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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF SAN FRANCISCO

18 SHORT TITLE: SF COALITION, ET AL, v. CITY AND COUNTY OF SAN FRANCISCO

19 THE SIERRA CLUB, et al.,

20 Petitioners and Plaintiffs,

21 vs.

22 CITY AND COUNTY OF SAN FRANCISCO,
23 et al.,

24 Respondents and Defendants,

25 SAN FRANCISCO RECREATION AND
26 PARKS DEPARTMENT, et al.; AND CITY
27 FIELDS FOUNDATION AS INTEVENOR

28 Real Parties in Interest and Defendants
and Intervenors.

Case No.: CPF-12 512566

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PETITION FOR
WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Assigned for All Purposes to
Hon. Teri L. Jackson

Hearing: August 16, 2013
Time: 9:45 a.m.
Dept: 503 (CEQA CASE)

1 Petitioners and Plaintiffs THE SIERRA CLUB; SF COALITION FOR CHILDREN'S
2 OUTDOOR PLAY, EDUCATION AND THE ENVIRONMENT; Dr. ANN CLARK; and
3 MARY ANNE MILLER, (collectively, "Petitioners") hereby request that the Court take judicial
4 notice, pursuant to Evidence Code Sections 452 and 453, of the following documents in support
5 of their Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief:


6 1. Attached hereto as Exhibit A is a true and correct copy of San Francisco Ethics
7 Commission Regular Meeting, February 25, 2013. The transcript is an official act of the City
8 and County of San Francisco and their authenticity is not reasonably subject to dispute and is
9 capable of immediate and accurate determination by resort to the agency's administrative files.
10 Evid. Code § 452(c), (h).

11 2. Attached hereto as Exhibit B is a true and correct copy of the Recreation and
12 Park Department Records Retention and Destruction Policy. The Policies are legislative
13 enactments issued by the City and County of San Francisco. Evid. Code § 452(b). They are also
14 official acts of the City and County of San Francisco and their authenticity is not reasonably
15 subject to dispute and is capable of immediate and accurate determination by resort to the
16 agency's administrative files. Evid. Code § 452(c), (h).

17 3. Attached hereto as Exhibit C is a true and correct copy of the Recreation and Park
18 Department Records Retention and Destruction Schedule. The document is a legislative
19 enactments issued by the City and County of San Francisco. Evid. Code § 452(b). It is also an
20 official act of the City and County of San Francisco and their authenticity is not reasonably
21 subject to dispute and is capable of immediate and accurate determination by resort to the
22 agency's administrative files. Evid. Code § 452(c), (h).

23
24 July 8, 2013

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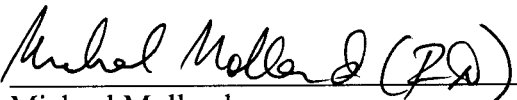

Michael Molland
Attorneys for Petitioner and Plaintiff
THE SIERRA CLUB

EXHIBIT A

PARTIAL TRANSCRIPT

San Francisco Ethics Commission Regular Meeting
February 25, 2013

Commissioners in Attendance: President Hur; Commissioners Liu, Studley, Renne
Absent: Hayon

.....

Partial Agenda:

Agenda Item 3b: Ethics Complaint No. 15-111205 regarding alleged willful violation of the Sunshine Ordinance by a department head. Complainant: George Wooding. Respondent: Phil Ginsburg, General Manager, San Francisco Recreation and Parks Department.

Agenda Item 4a: Ethics Complaint No. 15-111205 Complainant: George Wooding.
Respondents: Sarah Ballard, Mark Buell, and Olive Gong, San Francisco Recreation and Parks Department.

1:04:32

HUR: Next item on the Agenda is 3b, Ethics Complaint No. 15-111205 regarding an action by George Wooding, and for this item the respondent is Phil Ginsburg. Are both the complainant and the respondent present? OK. Mr. Wooding, you have up to ten minutes.

WOODING: May I shut this?

HUR: Yes.

WOODING: Good evening, President Hur and Commissioners. Thank you for listening. My name is George Wooding. I'll start by saying this hearing would have been completely unnecessary had Recreation and Parks Department Secretary Olive Gong simply reviewed

the RPD backup IT or contacted the Dept. of Technology and had them review the RPD records when they were Sunshine requested. Within days of the Sunshine Ordinance Task Force ordering her to do so my recollection is that she finally provided the emails which RPD had previously claimed had been deleted. I'd like to read what Ms. Gong sent 141 days after my request: "Dear Mr. Wooding and ____: Attached are documents in response to Mr. Wooding's request for records. The records were not withheld. They were deleted by staff before Mr. Wooding's request was made. Staff receives hundreds of emails and are not able to save all of them. Records were retrieved from the City's Dept. of Technology from backup tapes. Best regards, Olive Gong." OK. Olive Gong was asked twice by the Sunshine Task Force for IT records and she did not review the IT records. As Mr. Monette-Shaw mentioned in the Good Government Guide on Page 89, Mr. Herrera likens IT files to something that should be found in a dumpster. Basically my case ...I'll make this more illustrative. This is a case about how the Recreation and Park Department, a public city run agency, directed by Phil Ginsburg, abused the first amendment free speech rights of private citizens and then tried to hide the abuse by deliberately deleting all public records relating to the RPD sabotage of a public forum at the Commonwealth Club by changing the title, the panelists and the content of the meeting.

Case overview: The RPD was unhappy that citizens with differing points of view than the RPD's official policy were going to speak at the Commonwealth Club. The topic was to discuss Golden Gate Park and was called "Golden Gate Park Under Siege." And this was a discussion on how RPD was commercializing park assets like the Arboretum and in particular they were trying to build an artificial turf soccer field at the Beach Chalet. Miss Ballard, I think working on behalf of Mr. Ginsburg, wrote a letter to Cary Curtiss and asked him to change the meeting. She said, basically ...she goes on and says that the allegations stated in Mr. Buell's April 25th email "I hope this clarifies your questions. I will send a copy." What she was really doing was questioning the validity of the panelists that the

Commonwealth Club had invited, I being one. I want to read to you who the panelists were: One was Jim Chappell, former Director of SPUR. He was to be the moderator. I think you may know him. Another was Thea Hartwig, a published author on historic preservation. She has a University of California Ph.D. and is the Director of the Western Region of the National Trust of Historic Places, a prominent non-profit with 370,000 members. Kathryn Howard is an urban landscape architect, ASLA, and is the former chair of SPUR's Environmental Committee, the Golden Gate Park Preservation Association. Michael Lynes is Conservation Director and General Counsel for Environmental Matters for the Golden Gate Audubon Society. And then myself. I run several neighborhood groups and I was there to basically give the neighborhood response. And this was the group who was going to be speaking on the 5th of May. They did an investigation on us because of Recreation & Park's letters and said "they were satisfied that the panel was well qualified and collectively that they do not appear to present a general bias that I can detect." At that point, on April 25th we were acceptable as a group. What transpired in the next couple of days was that the Commonwealth Club started receiving calls talking about the panel being biased. Um, so anyhow, as this goes on Ginsburg and Buell were able to start changing this meeting. They changed the title, they changed the panel by adding Mark Buell and they changed the content. They were clearly unhappy with this meeting and decided to unofficially add Buell as a speaker. And, so, it became a much different meeting. And how they did it is they sent letters, and they pretty much abused the panel members by saying things behind our backs, saying that we inadequate, we were abusive, we were biased, we couldn't hold the meeting. It worked. The Commonwealth Club basically caved in. And what happened is I received a bunch of documents from the Commonwealth Club, and then I did a Sunshine request to Olive Gong and asked her for the same documents, and she said those documents don't exist, and I had them. So I requested to her for process if she would through these and let me know what each department said and if they had any of these emails. And she went

back and said, “No, we don’t have any of these emails.” So, it came down to we were basically, though I had all the records and I had letters, Recreation and Park was telling me they had nothing.

I want to go to basically what was going on here. The RPD wanted to protect its City Fields Foundation, a private enterprise that installs artificial turf on the city’s playing fields and did not want conflicting viewpoints being made public, especially at the Commonwealth Club. The Fisher family, the sponsors of City Fields Foundation, are working with the RPD to pave over the 7.5 acre Beach Chalet grass soccer fields by replacing the natural grass with synthetic grass. Fearful that the Commonwealth panel would upset the City Fields Foundation’s soccer fields plans, Ginsburg, Ballard, Buell and lobbyist Susan Hirsch who runs City Fields Foundation tried to either cancel or alter us. This is what was said: After the calls Sarah Ballard said, “the panelists were likely to incite the audience, were not rationally able to discuss the issues; panelists were deeply biased; had no interest in discussing facts; answers would be heavily skewed. We are all surprised that the Commonwealth Club’s name would be attached to something that was so clearly hyperbolic. The forum should be cancelled.”

Mark Buell, in an email to Commonwealth Club COO Greg Dalton: “I find the title inflammatory, the participants biased, and the fact that no one from the RPD was invited hard to understand. As President of the Commission I would like to urge the club to both alter the title of the event to Issues Facing the Park and ask the Club to have a representative of the RPD on the panel.” Mark Buell was then subsequently added. City Fields Foundation lobbyist Susan Hirsch wrote to event moderator Jim Chappel from her private email address on May 3: “I want to follow up on the phone message I left you regarding the upcoming Commonwealth Club discussion about Golden Gate Park. You and I discussed this project ...”

Due to time, I'm going to come right to the point. The point is that this was a public agency going after a group of citizens, and then later deleting all their emails like mad although they had these emails on their IT, they wouldn't provide this, and I read Mr. St. Croix'...I don't claim to be an expert, but he clearly favors Phil Ginsburg in this. So I think this is a bigger issue than just going through 62.735. This about what agencies are doing to people in this city and how they're treating people. Thank you.

1:148

HUR: Thank you Mr. Ginsburg, err, sorry, Mr. Wooding.

GINSBURG: I'm Phil Ginsburg, the General Manager of Recreation and Park Department. I'm going to be brief and just ask the Commission to adopt the findings of Staff and dismiss the complaint. We've submitted a letter that was prepared in conjunction with the City Attorney and signed by Olive Gong concerning the records on February 15th that lays out our rationale and essentially there has been no violation of either 67.21, 67.25, 67.26 or 67.27 and the charges lack merit. I would start by saying that our department has a tremendous amount of respect for our city's Sunshine laws and is very committed to transparent government. Last year in calendar year 2012 we responded to 175 different Sunshine requests and we devote almost a full FTE's time to serve in the role as the custodian of records and then make sure that the work gets done to produce Sunshine requests. In this particular case there were no documents, and I know that the charges have been separated under the regulations, I'm under Title 3, I guess, and Miss Ballard and Mr. Buell are under Title 2, so I will focus on the emails that Mr. Wooding said in his presentation were three emails, one was sent by a private citizen, Susan Hirsch, to the Commonwealth Club, and there were two communications that were cited, one by Miss Ballard and one by Mr. Buell to

representatives of the Commonwealth Club asking that we be represented on the panel. And either the substance or Mr. Wooding's perceptions of what our true motives were are certainly subject to debate and perception but at the end of the day there was a public discussion about Golden Gate Park and we asked for some representation on the panel. The charges that are directly focused on me I think that there was an email on which I was carbon copied. I did delete the email. It was sent at home. I probably get well over 300 emails a day, and based on the department's record retention policy that is not a record that in my view, at least at the time, was either essential or required any kind of serious departmental action. This was an outside entity that, again, was hosting a panel and the emails that Mr. Wooding cites were again in an effort to have a department representative and present what we felt to be a balanced view of a public policy issue. It was nothing that required departmental action. It was not anything that was either an essential record or a legal record, and Mr. Wooding's Sunshine request I believe came in on June 3rd and on June 6th I responded to the Custodian of Records Miss Gong that I didn't have any emails and went forward from there.

1:19:31

HUR: Thank you, Mr Ginsburg. If you'll stay, we'll have some questions after public comment. Thank you. Mr. Gooding (sic) time for rebuttal.

WOODING: Thank you. Having the ability to delete emails in a quick fashion does not make one moral or upstanding or a good manager of an agency. I still look at the bigger picture of what was happening and what they were trying to do, the lobbyists in particular. This whole thing was about saving a field and limiting citizens who could talk about that in a big public forum. Ninety-nine percent of the information that comes out about Rec & Park comes from

Rec & Park. You get very little citizens' input or forums. I think I'm going to just read what Hope Johnson said. According to Hope Johnson, President of SOTF: "the RPD emails should have been retained in a professional and businesslike manner under a records retentions policy, and Rec & Park needed to take responsibility for that action." She also stated: "I believe that this case demonstrates the need for the Mayor, Ethics Commission and District Attorney to enforce the Sunshine Ordinance is much deeper than simply adhering to an ordinance. Rec & Park's lack of compliance was also hiding City employee and Commissioner attempts to sabotage public discussions of privatization of public lands. These public officials were signing their non-public emails with their public titles to sway the Commonwealth Club to bias a forum arranged by members of the public." Hope was the President of SOTF at the time she wrote this. So, Mr. Ginsburg is...whether he gets off the hook...but he was clearly complicit as he was getting emailed by Mark Buell. And he either helped plan it, he helped orchestrate it, he may very well get 300 emails a day. He may only get five from Mark Buell. I'll bet he reads every one of them. So, I think, I think, what they were doing is they were working as a unit. Ballard is a subordinate of Ginsburg, she was acting at his behest. It's pretty clear that this was done as a group effort. So, thank you very much.

