

San Francisco's Office of the Mayor Deliberately Violates Local Sunshine (Open Government/Open Records) Ordinance

Partial Transcript of the San Francisco Sunshine Hearing October 28, 2003

I have tried to transcribe this tape as closely as possible; any transcription errors are unintentional. Because of the length of his transcript, I have included my prepared remarks, not a transcription of it.

Patrick Monette-Shaw's Five-Minute Introduction of Complaint

Speaker # / Name	Prepared Testimony
1. Monette-Shaw	<p>[Note: Because the format of these hearings artificially imposes five minutes on the complainant in which to summarize the complaint, and because of the number of issues involved with this case, I was cut off before I could present all of the salient facts in this case. The Task Force did not hear a proper summary of the facts and went into the remainder of the hearing with only a partial understanding of what would eventually unfold during their deliberations. Had they allowed me an extra couple of minutes, they could have prevented a lot of needless questions that they subsequently posed, as I had answers all lined up for them. Instead, this hearing dragged on for nearly two hours, and I could have spared them enduring sitting for so long. There's a lesson in that for the Task Force to consider if they would really like to trim the amount of time they spend hearing these cases.]</p> <p>Just last Thursday, P.J. Johnston was interviewed on KRON TV about the appointments to the PUC Supervisor Daly made with Mayor Brown was in Tibet. Mr. Johnston stated during that interview that Daly had violated the spirit of the law. So it is highly ironic that we are here today, considering that the facts in this complaint illustrate that Mr. Johnston himself broke both the spirit and the letter of San Francisco's Sunshine Law by failing to respond at all to two of my immediate disclosure requests for public records, in addition to failing to produce documents to a third public records request.</p> <p>During the jurisdictional hearing on this matter last week, Member Cauthen asked me why I had believed Johnston was the custodian of the public records I sought. I noted to her that between May 15 (when I had first contacted Mr. Johnston concerning documents about the status of union contract negotiations) and June 25 (when Mr. Johnston advised me not to write to him again because he would not respond) fully 35 days had elapsed, and at no time during that period did Mr. Johnston indicate he was <i>not</i> the custodian of records for the Mayors Office, nor did he refer me to the Mayor's Chief of Staff, or the Mayor's Budget Director, nor to any other contact person in the Mayor's office. I indicated to Ms. Cauthen that in the absence of being told I had contacted the wrong office, that I assumed that the Mayor's press spokesperson was the correct person to have contacted, just as DPH's public information officer handles all requests for public records for DPH. I also assumed that the role of press spokesperson handled essentially the same job functions as a public information officer.</p> <p>Also during the jurisdictional hearing, Ms. Hall was asked by a Complaint Committee member what response Mr. Johnston had provided to the Task Force; she indicated his position is that he had responded to each of my requests. <u>As I noted in the jurisdictional hearing this is patently untrue:</u> The last e-mail or other communication I received from Mr. Johnston was dated June 25. As my complaint alleges, I wrote him on July 6 requesting information about the Mayor's advisor on HIV and AIDS issues and I wrote him again on September 27 requesting information about the Mayor's failure to reappoint Mark Dunlop to the CARE Council. Therefore, since I have not heard a peep from the Mayor's Office since June 25, <u>Mr. Johnston's assertion that he responded "fully and completely" is a false statement.</u> His assertion that he responded completely is not spin control, it's a false statement.</p> <p>Johnston stated that he had responded to a lengthy request; however, the request I placed on June 21 was less than two pages, and the disclosure portion request describing the public records being sought were detailed only in paragraphs 4a through 4e. This is hardly "a lengthy request."</p> <p>Johnston stated that "I demanded" he create or re-create documents that contained a printing error. This is untrue, and a false statement. I had asked that a document on the Internet be fixed, first because initially it could not be opened, and second, it subsequently also contained the same error of a missing page,. I did <i>not</i> ask him to "<i>create or re-create</i>" that missing page, I merely asked that he <i>locate</i> the missing page.</p>

Speaker # / Name	Prepared Testimony
	<p>In his written response to this Task Force Johnston indicated I had “claimed” there was a printing error, implying that I was only making a claim, not stating a fact. He also wrote you that no news organization or other citizen had found the error nor had the media asked about it, implying that my “claim” could be ignored simply because I was the only one who had caught the printing error.</p> <p>[In his subsequent testimony below, Johnston also notes that the Board of Supervisor’s had not noticed the problem, implying that there must be something wrong with me for having made a fuss about the missing page if it had not bothered the Board of Supe’s.]</p> <p>Also in his written response, Johnston stated that the document I had requested “was entirely out of [Johnston’s] purview. That, too, is a false claim; the <i>purview</i> was the Office of the Mayor which had generated the Budget Summary booklet in question, so it <i>was entirely within</i> Johnston’s purview to locate that missing page from whichever of the Mayor’s many sub-offices in which it had first originated from; <i>that is his purview</i>, and this Task Force should disregard his <i>false assertion</i> that it was beyond his purview.</p> <p>Johnston noted that my communications had become “increasingly” hostile. This is simply untrue. I had been nothing but polite with him throughout at least five preceding e-mails, and it was only in a single e-mail (dated June 25) that any trace of so-called “hostility” can be found. I had merely rhetorically asked if his antennae were working, and stated that I assumed English was not his second language. Johnston then twisted these relatively innocuous rhetorical questions completely out of context using his frenzy that I had violated the spirit of the Sunshine Ordinance simply so I could use the Ordinance as a tool to “abuse” City employees. His misinterpretation of my motives, or that I would use the Sunshine Ordinance as a tool, is simply absurd. I have no hidden agenda or ulterior motive, as he implies, to beat up on City departments, nor is my purpose as he stated to “insult City employees,” whether simply for the hell of it or otherwise. His statements are intended to incite your feelings, hoping you’ll rule in his favor to let him off the open government accountability hook. It’s that simple. Asking rhetorical questions, as far as I know, is not prohibited by either the Ordinance nor by the First Amendment to the Constitution, and rhetorical questions are not enumerated in Webster’s Dictionary under the definition of “abuse.”</p> <p>Johnston’s defense is that he referred me to proper departments in search of the missing page 30 of the Mayor’s Budget Summary. Because the title of the document states the word “mayor,” sending me on a wild goose chase to either the Public Library or the Department of telecommunications and Information Systems is an improper referral, plain and simple, as <i>neither of those departments are the custodian</i> of this particular public record; they are merely <i>repositories</i> of a flawed public record that they had not authored. The Office of the Mayor authored, and is the custodian of record for, this document. You should note that <i>a flawed version of a public record is a distinct public record</i> from the fully accurate version I had sought.</p> <p>As far as the failure to reappoint Mark Dunlop, coverage in the <i>Bay Area Reporter</i> is worth noting:</p> <ul style="list-style-type: none"> ▪ “Even more strikingly, Brown’s office told the <i>Bay Area Reporter</i> that the reason for not re-appointing Dunlop was political, and personal.” ▪ Johnston also told the BAR: “He has no confidence in, or respect for, the person appointing him, so it’s unlikely he’ll be winning respect in return.” ▪ “Regardless, it was the perceived personal affront that was behind Brown’s refusal to reappoint Dunlop to the Care Council, said Johnston.” <p>Just last night I learned at the CARE Council meeting that Mayor Brown’s letter to the Council had just been received stating that the Mayor’s reason why he did not reappoint Dunlop was because Brown felt it was time someone else should be given a chance. If this were true, other nominations for Council membership winding their way towards Brown’s desk should also not be re-appointed in order to give other people a chance; otherwise the truth will be exposed for what it is: Brown failed to reappoint Dunlop simply out of pique that Dunlop had not shown him a sufficient level of respect.</p>

Speaker # / Name	Prepared Testimony
	<p>As this Task Force may know, Mayor Brown criticized Supervisor Daly on KRON TV when Brown returned from Tibet saying that Daly had shown disrespect for the mayor.</p> <p>Given the anal-retentive fixation this Mayor's Office has on the issue of "respect," it is ironic Mr. Johnston has shown such flagrant disrespect to the Sunshine Ordinance by his self-admitted refusal to respond to two of my public records requests at all, and — for now going on four months — and by having stonewalled in responding to a third public records request.</p>

After my prepared remarks, we pick up with the actual *partial* transcript of the hearing.

