



*The records depicted are actual government records. An actor plays the person. Any resemblance to any government official is purely coincidental.*

## Public Records and a Side of Fries

"Will you have fries with that?"

*This article is also published in the **Westside Observer**: <https://westsideobserver.com/23/5-Can-the-Sunshine-Task-Force-enforce-the-sunshine-laws.php>*

Have you ever felt like you have walked into a Monty Python or Saturday Night Live skit? You walk into a San Francisco government department to request a record and you get handed an ad for pet insurance. It could happen to you, and the Sunshine Ordinance Task Force (SOTF) is totally fine with this.

This is the second article in this get your popcorn series. The first is “**Is the Sunshine Ordinance Task Force Ethically Challenged?**” <https://westsideobserver.com/23/4-Is-the-sunshine-task-force-ethically-challenged.php> is the middle of this developing story. Though each story can also be standalone. When we last left, the Sunshine Ordinance Task Force was tying itself in a “conflict of interest” knot to avoid making anything transparent and anyone accountable. Today, we flashback to the beginning of this story. It is so funny, it is sad.

I made what I thought was a simple “Immediate Disclosure Request” request to the San Francisco Department of Public Works for records on any person who had made an inquiry about starting a Green Benefit District (GBD) over a two-year time period, later reduced to 1 year.<sup>1</sup> I also asked about any activities that Public Works had on GBD during the same time

period. The time period was outside any of my prior request I had made about GBDs. I was just following up. I expected the request would produce zero too very few records because I saw no public activity. I used an “Immediate Disclosure Request” because this section of the Sunshine Ordinance emphasizes the word “responsive” as in “*shall produce any and all responsive public records*” (AC Sec. 67.25 (d))<sup>ii</sup>. The wording is lacking in the regular public record request section of the Sunshine Ordinance.

So just so you know how crazy this story is going to get, on the people inquiring about GBDs, I got only 4 responsive records (2 were copies of the other 2 records) of one person asking about GBDs out of 1886 records that had nothing to do with GBDs including commercial advertisements. I got these 4 records a little over a year after my original record request. On the “any activities that Public Works had on GBD during the same time period” part of my request, I was told there were no records 7 months after my record request.

You are not required to state the reason for your record request (Sunshine Ordinance Sec. 67.25 (c))<sup>iii</sup>. Green Benefit Districts are a part of the San Francisco Administrative Code that allows for the creation of property owners accessed (taxed) “Benefit Districts” by establishing semi-nonprofit government entities. In the past, the city was pushing and funding GBD formation committees in non-transparent ways through the at the time Director of Department of Public Works Mohammed Nuru,. What could possibly go wrong with that equation?

The Department of Public Works, “custodian of record” is Mr. David Steinberg. All Department of Public Works employees must notify him of any record request and he wants all record requests to go through a web app called NextRequest. This is partly the city trying to control the release of information. Mr. Steinberg follows his own set of public record request laws, which can deviate greatly from the SF Sunshine Ordinance and the California Public Record Act (CPRA). My request to find out if the city was still funding startup GBDs could have been asked as a simple question which is not disallowed by the SF Sunshine Ordinance. The SF Sunshine Ordinance provides requests can be answered orally, as information, or as a record.<sup>iv</sup> Mr. Steinberg doesn't allow any public record request that ends in a question or appears to be a question even if there are responsive public records to the request. So, with him, you can get into wording your questions as statements as if you are part of a game show. Example of public record request by someone in the news media asking about parklets which was thrown out by Mr. Steinberg. <https://sfneighborhoods.net/docs/articles/recordfries/nextrequest21-46questionexample.pdf>

It was pretty clear from the beginning Mr. Steinberg was playing games with the request. He said he found over 13,000 responsive records to my request and that it would take him over 4 years to produce. Records are digital now, so ̄\\_ツ)̄/ He asked me to narrow my request which I tried multiple times. Now, it was supposedly reduced to 7,500 e-mails. This back-and-forth went on for a bit. I asked him to “*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*” Sunshine Ordinance Sec. 67.21 (c)<sup>v</sup>, to help him and me reduce the number of records. To which he claimed that giving a total amount of records that would be generated each time I made a suggestion suffices for giving a statement for me to narrow my request. “You will

note, however, that we have already essentially provided to you such information when we notified you of the approximate number of emails responsive to your request.” Of course, this is not enough specificity to both narrow the request as he asks, nor does it comply with the law.

Not getting any help but intentional runarounds, I decided to find out how he was doing his searches. I did another public record request for search manuals and training on how public record searches were being done.

While I was getting this search information, Mr. Steinberg produced 3 records outside the dates of my original request and closed my record request stating “In this case, the records are two years' worth of emails, and Public Works finds that the public interest served by not disclosing the documents requests clearly outweighs the public interest in disclosing the records in light of the presence and availability of staff during the COVID restrictions to adequately and efficiently produce the requested documents and files. This determination also is based on the following: "the voluminous nature of the request, your unwillingness to work with us to create reasonable search parameters that would allow us to deliver records to you in a timely manner.”

This is just turning everything on its head. My unwillingness to work with him to create reasonable search parameters? There was no difference in his staffing levels during Covid restrictions. A government official deciding what the public interest is in government transparency?