HUR: Thank you Mr. Gooding...Wooding. I'm so sorry. Ginsburg, Wooding, I'm mixing them up and I very much apologize for that. Public comment on this matter.

1:22:53

SPEAKER #1: My name is Monette-Shaw. I'm here on my own time. Isn't it curious that Mr. Ginsburg is being disingenuous with you? First he says in his testimony "there were no documents." Then he changes his mind and says "there were no essential records." Then,

when he reports to you that he told Miss Gong that he didn't have any emails, what he should have said to her was, "I've already deleted them." Because that may have set off that little alarm bell in the secretary's head that she should have turned immediately to back-up tapes to retrieve the documents that he had deleted but failed to tell Miss Gong that he had deleted. Government Code 340.90 says: "That unless otherwise provided by law and only with approval of a legislative body by resolution and the written consent of the City Attorney heads of city departments may not destroy city records after a document is no longer required." 340.90 does not authorize destruction of records less than two years old. Further, 340.90.7 writes that only duplicates of city records less than two years old may be destroyed if no longer required. This body, this Ethics Commission, has an ethical duty Mr. Renne to notify Mr. Herrera that he must rewrite his good government guide that uses the analogous city-owned dumpster so that city employees don't have to go climbing into to find deleted records. That's ridiculous, under 340.90. Gong never said at the outset that the records had been deleted. She never told Mr. Wooding that the records had been deleted. In fact that didn't come up until right at the end of the SOTF process, when he was finally told that they were in fact deleted. Had he been told that earlier he could have asked earlier that back-up tapes be searched. Mr. St. Croix' recommendation to dismiss notes there is no requirement to refer records requestors to private entities. That is complete hooey. In fact, what Miss Gong should have done was to refer Mr. Wooding to the Department of Technology and Information Services which is the city agency which must have bypassed Mr. St. Croix' awareness. Miss Gong should have referred George to DTIS. The second thing that she did not do...

HUR: Mr.Shawn, thank you. Your three minutes are up.

SPEAKER #1: It's a private-public partnership. She had an obligation to refer Mr. Wooding to private entities that...

HUR: Mr. Shawn, we have a lot of speakers today and I am going to limit people to three minutes.

SPEAKER #1: Continues speaking off mike. Cannot understand.

SPEAKER #2: Good evening, Commissioners. My name is Greg Miller. I'm a resident of San Francisco for about 38 years. I'm not an expert on Sunshine law so please bear with me if some of my comments seem a little bit general. I did want to point out one thing. Mr. Ginsburg said that the letters just asked to include the city in this meeting. But one of the first letters from Sarah Ballard addressed to the Commonwealth Club on April 20th, which she signs as Sarah Ballard, Director of Public Policy and Public Affairs for the San Francisco RPD, basically says that this is a deeply biased panel with no interest in discussing facts. I am hopeful that you will cancel the panel and you will put on more balanced approach. So, I mean, here we have basically using the official title of a city employee, highly paid, very high up in the department, basically requesting a private club that ordinarily puts on a lot of controversial presentations to scotch this one. And that's the pattern here. The underlying pattern is that a number of city officials...paid employees as well as city Commissioners...basically went out of their way to use their official titles and approach a private entity and discourage a public meeting on public affairs. And they did it by basically saying these people are unqualified, these people are biased, these people will incite the public, this is totally inappropriate, please do not have this meeting. That to me, as an individual, as a citizen is deeply, deeply disturbing. Our country is based on the principle of the public being able to get together to discuss issues. We may not always agree with each

other That's fine, but the point is we have to have the faith that our government is not going to turn on us and do everything in their power and their prestige to try to prevent people from speaking. All that will do ultimately is deeply undermine our faith and our desire to work with our own government, which is our government, all of our government. So that's why this is very important, and I ask you to consider very seriously that they said these records weren't there because everybody had deleted them. Whatever the case is, these records should not have been deleted. They pertained to the basic important rights and interests of the public, and these people were involved in basically saying these people should not have the right to speak in public and meet in public. And that I find deeply disturbing as a citizen, as a member of this society. Thank you very much for your time.

SPEAKER #3: Good afternoon again, Commissioners. I'm Dr. Garrett Kerr. Mr. Ginsburg mentioned something about 300 emails a day. But some of those are just junk emails, there are going to be inquiries about what time the park opens or the swimming pool closes. And we know that this was an important issue. This was not a trivial matter. The individuals involved in this correspondence and this lobbying back and forth are important individuals in the city. This is not the kind of correspondence that one deletes because it's of no value as a record. One deletes this information to conceal what it contains. Mr. Wooding said that there's a bigger issue here, and the bigger issue is one of ethics. Now, this matter can be reduced and narrowed down to a technical, legal point that will make it much easier to dismiss this case as virtually every other Sunshine case has been dismissed. But this is an Ethics Commission. It would be nice if there were a professional ethicist here. But even so, there isn't, it would be good if once in a while the ethical dimension of the behaviors you're hearing about would be considered rather than just the loopholes and technicalities of the law. Thank you very much.

1:31:30

HUR: It looks like people are lining up.

SPEAKER #4: Good evenings, Commissioners. My name is Nancy Wuerfel. Mr. Ginsburg is guilty of willful violation of the Sunshine Ordinance. He is a lawyer, he was employed as a Deputy City Attorney, he knows not to leave any smoking-gun emails around on a computer. Not only he is adept at eliminating damning evidence from being connected to him, he has motive for his actions. He absolutely did not want a discussion about a controversial decision made by him to be aired in a public forum that he could not control. He knows how to use his influence as the General Manager of Rec and Park to intimidate people. He and others had every intention of cancelling or seriously changing the format of the planned discussion about Golden Gate Park issues to be held at the Commonwealth Club. Of course any emails about interfering with the public forum were instantly deleted, not because of a deep commitment to the department's record retention policy, but because Ginsburg knows that the Sunshine law requires disclosures. He's not stupid. Had it been true that the motive for record destruction was implementing the department's policy then this should have been stated to Mr. Wooding at the outset. The disclosure that there were once emails but they were indeed destroyed according to regulations would have led to the next requirement in the Sunshine Ordinance which is to assist in referring Mr. Wooding to someone who could help him with his records request. Miss Gong should have referred him to the Department of Technology about recovering the deleted emails, since her technology staff could not help. Let us not kid ourselves. Mr. Ginsburg attempted a cover-up of an ill-advised attempt to influence a private entity from having an open panel discussion about contentious development in our City's most famous and beloved park. He wanted to use his government position to exert power over the public who were simply exercising their First

Amendment rights of freedom of speech and assembly. The Sunshine Ordinance and the Brown Act were created specifically to facilitate people, helping people find out just such misuses by our trusted officials. There's nothing innocent about erasing these emails. Mr. Ginsburg is guilty as charged. The regulations for violations of the Sunshine Ordinance call for you Commissioners to consider all the relevant circumstances surrounding this case. You must consider Mr. Ginsburg's motive in his actions to destroy evidence. The Code of Ethics of the Ethics Commission requires that you set the highest standards of conduct, including the appearance of propriety of the operation of government and to assure public confidence in its governing institutions. I am holding you to this Code of Ethics today, and am awaiting your decision that will assure the public that we should have confidence in our city government. Thank you.

SPEAKER #5: Peter Warfield. I'm not familiar with the details of the case, nor am I a party to it. But I must say I was taken aback by Mr. Ginsburg's "the dog ate it" defense. First of all, what park's policy was he following, if indeed he claims he was following it. I think you should certainly ask under what policy was he destroying these documents. And I should back up and say I support Mr. Wooding's request and position, as many of the other folks previously have said. I would like to read to you Sec. 67.29-7: Correspondence and Records shall be maintained. Section A: The Mayor and all Department heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, emails, drafts, memorandum, invoices reports and proposals, and shall disclose all such records in accordance with this ordinance. That doesn't allow for the dog ate it, or it wasn't an important enough document, or some such reasoning. I'll read it again in full, it's one sentence. "67.29-7: Correspondence and Records shall be maintained. Section A. The Mayor and all Department heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence,

including but not limited to letters, emails, drafts, memorandum, invoices reports and proposals, and shall disclose all such records in accordance with this ordinance.” Thank you.

SPEAKER #6: Good evening, Honorable Commissioners. It’s an honor to stand before you. I’ve watched you on TV quite a bit and I really appreciate your dedication. I know this isn’t an easy job on a good day. My name is Suzanne Dumont and I am person who has actually been successful in getting a Sunshine violation against Recreation and Park in 2010. So, having had that, the Order of Determination was that they were in violation, it’s very clear that under Phil Ginsburg they knew exactly what the Sunshine Task Force was all about, what their obligations were, and especially since he’s an attorney, come on folks, we know he knows what he’s doing here. It is most egregious to me that in the City of St. Francis we are paying people to deceive us. And I hope that you folks will do the right thing tonight. This was deception from beginning to end and the emails luckily that George Wooding has put together for you and I think you can see from George Wooding that this is not where he’d like to be tonight. He has a family, he has other needs and interests. We’d all like to be someplace else. But this is important. This is our city. This is a democracy. And you cannot let a few people with other interests take it away and abuse us. The public trust is being abused by Rec and Park and I hope that it will stop here. Thank you very much.

SPEAKER #7: This matter reminds me of the missing eleven minutes from the Nixon tapes. Unfortunately for Mr. Ginsburg and fortunately for former President Nixon there were backup tapes. When the Sunshine request came in the designated custodian of records had an obligation to search everything for the requested records. The suggestion in the Good Government Guide that they’re trash is just nonsense. If you look at the California Public Records Act Section 6252 it defines public records as any writing containing information

relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics. And a writing includes, among other things, every other means of recording upon any tangible thing, any form of communication or representation including letters, words and any record thereby created regardless of the manner in which the record has been stored. That is backup tapes. So the fact that Miss Gong, who is officially named the Custodian of Records, didn't even bother to look through their archives to see if any of those emails were saved is a violation in and of itself. And the fact that Mr. Ginsburg has successfully up 'til now managed to get away with it I think is a pretty flagrant violation. Thank you.

SPEAKER #8: Good evening. My name is Jeannie Quach and I know George Wooding because we're both delegates to the Coalition for San Francisco Neighborhoods. I know him as a person who spends a lot of time on matters concerning the City. He personally volunteers to research different issues and writes long articles in the newsletter for the Coalition. And he's held in such high esteem that I've heard a lot compliments about the articles he writes, and also he's held in such high esteem that I personally nominated him for the ExCom Committee and then when the First Vice President position became open he was nominated for the position, and now he's First Vice President of Coalition for San Francisco Neighborhoods. So I just wanted to say that he's a person who really loves San Francisco and dedicates a lot of personal time to informing neighborhoods about the City. Thank you.

1:41:56

SPEAKER #9: Good evening. My name is Hiroshi Fukuda, and I also belong to the Coalition for San Francisco Neighborhoods, an organization of over 45 neighborhood organizations. I don't normally come to this Commission, but I have an interest because in

this case Mr. Wooding has explained to the Coalition members at meetings about all the details going on with Rec and Park and some of their...well, how their mission has changed from serving the public good, and now, foremost, is raising revenues at the expense of having the park for the public. Now in hearing about this case it seems quite obvious, you know, the Sunshine Task Force they've come to a conclusion. And they're volunteers, and I don't think they have any ax to grind, and they came up with a conclusion that the Sunshine Ordinance was violated, clearly, and I can't understand how their findings could be overturned. In some cases, what is it, you need irrefutable evidence...oh, I know what it was, in football, for example, there's a play and the coach throws red beanbag and they ask for instant replay. The judge could only overturn if there's irrefutable evidence that a mistake was made. And I can't see how anyone could come to that conclusion in this situation. There was a violation. And this thing about oh, they didn't keep the records, well it says clearly that this is information, email, that should have been kept, and the Sunshine Ordinance supersedes local policy, and Rec & Park should have kept the emails and produced them when asked. One more thing. This, to me, seems like a cover-up. Watergate wasn't just a crime, it was the cover-up that was the bigger problem. Here I see the same case. I see a cover-up. And I think that if you allow this to go through, the public confidence needs to be... in order to have good government you've got to have people who believe in government, and you people are serving the city as the Ethics Commission you have to come to the right conclusion. Don't let cover-up be rewarded.