P.J. Johnston's Five-Minute Rebuttal

Speaker # / Name	Verbatim Transcript	Discussion
2.	Garrett Jenkins Mr. Johnston? OK. You have five minutes to respond to Mr. Monette-Shaw.	
3.	<p>P.J. Johnston Mr. Chair. Member. I'll leave most of my time for questions and any other information that you'd like to ask me. I believe Donna [Hall] has sent to you my response to the complainant. It's fairly simple. Mr. Monette-Shaw has contacted my office in the past for documents. To me, I believe it began earlier this year. Please forgive me ... I receive hundreds of document requests thorough the years. I do my best to keep up with them, and frankly, I am very good at responding immediately and forthrightly, not just with members of the media whom I have to deal with every day, 24 hours a day, but also with general citizens. And I've worked for other departments besides the Mayor's Office, and I've had to do the very same thing.</p> <p>This latest issue really arose with the issue around the [City] budget [for FY 03-04]. Leading up to that [enactment of the budget in July], Mr. Monette-Shaw had asked me to provide him with information regarding labor agreements and contracts with City employee groups leading into the budget. <u>He repeatedly asked me to create a document according to guidelines which he sent as an attachment to me.</u> That's where this whole issue of creating documents first arose, and it continued through the vein of his e-mails ...</p> <p>... in which he said: "<u>I don't like the information that you are giving me</u>" ... <u>I'm paraphrasing</u> [Mr. Monette-Shaw] ... "I don't like the information you are giving me, so create this for me." <u>I didn't make that up.</u> I take my job very seriously. I take my role as a civil servant very seriously. And while I certainly have a job that is thrust into the political limelight ... which</p>	<p><u>False Statement # 1.</u> Johnston's first false statement was contained in the written response he submitted to the Sunshine Task Force. Ms. Hall (the Tasks Forces' Administrator) was questioned during a preliminary jurisdictional Complaint Committee, hearing on October 21 regarding Johnston's response to my Sunshine complaint. She testified that <u>Mr. Johnston had told her verbally that he had responded fully to my records requests.</u> Subsequently, Johnston's written response date-stamped (not actually dated) October 24, stated in its first sentence: "<u>I responded promptly and completely.</u>" This is patently untrue, because if he <u>had</u> responded "promptly and completely" to each of my three public records requests, I would never have filed a Sunshine complaint because I would have had no basis to do so.</p> <p>It should be noted that I did not so much ask Johnston to create documents in particular formats according to "guidelines," as I had requested highly specific data. As I had done with other City departments, I sought to obtain a document with particular column headings, or "fields" of information, and I listed the particular data elements that I was seeking. Those other City departments had complied by providing the data requested. I assumed the Mayor's Office would also be able to locate certain data elements, regardless of which other document(s) they may have been contained in. The specifications I provided him were to detail the information I was seeking.</p> <p>The Sunshine Ordinance needs to be modified so that if the data elements exist in any other format or document than the particular record <u>named</u> in a records request, then the data as it exists in another document must be provided.</p> <p><u>False Statement # 2:</u> Johnston makes two false statements here: First, he is <u>not paraphrasing</u>, as I never told him (or even implied) that I didn't like the information he had given me" Second, because he <u>did make this up</u>, his statement that he <u>didn't</u> make it up is also a false statement.</p>

Speaker # / Name	Verbatim Transcript	Discussion
	<p>clearly, Mr. Monette-Shaw has already thrust into this discussion ... the one of [public records] requests is something that I try and deal with as directly, and as quickly, and as matter-of-factly as possible. My process for responding to a records request is to immediately respond to the person in consultation with the City Attorney's office, then set about to collect whatever documents exists, as they existed in my department, Department 25 ... the Mayor's Office, to have the City Attorney take a look at those documents to see if there is any information that should or must be redacted, or any other issues that may arise, and then to provide that information. I've never ... to the best of my recollection, never charged people for the copying. I've sent documents, as I have to Mr. Monette-Shaw, electronically, where requested. I have allowed people for extremely voluminous documents to come in and take a look them first and then narrow down their search. And frankly, that's put me in good stead, not just with the public, but with the San Francisco media, which as some of you know, and I know one of your colleagues, Mr. Brugmann is not here, but his publication in particular can be pretty demanding. I have raised this to tell you that I try and respond to my duty as a public servant with regard to the Sunshine Ordinance as best and as directly and as timely as I can.</p> <p>Where this whole thing went awry is that Mr. Monette-Shaw, who not just asked for public documents, but frankly creates a growing hue and cry with political arguments, and he wants to get ... engage me ... I'm obviously the Mayor's press secretary. I'm obviously quoted in the paper a lot. I'm obviously on television from time to time. I'm in the middle of many of these issues by the nature of my job.</p> <p><u>I have no desire, nor will I engage, in political back-and-forth, with people who make records requests.</u> It's a very onerous task, and I treat it as one separate from the political demands of being the spokesperson for the Mayor of San Francisco. <u>Once he got into that, it started going off course,</u> real fast.</p>	<p>False Statement # 3: I <i>never</i> included any "political arguments" in the public records requests I submitted to the Mayor's Office. I did include <i>one</i> "editorial aside" at the end of my third e-mail to Johnston in a lengthy public records request, but a single editorial aside does not make for a "hue and cry of political arguments." My single editorial aside had concluded: "... two-thirds of a billion dollars to administer and manage (however well or not), or be 'responsible for' City government ... is a lot of [money.]" (See the "E-mail Exchange Document" posted on this web site, and while you will find this single social-commentary editorial aside, you will <i>not</i> find one word of "political arguments.")</p> <p>False Statement # 4: Johnston claimed "... once he got into political back and forth ..." This is simply untrue. I had made a single editorial observation about the cost (two-thirds of a billion dollars) to administer and manage City government. I never said anything about politics per se in the third e-mail I sent to Johnston. In the 5th e-mail to him arranging for pick up of materials, I did note that he was providing me with hardcopy documents, rather than electronic documents, as I had requested,</p>

Speaker # / Name	Verbatim Transcript	Discussion
	<p>And then it came to, downright insults sent to me about “whether or not I speak English ... are my antennae up ... let me put this to you again since you appear too stupid to recognize this” ... <u>and I’m paraphrasing [his] remarks.</u> And frankly I’ve been down that road. I’ve worked for the City for eight years. And while I have worked with other departments, I have been associated with the Mayor of San Francisco, who is, obviously, a lightning rod for political discourse and public discourse in this City. And some things I just have no control over. And the fact is, people feel very strongly about certain things, and it is one thing to express yourself or to utilize the powers afforded you as a citizen of San Francisco, I’ll wrap this up in one second. It’s another thing to go down the road of insulting or berating and mistreating City employees. And I’ve been on the receiving end of that. I’ve seen in the past that once I start going into rebutting some of these ...</p>	<p>but that commentary should <i>not</i> be misconstrued either as a “political argument” or as an “editorial aside.” That <i>commentary</i> was a simple statement of fact that I was willing to accept a response in a medium other than what I had requested.</p> <p>Any other first-amendment commentary included in my e-mails numbered 1 through 6 to Mr. Johnston, all addressed Sunshine processes and various requirements imposed on City departments; that commentary, surely, is a proper topic in Sunshine requests, and is not “political discourse,” nor is it “back and forth.”</p> <p>False Statement # 5: Johnston claims I called him “stupid.” He is definitely <i>not</i> paraphrasing here, as all I wrote to him was:</p> <p>“Let me restate my public records request in language you might understand. I assume English is not your second language. This time, I’m using very precise language that appears to have gone over your antennae the first time ‘round.”</p> <p>Note: <u>Johnston’s Rebuttal was not fully audiotaped, as there is a gap in the audiotape of 10 to 15 minutes.</u> A significant portion of Johnston’s three-minute rebuttal is missing from the recording.</p> <p><u>The missing gap in the audiotape involved the most egregious portion of Johnston’s guilt-by-association defense: His extensive recantation that he had experienced “hate speech” from other people submitting records requests, and his unstated implication that I would resort to the same behavior.</u> The Sunshine Task Force members appeared visibly disturbed by Johnston’s allusions to the behavior of other members of the public who had requested material from Johnston, but at no time did the City Attorney intervene to stop Mr. Johnston from comparing my records requests to other people’s behavior, and by so doing, interjected guilt-by-association into this hearing as one of his primary defense strategies.</p>

3-b	<p><i>Discussion of Guilt by Association:</i></p> <p>City Attorney Llorente, or Garrett Jenkins (the Chair of the Sunshine Task Force) had an ethical obligation under Robert's Rules of Order to have called "Point of Order" to stop Johnston from straying from the subject matter and issues at hand — because what was being discussed in the hearing was my behavior, <i>not</i> other people's behavior. Johnston stated that in other public records requests he had allowed himself to be dragged into political discourse by other people, and that when he had done so in the past, the behavior of those other people had involved behavior bordering on "hate speech." Johnston indicated that he was afraid if he got into political discourse with me (Monette-Shaw) that he was afraid more "hate speech" [a "hate crime"] would ensue. Drawing a parallel to other people's behavior — inferring guilt-by-association — was Johnston's principle strategy for his defense of having violated the Sunshine law.</p> <p><u>Both the state of California and the U.S. Constitution — by way of Supreme Court rulings on the 1st, 5th, and 14th amendments — disallow "guilt by association," because it violates these amendments;</u> the Supreme Court has rejected it as "alien to the traditions of a free society and the First Amendment itself."</p> <p><u>Guilt-by-association — also known as the "bad company fallacy" — is a deductive fallacy of soundness containing a falsehood as its major premise, and is in the <i>ad hominem</i> family.</u></p> <p>Freedom from guilt by association is a fundamental right under American law precisely because guilt or innocence is an individual, not a collective, matter. <u>A person's guilt or innocence is determined by what acts they may have performed, not by the acts of others.</u></p> <p>As a strategic matter, guilt by association is counterproductive, because it leads government officials to waste resources targeting the innocent and alienates whole communities of people who might have information about true violations of open government/open records by public officials.</p> <p>Our Constitution's basic legal principles are built on the premise that we cannot tolerate a system that practices guilt by association. <u>Some legal authorities have asserted that use of "bad company" accusations based on guilt by association is a malicious prosecution.</u></p> <p>The interactions Mr. Johnston had with <i>other</i> people in the past was not germane to the case at hand, but neither Llorente nor Jenkins invoked Roberts Rules of Order to stop Johnston from using guilt-by-association as his primary defense. Llorente, in particular, having a background in the law, should have known that this was an improper defense, and Llorente had an ethical obligation to have stopped such testimony the first time Johnston used this strategy. <u>Instead, Llorente sat there like a bump on a log, permitting Johnston to use this despicable defense strategy.</u></p>
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How Rosemary Woods-like is this: A significantly large portion of the proceedings was not audiotaped and was subsequently found to be unrecoverable, including a goodly chunk of P.J. Johnston's Rebuttal, which is completely missing between the end of Tape 1 and the beginning of Tape 2 ... because the audiotaping system was not monitored carefully in order to change tapes promptly.