The courts have upheld that there is no volume record limit. In *Getz v. County of El Dorado*, the Third District Court of Appeal overturned a trial court decision and found that the County of El Dorado was required to disclose over 40,000 records in response to a request made under the California Public Records Act (“CPRA”). If there was such a limit, city agencies could just inflate numbers to not produce records that are actually responsive to a request, as Mr. Steinberg is doing here.

I asked the Sunshine Ordinance Task Force (SOTF) administrator “to assist any person in gaining access to public meetings or public information” **Sunshine Ordinance Sec. 67.31** by requiring Mr. Steinberg to reopen the public record request even though to my knowledge this has never worked. It did not work here. I had to file a complaint with SOTF.

SOTF heard the complaint six months later. SOTF found that “Public Works violated **CPRA, Section 6253(b)** by withholding all records in their entirety and orders the Respondent to resume production of records to the Petitioner and **Administrative Code (Sunshine Ordinance), Section 67.26** for withholding all records in their entirety.”

[https://sfgov.org/sunshine/sites/default/files/sotf\\_110321\\_minutes.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_110321_minutes.pdf) Mr. Steinberg claimed he would only have enough time to produce 20 records a week and would take at least 2 years. Mr. Steinberg's primary job is to reply to public record requests. During the hearing, SOTF Member Schmidt stated he should start producing records immediately and that I could narrow my request once I started seeing the records. **Sunshine Ordinance Sec. 67.21 (e)** “*If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance.*”

Mr. Steinberg started producing public records 30 days after the SOTF order. I again tried to narrow my request only for Mr. Steinberg to say there were 8,586 items found. In the end, Mr. Steinberg produced 1886 records, including 234 commercial ads. The 4 responsive records were produced at the end of the record production. At various times, he claimed it would take him 2 to 4 years to produce the records. From the time he started producing records, it took him just a little over 6 months. What happened to the claim of 8,586 records now only 1886? I guess he just ran out of steam and realized he was doing all this made-up “work” hiding 4 responsive records. I tried early on to limit some records like saying “no ads”, but it did not matter. He continued to produce ads and other records that had no mention of Green Benefit Districts. Mr. Steinberg looks at all public records before he makes them public. It was obvious from the start that Mr. Steinberg was making up finding “responsive” records. I decided to let the horse run for all he wanted.

Example of one of the responsive records on GBDs:

<https://sfneighborhoods.net/docs/articles/recordfries/restreetparksgreenbenefit.pdf> The other three are basically copies of this email exchange.

This burying responsive records in an avalanche of irrelevant or junk records is not uncommon. It goes against the core purpose of public access laws and government transparency. The **CPRA** has a very strong clause in it in **Sec 6253 (d)** “*Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.*” There is no echo of this in the San Francisco Sunshine Ordinance. It is a weakness in the San Francisco Sunshine Ordinance. Luckily, the CPRA states it is the bare minimum for compliance. Both laws state something similar to **Sunshine Ordinance Sec 67.21 (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 requirements provided in this ordinance.*” **CPRA 6253 (e)**<sup>vi</sup>. The two laws can be read as one law, and which ever has the stronger provision should be what is enforced.

Now I think that since the citizen of San Francisco voted to put the San Francisco Sunshine Ordinance in 1999 into the city's administrative code, they were demanding a higher standard of disclosure requirements and transparency from their city. That the SOTF would be fighting against any obstructing of public record disclosure. At least with the current iterations of SOTF, the task force rarely enforces an agency to make records public within 5 days, as mandated by **San Francisco Sunshine Ordinance Sec. 67.21 (e)**. Both the CPRA and San Francisco Sunshine Ordinance have a 10-day deadline for a public record request, with a 14-day extension in certain situations. You would think that SOTF would be interested in their orders of determination being followed after they have spent time producing them and the member of the public has been waiting months for their record request to be complied with, but SOTF seems to lose interest in any enforcement of public record laws post their order of determination. City officials like Mr. Steinberg understand they can violate public access laws with no repercussions.

In this public record request, Mr. Steinberg threw everything he could make up in violating the San Francisco Sunshine Ordinance and CPRA. In this article, I did not go into all the violations because it would be getting too much in the weeds, but I will touch on them in the next article.

The next article is about what SOTF does when I submit complaints about Mr. Steinberg's obstruction and ask them to enforce the Sunshine Ordinance. It is comical but sad. They do not even seem to know their own by-laws, let alone the public access laws they are supposed to defend.

*Sullivan runs the website <https://www.sfneighborhoods.net/> committed to giving power to citizens to promote transparency, democratic equality and to increase participation in their neighborhoods and government.*

## End Notes

<sup>i</sup> Green Benefit District "Immediate Disclosure Request" Public Record Request <https://sanfrancisco.nextrequest.com/requests/21-2053> To actually read all the request, you would have to hit the "show me more" link for a long time. It is located as a pdf here: <https://sfneighborhoods.net/docs/articles/recordfries/nextrequest21-2053steinberggbdinquiry.pdf>

<sup>ii</sup> **Sunshine Ordinance Sec. 67.25 Immediacy of Response (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 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. Failure to comply with this provision is a violation of this Article."*

<sup>iii</sup> **Sunshine Ordinance Sec. 67.25 (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."*

<sup>iv</sup> **Sunshine Ordinance Sec. 67.22 Release of Oral Public Information, Sec. 67.20 Definitions (b)** *"Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9)."*

<sup>v</sup> **Sunshine Ordinance Sec. 67.21 (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."*

<sup>vi</sup> **CPRA 6253 (e)** *“Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.”*