SPEAKER #10: Commissioners, Ray Hartz (?) for San Francisco Government, and I'd like to reiterate and agree with the comments of a lot of the other speakers which is that it does seem that their policy in the department is one of everybody decides whatever the heck they're going to do and does it whatever way they want to do it, and then the department feels no responsibility at all to try to correct the mistakes they make because they haven't got

clear direction. Parks and Recreation should be not allowed to unilaterally decide employee by employee when they will delete records, you know, not follow the Sunshine Ordinance or the Brown Act or the California Public Records Act. I'd also like to make a comment on Mr. Ginsburg's request that you find in favor of what the staff has recommended. Well of course he's gonna say that because every single time a case comes before you the staff recommends no violation. Even in cases where they have a clear conflict of interest such as my last case because there was a finding against this body and your Executive Director for violating the same 150 word summary problem. And he saw no problem at all saying there shouldn't be any violation which basically results in a case of, well, if we find a violation against Mr. Herrera, Mr. Hartz may be back here trying to get a violation against me. And he saw no problem with that. Not at all. If I recommend no violation, then we can say precedent has been set and when the case comes before me we can say I didn't violate the law either. I think that's very, very convenient. Basically you can't have someone giving you advice which you rely on totally when they are unwilling to be honest about the fact that they may be affected by the decisions you make. And the simple fact that you say, "Oh, the City Attorney can interpret these laws but other bodies like the Task Force, even though the law specifically says they are the ones to interpret it, can't, is real hypocrisy. If interpretation is allowed then different people can interpret it and there can be differing opinions. You can't say Task Force can't interpret it but the City Attorney can. Task Force can't add to it, but the City Attorney can. Task Force can't make decisions about the law even though in the law it says they're the bodies to do it, and yet the City Attorney, who has absolutely no right to do it, can do it not with a legal decision but with simply writing a memo.

SPEAKER #11: Good evening, Commissioners. My name is Kathryn Howard, I was one of the panelists at the Commonwealth Club. I am a member of Friends of the Music Concourse, the Park Rangers Coalition, the Golden Gate Park Preservation Alliance and SF

Ocean Edge. I'm a landscape architect, I've been involved with park preservation for over ten years. It started with saving the historic paillarded trees in front of the bandshell in the music concourse in Golden Gate Park. Since that time I have found it necessary to keep an eye on various projects planned for the Park. Golden Gate Park is really the prize for those people who see parkland as free land for building their pet project. From the proposed 1915 World's Fair Exposition, which would have wiped out the Park, to the early 1950's freeways that were going to be built right through the Park. The Beach Chalet Soccer Fields are such a development. This project would remove over seven acres of living grass and replace it with over seven acres of artificial turf. It would add over 150,000 watts of sports lighting to the western end of the Park right next to Ocean Beach. The lighting would be until ten o'clock every night of the year, ruining the wildlife habitat and the beach experience for those who come to view the sunset, to sit by fire rings, or gaze at the stars. Lack of transparency regarding this project was evident from the very beginning. For example, the project was presented to the organized sports community a full six months before there were any public hearings. Public comment, at city hears, as you know, is limited to three minutes compared to the unlimited time given to City departments. What was needed was a place dedicated to free speech where a qualified panel of experts could discuss the complete picture of past, present and future threats to Golden Gate Park. I was frankly appalled when I learned of the emails written by the Rec and Park Department. I had suggested this panel discussion, and by doing so I had exposed respected professional panel members to personal attack. And I am shocked, I am really shocked, that members of our city government tried to stifle free speech and to have this panel discussion cancelled. And then they denied that they had tried to do that. All we were asking for was fifty minutes, five zero minutes to present our love of Golden Gate Park. We are very grateful that the Commonwealth Club stood by its principles and they let the expert panel hold this discussion. I recommend that you go to our website, sfoceanedge.org, as in San Francisco. [Sfoceanedge.org](http://sfoceanedge.org), and view the Commonwealth

Club presentation and judge for yourself. In conclusion, free speech and transparency are vital to open government and they must be preserved at all costs. Thank you.

1:51:36

SPEAKER #12: President Hur, Commissioners. Judy Berkowitz, President of the Coalition for San Francisco Neighborhoods. I'd like to also point out that Mr. Wooding is an investigative reporter and investigates everything he goes into with astounding depth and accuracy. I urge you to uphold the findings and decision of the Sunshine Task Force and the recommendation based on that to find the respondents have violated Sunshine Ordinance Sections 67.25; .26; .27; and .21(c), and cite them accordingly. The events went as follows: A private event was organized at a private venue. The government gets wind of this private event and finds it threatening. It attempts and succeeds to change the private event. The private event's coordinators sunshine the government for the documents that they used to change this event. After it's been sunshined the government says that it has no records. The complainant obtains those records from a third party. When confronted by these records the government changes its tune and says they were there but they were deleted. So if you believe that they actually deleted them or not, if they were actually there when they were sunshined or not is beside the point. The point is, as so many others have pointed out, is that there is a violation. Please find them guilty and cite them accordingly. Thank you.

SPEAKER #13: Good evening Commissioners. My name is Bruce Wolfe, I'm the former Vice-Chair of the Sunshine Ordinance Task Force. There were a lot of comments that were made. I'm not going to repeat any of them but one that wasn't mentioned is what this department relies on with regard to records retention, and that's their own records retention policy which is contained in your package. Now, in it it specifies a specific section of our City

Code, which is Administrative Code 8.1. Now, since there's kind of a feeling that you must determine whether the Task Force's determination is valid or not let's go straight to the law that actually governs what the retention must be. And that also includes the Sunshine Ordinance. Now under 8.1 if you notice on page 2 of their retention policy, in category 4 it states in the first sentence that "documents and other materials that are not 'records' as defined by the Administrative Code in Section 8.1 need not be retained." But 8.1 doesn't say anything about not being retained. It says that everything must be retained, and that it must be according to three different categories. They're specific. They're current records, they're storage records, or permanent records. There is no such label as essential records. So a lot of what you see here in this records retention policy, a lot of it is embellished when you read that Administrative Code 8.1 and I would strongly ask you to refer to that and apply what is going on here and what was said to be needed to be retained or not. Now, there's a question as to whether public records with regard to city records versus external records need to be retained. And Section 8.1, actually in Section 8, let me see if I can find it, I'll just paraphrase, it does specify that if there are documents that are pertaining to the business of the department...internal, external...it doesn't matter what form it's in, it's all pertinent. It's all public information. So I would urge you to...this is the point, to me this is the point that would give me pause, I would say if I don't know, I haven't read Section 8.1 of the Administrative Code, I would continue this item. I would read it and come back and then have another discussion about it. I just feel...it really speaks to this. I don't know who created this retention policy there are a lot of anomalies in it, especially under 67.24 (a). There's no listing like that there. Thank you.

SPEAKER #14: Good evening, David Pilpel. I'm speaking as an individual. I was not a member of the Task Force at the time that this matter was heard. I appreciate all of the comments that the previous speakers made. I believe that Bruce Wolfe who spoke just

before me was most on point and I agree with much of what he said. I would refer the Commission to the record retention and destruction schedule that's included in your packet, both Part 2, page 1 and 2, and the overall policy that precedes the chart. I believe that the emails in question were improperly deleted, and were more properly characterized as "correspondence, miscellaneous," and not "correspondence, not requiring follow-up."

Referring again to Category 4, defining the no-retention required records, among other things not otherwise required to be retained, not necessary to the functioning or the continuity of the department and which have no legal significance, that those may be destroyed when no longer needed, etc. I'll let you read that paragraph on page 2. I believe that the emails were in relation to a continuing matter, may or may not have required follow-up but were in any event general correspondence. What's not clear to me, having been involved in this area of law for many years is what the consequences are of failing to adhere to a department's record retention policy. I recall in 1998 prior to putting the Prop G amendments on the ballot in 1999, there was lot of discussion about what sections of the ordinance to amend and it was decided to only limit the amendments to Chapter 67, to the Sunshine Ordinance itself. So, that's why there's that new section that was read earlier that talks about department heads maintaining records in a business-like manner so as to not supersede Section 8.1 et. seq. of the Admin Code, but to reinforce the notion that departments needed to keep records that were required to be kept not keep phone messages from one's spouse saying would you please pick up milk at the grocery store, but those things that are related to the functioning of City government need to be kept and kept in a business-like manner. It appears that did not occur here and I would encourage you to find for Mr. Wooding in this matter. Unless you have any questions, thank you.

2:00:08

HUR: Questions for either Mr. Wooding or Mr. Ginsburg?

HUR: Mr. Ginsburg, I have some questions for you. Oh, I'm sorry.

LIU: I have questions for Mr. Ginsburg. Thank you, Chair Hur. Mr. Ginsburg, what is the department's protocol on looking for backup files and backup data when responding to Sunshine requests? And the reason I ask also is that it troubles me a bit that the request came in just weeks after the event in question, just a couple of weeks or a few weeks. So what is the protocol for when you know that there were emails but you know they were deleted?

GINSBURG: We work very closely with the City Attorney's office on all record requests and when the request was made to look at our back-up data I think our Custodian of Records went about doing that in conjunction with the City Attorney and the Department of Telecommunications and Information Services. I don't know that it's a routine practice, that we routinely check back-up data any time a public records request comes in I think when we're asked to do so, we do.

LIU: So you waited until the Task Force asked you ...until the Task Force called it to your attention and asked you to do it?

GINSBURG: I believe that was time frame. I'm not quite sure of the time frame when we ended up working with DTIS.

LIU: OK. So at this point in time does the department have a protocol about asking for...you know, to search back-up files or backup tapes when getting a Sunshine request? And I

mention this only because you had made a point of saying that you have a full FTE person as Custodian of Records, and that you get many, many requests.

GINSBURG: Right. So we actually have a person who works full time but is a half of an FTE with all the time that's spent with Department staff going through and preparing and copying records, that adds up a full FTE. Honestly, this is certainly something we can take a look at but I think when records requests come in we work with our Custodian of Records, we work with the City Attorney's office and when there's a specific request to kind of look through backup data and backup dates we most certainly do that.

LIU: And so, in this particular instance, when you got the request, at the time that you responded to Miss Gong that there were no responsive documents, did you recall that you had emails pertaining to the subject matter?

GINSBURG: So, I did two things. I had no emails on my SFgov account, on my city account, and I'm not even sure I remember or not whether I deleted an email on my personal account. I was carbon copied on it. I think in my, um, you know I frankly may have told Olive that, you know, "I don't have any emails, I deleted them." The ones on my personal account, which I do routinely as a matter of housekeeping. (2:03:23)

LIU: I see, OK. So when your IT department finally did recover data, and I don't think we have that in our packet what the specific emails were that were recovered eventually, were there emails from your account?

GINSBURG: Not from my personal account. There were no emails on my SFgov account.

LIU: I see. OK, thank you.

HUR: Mr. Ginsburg, following up on that. So you get this request from Miss Gong, what specifically do you do next?

GINSBURG: So I think I got the request either late Friday or the first thing Monday. I think the request came in sometime around noon on Friday and I honestly haven't looked at my calendar to see if I was even in my office when the request came in. I checked my SFgov account ...

HUR: What did you do? What did you check?

GINSBURG: Uh, I either searched for anything involving...I searched in response to the criteria that was in the specific request. So, I don't have it in front of me, but it might have been all emails on my SFgov account dealing with the Commonwealth Club or in communication dealing with Mark Buell or Sarah Ballard. There might have been other criteria in the request, I don't remember.

HUR: So, specifically I'm trying to imagine what search you might have conducted here.

GINSBURG: So I actually do keep very thorough email records. I probably have about 50 different files and I actually have lots of emails and records for a variety of public policy topics, and I would have searched all of them, and nothing came up.

HUR: How are they divided? Meaning, you would have had a Commonwealth Club folder?

GINSBURG: I may not have had a Commonwealth Club folder, but I may have checked either in my in-box, that's where most of the housekeeping has to take place. I have an in-box, and then as time allows I try to actually manage my files where I will move emails in conformance with the Department's records retention policy into specific subject matter files. So I may have a file for Parks, I may have a file for Beach Chalet, I may have a file for Recreation, uh, you know, basically different subject matter topics, as it's easy to organize, and I probably have about 50 in my email system.

HUR: Do you have a folder for Mr. Buell?

GINSBURG: I do not. Maybe I should.

HUR: So when you search these emails do you have to search each folder individually to try to find responsive documents or can you run one search to cover all?

GINSBURG: You can run one search. You can use the search key and it will come up with all of the emails that are in your files that are responsive to a particular key word, but I will sometimes also check other files that I might have in my file management system.