[Note to Task Force — Low-Tech Hint From Heloise: Buy an egg-timer, set it to the length of the audiotape, and when the alarm bell goes off get up and change tapes promptly!]

Also missing is the entirety of Monette-Shaw's Response to Johnston's Rebuttal, and a large portion of the beginning of the Task Force's "Discussion" period in which both parties may be questioned by Task Force Members as they deliberate on the merits of the facts presented.

Patrick Monette-Shaw's Three-Minute Response to Johnstons' Rebuttal		
Speaker # / Name	Verbatim Transcript	Discussion
3-c Monette-Shaw		<p>Because the Task Force failed to operate the tape recorder properly, my response to Johnston's guilt-by-association accusations was not recorded. My memory is that I told the Task Force that "guilt by association" was entirely repugnant, and that at no time had my contacts with Johnston come anywhere near to being "hate speech."</p> <p>Totally shocked by Johnston's ploy in using guilt-by-association, and speechless over</p>

Speaker # / Name	Verbatim Transcript	Discussion
		how bizarre were Johnston's "hate speech" statements were, I may not have stated this in my response, but I remain astounded that <i>Johnston had stopped just short of</i> accusing me of setting a cross on fire on his front lawn. <i>That's</i> how bizarre Johnston's testimony sounded!

Tape 2 Side 1

Tape 2 picks up well into the Discussion period. Notably missing in this 10- to 15-minute gap in the audiotape are several questions posed to Monette-Shaw, and his answers, at the start of the Discussion period. Side 1 of Tape 2 begins mid-sentence ...

Discussion Period Followed Complainant's Introduction, Defendant's Rebuttal, and Complainant's Response to Rebuttal		
Speaker # / Name	Verbatim Transcript	Discussion
4. P.J. Johnston sent him to the correct department for that. That's on that particular request. Secondly, I would also mention that it's just not .. It's just [inaudible] not true that ... and I think ... you Members might be able to discern this, that there has been a <u>political discourse</u> as a part of these contacts with us.... I'm getting ... I'm getting to the heart of your question. That the questions [raised in his public requests] about the labor agreements were <u>rife with political discourse</u> about Mr. <u>Monette-Shaw's views about who is highly paid and who is not in City government</u> . And that's So that's just one point ... But on the issue of whether or not someone who is offensive or impolite uh ... still ... uh ... can petition an officer of City government and demand information ... I tend to agree with that and I will be obedient to the findings of this Task Force, but I ask you, just as you're going to clarify language about responding <u>in the format</u> (which has created a number of problems), I beseech you ... on behalf of City employees who I personally believe, on the whole, do their best to uphold the City Charter, the constitution of the State of California, and the constitution of the United States to the best of their ability .. those are the people I deal with, too. To put in some protections and some thresholds by which requests become abusive. And I'm not talking "abusive" because they're difficult, or they are large in nature. I've dealt with really large requests. When I worked at the Municipal Railway I would get requests for all 2,300 Municipal Railway employees ... the records .. we had to figure out what was protected information, what was protected by contract ... what was, uh, permissible to be sent over. I've dealt with very difficult records requests. I'm talking about abusive in the nature. So if this Task Force gives me a charge [to comply with Monette-Shaw's records requests] I will be obedient to it, but I beseech you to deal with this issue.	<p>False Statement # 6: Accusation of "rife" political discourse. As the False Statement # 3 discussed above shows, I included no political discourse, so "rife" is simply untrue.</p> <p>False Statement # 7: Accusation that I had expressed multiple views on which employees are paid at what salary level. The "E-mail Exchange Document" on this site shows on pages 4 and 5 that I had made a public records request on June 7 requesting information about City employees who earned in excess of \$90K, but the mention of the salary levels were part and parcel of the public records request. I did <i>not</i> "express my views" about who is highly paid and who is not; I made a public records request for specific data elements, using as the principal parameter [query condition] a condition of 'employees earning in excess of \$90K,' but I added no commentary about who was highly paid and who was not, as he falsely testified. The <i>only</i> "view" I expressed was a single first-amendment statement: "<i>But then, I don't make \$90K.</i>"</p>
5. Doug Comstock	Well, as you know we are open to suggestions because we are amending the legislation; we are working on that. So if you have some specific requests for us to amend it, if you have areas where you feel that this would be appropriate, we're certainly open to that. I'm interested in ... for example... the Budget Summary for the Police Department. Mr. Patrick Monette-Shaw tells us that was not included in the budget [e.g., the Budget Summary document authored by Mayor	

Speaker # / Name	Verbatim Transcript	Discussion
	Brown's staff] and that his request was not satisfied for that; that he has not received it. Is this the case?	
6. P.J. Johnston	<p>I'm telling you that in my role as the Public Information Officer for Department 25, I provide all the documents in our hands in Department 25 in the format that they are requested. <u>And those were provided to him.</u> If there is information that he believes was not there, then its something I can't answer, because frankly <u>I am not the expert on the computer file that I ... made available to him,</u> or directed to where they are to go. If there's information regarding the Police Department, the budget, or whatever, and we narrowed it down to what it needs to be, I'd be happy to be the facilitator of that, although probably, <u>realistically, it will be directed to the Police Department</u> ... um' but it veered off course at that point, is what happened here.</p>	<p>False Statement # 8: As noted in the Discussion in Speaker # 3 above, Johnson's assertion that he had provided me "all of the documents" I had requested is patently untrue, or I would not have filed a complaint.</p> <p>False Statement # 8: Johnston is mixing apples and oranges by mixing up two unrelated records requests; he <i>had</i> provided me a computer file about the status of union contacts [which issue of union contracts was not a part of my complaint, as that matter had been completed], but here Johnston is referring to the "information not available in the Budget Summary" to which he is not an "expert on computer files," and at no time did he provide me with any attached computer file(s) regarding the Police Department or other City department budgets.</p> <p>Misinformation: Directing anyone to the Police Department for the summary budget is utter nonsense, as the Police Department is not the author of the Summary Budget booklet. The Summary Budget document was prepared in, or for, the Mayor's Office, but certainly was <i>not</i> prepared by the Police Department.</p>
7. Doug Comstock	I understand that. But, um ... but uh ... so you're telling me that there was ... <u>that the Mayor's budget did not include the summary of the Police Department</u> and that's OK? That the Board of Supervisor's ...	
8. P.J. Johnston	No, I'm not telling you what's OK. Mr. Comstock, you're saying that.	
9. Doug Comstock	I'm saying that, yes. <u>And the Board of Supervisors did not request the [Police Department] Summary</u> that only Mr. Patrick Monette-Shaw requested	
10. P.J. Johnston	<p>The Board of Supervisors delayed ... uh, debated, the budget document, as you well know, for two full months. <u>And they didn't seem to have any mystery about this.</u></p> <p><u>What I am saying is I provided him with the documents that were in my hands.</u></p>	<p>Sadly, it <i>should</i> have been the Board of Supervisor's or a member of their respective staffs to have found this error, not me. This speaks to their skills or lack thereof, not mine.</p> <p>Misinformation: Johnston <i>had not</i> provided me with <u>all of the documents I had requested.</u> The issue was not about the documents he physically may have had in his hands; at issue was whether he had attempted to locate the correct, complete version of a document that was available from another subdepartment <i>within</i> the Mayor's office.</p> <p><u>Johnston's "hate speech" guilt-by-association remarks were the most troubling but THIS statement ranks a close</u></p>

