

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

January 27, 2011

DATE THE DECISION ISSUED

January 25, 2011

DORIAN MAXWELL v SF MUNICIPAL TRANSPORTATION AGENCY (CASE NO. 10059)

FACTS OF THE CASE

Complainant, Dorian Maxwell, alleges that the San Francisco Municipal Transportation Agency ("MTA") refused to provide documents responsive to his October 18, 2010, public records request for "any and all documentary evidence such as emails, inspectors reports, photos, etc for review. In respect to a matter backdated September 25, 2010." He also alleges that MTA's refusal occurred on October 27, 2010, but fails to say whether was delivered orally or in writing.

COMPLAINT FILED

On November 2, 2010, Mr. Maxwell filed a public records complaint against the MTA for violations of Section 6254 and Section 6256 of the California Public Records Act.

HEARING ON THE COMPLAINT

On January 20, 2011, Mr. Maxwell appeared before the Task Force and said the MTA had not responded to his request and had not produced the requested records. The MTA was not present at the meeting. There was no one in the audience who spoke for or presented facts on behalf of the MTA. The matter was rescheduled to the January 25 meeting and it was later known that an MTA representative was in the audience. On January 25, 2011, Mr. Maxwell again appeared before the Task Force and presented his case. Cyndia Chambers and Rumi Uno represented the MTA.

Mr. Maxwell told the Task Force that since the January 20 hearing, the MTA had provided him with all but two documents: an inspector's report and an alleged document that should have been attached to a photo he had been provided by MTA.

Ms. Uno, an Employee Labor Relations Manager for the MTA, said Mr. Maxwell was subject to a "Skelly" hearing, an administrative process that precedes a department's action to dismiss a public employee for cause. She said certain items that Mr. Maxwell was seeking are either premature or inappropriate to be placed in his personnel file because he has not exhausted the administrative appeal process. She said if Mr. Maxwell was seeking documents

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related to a disciplinary hearing, they would not be in his personnel file until the conclusion of the hearing process. She said Mr. Maxwell made an appointment to review his personnel file and noticed certain documents missing. She said based on the MTA's procedure, the type of document would indicate where it would be filed. Eventually, she said, the documents would be placed in the personnel file at the conclusion of the administrative appeal process.

Ms. Chambers, Mr. Maxwell's superintendent, said he has the right to come to the office and review any of his personnel files there. She said he came with his shop steward last month and reviewed all the files and, in fact, she assisted him by providing him information related to another matter that occurred several years ago. As Mr. Maxwell's superintendent, she said, she has tried to help him with everything that he needs.

To Member Knoebber, Mr. Maxwell said since he was interviewed by an inspector, who also searched his bus related to the alleged employee misconduct, there should be a report reflecting that encounter. He also said he believed the photo must have been accompanied by an attached document because the picture was not time-stamped and a document usually accompanied photos used in disciplinary hearings to explain when and where a photo was taken .

Ms. Uno said she believes Mr. Maxwell is referring to the Skelly packet because her office has to provide public employees who have a pending disciplinary hearing a notice that says what disciplinary action MTA is proposing or recommending based on collected evidence. She said although Mr. Maxwell thinks the packet should contain the report, the proposal or recommendation made was not based on such a document and that its existence was unknown.

Regarding the photo, she said she did not know if it was attached to another document and, if it was, the MTA chose not to use it because it was not in the packet and was not used to support the proposal or recommendation.

Ms. Chambers told Member Snyder that she may or may not have received Mr. Maxwell's letter on or after October 18, but responded only on Monday because of the Skelly hearing. She said there is a procedure and a process in which every time there is a hearing, he is entitled to the hearing file. She said he also has a shop steward and a union representative who are supposed to supply him with what he wants. She said he came to her office on Monday and she gave him his Skelly paperwork and some memos and references related to an offense that he had allegedly committed. She reminded the Task Force that Mr. Maxwell's appeal process was ongoing and that a final decision has yet to be reached.

In closing, Ms. Chambers said the MTA has rules and regulations as well as processes and procedures, all of which she follows, and that the MTA has some employees who feel that the employer is not doing what they expect it to do.

Mr. Maxwell said the inspector's report would have exonerated him of the alleged offense because the inspector searched the bus and the materials that the MTA claimed he had did not exist. He also said there was confusion in his complaint and wanted it clarified to reflect that the MTA had not responded to his request by October 27.

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Members found that Mr. Maxwell's request was for all documents held by MTA, and was not limited to the Skelly file or his personnel file. They also found the MTA needed to respond within the statutory time frame because Mr. Maxwell had invoked the Sunshine Ordinance. They added that regardless of whether the documents were public, they were required to respond to the request under the Ordinance, and at some point the MTA needed to seek guidance from the City Attorney's Office or its own public information office staff on how to respond to a Sunshine request. The Task Force applauded the MTA for its good-faith approach in following the Skelly hearing procedures, and for coming and explaining its case.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Sunshine Ordinance Sections 67.25 for failure to respond, 67.26 for not keeping withholding to a minimum, and 67.27 for failing to provide justification for withholding, and California Public Records Act Section 6254(c) because the requestor was asking for his own file and therefore disclosure to him could not have invaded his personal privacy.

The MTA shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on February 8, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 25, 2011, by the following vote: (Johnson / Snyder)

Ayes: Snyder, Manneh, Washburn, Knoebber, Wolfe, Chan, Johnson, Knee

Excused: Cauthen



Richard A. Knee, Chair
Sunshine Ordinance Task Force



David Snyder, Member, Seat #1*
Sunshine Ordinance Task Force

c: Dorian Maxwell, Complainant
Cyndia Chambers and Rumi Uno, SFMTA, Respondents
Jerry Threet, Deputy City Attorney

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*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.