HUR: Now, are you actually remembering doing these searches, or are you just saying what you likely would have done?

GINSBURG: It's what I likely would have done.

HUR: OK. Where else are emails kept within your Department?

GINSBURG: Well, I mean, you know, we have probably 600 full time staff, so we have a combination of both a centralized and decentralized IT system. I may not be the subject matter expert on this, but I'm sure we do have a server which is capable of being searched, and I do believe in response to this, although it may not have been put in as quickly as Mr. Wooding would have liked, we did work with the City Attorney's office and our IT staff to search the server.

HUR: OK, so let's go back to what you do. I know you are not the expert but you are the only subject of this particular complaint, which is within our original jurisdiction. So, you get an email that you deem to be important, can you categorize it in some way or put it on a server or something that's more centralized so that if it's lost from your email it can be retrieved by others?

GINSBURG: I do believe that on my SFgov account my email system does back up to a server. I'm pretty certain of that, but again I'm not the subject matter expert. But, again, within my own desktop I have an inbox, which I try to keep in relatively manageable order and then I have a number of files based on topic or subject matter.

HUR: OK. So there's no central storage place for important emails within your department?

GINSBURG: Again, I think that our server does back up emails that come into the department. So, I'm going to assume that. I am not the IT expert, but I assume that we have a server that has copies of all the emails that come in through the SFgov account.

HUR: So when, I believe it was your assistant responded to Miss Gong's email. When Stacey White responded to Miss Gong's email saying that neither I nor Phil have any

documents responsive to the request below, you personally searched your account, right?

Correct?

GINSBURG: Yes.

HUR: And did you have a conversation with Miss White about it?

GINSBURG: I'm pretty certain that I would have because I coordinate with Stacey, Miss White, who has access to my email account. If I'm out of the office I will ask her to double check or to look through files, but I'm pretty that we would have both looked through it to make sure that we were being responsive.

HUR: Any other questions for Mr. Ginsburg?

RENNE: When you decide something is Category 4 under your retention policy is there some standard period of time that you retain it in some file before you delete it?

GINSBURG: There is no standard. The period of time I have until I delete it is the next period of time I have to manage my inbox, to be honest with you. If it's not something I'm going to retain because I didn't feel it was compliant with either Categories 1, 2 or 3, when I get the opportunity to actually manage my inbox is when I would delete non-essential, or emails that were not consistent with our record retention policy.

RENNE: Now when you delete...you get an email and you hit delete isn't there a category of deleted items?

GINSBURG: There is a trash box which periodically empties.

RENNE: And what's the policy on how often that's deleted?

2:10:00

GINSBURG: Commissioner, I don't think we have a policy on that specific point. I think the point at which we delete, we delete. And it's still possible, though, that if you go back to our server as was ultimately done here you would still find records that have been deleted. But again you're asking me a question that is beyond my level of technical expertise.

RENNE: Well, when got the request did you go to the deleted items to see if there were any items in that deleted file that had not gone out of the trash box?

GINSBURG: I would have checked all of my files, including my deleted in box.

HUR: Commissioner Studley?

STUDLEY: I have a question, but I think it may not be a question for Mr. Ginsburg, it would be a question for Mr. Givner, who has stepped out for a moment. The question is...and you can help me think about whether it's important to get an answer, and if so, from whom, is whether there is a standard city-wide policy with regard to handling open records requests by referring to back-up tapes in the first step. It does seem unreasonable for me, if I'm a member of the public and a requestor, when I ask for something to know to ask for it from backup tapes or from some other source. I would imagine that I would think that I was asking for this record wherever it was kept. So whether it was on my desk or in a file drawer

I would expect someone, you know the respondents, to look for it. It seems to me that that is a matter that might be a city-wide policy not a department by department policy. So, I can restate it for you. John, I didn't realize you'd come back. Do you know or there someone who could tell us whether there is a city-wide policy or expectation about whether open records requests should be complied with including reference to back up tapes?

GIVNER: I don't believe there's a city wide policy. In my experience departments search their own records and don't ask the Department of Technology to also search back-up tapes, which I understand, I'm not the expert, you probably want to talk to someone at DT, is a time-consuming process, and quite time-consuming if you consider how many public records requests come to the City every day.

STUDLEY: The way you answered sounded as though the documents become the records of the Technology Department. Is...That could complicate it for the agency if deleted records are no longer their own records to search, although it may key into that other provision which says you have to tell people there may be something somewhere else that those technology folks now have on their back-up tapes. I'm just trying to think what the agency's responsibility is and what standard practices the public ought to expect.

GAVIN: I think generally, the position, our advice is that the Sunshine Ordinance does not require the City to search the back-up tapes of documents that have been appropriately deleted under a department's record retention policy. The back-up tapes exist for other purposes.

STUDLEY: So that raises...that brings us into one other question that we haven't talked about is the correct categorization of documents. Whether the ones that were described as

Category 4 documents were in fact appropriately deleted. I can understand the public being...my office just had a training on email management and clearly the A+ answer was delete everything you're allowed to delete right away. On the other hand the public that is looking for records can understandably be surprised that a couple of weeks later records that they are looking for are not there. And I don't know that the law has attempted to go after that. These practices were in their infancy when these rules were written, and technology has changed a great deal about what would be around and how it would be accessible. I think it's a little hard to know what responsibility the agency has where there aren't common standards and they can make their own determination, both of deletion and of what records to search. That's not making it any easier, but it's part of what I'm struggling with. I apologize.

HUR: Mr Givner, do you have anything to say in response to that?

GIVNER: (Shakes his head) No.

HUR: Here's sort of what...I think this is a larger issue than the one we have right now with Mr. Ginsburg. The question before us right now is whether Mr. Ginsburg committed a willful violation of the Sunshine Ordinance. We will later get to the others who had their issue adjudicated by the Sunshine Ordinance Task Force. So to me the main question is: Did Mr. Ginsburg actually conduct the search for the records that we've been told he conducted through the submission by Rec & Parks. Because I think at least my reading of the records retention policy suggests that the one email that he received would fall into Category 4 based on my read. Now whether Category 4 is acceptable under the definition of the Administrative Code or the Sunshine Task Force, or whether it's legal is not an issue that I feel I can adjudicate right now nor is one that's before me, because I think if we find that Mr. Ginsburg

followed that document retention policy, that he appropriately deleted an email that was within Category 4, and that he looked for those records, I think it's hard for us to find a willful violation. I am still curious and want to know whether the document retention policy itself complies with the law. If it doesn't that's obviously a huge problem and that Parks is going to have to rectify. But for the narrow question before us right now, I don't know if we need to reach that issue.

GIVNER: Our office works with departments on their record retention policies to insure that they comply with the Admin Code and the requirements of State law. So I can say, yes, the record retention policy complies with the record retention requirements of State and local law.

HUR: Did you hear Mr. Woolf's comments? Were you here for that?

CITY ATTORNEY GAVIN: Yes.

HUR: So he was suggesting that perhaps Administrative Code 8.1 defines records in a way that would encompass the documents that can be deleted under Category 4.

CITY ATTORNEY GAVIN: I think Admin Code Section 8.1 gives you a sense, or explains the universe of documents that you're looking at and puts them into different boxes. And as to whether they need to be kept permanently, for some period of years or whether they're really on current records just for use on the day that can be destroyed or thrown out. And then the department's record retention policy effectuates the requirements of the Admin Code by being more specific about which documents fall into which of those boxes.

HUR: Any further questions for Mr. Ginsburg? (No response.) Thank you Mr. Ginsburg.
Any questions for Mr. Wooding? (None) Comments or thoughts from the Commissioners on this agenda item?

2:19:22

RENNE: I may have one question of Mr. Wooding. I think it's in the record somewhere but when you eventually got the documents from Rec & Park after they went to their IT people, did you get all the same documents that you had gotten from the Commonwealth Club?

WOODING: The answer would be no. I believe through memory I received two or three of the documents, I did not receive the complete ones, all five or six documents. I believe also they were given to me the day before, or the day of, when Sunshine was going to make their determination. So it was like an eleventh hour type of thing..."Look what we found, here they are."

RENNE: OK.

WOODING: So in that context it was very insulting in that on the very last day. And it's interesting to see Mr. Buell and Mr. Ginsburg and Sarah Ballard here tonight, as they only sent Olive Gong, and they never spoke for themselves one time. And Olive Gong seems to be a very nice woman but she did not a clue as to what was going on, and the Sunshine Task Force had to ask her twice. I was embarrassed for her. When she came the first time and they had already asked to find the IT records and she had not done a thing. And she was basically taken to the woodshed and sent back again to try to find something. So the way I look at this Rec & Park has never treated this as a serious issue and I think that Mr.

Ginsburg with his fifty categories but not one for Mark Buell, you know, I find it very interesting how he would go through everything. I wonder what key word he was using. It'd be interesting to find out, and, honestly, I don't believe him. So, I hope that answers your question. Thank you.

RENNE: Thank you.

HUR: Any other questions for Mr. Wooding? (None). Comments from the Commissioners? I am looking at the one email, April 25, 2011, it's on page 235 of the December 5, 2011, Sunshine Ordinance Task Force packet. For me the issue comes down to, like I said: One, did he search the records, are we convinced that he searched the records; and secondly is this email one that would fit under Category 4? On the first question we have testimony from Mr. Ginsburg, now granted, it's been many years since this happened. I did not find his recollection to be particularly elucidating in light of the fact...it seemed it was difficult for him to recollect what was going on. That said, he did testify that he conducted the search himself and he looked for responsive documents. I don't think it's unreasonable for someone after two years to not remember precisely the search that was conducted. With respect to the email, this is not an email that asks...he was a "cc" on it, it's addressed from Mr. Buell to Mr. Dalton, and it certainly expresses an opinion of Mr. Buell as to the participants and the panel. It does not suggest that there was going to be some official action or that they were asking the panel not to occur. To me this does fall into Category 4 as an email that did not need to be responded to and that it meets the other requirements. All that being said I understand Mr. Wooding your frustration here. I can see why you think it feels like a cover-up, because emails get deleted that are inflammatory and it's possible that the deletion was motivated by a desire to prevent it from being disclosed. But as far as what the law requires and what he

is required to maintain it does not appear to me that it fits within a document for which retention is required. I don't know if my fellow Commissioners have...

RENNE: I guess the question I have is I'm not sure that issue is really raised, because when you read the sections that they claim were violated, 67.25, which is failure to satisfy immediate requests, there's no doubt that the response that they gave that they had no emails or they had no documents was a correct response. The question that Commissioner Studley was asking whether there was some practice of going to the IT Department as being part of it, there's no way under an immediate request that anybody could contemplate that you're going to go to the IT Department. That's 24 hours. And, so that, it strikes me that the response was the correct response, that he had no emails, in his, in his... that he was aware of. And 67.26 is where you withhold the document. Well there's no evidence of any withholding of a document. And 67.27 you have to give a justification for why there's an exemption. Again, I think it's inapplicable. Then 67.21(c) claiming that they should have advised Mr. Wooding to go to the Commonwealth Club and see about getting documents from them, I don't think the statute requires that, and it seems to me it was self-evident to anyone knowing that the recipient on the other side would also have copies, to the extent that they had. But whether or not the retention policy was a proper retention I don't think is before us on this particular complaint.

STUDLEY: I think Commissioner Renne is right to turn to the four alleged violations. What I've been trying to figure out is what responsibility an agency has for the actions of an agency. Is his responsibility to respond timely to the request for his own documents if there were any that were responsive or was it to see that the agency got the requestor an answer on that day or a request for an extension? And that's not specific to him. This will come up over and over again I think as we deal with agencies where there are complaints under

67.25. And under 67.21(c) is there an agency responsibility to have referred somebody to IT? Not the Commonwealth Club, I don't think that's what the rules contemplate at all. The person I mailed the letter to may have the letter I sent and I may have a copy of it, but I don't think the law requires people to do it. I think what they are requiring is if you go to Rec & Park and they ask you for something that's really at the Labor Department or the Mayor's Office, they will say, "No, we don't have that but you should go to this other City office." But on those two there is at least potentially an agency responsibility, and does the head of the agency have that responsibility and what would it take even if there were a failure to respond on that day, what would make it willful? Since he had appointed a staff, responded himself in a timely way. As we do these, I think we're going to have a series of these kinds of questions.

2:29:50

LIU: Commissioner Studley's point is exactly the point that is troubling me because I think that Mr. Ginsburg himself did conduct the search and there were no responsive documents, though I do understand that technically the answer was correct and that he responded in the way that the ordinance contemplates, but at the same time what troubles me about this particular instance is that the request came in only a few weeks after the event that occurred, and there may have been, and I understand it's now two years and so Mr. Ginsburg doesn't understand specifically, but there may have been a recollection at the time that he had deleted an email, and why he didn't immediately say "I deleted an email," and so there may have been a back-up tape available to go look for it at the Department of Technology, that's the aspect that troubles me. But now having heard from Mr. Givner that there is no City-wide policy on directing agencies to the Department of Technology for back-up information in their response to Sunshine requests, I feel like there can't really be a finding of willful violation

because there is no protocol on back-up tapes. And that's the piece that I'm struggling with here.