Speaker # / Name	Verbatim Transcript	Discussion
		<p><u>second as VERY troubling:</u> What follows shows that Johnston either has no respect for the Sunshine Ordinance, or that he doesn't understand what is required of him as a Public Information Officer. How many other people who had requested records from the Mayor's Office may have possibly been told — and denied access to public records — that Johnston had provided them only those documents that were “in his hands,” or that “I have no documents responsive to your request,” simply because the documents <i>weren't physically</i> “in his hands.” He appears unaware [since he later stated in his testimony that he is not versed in Sunshine processes] that he is required to make a good faith effort to locate existing records in other sub-departments to located documents that <i>weren't “in his hands.”</i> <u>Who else may have been denied public records because Johnston may have failed to search for documents in Mayoral suboffices simply because he did not have them “in his hands”?</u></p>
11.	Doug Comstock	<p>That you have ... And you have no way of knowing of how to get ahold of that Police ... the budget of the Police summary?</p>
12.	P.J. Johnston	<p>I was requested ... the Police ... excuse me. <u>I was requested the budget documents that existed in the Mayor's office at the date of that records request</u> and that's what I provided.</p> <p>False Statement # 10: Johnston is splitting hairs: I asked for an <i>accurate</i> document that I knew existed in the Mayor's office, and I had specifically asked for the Police Department page. In this statement, Johnston tries to make it sound as if I had asked for a “budget document as of a given date [which I had not],” not the Police Department budget summary. <u>I never specified as “of the date of the records request,” precisely because I wanted a document that had to have been complete before the date of my request.</u> And besides, on the date of the request, the <i>accurate</i> document <i>did</i> exist in the Mayor's office, and he should have known it. Instead, Johnston continued to falsely state he had provided the document, but he failed to mention that the document he had provided was a version that contained errors; he did <i>not</i> provide the complete, <i>accurate</i> version of the document, and to that extent, this is a false statement.</p> <p>As well, this is the first occurrence of Johnston failing to answer a direct question (about whether he knew how to obtain the Police Department summary). [We all know that Johnston is paid as the Press Secretary to the Mayor to spin stories, and not necessarily respond to direct questions; this is the hallmark of all Press Secretaries; possibly there is a college course taught somewhere in the skills of not answering direct questions.]</p>

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		<p>Of course he knew who had — or should have went looking for — the original electronic document of the <i>complete</i> Budget Summary, including the missing Police Department summary, yet he persisted in refusing to admit that he didn't know how to get ahold of it, despite the fact that the document was prepared by the Mayor's Office of Finance and Legislative Affairs, with the assistance of possibly two separate third-party contractors: Nancy Schlesinger and Associates — who was paid (I eventually learned after this hearing) \$48,000 to "reformat" [the full budget book] into the "Budget Summary book," and also paid to assemble a print-ready document for use by the City's photocopying department; and also the SieWorthy Creative Group (the second contractor, who as of November 6, 2003, Johnston <i>has still not</i> provided public records about the SieWorthy Group's role in preparing the two budget documents). Can anyone imagine that leading up to the release of the Mayor's Budget Summary on June 2 that Johnston had no idea, and was not kept in the loop about, which outside contractors were involved in producing the Budget Summary and Full Budget booklets? After all, the two books cost a minimum of \$61,000 to produce. And Johnston asks us to believe both that he knew nothing about the books' production or how to get ahold of the <i>complete</i> materials?</p>
13.	Doug Comstock	And then when he ...
14.	P.J. Johnston	I'm not telling you what's OK and what's not OK.
15.	Doug Comstock	So then when he followed up saying ... pointing out that it was missing this particular piece of information that he was very interested in, that you said ... you don't have it.
16.	P.J. Johnston	<p>I provided him with resources to get the <u>full documentation that existed on-line</u> through the Department of Telecommunications and Information Services, <u>and the other places where it existed</u>. And that was not satisfactory to him and then he responded with an insulting e-mail.</p> <p>False Statement # 11: The problem with Johnston's logic here is that the on-line version document contained the <i>same</i> error that appeared in the final hardcopy of the bound Budget Summary the Mayor's Office had first given to me and had also sent to the Public Library, so he did <i>not</i> direct me to where the "<i>full</i>" document was at on-line. As well, when Johnston was ordered by the Task Force to comply with the Ordinance, he eventually wrote to me on November 6 that the missing page 30 was due to a "printing error." In fact, the "missing page 30" also does not appear in the on-line version [as late as of this writing on November 11, 2003], so it was not simply a matter of a printing error, it was an error with an <i>interim version</i> of the complete documents' source file that produced the Internet version, too, so the "full documentation" never existed to the public "on-line" either for me to access or for the</p>

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17.	Garrett Jenkins	Board of Supervisor's to access. Besides, the <u>"on-line" document was posted on the Mayor's own web site [which, admittedly may possibly be maintained by DTIS], not so to some nebulous "other" web site.</u>
18.	P.J. Johnston	That other place was the [Public] Library?
19.	Garrett Jenkins	Yes.
19.	Garrett Jenkins	Why not the Police Department?
20.	P.J. Johnston	Well, because, frankly, <u>what he was asking for was existing documented ... excuse me ... existing documents as they were presented to the public,</u> and at the same time that they go to the Board of Supervisors, they're immediately put on public display at the Public Library. And ... you know ... the budget books are this size [gesturing a large stack of papers with his hands].
21.	Doug Comstock	At this point in the hearing, Jenkins did not get it that the document in question was a summary authored by the Mayor's Office, <i>not</i> a document authored by the Police Department.
22.	P.J. Johnston	<u>I did not have any of those documents in my possession ... in my office's possession.</u>
21.	Doug Comstock	False Statement # 12: I was <i>not</i> asking for an existing document that had been presented to the public, because I had already obtained <i>that</i> document. Instead, I was asking for the <i>original</i> document that had been figuratively "redacted," given its missing page 30. So Johnston's response is a false statement, because I was <i>not</i> seeking a document <i>as it was presented</i> to the public and the Board of Supervisors containing a glaring error; instead, I was seeking the full <i>original</i> document. My <i>real</i> request was to obtain the document that <i>should have been</i> presented to the public and the Board of Supervisors: A full, complete report, not a report missing a crucial summary page about the embattled Police Department.
22.	P.J. Johnston	Misinformation: Johnston knows full well that the Sunshine Ordinance is <i>not</i> just about whether A City employee <i>physically</i> has possession of the document in his office. He should have directed me to the <u>sub-department in the Mayor's Office that had the correct material.</u> As the Custodian of Records—as well as the Public Information Officer/Press Secretary—for the Mayor's Office, Johnston had an ethical obligation under the Sunshine Ordinance to have directed me to (or to have obtained himself from) the mayoral sub-office that <i>had</i> the document in <i>its</i> possession (whether it was physically in his possession or not); that department was the Mayor's Office of Finance and Legislative Affairs, and surely Johnston knows where that office is located at in City Hall.
23.	Doug Comstock	Do you have any idea of who might have this information?
24.	P.J. Johnston	As I told him, I believe the Department of Telecommunications produces the physical materials.
		False Statement # 13: Johnston's assertion of who produced the "physical materials" is absurd; the Budget Summary lists on its front page credits for the "Mayor's Office of Finance and Legislative Affairs." Following this October 28 hearing, Johnston

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		<p>finally acknowledged on November 6 that it was Nancy Schlesinger and Associates who had “assembled the final print-ready document.” The physical materials submitted to Nancy Schlesinger’s company for “reformatting into a Summary booklet” were most probably prepared by the document’s two senior authors: Steve Kawa, the Mayor’s Deputy Chief of Staff, and Ben Rosenfield, the Mayor’s Budget Director. A total of ten people are listed on the frontice page of the Budget Summary, and all of them appear to work for the Office of the Mayor, not for DTIS, since they are listed under the subheading “Office of Finance and Legislative Affairs,” and the DTIS Department name does not appear in the credits. Additionally the Acknowledgements page in the Budget Summary also makes no mention of DTIS. Notably, Johnston’s false statement here does not elaborate that the only role DTIS could possibly have had was to physically upload to the Internet an electronic HTML or PDF file that was most likely output by Nancy Schlesinger’s computer systems after her firm had “assembled” the reformatted Budget Summary booklet.</p>
25.	Doug Comstock	<p>But [sighs] ... <u>he asked for specific ... for other specific information as to who produced this Budget Summary</u> and you believe that it was the Office of Telecommunications that produced ...</p>
26.	P.J. Johnston	<p>The <u>physical document was produced by the Department of Telecommunications.</u> His follow-up e-mail discussed the material that was provided to him, and the inadequacy of the material that he sought.</p> <p>False Statement # 14: Johnston repeats his assertion in False Statement #13 of who produced the physical document, and <u>he neglects to mention [as he later informed me on November 6] that the print-ready document prepared by Nancy Schlesinger and Associates was then turned over “to the City’s Reproductive [sic: he meant ‘Reproduction’] Services department for the actual printing and production of the booklet.</u> And Johnston appears to contradict himself: At Speaker # 22 above, he stated he didn’t have any of the sign-off (press proof OK’s) signature pages available, so how could he have so emphatically asserted who produced the booklet?</p>
27.	Doug Comstock	<p>And you have no knowledge of who the commercial printer was?</p>
28.	P.J. Johnston	<p>I personally have no knowledge of that.</p> <p>Putting aside false statements, misinformation, and disinformation, can anyone seriously believe that in the days leading up to release of the Budget Summary on June 2 that Johnston “had no knowledge” that the <i>two</i> different budget books were scheduled to be delivered to City Hall by Reproduction Services on Sunday, June 1 (as I learned on November 8, when I received</p>

