailed explanation to allow the Task Force to be fully informed in considering your response prior to the meeting.

Please refer to the File Number 23036 when submitting any new information and/or supporting documents pertaining to this complaint.

Cheryl Leger Assistant Clerk, Board of Supervisors

Tel: 415-554-7724



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#### SUNSHINE ORDINANCE TASK FORCE

Tel: 415 554-7724 Fax: 415 554-7854 TDD/TTY: 415 554-5227



City Hall, Room 244 1 Dr. Carlton B. Goodlett Place San Francisco 94102-4689

March 31, 2023

Caroline Celaya
San Francisco Municipal Transportation Agency

Re: Sunshine Ordinance Task Force, File No. 23036

#### Dear Caroline:

Please review the complaint as described below and acknowledge your department's position on File No. 23036 regarding an alleged violation of the Sunshine Ordinance.

File No. 23036 Complaint filed by Paul Khina against the San Francisco Municipal Transportation Agency for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.10(b) by failing to consider the appointment, employment, evaluation of performance, or dismissal of a City employee.

Please choose ONE answer. You may, if you wish, also attach any additional explanation.

- [a] acknowledge noncompliance for all allegations below
- [b] department/agency declares no-contest to all allegations below
- [c] deny one or more allegations below (please state an additional explanation which of the allegations you deny, and supporting evidence and/or argument)

If you or your entity acknowledges noncompliance or declares no-contest, the SOTF may, at its discretion, issue an Order of Determination against you or your entity for the allegations listed above without a hearing, and thereafter refer the matter to the Compliance & Amendments Committee for monitoring as needed.

Please respond within the next five business days of the date on this notice, with your acknowledgment. If it is not received within five business days, we will assume that you have acknowledged no-contest.

Very Truly Yours,

Matthew Yankee, Chair Sunshine Ordnance Task Force

MY:cal

cc: Paul Khina, Petitioner