GIVNER: There is no City wide policy on backup tapes. Our advice to departments across the City has been when you receive a Sunshine request or Public Records request you are not required to go and search back-up tape, which as Commissioner Studley said isn't even in your department. So I guess I just want to clarify that.

LIU: OK, thank you.

HUR: Any other comments from the Commissioners? Would anybody like to make a motion regarding this agenda item?

RENNE: I would move that we find that Mr. Ginsburg did not willfully violate the sections of the Sunshine Ordinance that were referred to: 67.25; 67.26; 67.27; or 67.21.

HUR: Yes.

Unintelligible discussion.

HUR: I'm looking at the memo from the staff and it says: "The Task Force made a motion finding that Mark Buell, Phil Ginsburg, Sarah Ballard and Olive Gong violated those sections of the Sunshine Ordinance."

STUDLEY: I was looking at the Task Force's finding which also tracked that. I was looking at the Task Force finding which appears not to be paginated, but of August 8 citing a decision issued July 26, 2011.

HUR: Is there a second to the motion?

STUDLEY: Second.

HUR: All in favor?

ALL COMMISSIONERS: Aye.

HUR: Opposed?

No response.

HUR: The motion passes.

STUDLEY: Before we move on to the next item, I'm guessing that our staff is already doing this, but just for the record, it would be helpful, and I know I'm not catching all of them, if we could try to identify the issues that we're coming upon that either go to interpretation of the rules or agency practice that we might want to inform so that as we build a body of experience we could go back and see where clarification is needed, where we want to ask the City Attorney's office to look at certain issues. I just think I don't want to walk away from the individual matter and leave our possible policy recommendations or law change or guidance for how to be more effective or consistent about doing this. There are many things

that won't be amenable to our suggestions, but I think if we could just follow those through we may find things where we can improve the underlying situation as we go through specific cases. Is that...does that seem like it might be worthwhile?

HUR: Sure.

STUDLEY: Our esteemed staff is nodding, so I'm satisfied.

HUR: Do any Commissioners need a break? No? Should we go on a little bit longer?

RENNE: Maybe we should go to the other individuals on that while it's fresh in our mind

HUR: The next item on the agenda is under 4a. This is under Chapter of our new regulations which provide the burden on the respondent. So I understand that Miss Ballard, Mr. Buell and Miss Gong are here. (inaudible) Miss Gong is not here? Umm, who is going to speak? (inaudible) OK. Mr. Buell, please. Five minutes.

BUELL: I'll use much less. Thank you very much. Let say first that I think you have communication from the City Attorney which pleads my innocence in this case, but I want to put a little background. I was asked to look at my emails, I did look, and I responded I think within twelve hours of being asked that I could not find the emails I was looking for. Having said that I wanted to find them, and I believe they're part of the record, but to set the record straight, when I heard about this session at the Commonwealth Club...I've spoken at the Commonwealth Club on a number of occasions, I hold them in high esteem...and I saw the title of the event that was being planned and I know the panelists involved in this that put it

forward. I have the utmost respect, particularly for Kathryn Howard. She's passionate about Golden Gate Park. I would not diminish her credibility in the least, but I felt, and I stated in my email to Greg Dalton was that this was a one-sided Golden Gate Park Under Siege, serious under siege. Golden Gate Park is under siege to some people, but surely not to the majority, but people who feel passionate about different issues in the Park, and I respect that fact. But I said to them simply that I thought that given the history of the Commonwealth Club that they had a responsibility to, one, have an unbiased title, and, two, to have at least one representative from the department to be able to speak to the issues. And, so, having done that, they came back to me, and I wasn't involved with the staff, there was no conspiracy with staff on this, I take full responsibility, I got into communications with them and they ultimately said "we will change the title." And I forget the title, but it was a neutral title in my opinion, and they said they wouldn't accept anybody, they'd only accept me to speak on that side. And so reluctantly I said OK, I'd do it, and so we went forward under those circumstances. So I think that it's really, there is an issue, and I've changed my own personal habits to not deleting anything anymore, on any subject. God help my wife if she finds it all...I'm only kidding. But it's just a fact, you know I would have kept anything that related to Commission issues. This wasn't a Commission issue, this was an issue among people that I'd done business with before, and I wanted to make my case. And so I simply say that I think in the big picture there's no conspiracy here. I wish I had kept them, but Mr. Wooding found them, and provided them to you, and I'm happy he did, and I stick by them, and I think they represent what I felt then and what I feel now. Thank you very much.

2:40:12

BALLARD: Commissioners, Sarah Ballard from the Recreation & Parks Department. I'll just add to that, that Olive Gong's role in the Department is to receive the public records requests

and disseminate them to the appropriate staffers. And also ask the follow-up question, "Is there anyone else who may have documents responsive to this request?" In this case she did that. I searched my records, no dissimilar to my boss, the General Manager. I keep, essentially my inbox is my to do list, and anything that complies with the record retention is saved either in an email folder and most often printed out and saved in a hard copy file. And so I searched both my email folders and my hard copy file and none of these documents were...I did not still have any of these documents at the time of the request, which was I believe about six weeks or eight weeks after the email exchanges took place. And I'm happy to answer any other questions. Thank you.

HUR: Mr. Wooding. You have five minutes.

WOODING: (Inaudible)...you bifurcate your own issues. I do think this was a group effort. It's pretty clear to me. The way I got the documents, they were handed to me, they were clandestine, "here, this is for you, to show you how screwed over you guys were." So, I think where I'm coming from is with this current board whatever I would be saying tonight, good or bad, I'm going to lose. So, it doesn't seem like whether something is deleted or whether something is no longer available really matters. I think what really happens here is Sunshine suffers and the public suffers, and the public loses confidence in government, especially when Ethics, who's supposed to maintain ethics and was voted to help citizens, now represents the city family more than they do the public. So, with that I'll leave you with, um, as someone who's new here I have very little confidence of any fairness. So, thank you.

SUTDLEY: I have a question for Mr. Wooding, please. Mr. Wooding, I have a question for you if you don't mind. You made a comment just now about the documents being provided

to you in what you called a clandestine manner. Were they provided to you by an employee of the Department of Rec & Parks?

WOODING: I won't answer, since I write stories I have to protect my own sources.

STUDLEY: So you think they were not provided to you through the routine...Let me start another way, and maybe the trial lawyers can phrase this better. You made a request for documents that was referred to an employee, Miss Gong, who has that responsibility for that area, it was she who told you that there were no responsive documents.

WOODING: Correct.

STUDLEY: When you did get documents, are you saying they did not come from Miss Gong?

WOODING: That's right. I had the documents before I made the request.

STUDLEY: I'm not talking about the set that you got from the Commonwealth Club. I'm talking about when ultimately the Department went to the backup files...maybe I'm misunderstanding the process...went to the backup files and said we will go back and see here if we have any of the documents that were deleted. I thought that you did get them from the Department...

WOODING: I did.

STUDLEY: I think my question is, did you get them officially from Miss Gong or someone else with a records management responsibility?

WOODING: Miss Gong. Miss Gong 141 days after my request.

HUR: I think when he was referring to the clandestine receiving, that was from the source that originally provided the documents.

WOODING: I can't mention who...

STUDLEY: OK, I thought you were saying...I misunderstood. I thought you were saying you never got documents formally and officially from the department.

WOODING: Oh, no. I got documents.

STUDLEY: OK. I understand that it was belated, and you were...

HUR: Mr. Buell and Miss Ballard, three minutes rebuttal.

BUELL: I failed to mention, which I think is important to not sound so presumptuous that I had influence over the Commonwealth Club but that I searched all their meetings and records for two years, two full years, and couldn't find a title that had a degree of bias or a subject matter that had only one-sided presentation, so I made that the case for when I went back to them and asked them for their consideration to change the title and add a person that could contribute some other information about the issues and not have it so one sided. So I just wanted to say that, thanks.

STUDLEY: While you're here I have a quick question.

HUR: OK, I was going to take questions after public comment. Miss Ballard.

BALLARD: Commissioners I hope to offer a clarifying comment although it may confuse things. But we actually...to speak to Miss Gong's responsibility in terms of the backup tapes, we actually switched email systems, and so now the backup tapes do reside in the department, but at the time of the requests and the email requests they did not, they resided with the Department of Technology. So just to clarify it for her in terms of the responsibility there. Thank you.

HUR: Public comment?

SPEAKER #1: Once again, Greg Miller, amateur. I don't know what to make of all your issues about the disclosure of the records and all that in great detail, but what may be pertinent with regard to especially Miss Ballard's message and her deletion of it that I think you should at least consider is once again she was basically dissing these people, and saying that they were biased, and were going to incite the community and asking for complete shutting down, do not do the thing. Look at the email that she wrote on the 20th. The other thing is the Category 4 retention versus the other retentions, I'm just looking at the department policy and they do talk about essential records, and essential records do include among other things records required for the protection of the rights and interests of individuals. Now, I assume that could be the narrow scope of the individuals within the department or something like that, but I think what's essential here or what seems to be glossed over because we're focusing on this one narrow issue here, is one that I hope you

take up in some form or another and that is that you have clear evidence before you, that you cannot deny, that members of the department, highly paid members of the department, directly reporting to the Director of the department basically tried to intercede and prevent the public from meeting and discussing a matter of public policy. And use the weight of their office and their title to basically try to keep people from meeting and discussing something of public concern. I think whether or not that is addressable under the particular hearing tonight, I would ask you just as a citizen this is something that you as the Ethics Commission need to take up. Not necessarily to find somebody guilty of something, but to establish a clear policy. And I would hope that policy would be one that you would agree with. That the public servants, both the people who are paid, and the people who volunteer, do wonderful work as Commissioners, should not be turning on the public, especially in private through back channels, and using their titles to denigrate them, to disempower them, and to try to prevent them from convening and meeting independently of the city. These are not terrorists, this is not the Red Army Brigade. This is the ex-Director of SPUR; this is the Conservation of Audubon; this is the Regional Director of the historic places area. So this is important. You need to take this up. You need to look at it and help the City learn from this mistake. Thank you very much.

2:50:25

SPEAKER #2: (Mr. Wolfe) Good evening Commissioners. I'm very, very concerned right now. OK. I'm a little concerned about how this is going to proceed through all the other ones because I'm hearing suppositions being made that are not based on any law. There's "I think the law should do this," or "the law should do this." I'm hearing those kinds of statements instead of actually referring to the law itself as it applies. Now, first off, I have to say, Mr. Givner, you're wrong. We have document storage, whether it's stored at Iron Mountain or

whether it's stored at DT in a back-up system it's the same thing. And there is a requirement for retention, and wherever that retention is it must be requested no matter what the location is. It's not a matter of policy. The law specifically states that the retrieval of those records must be had whether they're in a person's hand or not. Whether they're in storage or someplace else. The only thing that can't be retrieved are ones that can be destroyed. OK, those are the only ones. Now, if you're going to take the retention policy as the law, that is even more concerning because you haven't even determined whether it's correct or not. And I stated under Section 8.8, actually use all of 8, that most of this is embellished. Third, I was very concerned to hear that there was some letter that came from the City Attorney's office, a representation of any or all of the respondents here, because under Section 67.21(i) that's not allowed at all. They can make opinion...they can offer opinion as to what is publically...that applies to everybody across, but they can't specifically represent any one public official except if it's for litigation with regards to Sunshine. So if this was a court of law then the City Attorney could then represent them, but not before this body. So I'm a little concerned about where this is going right now because a lot of it is becoming very subjective, and it's not based on what I'm feeling is a good representation of the fact of law. And I am urging you again to continue this item, read Admin Code 8 because that is what I based my decision at the Sunshine Task Force on in sending you this determination. That's what I had to base it on, because that's where I had to go to find the detail. Thank you.