Speaker # / Name	Verbatim Transcript	Discussion
29.	Doug Comstock	All right. Thank you. Could I ask Mr. Monette-Shaw a question?
30.	Garrett Jenkins	Mr. Monette-Shaw ?
31.	Doug Comstock	So ... do you have the now in your hands all that you need?
32.	Monette-Shaw	No I don't.
33.	Doug Comstock	What are you missing?
34.	Monette-Shaw	<p>I am missing, as I told the Complaint Committee [during the jurisdictional hearing on October 21] <i>all</i> of the materials in the July 6th request regarding Mr. Shriver's employment,. Mr. Johnston stated in the <i>Bay Area Reporter</i> and I can track down the exact issue date for you, that Mr. Shriver, who has been out on disability for over two years, his job duties have ostensibly been carved up between mayoral staff and DPH staff. Those documents have not been provided at all, in summary. Also in summary, [I am missing] the letter not reappointing Mr. Dunlop [to the HIV Health Services Planning Council. And I refuse to believe that the Mayor would hand over preparation of his Budget Summary to the Department of Telecommunications and Information Services. And I believe the Sunshine Ordinance says if [Johnston was] unaware of who printed, or who had the contract, he was to make a good faith effort to find out from DTIS who the contractors were. And ... um ... I can't believe that this document does not exist in some electronic format in the Mayor's Office, or in the contractor's [office] who had the contract to put this thing together, and emboss it, <u>that somebody cannot pull up that electronic file and print the original page 30.</u> That's all that needs to be done. And then to locate the contracts and have them duplicated for me, [of] who did the printing of it [the Budget Summary booklet]. So there are several documents missing related to this, including page 30. And I don't believe for a minute that this document is <i>not</i> prepared in the Mayor's Office [not in DTIS].</p> <p>Afterward: On November 8, 2003 I received in U.S. Mail a letter from Johnston dated November 6 which finally contained the missing page 30 of the Budget Summary booklet (the Police Department budget summary), and it appears to be formatted exactly like the remainder of the Budget Summary booklet, including the fonts used, although it does not actually contain a page number on the footer.</p> <p><u>Readers should note it took fully four months (until after the November 4 election) — not the ten days required under the Sunshine Ordinance — to receive this single page from Johnston after I first filed the request to obtain this missing page on June 21.</u> The reasons for the four month delay remain highly suspicious: Perhaps because the Office of the Mayor did not want anyone — least of all the Board of Supervisors — to easily spot in the Mayor's Budget Summary that he was cutting the</p>

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Police Department's embattled Office of Citizen's Complaint by nearly \$100,000, chopping "Senior Escort Services" by \$1.2 million, slashing [neighborhood ?] "Patrol" by \$6.35 million, cutting "Vehicle Theft Abatement" nearly in half by \$126,000 — while at the same time fattening up the Police Dept.'s "Operations and Administration" budget by \$547,000, — possibly hoping not to inflame either the voting citizenry demanding reform of Mayor Brown's Police Department Office of Citizen's Complaints (which Office was the subject of a November 2003 "reform" ballot initiative opposed by the likes of Senator Diane Feinstein), elderly voters relying on the Senior Escort Services program, or God forbid, owners of cars worried about vehicle theft in the City.		
35.	Doug Comstock	Well, I certainly understand your exasperation over that point. I myself had tried through the Department of Purchasing to get contracts, and it's a black hole, which no one seems to have any answers [to]. But there's just nothing but questions ...
36.	Monette-Shaw	One last remark? <u>Can any of you, as a manager imagine printing a glossy book, and embossing it [with the City seal] and not knowing how it was outsourced?</u> What kind of management would <i>that</i> be?
37.	Garrett Jenkins	We don't have to answer that.
38.	Monette-Shaw	No you don't; it's just a rhetorical question ...
39.	Doug Comstock	I am always amazed by how the City does things., and it's an education.
40.	[Multiple speakers]	[Inaudible]
41.	Garrett Jenkins	Ms. Cauthen?
42.	Sue Cauthen	I had a question for Mr. Monette-Shaw. You are aware that the Controller's office has all of the budget material. Did you go to the Controller's Office? Were you ever directed to the Controller's Office? They have everything ... Ms. Cauthen at this point did not get it that <u>I was not seeking "all of" the line item budget data, I was seeking <i>only</i> the budget summary</u> , which was <i>not</i> prepared by the Controller's Office or by DTIS; it was prepared by a contractor to the Mayor's Office.
43.	Monette-Shaw	I was not directed to the Controller's Office; not at all. I was directed to the Library and the Public Library has exactly what he handed me in his office, because he sent exactly the same thing over to the Public Library.
44.	Sue Cauthen	But you do know ... <u>if someone doesn't know where it is, they can't direct you to where it may be.</u> This is hooley. P.J. Johnston surely must have known exactly who prepared the Mayor's Budget Summary and that it had been prepared either by the Mayor's Office of Finance and Legislative Affairs or by Nancy Schlesinger and Associates, and if nothing else, he should have directed me to another mayoral suboffice, <i>not</i> to DTIS. <u>And, here, Cauthen is being completely disingenuous</u> and she appears to be making excuses for Johnston, just as City Attorney Llorente makes excuses for him, too (below): As a Task Force member, Cauthen should know <u>language in the Sunshine Ordinance</u>

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45.	Monette-Shaw	I know. But I'm having a real hard time believing that nobody knows where this data is at.
46.	Garrett Jenkins	How come you didn't go to the Controller's Office?
47.	Monette-Shaw	Because this is a Mayor's Office document ... and it has his signature on it ...
48.	Garrett Jenkins	<u>When you realized page 30 was missing, how come you didn't you go to the Controller's Office?</u>
49.	Monette-Shaw	<p>Because <u>I wanted it in summary format that the Mayor had taken [from] the Controller's Office information and boiled it down, and summarized it, and packaged it for the public.</u> And, the Mayor also has a Budget Director named Mr. Rosenfield. So one would think that Ben [Rosenfield] is communicating with Ed [Harrington].</p> <p>Note: As I was to learn on November 8 in Johnston's November 6 letter, <i>this is precisely what Nancy Schlesinger & Associates contract was to do: To reformat the budget into a summary booklet and to prepare a "package" to deliver to City Repro</i> for printing using the City's photocopying equipment!</p> <p>Readers may also want to note that the 471 books (between the Full Budget book and the Summary Budget book — each of which had both tape-bound and perfect-bound versions, for <i>whichever</i> reason) ended up costing an average of \$129.51 each, at minimum — since Johnston has yet to tell me whether the SieWorthy Creative Group was paid an additional hefty "creative" fee — replete with the so-called "printing error" in at least the 270 copies of the Budget Summary book.</p> <p>Had these documents been produced entirely in-house without using two separate outside contractors, the City could have saved, at minimum, \$48,000, and at least one of the City's lowest-paid workers laid off since July 1 could have kept their job, and could have continued to contribute to the local economy. <i>Instead, we got a glossy Budget Summary containing a glaring error, which, ironically, may be a fitting legacy for Mayor Brown.</i></p>
50.	Garrett Jenkins	Did you ask Mr. Johnston...
51.	Monette-Shaw	No, because had I asked, how would I have gotten a response? [By that time in the timeline of events Johnston] had simply stopped responding to any of my e-mails at that point.
52.	Garrett Jenkins	Wait. You just stated you know the person in the Mayor's Office who handles the budget, right?
53.	Monette-Shaw	<p>And I have experience from [placing public records requests with] DPH; I assumed [that] was [a] Citywide [process], that <u>a public information officer [such as Johnston] is the entry point to asking for information from [a given City] department.</u> So rather than going to the Budget Director [Rosenfield] I went to the Mayor's Chief Information Officer [Johnston], expecting that he would coordinate with Ben Rosenfield, much like Eileen Shields coordinates with Greg Saas [in the Department of Public Health].</p>

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54. Garrett Jenkins	OK.	
55. Sue Cauthen	I hadn't finished ...	
56. Garrett Jenkins	Ms. Cauthen., go ahead.	
57. Sue Cauthen	I should probably ask this of Mr. Johnston ... <u>Who is the custodian of records in the Mayor's Office?</u> Is it Mr. Johnston?	
58. P.J. Johnston	Yes.	
59. Sue Cauthen	OK. And I just wondered ... you know, I make a lot of Sunshine requests myself, and I do think ... we're devising a procedure here to suggest that departments adopt. And the first thing that we said is that you have to use common sense and courtesy on both sides. And so, I know that as a requestor, I can get really frustrated, and I know that sometimes I've had documents slapped down where I was working. So I know the other side can get frustrated, too. I'm just going to say ... I'm telling you what my mother said to me, which is that you catch more flies with honey, but I know sometimes its hard to portray honey when you feel [inaudible] throwing flies at you.	
60. P.J. Johnston	<p>That's absolutely true, which is one of the reasons why, in spite of the obviously <u>pointed political beratement I received [from Monette-Shaw]</u> in the early e-mails regarding the ... you know ... it frankly did ... regarding Union contracts.</p> <p>Mr. Monette-Shaw <u>represented himself as a person from SEIU who was concerned about Union contracts,</u> and the 7.5% giveback ... and I "get" all that. And I agree the way the way to handle these things goes much better with friendliness and mutual understanding and respect for each other's positions. And I try to get off on that pitch.</p> <p>But the fact is, Mr. <u>Monette-Shaw knows all the places he can get these same documents, but the fact is he wants to get them from me.</u></p> <p><u>He wants to get into a back and forth with me,</u> and if you're going to tell me [rule that I must comply] I have to go back to doing them, I will do that. But I sure hope that</p>	<p>False Statement # 15: I never "berated" Johnston with "political beratements," as noted in the discussion of False Statements #3 and #6, above.</p> <p>False Statement # 16: At no time did I represent myself as affiliated with any union to Mr. Johnston, either verbally or by e-mail, nor have I ever mentioned to him my employer (see the "E-mail Exchange Document" posted on this web site; there is not one word in those e-mails about being affiliated with any union).</p> <p>False Statement # 17: In all of the e-mails I ever sent to Mr. Johnston asking for public records, I never <i>once</i> mentioned the 7.5% salary cut imposed on City employees. Johnston is simply, or <u>deliberately,</u> confusing my public records requests with other of my writing that he may have seen elsewhere.</p> <p>False Statement # 18: There is only <i>one</i> place — not <i>multiple</i> "all the places" — this Budget Summary document is available: That <i>one</i> place is by the author who prepared it in, or for, the Mayor's Office, because there are no "same documents" located elsewhere, there is only one [summary] document. Johnston knows there is no other place to get it from. This single sentence by Johnston actually contains <u>two false statements,</u> as he has no "fact" that I wanted to get it from him. Frankly, I didn't care who I got it from, and least of all, whether I obtained it from him.</p> <p>False Statement # 19: I had, and have, no desire to get into any "back and forth" discussion with Johnston; I had contacted him</p>

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	you will at least consider the issue of how City employees are treated in the name of what you guys are here defending.	<i>only</i> since he is the custodian of records for the Mayor's office and I was seeking a public record. (I had <i>not</i> contacted him <i>simply</i> because I was looking to get into "back and forth" with a Mayoral employee whose name often appears in the press.) <i>Johnston's head is simply swelled too large</i> : I had no interest in getting into a political discourse with him, and I did not, in fact, attempt to "engage" him in political discourse. This is patently untrue, and is only speculation by Johnston, not a fact.
61.	Sue Cauthen	I think you are making a very good point. And I hope that Mr. Monette-Shaw is hearing me also when I say "common courtesy and respect" on both sides, no matter how hard it is. I did want to ask you It seems you guys did have a Did you think about assigning someone else to work with him instead of yourself?
62.	P.J. Johnston	Frankly no. <u>I wouldn't pass on the abuse</u> that I was receiving from ...
		It is instructive to note Johnston again alleges "abuse," absent a definition of whether innocuous statements like "are your antennae up?" or "is English your first language?" rise to the standard of what most people interpret as constituting "abuse."
63.	Sue Cauthen	You see the problem is that obviously it is really hard to deal with someone who is abusive. And those things make you feel bad. But on the other hand.... <u>The Sunshine Ordinance requires a response; it doesn't say if the person asks if you speak or if English is your first language that you can ignore them in the future</u> . So I would just say ... I would just suggest that you bite your tongue or assign somebody else ... <u>but you've got to do it [respond to the inquiry]</u> .
		It is interesting to note that <i>nobody</i> on the Task Force examined whether my language in a <u>single</u> e-mail had <u>really</u> been abuse, or whether it was merely first-amendment speech. <u>Stating that you assume a person's first language is English is not abuse</u> . Without defining what "is" is or was, or what "abuse" is or isn't, the Task Force swallowed hook, line, and sinker Johnston's <i>unexamined claim</i> that abuse had taken place.
64.	P.J. Johnston	I understand. And frankly, given the fact that I knew in this particular case ... and again, bear in mind that I receive a number of requests, not just from the City San Francisco but from all over the country ... I frankly knew that a) <u>The information that Mr. Monette-Shaw [wanted] was fairly obviously available in the public sphere in a number of different places</u> . Also that the budget document, as everyone well knows, is a work in progress, <u>that is then considerably amended</u>
		False Statement # 20: Johnston — again — falsely states that the summary-level information I sought was available elsewhere. <u>This is false precisely because the Budget Summary was prepared only by the Mayor's Office, or it wouldn't have been called "The Mayor's Budget Summary"</u> ; any information available elsewhere contained detail-level, not summary-level, information. <i>The Budget Summary is not, and was not, available in a number of different places or "public spheres."</i> Had I attempted to recreate summary-level information myself from detail-level data, the veracity of my interpretation of the Mayor's "summary" would have become an issue (which I wanted to avoid). Johnston also sidesteps that I had wanted to receive the Summary Budget that existed

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	<p><u>by the Board of Supervisors, as all budgets</u> are works in progress.</p> <p><u>I, frankly, anticipated having this come to you</u> [as a Sunshine complaint]. <u>Because I liked [wanted] to raise this to your attention.</u> I don't frankly, relish getting political lectures from Task Force member Comstock, but I'm willing to do it. And he enjoys it sometimes. And sometimes people need to talk about the issues that arise given the policies and local ordinances we put in place. So <u>I frankly wanted to push this issue to this body,</u> and I'll be obedient to it [your ruling]. But I think that you recognize what happens here, and its something that I think in Committee or somewhere along the line ... I don't have too much more time in the City of San Francisco, but I think it is something that the 27,000 City employees or however many people have to respond to public information requests, deserve some clarity on it.</p>	<p>before the budget evolved in the hands of the Board of Supervisors. I was attempting to obtain the summary data as it was first presented to the Board of Supervisor's, and before it was then amended and changed by the Board of Supe's.</p> <p><u>This is a clear admission,</u> albeit between the lines, that Johnston <i>deliberately</i> failed to respond to my July 6 and September 27 public records requests because he had decided in June that he suspected I would file a Sunshine complaint and <u>Johnston appears to have deliberately not responded, simply in order to force me into filing a Sunshine complaint.</u> And because he wanted to make the issue one of "abuse" or a "sufficient level of politeness" in front of the Task Force, <i>he deliberately did not respond to the second and third public records requests.</i></p>
65.	Sue Cauthen	Well I take your point, and thank you for bringing these issues forward.
66.	Garrett Jenkins	Ms. Williams?
67.	Marjorie Ann Williams	<p>Mr. Johnston? I can feel that you are very, very frustrated, and your time is almost up, and we thank you for being a civil servant and we want you to leave here with that. And we thank you for what you've brought to the Task Force. But sometimes these things can get heated, and it can take on a personal affect. Don't take this away with you. We're here for both sides. I want you to know that. You've been a good public servant, and you've represented the Mayor; your time is almost up. We're here for both sides to listen. So what you've brought to us, telling us all this other ... we know that the public takes abuse, but you inherited this. Sunshine came into effect because of years of no open government. <u>So what you're getting the brunt of is years of people not telling the residents of San Francisco what they need to know.</u> So I just want to say as a public servant to, don't take it personally and let it go and enjoy your life. And we're going to get on with it.</p> <p>In her two digressions during the hearing, Member Williams may not have grasped the significance of her remarks: <u>It has been the years of Willie Brown's staff blackballing the residents of San Francisco over open government that resulted in my frustration with Johnston's stonewalling me, and that I'd finally had enough of being misled.</u></p>
68.	P.J. Johnston	<p>I appreciate that, and the only thing that I would add to that is that I recognize also that Ordinances are works in progress, just as budgets are, and <u>I do think there are a number of issues that improve open government.</u></p> <p>Nobody caught the fact that there were a number of issues is this Sunshine complaint which point to Johnston himself not helping move "open government" forward.</p>
69.	Garrett Jenkins	Mr. Llorente? I'm sorry. Ms. Nickliss?
70.	Alexandra Nickliss	<p>I have a question for [City Attorney] Mr. Llorente. In terms of Sunshine Ordinance, if there is information available that someone is asking for that is available in other places ... can you refresh my memory what is ... what does the Ordinance say about what a City employee is supposed to do?</p> <p>Ms. Nickliss, too, missed the point that the information in the Budget Summary was available <i>only</i> from the Mayor's office, and that information available from other sources was in detail-level format. So her question to the City Attorney missed the point of whether the information was actually available</p>