SPEAKER #3: Commissioners, Nancy Wuerfel again. I want to reiterate that a response that says, "We have no records that are responsive to your request," tells me, Nancy Wuerfel, that there never was a record, there's nothing. We don't have anything. It's not that we don't have it right here on my desk in the in box, we never had it because I expect a record that did exist, that somehow became eliminated, or deleted, or thrown away I want you to tell me that. I want you to tell me in this city government that you had a record that for

whatever reason was legitimately disposed of. But to say that you don't have one means that the event never took place. This is where we're coming from. This is the big deal. This is going to be so important to you because it's going to come back a hundred million times. This is what we are screaming about from the public. We want our records. If you don't have a record because it never happened, that's what that means. But the very second there was a record that somehow evaporated off the face of the earth because of whatever reasons we're hearing here tonight, I need to know about that, because that tells me there's someplace else for me to go. Something like an IT department in a department, or something like the Department of Technology within the City and County. There are two different places. And I could have had a much different response if I'd known that information. Also, I would like to say I can't believe Sarah Ballard, I really can't. She wrote an email on Figure 1 that is quite long with a great sentence in here where she accuses the panel at the Commonwealth Club of being deeply biased, that has no interest in discussing facts. She made some very, very disturbing comments from...she's a city employee, she's on my nickel, and she's making these horrendous comments and she doesn't remember she had them, and she just says...she doesn't say "I deleted them," she just doesn't have any records any more. Well, I can understand why because this is a pretty damning piece of paper. I don't think it's a good idea for you to pass on this second group. You let Ginsburg got a pass. Not these people. Miss Ballard has been found guilty of doing something. She has not been forthcoming to this body or to any of us. She did not come in and say, "Gee, Olive, I had some records and I deleted them, now what do I do?" She didn't say that, she just pretended like they never existed. This is an indictment. You can't ignore it. Thank you.

SPEAKER #4: Good evening, my name is Ann Clark. I've never been to an Ethics Commission meeting and I think that you have a really hard job ahead of you and I'd like to speak to that just briefly. Earlier tonight in the meeting, and I don't know who said it, which

side they were on or even whether it came from you because it's been kind of a long evening. It was something to the effect that the reason we have the Brown Act and the Sunshine Ordinance and the California Public Records Act is because government activity must be as transparent as possible. And I think you found tonight, in both the cases you heard, that government transparency is not very transparent. And whether we talk about it in terms of emails, or we talk about it in terms of budget and finances, or we talk about what's happening in a particular department or not happening, obviously you face the task now ahead of you of figuring out how government activity, and it means government across the board for all of us, be as transparent as possible. What my government is saying about me, what your government is saying about you behind your back possibly, without your knowing it, what kind of financial records are made available to the public, are they complete, are they whole, are they understandable, what kind of other policy decisions are made that are really sunshined to the public in completeness. I don't envy you the job you have ahead, and I know that you are working very hard to be as fair as possible, but I think you need to talk among yourselves...well then you'd have to make it transparent...but you need to...(laughter)...I take that comment back. But we really do need to talk about what government transparency means, how does it happen and work in this city, what kinds of grades you might get for government transparency. What are the principles and policies this ethics committee has to stand on and refer to. So I wish you the best and I appreciate your work very much, but we need to remember that these laws exist that government activity...I don't know who said it so I can't quote anyone...but I wrote it down: "Government activity be as transparent as possible". And everything we heard tonight was about government activity. Thank you.

SPEAKER #5: President Hur, Commissioners, Judy Berkowitz, Coalition for San Francisco Neighborhoods. In my position as the President of the Coalition, I have been in every

Supervisor's office, and sitting down next to every aide and the Mayor's aides, and I can tell you that I don't know of anyone outside of those testifying today that deletes emails. These guys keep everything on their desktop computers. It's like they have a reply that says, "?" it's there. They keep it in their inbox. I don't know why, but they do. These are the only people who don't. On the second item Mr. Buell reports that the Commonwealth Club, other than "Golden Gate Park Under Siege" that there's no controversial topics that the Commonwealth Club has hosted, and I'd like to remind him and point out to you that perhaps "A Case for Palestine" could be considered a little more controversial than "Golden Gate Park Under Siege." This was a title for a not too recent, but within the time frame, of a Commonwealth Club topic. Thank you very much.

3:00:49

SPEAKER #6: Good evening Commissioners, Kathryn Howard. The Commonwealth Club has regularly had forums on gay rights which been one-sided. I haven't seen any right-wing people listed. The Commonwealth Club stands primarily for free speech and exploring a variety of issues. That is really not relevant to your decision, but I think it does speak to the fact that we were trying to have a broader public learn about our issues. I want to repeat that Miss Ballard did write as an official of the department. She wrote in response to a phone call, she mentions in her email a phone call she had. She wrote a one page letter and she signed it Sarah Ballard, Director of Policy and Public Affairs, San Francisco Recreation and Parks, McLaren Lodge, Golden Gate Park, 501 Stanyan Street. Phone number, email address, etc. So this is definitely an official communication that she spent a great deal of time on and it is something that should have been provided. The only reason we had a suspicion that these emails might exist is because the title and panel makeup suddenly, out of the blue, changed. It was fine with the Commonwealth Club for a month and then all of a

sudden we get a call that it's changing. If we had not been provided by a wonderful, free speech, public spirited citizen with the emails, we would never have known they existed. We would have done a Sunshine request and we would have been told they were not there. What are you going to do to help people who make requests, hoping to find out something, and they aren't sure the documents exist? What are you going to do if there isn't a whistleblower who provides the documents. How are you going to provide some kind of accountability for our city departments if you don't do something about this? And I can tell you there was someone here earlier, Suzanne Dumont, who worked on the Stow Lake Boathouse concession, and however you may feel about that what got them information was a lawsuit where the court required that the department provide documents that showed the Department had been doing some things that were not particularly great in trying to influence the outcome of that rental lease. So, please, think about the fact that there are those of us out here who are trying to find out what our Department is doing. We don't often have the smoking gun, we just have an instinct that something's wrong. How are we going to find out if people are going to come back and say, "Well, that was a Category 4...?" Is that like hurricanes or something? How are we going to do that if they can just do that, and the document's there, and we know it's there, and they say they don't have it, and they wrote it as an official of the department. What are we going to do? Please help us. Please help us to get some accountability. That's all we're asking for. Thank you.

SPEAKER #7: David Pilpel again. Two preliminary matters. First to Judy, your comment about Palestine, as a Jewish person who helped separate Golden Gate Park under redistricting, I'm not sure what that means to me, but I'll think about that. And with regard to the last comment about Stow Lake this Commission agreed to a settlement agreement for a fine with regard to the Stow Lake communications. Just to remind you and the public. As to the instant matter, I'm a bit torn. I still think that there's a violation here. I'm not sure if it's a

violation of the sections that were referenced, and I'm not sure if it's a willful violation by the three named individuals in this case. I think I agree very strongly with Commissioner Studley's suggestion that we catalogue these items for further discussion perhaps between the Commission, the Task Force, the City Attorney's office, and various departments. If we're going to require all emails and all paper records to be retained forever, that seems on its face to be unworkable. If we're going to allow some people to exercise discretion about what to keep and what not we need to have some pretty strong standards and some meaningful enforcement mechanisms. And I'm not sure if the language of our laws now cover record retention policies in the ways that they could. I think as computing takes over more of how records are kept, whether something is on a server, in the cloud, hosted by somebody else, or elsewhere...these are all very difficult questions, and I don't have all those answers right now. I don't know if any of us do but I think these are things to be thinking about. I think at a very practical level, where there's a question about a record being kept or discarded, if it's about a public issue for which there's been some controversy, and likelihood of more discussion, I think a reasonable person would say, "I should keep that for the moment, at least for the two year period." So if you go to a common sense interpretation, I think you may get to that sort of a conclusion, but it really depends on where you go with this and whether you want to seek more information from people here or others. I think this has teased out a lot of complicated policy issues...

HUR: Your time's up....Oh, sorry. That was the warning. If you have more to say...

SPEAKER #7: No, no, we're all looking forward to a break, so I'm good with that.

HUR: Questions for the respondent or the complainant. I have some questions, particularly for Miss Ballard. Miss Ballard, I'm looking at Figure 1, which is the email that you sent to Ross Lawley on April 20th. Why didn't you retain this document?

BALLARD: I don't retain sent emails.

HUR: So if you had sent a government contract, that would just disappear into the ether after it had gone out if yours was the only copy?

BALLARD: If I had a copy of a contract that was sent as an attachment, I would assume that would...I would save that either on our server or on my desktop. But as a matter of practice, no, I do not save sent emails.

HUR: So regardless of the importance of the email if you send it and there's only one recipient who's outside your department, that email's going to disappear in, what, two weeks?

BALLARD: I don't retain sent documents. I don't know...I don't think they're retained anywhere beyond that.

HUR: Do you know how long your sent emails are retained?

BALLARD: I don't believe it is.

HUR: At all?

BALLARD: Correct. So it's sent and it's gone.

HUR: So you can't go to your sent file to see, oh, when did I send this email to this person?

BALLARD: Correct.

HUR: OK. And I saw that ...any other questions for Miss Ballard? (No response)

Questions from the Commissioners for either the respondents or the complainant?

STUDLEY: I have a question for Mr. Buell. Thank you. I realized I just wasn't clear when you said that you looked for responsive documents when you got that request but didn't find it you also said you don't ordinarily delete your emails. So...

BUELL: I don't know that I said that I don't ordinarily delete them. I do delete a lot of emails. I thought I had kept track of it, but the more I think about this, particularly with the help of Mr. Wooding, that there was only one apparently that I had emails with the Commonwealth Club, the rest of it became telephone calls. So when I looked under Commonwealth Club or Greg Dalton, I didn't see anything. I must have deleted it. But it wasn't as significant to me at the time, to tell you the truth. It seemed outside any issue that was before the Commission and I know Mr. Dalton well, so it was kind of just a let me tell you what I'm thinking and why. I should correct also I said that you had a communication with the City Attorney, it was actually from Olive Gong that had some citings of some City Attorney stuff in it, so I think that's correct. I'm not represented by counsel.

STUDLEY: Do you, and I know this is some time ago, but do you recall whether you would have looked in both your received and sent locations for correspondence.

BUELL: You know, at that time that was probably above my pay grade. I was operating on a Blackberry at the time and I think there was just one category that I knew to plug in to search for anything in email and it would show up I think both as sent and received but I can't say that as a fact. I've learned a lot more about it since...mostly from my grandchildren. I'm on the iphone.

STUDLEY: OK, thank you.

BUELL: Thank you.

3:11:18

HUR: I actually had wanted to bring Mr. Wolfe up here, if you wouldn't mind. So, Mr. Wolfe, I hear your comments, and certainly my view of this is that in order to find a willful violation I think I'm going to have to find that a respondent at a minimum did not retain a document that they were required to maintain under their policy. Whether the policy is right or wrong I think is a discussion we should have ultimately, but not one that's relevant here because in my mind at least, an employee who follows their own document retention policy cannot be found to have willfully violated the Sunshine Ordinance when this is about document retention. Now, you may disagree with that, but what I'm here to ask you is, you appear to have studied this retention policy to some degree, if you don't think this is a Category 4 document, particularly the Ballard document, what category do you think it would fall under?

WOLFE: Well, I wouldn't refer to retention policy, first of all.

HUR: OK, I understand your view.

WOLFE: I only refer to Section 8 of the Admin Code, and in there...

HUR: Mr. Wolfe, that's not my question.

WOLFE: I understand, but there are categories that are part of the Admin Code that are in the retention policy. There are current records, there are storage records, and permanent records. These records are current records, and so if you refer to Section 8 with regard to current records, which they try to include in their retention policy. But it's not correct. So if you're saying they're at no fault because their retention policy was wrong but that was what they were given...

HUR: Mr. Wolfe, I'm giving you an opportunity to help me understand something, so if you don't want to answer my question...

WOLFE: I can certainly answer your question, I don't see them being contained in Category 4.

HUR: What category do you think it's contained in?

WOLFE: I don't have it in front of me. But I would say that it was (Pilpel brings policy to podium) in Category 2.

HUR: Why?

WOLFE: Why? Because it's a current record that must be retained. I don't agree that in Category 4 that those lists that they have in there halfway down, where it starts getting into the Sunshine Ordinance, "as a specific example, include calendars, telephone message slips, miscellaneous correspondence. Calendars? It can't be calendars. Calendars is Prop G. They can't delete calendars. That's state law. You can't do that. Notes, unless it's work product, and there are notes, stuff like that, how lawyers work, there's lots of work product that they use before the actual documents come out, that's treated a little differently. But we're not talking about that here.

HUR: Thank you, I understand your view. I understand what Commissioner Renne was saying before, that the specific violations that were alleged do necessarily reach the issue of whether the documents should or should not have been retained. However, we have a somewhat unique situation here where we know that a document that was not retained does exist, and it does strike me as somewhat hollow to not evaluate whether the document should or should not have been retained, and was not produced because a document that should have been retained was not. So that's what I'm struggling with on this particular complaint. And particularly if Miss Ballard doesn't keep anything that she sends out, there certainly could be instances where she's not even following her document retention policy if as a matter of course she doesn't maintain anything that's sent. So that also is quite troubling to me. So I really welcome the views of my fellow Commissioners on how that plays into whether there was a willful violation.