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71.	Ernest Llorente	Yes. 67.21c ... there's a subsection under that. It is the last sentence of that [section]. "A custodian of any public record, when not in possession of the record requested, shall assist the request [by] directing the requestor to the proper office or staff person."
72.	Alexandra Nickliss	"... [to] the proper office or staff person." So in terms of [inaudible] directing Mr. Monette-Shaw to the [Public]Library ...
73.	Ernest Llorente	<p>It depends on what source of information you are looking for. If you are looking for what was actually presented to the Board of Supervisors from the Mayor's Office, and that's a record that was kept in the Library, that's one thing. <u>But if you're asking for the raw data that was used in order to formulate the report</u> done [by the] Mayor's office or it might have been with the Controller's office ...</p> <p>City Attorney Llorente appears here to be making an excuse for the defendant (Mr. Johnston), rather than advising the Task Force, which is Llorente's job. <u>I was not seeking the "raw data"</u> used to create a separate public record, and Llorente knows (or should have) that <u>one document (at the detail level) does not supplant a different document (the summary-level report)</u>. Llorente should know that when a given document is created and has exchanged hands (as in a draft document being passed from desk to desk), that <i>that</i> document becomes an official public record in its own right; <u>Llorente should not have thrown sand</u> into the eyes of the Task Force by suggesting that <u>a detail-level document available from one City department can not supplant a request for a summary-level document that was a distinct public record produced by a different City department</u>. WHAT was Llorente thinking?</p>
74.	A. Nickliss	OK? What was requested was the former?
75.	Ernest Llorente	<p>Yes. The problem that we have, and we can see it here, is that <u>there is problems in trying to understand what the issues are</u>, and when there's a lack of courtesy and respect it needs to be addressed in some way in the Ordinance.</p> <p>What we see here, is that it is Llorente himself who has a problem in understanding what the issue was: A request for a <i>distinct</i> public record. Indeed, several of Llorente's response appear to either obfuscate the issues, or that <u>he didn't understand I wanted a distinct public record</u>.</p> <p>Instead, Llorente tried to fan the flames by tossing gasoline on the "you-gotta-be-more-polite,-son" fire by suggesting that courtesy and respect need to become embedded in the Sunshine Ordinance as a precursor condition to being able to request <i>distinct</i> public records. <u>At this point, a reasonable person wonders whether Llorente is defending the defendant, or providing legal advice to the Task Force, the latter of which is his job, and which the former is not</u>. Eventually during the hearing, a Task Force member</p>

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		states Llorente's supposition that courtesy and respect is a required condition of the Ordinance is false, since the <u>current</u> Ordinance does <u>not</u> address a petitioner's behavior, it <u>only</u> sets into law what City departments are required to produce in response to public records requests.
76.	Alexandra Nickliss I do suggest that the Compliance and Amendments Committee take this issue up in terms of language in the Ordinance. So we're still a little fuzzy here. Is that correct?	
77.	Ernest Llorente Yes.	
78.	Garrett Jenkins Mr. Comstock?	
79.	Doug Comstock I'm sorry, but I'm very fuzzy. We haven't ... We have addressed the problem with regard to page 30, but we haven't addressed Mr. Shriver's employment or the letter reappointing Mr. Dunlop. These ... I guess these are requests that were made, and I guess I should ask Mr. Johnston about that. These requests were made. <u>Did you respond to those two requests?</u>	
80.	P.J. Johnston <u>No.</u> Two things on this. First of all <u>I don't dispute Mr. Monette-Shaw's claim</u> and the fact that I am the designated person to respond from the Mayor's office. And I don't dispute the fact that in my response on June 25 I reiterated my exasperation about the fact that I was not going to create documents that were already in existence or re-create ones that may have once existed. And I also let him know that I was offended by his inquiry. <u>And at that point I did stop communicating with him.</u> And so I am not disputing ... those subsequent requests may very well have documents in my office. I could guess off the top of my head, but rather than do that, what ... and frankly I've never been before your Task Force, unbelievably in all these years ... I don't know exactly what matter of course comes out of this. But if I am If the direction from this Task Force is to respond those two subsequent things, I'll do so in good faith while I'm still in this office. <u>I simply stopped communicating [with Monette-Shaw] 'cause, frankly, I have seen these things develop. And you may believe it or not, but I have been the recipient of a lot of ugly communications through the years.</u>	<i>The Smoking Gun:</i> Johnston admits that he is not disputing the facts in my complaint that he had <i>deliberately</i> failed to comply with the 1a and had <i>deliberately not responded to my records requests!</i> <u>Guilt-by-association: This is one of the few verbatim quotes that was, fortunately, not part of the missing 10- to 15-minute Rosemary Woods-like gap on the audiotapes that prove Johnston was using guilt-by-association in a possibly bald attempt to taint and unfairly sway the deliberations of the Sunshine Task Force.</u> Again, it is notable that City Attorney Llorente just sat there like a bump on a log and did not stop Mr. Johnston from using <i>guilt-by-association</i> in alluding to other cases that had <i>nothing</i> to do with the case at hand. <u>Legal defense would have stopped all of Mr. Johnston's inflammatory remarks,</u> as they were wholly irrelevant; rather than stopping Johnston's abuse of guilt-by-association, but all Llorente could muster was sitting there like a <i>big</i> bump on a log, saying nothing.

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81.	Doug Comstock	<u>So you are not disputing that you are in violation of the Sunshine Ordinance by not providing these documents?</u>
82.	P.J. Johnston	I believe that that is a determination for your body to make ...
83.	Doug Comstock	But you're not disputing it?
84.	P.J. Johnston	I'm coming here with <u>my response to the facts as they have occurred</u> and it's your determination.
85.	Doug Comstock	Thank you.
86.	Garrett Jenkins	<u>OK, he's not disputing the fact that he didn't provide the information.</u> OK. Any further questions? [Hearing none ...] Do we have a motion from the Task Force for hearing an Order of Determination?
87.	Doug Comstock	[Sighed, in exasperation] Well ... I don't know where to start. [Another sigh; long pause.] Let's just say that "The office ... <u>Which office are we talking about?</u> The Office of the Mayor, or are we just talking about the Public Information Officer?
88.	Garrett Jenkins	What's [the name of] your office, Mr. Johnston?
89.	P.J. Johnston	Office of Communications for the Mayor. I am the Public Information Officer for Department 25, and I'm commonly known as the Press Secretary.
90.	Garrett Jenkins	Office of Communications for the Mayor ...
91.	Doug Comstock	The ... I think that the ...
92.	P.J. Johnston.	I'm sorry ... that's confusing. My office is a suboffice within Department 25, which is the Mayor's Office.

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93.	Doug Comstock Then I think that our Determination should ...	
94.	Ernest Llorente It should be with the Office of the Mayor.	
95.	Garrett Jenkins OK.	
96.	Doug Comstock "The Office of the Mayor is in violation of Sections 67.21(c) ... and ... since these were Immediate Disclosure Requests ... under Section 67.25. I believe that our Determination should say the "The Office ... the Mayor's Office is in violation of the Sunshine Ordinance with regard to Section 67.21(c) and 67.25, and that we should request that Mr. Monette-Shaw receive all documents that he has asked for."	
97.	Ernest Llorente For clarification, you should state what the Section is and also what the summary of that section is ... in Section 67.21(c) ... that the custodian did not assist the requestor or direct the requestor to the proper office ... is that the issue that you are talking about?	
98.	Doug Comstock That's one of the issues that I thought we dealt with, or that we brought into the discussion. And it seems to me that that has clearly has been violated if he did not refer him to ... if he referred him to the Public Library after all, and then stopped referring him entirely, he certainly ... he's in violation of it.	
99.	Nicole Dogwill I'm sorry ... I thought he referred him to the Department of Telecommunications ...	What the Member Dogwill continued to miss is that the referral to DTIS was <i>not</i> the proper office, and neither was the referral to the Public Library.
100.	Doug Comstock Yes, but then he stopped referring him at all, or even responding in any way. So if he wasn't going to respond, then he should have referred him to someone who could respond to him, in my opinion ...	
101.	Garrett Jenkins Would that be an Ethics [Commission] issue ... government ethics?	Jenkins <i>finally</i> gets it right: Johnston's behavior was clearly willful non-compliance, which in itself is official misconduct. <u>Willful non-compliance should be grounds for automatic referral of cases to the Ethics Commission under the stipulation of official misconduct.</u>
102.	Ernest Llorente What? In terms of? ...	
103.	Garrett Jenkins Of not doing his job?	
104.	Ernest Llorente No. Yeah. ... The failure to respond, at all, is an issue that could be ... in theory ... If there is a willful violation ... willful refusal, you know. If you wish to refer it [to the Ethics Commission]. If that is ... But again, if you look at all of the facts of the case to decide which cases are worthy of referral [to the Ethics Commission]. [Stuttering ...] But you haven't even got there yet. First you have to make an Order of Determination as to what sections of the Ordinance are violated, whether it be one or two sections. This motion refers to two sections.	An aside for Mr. Llorente: So which is it, "No" or "Yes"? Why are you so unsure of yourself? Your stammering long before getting to "First you have to make an Order" is maddening, precisely because it seems that you intended to circumvent a discussion of whether this case was sufficiently "worthy" of referral to the Ethics Commission. Note to Task Force: The Sunshine Ordinance should be amended to state that will willful failure to respond to a public records request at all is the most egregious violation of this Ordinance imaginable, and willful failure should be automatic grounds for referral to the Ethics Commission.
105.	Doug Comstock But I didn't quite complete my sentence. I think that we should include in that Determination that the Mayor's Office turn over all of the documents, and we should request that anyone requesting information from any	