LIU: Well, I think for me it boils down to 67.21(c) about whether any of these individuals or the department had an obligation to inform the requestor that there were emails but they were deleted, and that it's not within their custody anymore, and that it needs to be referred

to the Department of Technology. So that's where it boils down to for me. 67.21(c), I think, that's where that piece might fall for not assisting the requestor.

STUDLEY: I'm totally confused. I have attempted to address my confusion by making a chart. This is not getting any better, because the four headings that I'm looking at: Failure to respond is one of the specific claims, but all three of the people responded...Miss Gong, Miss Ballard, and Mr. Buell all responded, and Miss Gong responded for the department.

HUR: I do think Miss Gong's response was late. And I think she knew the deadline, but she still responded late because she was waiting for others who were not on the list.

STUDLEY: Late seems the easiest. Then there's the question "was there an obligation to keep in the first place." I too was surprised that Miss Ballard keeps nothing, and I would have to look at Categories 1 through 3, but as you said, I think it might be hard to satisfy the policy about other materials, unless that statement is overbroad and there are other ways that official records are kept properly. Then there's the separate question of what items, if erased, go into IT. Mr. Buell's was on a private email, and even if while it exists it is a city record, and I don't know the law on that, but even if it were, when he deletes it, it isn't, or if he can't find it there's no referral for that because it wouldn't default to a city IT system. Miss Ballard's might, even if she doesn't keep her sends, do they go someplace else? That's just a question mark. And there were some suggestions earlier about memory. And this situation is confounded by the fact that it was so close in time to the exchange that we can imagine ourselves saying, "But, people might have remembered. Why didn't they just say so, and then go look for them. Or at least say there was a record but I can't find it which might have been satisfying to Mr. Wooding to at least know and acknowledge that there was such a thing. But I'm very nervous about trying to create a standard, one, because the

Sunshine laws are not about do you remember documents, or information or exchanges, they're about production of records. And it would be so excruciating to draw the line between records that you could or should remember and records that were so long ago, or so voluminous, or part of a gigantic box that came through your office that I hesitate to do anything about memory, although in this case I can understand that it's frustrating, as just a matter of people saying, "Oh, wait. It wasn't that long ago. Do you remember writing anything or getting anything?" And this goes to the comment that several people have made between these tight, specific allegations where we are determining violations that need to be drawn precisely, and a feeling of desire to support transparency. And I say that as someone whose organization often files Public Records Act requests against state and federal, not so much city, entities, and wants to get what we have asked for. I am not a stranger to this. But I don't know how to write better rules that would make a city employee...I'll use Miss Gong because I have not met her here...to go behind the city policy, the department's policy, about categorization of records and expect somebody in that kind of role to rethink or redetermine what is appropriate or be held at risk for failing to compel the rest of her colleagues to do something other than what is put forward as the department's record retention policy. So that helped not at all, but it shares the nature of my multivariable confusion.

3:22:05

HUR: Well, on the point of whether to search for backup files, I think first of all that's got to go on the list. To the extent that that's a problem that's going to plague everyone and we need to figure out what to do about that. But I don't think we can today find that failure to search backup files was a willful violation of the Sunshine Ordinance if the City Attorney has said you don't have to do that.

LIU: I do agree, and ...like now, it's in the custody of the Department. If it wasn't in the custody of the department I can't see a willful violation for failing to search the backup tapes.

HUR: For the backup tapes, for today, is a different issue. I don't know Mr. Givner if you're the right one to ask this question to, but on this issue of whether failure to retain a document that one should have retained is a violation of the ordinance or is a violation of 67.21(c), do you have a viewpoint on that?

GIVNER: That is not an issue I've considered before. The ordinance does require, as I think a few people, including Mr. Pilpel and maybe Mr. Wolfe had said, that department heads at least retain records in a professional manner. I'm misquoting it. Which we've also interpreted to mean and advised, consistent with your records retention policy. So there is something in the ordinance that requires, department heads at least, to act in a manner consistent with their record retention policy. That probably doesn't help you with this particular matter since you're not looking at a department head.

LIU: Mr. Givner, are you talking about Section 67.297. One of the speakers during public comment had pointed to that about that "department heads shall maintain and preserve in a professional businesslike manner all documents and correspondence, including letters, emails, correspondence ."

GIVNER: That's right. And we have advised and always interpreted that to mean consistent with the records retention policy, not every one-line email that crosses your desk must be kept in a file.

LIU: OK

HUR: Comments or questions from Commissioners.

STUDLEY: Like the “failure to retain a document that should have been retained” question, is there a good faith search and failure to find a document that might have been there standard? Mr. Buell does not think that he deleted it. He says that he looked for it, he didn’t find it. There is an exchange that he doesn’t dispute took place, that was provided in another way. Is a good faith search that standard?

HUR: I would think so.

GIVNER: And the standard as we and city departments have applied it is also that there’s a rule of reason here, that the department has to make reasonable efforts to find a document but if you receive a request, say, for every email from the last 20 years on topic X, if it’s unreasonably difficult to find you should work with the requestor to figure out what a more narrow search could be. I think that general rule may also pertain to the backup tape question that you’re flagging for a future day, the amount of resources and effort that what you’re suggesting would take.

STUDLEY: I think we’re not suggesting a policy outcome. We’re just saying that people ought to understand what they’re required to do and what they’re going to get, or where in between it gets decided whether to go that next step.

HUR: What’s frustrating me, I cannot find in here a requirement for a non-department head to maintain records.

GIVNER: That may be because as Mr. Pilpel said the purpose of the Sunshine Ordinance when it was on the ballot was not to deal with the records retention issue, but to deal with disclosure of documents that had been retained. We have a separate chapter of the Admin Code that deals with record retention. I think that probably answers the question.

HUR: In light of that, the way I preliminarily would come out, was that there was a violation with respect to the failure to provide the records by the end of the next business day by Miss Gong. She had a response from Miss Buell. She claims to have gotten a response from... Mr. Buell...Miss Ballard. Sorry, there are a lot of people I'm learning about today. There was a response from Miss McArthur reflecting that Mr. Buell had done the search. She had a response from Mr. Ginsburg as well, but did not put out the response in a timely fashion when she had them on June 6th. So there I would find there was a willful violation of 67.25. Although I'm somewhat surprised, I must say, that there isn't a requirement, and frankly Miss Ballard, I highly recommend that you create some mechanism whereby you maintain important documents that are sent. The notion that they're just deleted is not earning a lot of sympathy from me on that. But I don't know...but based on the decision that was made by the Sunshine Ordinance Task Force I don't think that's before us, although I think it's a problem. So I would preliminarily find that there was no violation of 67.26 or 67.21(c) for all the other reasons we discussed earlier.

GIVNER: Just to clarify. Because this is a hearing under Chapter 2 of the Sunshine Ordinance you don't have to find a willful violation. This chapter just asks, was there a violation of the Sunshine Ordinance.

2:30:00

HUR: Well, right. But the...maybe I'm looking at the wrong thing, but I'm looking at the December 5, 2011, Sunshine Complaint and the notification by the Task Force, and it says: "The Sunshine Ordinance Task Force hereby provides notification of willful failure and official misconduct findings against Phil Ginsburg and Sarah Ballard."

GIVNER: Right. I believe that's the Task Force's long standing practice to forward complaints to you when it finds a willful violation, but that question is not before the Ethics Commission under Chapter 2. The only question is whether there was a violation of the ordinance in this case.

STUDLEY: What I was looking at was...I think we're all looking at the December 5 document where it speaks to willful failure and official misconduct against Ginsburg and Ballard, and then a referral for failure to comply with the Order for Buell and Gong.

HUR: It wouldn't change my view because I think the...wait, why is Ballard included under willful failure? Is there any...is that just how the complaint was...

GIVNER: My understanding is that's just how the Task Force operates. I've never attended a Task Force meeting. That's what they refer...when they find willful violations they refer them to you.

HUR: But Commissioner Studley's right. They did refer Buell and Gong to us for simple failure to comply with the order. Mr. Pilpel, do you have something to help us through this morass?

PILPEL: Looking at the December 5th transmittal from the Task Force there was a finding of willful violation. The language is not as precise as it could be with regard to Mr. Ginsburg and Miss Ballard. And with regard to Mr. Buell and Miss Gong just a failure to comply with the Order, and presumably a violation. And I would also note on the Regs, page 5, 1(a), 1(a) and (b) make some distinction between willful and non-willful violations, but later on in your determination that distinction is lost. I think you could further delineate between Miss Ballard and Miss Gong and Mr. Buell on this. Thank you.

HUR: OK. Well in my view...my view is that Miss Gong's failure to comply was willful, so it certainly would be non-willful as well. It would still be a violation in my view. With Mr. Buell, I frankly don't see the violation. It appears to me that he searched, did not find the documents. I don't find the deletion of the documents he had to be particularly problematic even if that were relevant to our discussion. At least as it relates to a Sunshine violation. With Miss Ballard it appears they were alleging willful violations, but again I don't think the failure to save the document is necessarily at issue in light of what the Sunshine Ordinance Task Force found.

GIVNER: I would just caution the Commission on this matter...separate...finding willful violations. That's not what the ordinance, I'm sorry, your regulations specifically authorize you to do. It's not how this particular issue was agendized.

HUR: Chapter 2: Referrals to the Ethics Commission.

GIVNER: So Chapter 2 applies to referrals from the Task Force when the Task Force considers willful violations of the Sunshine Ordinance by non-department heads. In Sections D and E on page 6 of Chapter 2, the regulations explain what the Ethics Commission can do

in making its findings and issuing orders. And there it's a matter of finding violations or non-violations.

HUR: I see. Your point is not that we don't have jurisdiction to handle 1(a), 1(a) and (b), but that under (d) and (e) our findings don't require delineation of willful or not.

GIVNER: Exactly. You do have jurisdiction over it, you just...I would recommend that if you're going to find a violation you just find a violation.

HUR: OK. My only concern is that if the...since we're dealing with a referral, if the Task Force found a willful violation in order to determine whether the burden was met don't they have to...I mean, wouldn't we have to use that same standard?

GIVNER: When the Task Force issues...makes a referral under Chapter 2 the employee has the burden to show they did not violate the Ordinance.

HUR: In the way that the Task Force found that he did. So, it would be one thing if that employee only had to prove that it wasn't willful. It'd be a different thing if he had to prove that the violation didn't occur. So...does that make sense? So then in a case where they have found a willful violation shouldn't we determine whether or not the respondent has met their burden of overcoming the finding of a willful violation?

GIVNER: I guess the way I would read these regs, whenever you receive a referral that alleges a willful violation and you can find that the person has committed a violation and issues the orders that this section allows. It may be semantics, although the ordinance specifically calls out willful violations of official misconduct for certain parties, I don't think

employees in Miss Gong's category fall under that under that provision. But because of that it may be at least symbolically significant, whether it's willful or not.

HUR: For the public who is listening to us muddle through this, these are new regulations we knew today would be challenged, because we're applying them for the first time and we appreciate your patience and participation here.

WOLFE: Just to make a clarification in relation to...in support of Mr. Givner on this. When the Task Force sends you anything with regard to willful failure which shall mean official misconduct it will usually state 67.34 in it. In this particular case it didn't, for the reasons that Mr. Givner is trying to explain to you. That it's a little more semantical; that this was a general violation. But the Task Force found it to be willful of that particular non department head of a general employee. So it's just, really, they could have said, "Well, they did it deliberately," instead of using the word willful which would be a red flag for you all the time. Maybe they should have said they felt it was done deliberately, and so I would agree with Mr. Givner, just from having served on the Task Force during this particular time that that's what the intention was.

HUR: Thank you. Any other comments from the Commissioners. Commissioner Renne, you've been conspicuously quiet. Anything to add.

3:39:30

RENNE: I would tend to agree with the City Attorney on his interpretation that we, under Section 2, can find that there's evidence of a violation but not a willful violation. It may be a technical...I'm troubled by saying that where you get 24 hours, and they do it in 36 hours that

that's a significant factor. It may be a violation, technically, of the 24 hours, but I don't find that it's something that requires great admonition. One of the reasons I've been quiet is that in litigation, when you have a document production request, you're asked for documents, and then you say, "If the document ever existed, but no longer exists, please identify it." Well, that is not what the procedure at the City level. These people were literally asked, "Do you have the document?" They checked their files in the ordinary course, and came back and said, "No." It turned out that the documents had at one time been in their files, but there were not, and they were not expected to respond by saying, "No, we don't have any, but we deleted them." Maybe they should, but I don't think there's any requirement of them, that I'm aware of.

HUR: I'm not sure that there is a hook for the situation where an employee does not retain a document that should have been retained, at least not through the Sunshine Ordinance as Mr. Givner suggested. Is there any further discussion or should we make a motion? (No response) Is there a motion to find that Miss Gong violated 67.25 with respect to failure to respond in a timely fashion to the request that no violation by any of the three respondents as to the other violations that were found by the Task Force? Did I say that motion correctly in light of the standard?

STUDLEY: So moved.

HUR: Is there a second?

LIU: I'll second.

HUR: All in favor?

(Unanimous Ayes.)

HUR: Opposed? Hearing none that motion passes. I think we then need to determine what Order is issued for the finding of the violation. Here I think it's appropriate...first of all I think Commissioner Renne is right. In a situation where they're late by two days because they were trying to get additional information to provide to the complainant, I don't think that is a particularly egregious problem that requires a lot of remedying activity on our part. I would suggest a letter to Parks & Rec saying that they should comply with 67.25 in the future, and that document requests need to be responded to in a timely manner.

STUDLEY: I like the way you put that, that the letter is to the agency, because this is one of the questions on perhaps this lengthy list, is the responsibility of the agency head to see that it is possible to carry something out, and that people are trained and have the ability to do it, versus the most junior person in this situation being the only one as to whom we found a violation, because it is a technical and crisp violation. It may be that good practice that we and the Sunshine Task Force perhaps could work on, or look at the way people...the way agencies are given information and training. Maybe it would have been better to provide a partial answer within the 24 hour period, and say that not all the responses were in. Would that be more transparent and meets the speed needs of people? And the other is, teaching people how to search, both what to retain and what to search. I realize these are boring, unpleasant responsibilities, and that we have a lot of departments and a lot of employees who have different levels of experience, different levels of technical capacity, but maybe a constructive thing we can do with the Sunshine Task Force would be at least to collect these kinds of questions, and get them to the people who do the training and advice for the agencies. I'm not saying we should do it or take it on ourselves, but at least identify some

places where we either hear about good practices or we spot things that could be helpful to city agencies about. I don't want to take on something that we don't have the expertise or the capacity to do, but it may be as simple as saying, "With a 24 hour turnaround, how can you get people who are trying to write a story or go to a hearing, or follow up, would it be better to hold them in violation for missing the deadline, or get people something?" I may be off base about the solutions, but at least try and point up some of these things, so that the people who have the training responsibilities are aware of how these things actually are playing out.

HUR: I think that's right. I have a lot of concern about trying to provide too much direction to search terms, and the like because having done it in litigation, it takes on a life of its own and leads to ...will not lead to the fast resolution in providing the documents as you've eloquently identified a the whole point here. But it's definitely something that should be on the list and something we can continue to work on resolving. OK. Should we take a quick break before the next two items. Any objection from the Commission? OK, let's take ten minutes.

PILPEL: Can I also just say as the Chair of the Education Outreach and Training Committee of the Task Force I'm happy to work with your staff and the staff of the departments to try to sort through what you just talked about, and it's not going to be easy. Thank you.

HUR: I appreciate that. OK, we'll be adjourned for ten minutes.

3:47:17

Case Name: _____

Case Number: _____

CERTIFICATION OF TRANSCRIPT

I, Jean Barish, do hereby certify:

That I have experience transcribing audio and video recordings, and that I am qualified to transcribe said recordings.

That I prepared the foregoing transcript from the audio recording of the February 25, 2013 San Francisco Ethics Commission Regular Meeting.

That I listened to and transcribed the contents of the recording to the best of my ability, and to the best of my knowledge and skill, and this transcript constitutes a full, true, and correct report of the recording.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed by:

Jean Barish on April 22, 2013 in
New York, NY

EXHIBIT B

RECREATION AND PARK DEPARTMENT Record Retention and Destruction Policy

The Recreation and Park Department Record Retention and Destruction Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a records retention and destruction schedule.

This policy covers all records and documents, regardless of physical form or characteristics, which have been made or received by the Recreation and Park Department in connection with the transaction of public business.

PART I: POLICY AND PROCEDURES

A. RETENTION POLICY

The Recreation and Park Department shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference, or to comply with contractual or legal requirements, or for other purposes as set forth below. For record retention and destruction purposes, the term "record" is defined as set forth in Section 8.1 of the San Francisco Administrative Code. Documents and other materials that do not constitute "records" under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified in Part II. The records of the Recreation and Park Department shall be classified for purposes of retention and destruction as follows:

Category 1: Permanent Retention. Records that are permanent or essential shall be retained and preserved indefinitely.

- **Permanent records.** Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed and special measures are followed. Under Administrative Code Section 8.4, once microfilmed, or may be placed on an optical imagery system, the original paper records may be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of this Department. An example of permanent records includes but is not limited to official records of commission action.

- **Essential records.** Essential records are records necessary for the continuity of government and the protection of the rights and interests of individuals. Administrative Code Section 8.9. An example of essential records includes, but is not limited to, the Department Employee Handbook.

Category 2: Current Records. Current records are records which for convenience, ready reference or other reasons are retained in the office space and equipment of the Department. Examples of current records include lease files and personnel files. Current records shall be retained as follows:

- **Where retention period specified by law.** Where federal, state, or local law prescribes a definite period of time for retaining certain records, the Recreation and Park Department will retain the records for the period specified by law. Examples of records required to be maintained for a specific period are Family Medical Leave Act Records and Workers' Compensation Records.
- **Where no retention period specified by law.** Where no specific retention period is specified by law, the department must specify the retention period for those records that the department is required to retain. Records shall be retained for a minimum of two years, although such records may be treated as "storage records" and placed in storage at any time during the applicable retention period. Examples of current records include but are not limited to invoices for purchases of supplies and budget documents.

Category 3: Storage Records. Storage records are records that are retained offsite. Storage records are subject to the same retention requirements as current records.

Category 4: No Retention Required. Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law. Documents and other materials (including originals and duplicates) that are not otherwise required to be retained, are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed. Examples include materials and documents generated for the convenience of the person generating them, draft documents (other than draft of agreements subject to disclosure pursuant to Administrative Code Section 67.24(a)) which have been superseded by subsequent versions, or rendered moot by departmental action, and duplicate copies of records that are no longer needed. Specific examples include calendars, telephone message slips, miscellaneous correspondence not requiring follow-up or departmental action, notepads, e-mails that do not contain information required to be retained under this policy, and chronological files. With limited exceptions, no specific retention requirements are assigned to documents within this category. Instead, it is up to the originator or recipient to determine when the documents business utility has ended.

B. RECORDS NOT ADDRESSED IN THE RECORD RETENTION SCHEDULE

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for the periods prescribed for substantially similar records. Current or storage records may be destroyed five years after they were created if they have served their purpose and are no

longer required for any public business or public purpose, and destruction of the record has been approved by the Controller (for records pertaining to financial matters), the City Attorney (for records have legal significance) and the Retirement Board (for payroll checks, time cards and relate documents).

C. STORAGE OF RECORDS

Records may be stored in the Recreation and Park Department's office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the Recreation and Park Department's office space or equipment include active chronological files, research and reference files, legislative drafting files, administrative files and personnel files. Inactive records, for which use or reference has diminished sufficiently to permit removal from the Recreation and Park Department's office space or equipment, may be sent to the City's off-site storage facility or maintained in the Department's storage facility.

D. HISTORICAL RECORDS

Historical records are records which are no longer of use to the Recreation and Park Department but which because of their age or research value may be of historical interest or significance. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code section 8.7.

EXHIBIT C

**PART II
RECORD RETENTION AND DESTRUCTION SCHEDULE**

TYPE OF RECORD	RETENTION CATEGORY [e.g., current, permanent]	RETENTION PERIOD			REMARKS/ DISPOSITION OR INSTRUCTION OR TRIGGER
		Total	Current *	Storage **	
GENERAL AND ADMINISTRATIVE RECORDS					
Administrative records, miscellaneous	2	2 years	X		
Advice Letters	2	Later of 2 years or until superceded	X		
Annual Reports	1	Permanent	3 years	After 3 years	
Audio/Video recordings not specified	2	2 years	X		
Audit Reports	1	Permanent	3 years	After 3 years	
Budget Files	2	2 years	X		
Calendars [other than department head]	4	None			
Calendar [department head]	4	2 years	X		
Chronological files	4	None			
Claims Files	2	Later of 2 years or until claim is disposed.	X		
Code Interpretations	2	Later of 2 years or until superceded	X		
Correspondence, miscellaneous	2	2 years	X		
* files located in house					
** files located in storage in house or off site					

Correspondence not requiring follow-up	4	None			
Correspondence, draft	4	None			
Emergency Response Plan	2	Later of 2 years or until superceded	X		
Employee Handbook	1	Until superceded	X		
Fax Transmittal Sheets	4	None			
Financial Records, miscellaneous	4	None	X		
General Manager Reports	2	5 years	X		
Incident Reports	4	None			
Journals/Magazines/Catalogs	2	Until superceded	X		
Legal Advice	4	None			
Legislative Drafts	4	None			
Memoranda, miscellaneous	2	5 years or until superceded	X		
Memoranda, policy/decisional	2	Later of 2 years after applicable fiscal year	X		
Payables (Invoices)	2	2 years	X		
Publications, reports created by department	2	For life of permit, minimum of 2 years	Located at Log Cabin - permits and reservations office		
Permit Application and Issuance Records	2	3 years	X		
Revolving Funds Records	1	Permanent	For 3 years	After 3 years	
Settlement Agreements	2	2 years	X		
Telephone Logs	2	Later of 2 years after applicable fiscal year	X		
Work Orders and Payments	2	2 years	X		

COMMISSION RECORDS									
Agendas, Notices and Minutes of Commission Meetings	1	Permanent	X						
Audio/Video recording of meetings of policy bodies	1	Permanent	For 2 years					After 2 years	Required by Admin. Code §67.14
Commission Correspondence	2	2 years	X						
Commission Files	2	10 years	X						
Motions and Resolutions	1	Permanent	X						
CONTRACT/GRANT RECORDS									
Bond Documents	2	Duration of Bond	X						
Contracts/Agreements/MOUs	2	2 years after life of agreement ¹	X						
Contract correspondence	2	2 years after life of the agreement	X						
Construction Plans	2	Later of 2 years or until superceded	X						Admin. Code §67.24(a)
Exchanged Drafts of Agreements	2	2 years	X						
Lease Files	2	3 years after expiration	X						
Professional Services Contracts	2	2 years after life of agreement	X						
Purchase Orders	2	2 years	X						
Regulations	1	Current until superceded	X						
Requests for Proposals (RFPs) and Request for Qualifications (RFQs);	2	2 years	X						Admin. Code §67.24(e)

¹ Unless longer retention period required by state or federal law, in which case the type of agreement and applicable retention period should be listed.

Responses to RFPs and RFQs							
RFP Scoring Records	2	2 years				X	
PERSONNEL/HR RECORDS							
ADA Request for Reasonable Accommodation Report	2	5 years				X	
Affirmative Action Plan	2	5 years				X	
Discrimination Complaints	2	5 years				X	
Employee Accident/Incident Reports	2	7 years				X	Title 8, Cal. Code of Regulations, Section 10102
Employment Applications/Resumes	2	2 years				X	
Ergonomic Records	2	2 years				X	Required by Fair Labor Standards Act §11(c)
Family Medical Leave Act Records	2	5 years				X	
Payroll Records	2	5 years				X	
Personnel Files	2	5 years after date of separation				X	
Sexual Harassment Complaints	2	5 years				X	
Time Rosters*	2	5 years				X	
Time Sheets	2	5 years				X	29 CFR 1904.6
Workers' Compensation Records	2	5 years				X	

*These are no longer generated. Prior records will be retained for 5 years.

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PROOF OF SERVICE

I, Toyer Grear, declare as follows:

I am a resident of the State of California, and employed in Oakland, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 410 12th Street, Suite 250, Oakland, CA 94607.

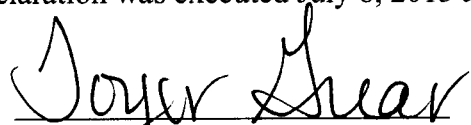
On July 8, 2013 I served a copy of the foregoing document(s) entitled:

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

on the following interested parties in the above referenced case by: 1) transmitting by electronic mail to the email addresses below; and 2) placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below:

Jim Emery, Victoria Wong, Marlena Byrne Deputy City Attorneys City and County of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Email: Jim.Emery@sfgov.org; Victoria.Wong@sfgov.org; <u>Marlena.Byrne@sfgov.org</u>	G. Scott Emblidge MOSCONE EMBLIDGE SATER & OTIS LLP 220 Montgomery St., Suite 2100 San Francisco, CA 94014 Tel: (415)362-3599; Fax: (415)362-2006 Email: emblidge@mosconelaw.com Reding@mosconelaw.com; torrise@mosconelaw.com Counsel for Intervenor
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed July 8, 2013 at Oakland, California.


Toyer Grear