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	public servant be as polite as possible, although ... but remain assertive of their rights to receive that information.	
106. Garrett Jenkins.	I'm sorry, Ms. Dogwill. [Mr. Comstock], please restate the sections.	
107. Doug Comstock	67.21(c) and 67.25, in toto.	
108. Garrett Jenkins	OK.	
109. Ernest Llorente	67.25 is the immediate response?	
110. Doug Comstock	Immediate response. He ... His [Monette-Shaw] request wrote "Immediate Disclosure" on the top.	
Long pause while Task Force reviewed documents.		
111. Ernest Llorente	<p>[Very faint internal legal consultation among the advisors] That's what I'm wondering ... that's why I raised the issue. Did he make the referral?</p> <p>OK. I guess with that motion ... you are basically making a factual determination that the Mayor's Office did not refer the complainant to the proper office, <u>even though there is evidence that he made the referral to DTIS.</u> If that is your motion and your Order, that is the factual determination as, I understand it, at least based on this Motion. If everybody agrees that is what the factual determination is.</p>	<p><u>Llorente is again making excuses for the defendant:</u> I was <i>not</i> referred to the <i>proper</i> office, and the fact that I was sent on a wild goose-chase to DTIS is not a sufficient "even though" defensible argument to excuse Johnston's freely-admitted actions. <u>I was not referred to the proper office, and surely Llorente must have understood this.</u> Paragraph 67.21(c) of the Ordinance states that "A custodian of any public records, when not in possession of the record requested, shall assist a requester in directing a request to the <i>proper</i> office ...". Johnston should have known that the document requested was not prepared by DTIS and that DTIS' only role was to upload the document it had been given to the Internet.</p> <p>For his part, Llorente should have understood that DTIS was <i>not</i> the proper office to have referred me to, and Llorente had no business using an "even though" method to lend credence to Johnston's improper referral: <u>A referral to an improper department is an improper referral,</u> plain and simple <u>and is not rocket science,</u> raising the question of whether Llorente needs training in common sense to supplement his legal training.</p>
112. Alexandra Nickliss	And what should have been the proper department, or place to which he should have been referred?	
113. Monette-Shaw	To the Mayor's Office!	
114. Garrett Jenkins	It doesn't matter what was in <u>his state of mind</u> at that point if he [Johnston] <i>believed</i> that it was handled by DTIS, then I guess he did refer him to the proper department.	Chairperson Garrett is also making excuses for Johnston: "State of mind" has nothing to do with anything; <u>Johnston's job was to have investigated which department was the proper department,</u> not what his state of mind had been in <i>guessing</i> which department to refer me to. Anyone could get off of the Sunshine accountability hook by <i>claiming</i> they had "believed" they had correctly guessed about which department to refer someone to <i>merely as a claim of defense.</i>

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115. Heather Sterner	<p>May I say something? I'm not prepared to say that he wasn't referred to the proper department. <u>I think we have to be extremely careful that Sunshine does not become a tool of abuse.</u> And I really do think that we have to understand that City employees are as entitled to courtesy as [are] citizens. And, uh ... I'm not prepared to vote for an Order of Determination finding fault with Mr. [Johnston] ...</p>	<p>Sterner simply doesn't get it: She's buying into Johnston's "abuse" defense, rather than focusing on the job at hand: to determine which department would have been the <u>proper</u> department. Sterner also did not understand the not-rocket science that <u>a referral to an improper department is an improper referral!</u></p> <p><u>And Sterner et al. completely miss the point that people requesting records can lose their sense of "courtesy and respect" when they know they are being given the run-around and are being referred, purposefully, to an improper office.</u> While this may be no defense for not displaying <u>"sufficient respectful," to the Mayor's Office [which is an issue of which this mayor and his staff are absolutely obsessed by]</u>, a fact of human nature is that when people are being given the run-around, they are not likely to kow-tow to false expectations to exhibit sufficient levels of "respect."</p>
116. Garrett Jenkins	<p>However ... if I may. The problem that I have, for the Members [of this Task Force] is ... once he realized that he was missing page 30 ... that Mr. Monette-Shaw wanted information for page 30 ... <u>I believe Mr. Johnston would have known exactly where to get that summary from.</u> And <u>referring him [Monette-Shaw] to the Library, I believe, would have been inappropriate, and wasn't proper.</u></p>	<p><u>Finally</u>, Jenkins got it that an improper referral had been made, and that <u>Johnston probably had known all along exactly where to have gotten the information being requested.</u> Indeed, following this hearing and its subsequent ruling in my favor, Johnston did, in fact, obtain the records I had sought and finally provided them in November; if he knew where to get the information in November, why didn't Johnston go to that same source last June, unless he simply did not want me to obtain the information when it was newsworthy?</p> <p>Johnston knew <i>exactly</i> where to go to get the information, and probably knew it all along! <i>Sadly, it took fully four months to obtain this information, not the 10 days stipulated by the Sunshine Ordinance, and it could be posited that Johnston took four months to eventually provide them, precisely doing so in order for the issues and the public records to have become "old news," hoping that nobody would care about the underlying public records any longer.</i></p>
117. Ernest Llorente	<p>Again ... what was the record that was supplied to the Board of Supervisor's from the Mayor's Office, and if this [Budget Summary] was supplied to the Board of Supervisors and the Board of Supervisors decided the budget based on <u>that report, which may have been faulty, that is still the report.</u> <u>And if the Library has it, even though it's incorrect, that is not an improper referral.</u> It's a repository of information ... um ... and again, it's, basically, if we're going back to ... if that is what was decided and then you want to go back and see what it <i>should</i> have been ... but that's not what the Board</p>	<p>Llorente's rationale is specious: "<i>That is still the report</i>" is simply a <u>bad</u> legal conclusion. <u>Three separate documents were at issue:</u> One "report" (the detail level document) issued by one City department does <u>not</u> <u>supplant a different document</u> (the summary-level report) issued by the Mayor's Office that exists in two separate versions.</p>

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	<p>of Supervisors decided [to set the budget] on, <u>from what I hear</u>. So you're asking for what is the burden this custodian of records had to do in order to comply with this request.</p>	<p>And since the <i>summary-level report</i> existed in <i>two</i> different versions (totaling the three documents at issue) — one which was “faulty” containing a glaring error, and another complete version <i>without</i> the error — then Llorente had no business trying to suggest that “that is still the report,” because it could have been <u>any of up to three different distinct public records</u> that Johnston had <i>failed</i> to refer me to the <i>proper</i> location in order to obtain the record I sought, because there is a huge difference between a <i>complete</i> report and a <i>faulty</i> report, which are <i>not</i> the same documents.</p> <p>And if the report (document) I was seeking was faulty at two separate locations (the one in my hand and the one at the Library), Llorente should have understood that when a given <i>un</i>-faulty (i.e., the fully complete) document was created and exchanged hands, <u>that un-faulty document is an official public record in its own right. Since that fully complete report was the document I was ultimately requesting,</u> I should have been referred to the correct location of where that <i>distinct</i>-public record existed, <u>so Llorente had no business suggesting that a referral to a “damaged” report, which I had not requested, was a proper referral.</u> How Kafkaesque is <i>that</i>?</p> <p>Sending anyone to the Library to obtain a <i>faulty</i> report is clearly sending someone to a “repository of <i>incorrect</i> information,” rather than directing them to the person who had the <i>correct</i> material; as such, it is an improper referral. <u>Referring anyone to a faulty report is not what Sunshine is about; Sunshine is about directing requestors to the person who has the correct complete report.</u></p> <p>It's as if Llorente was providing Johnston with an opportunity to say “You want a correct report, Patrick? Well all I'm going to bother to do is to refer you to a second location containing the same incorrect information I provided you earlier, and then claim I did my job because I referred you <i>somewhere</i>, albeit to an incorrect place.”</p> <p>As well, it is not clear what Llorente meant by “from what I hear.” If he was introducing hearsay about which document(s) the Board had used to pass the final budget, Llorente should not have introduced hearsay, as it had no bearing on this Sunshine complaint.</p>

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118. Garrett Jenkins	Mr. Comstock?	
119. Doug Comstock	<p>I agree with Ernie in the first part of it, but then when Mr. Monette-Shaw pointed out that page 30 was missing and that it was ... and he couldn't conceive of any reason why that particular document was not revealed to the public, that Mr. Johnston then did not respond at all to anything ... and used ... and instead ... <u>even though he says he is used to a lot of threats, he used this ... excuse for no longer responding at all.</u> Which is, which he is legally required to do [to respond].</p> <p>This to me is very troubling; I can see that ... and I can <u>understand why Mr. Patrick Monette-Shaw could get under your skin.</u> [Laughter] But Mr. <u>Patrick Monette-Shaw is not paid to be doing what he is doing; Mr. Johnston is paid to be doing what he is doing, and he is paid to be civil and he's paid to be polite, and he's paid to carry out his responsibilities.</u></p>	<p>Notably, here Comstock shows that he "heard" and <i><u>gave some measure of credence</u></i> to Johnston's "guilt-by-association" defense, even though Comstock appears not to have bought into such a weak-kneed excuse.</p> <p>What Comstock <i><u>should</u></i> have said was: "I can understand why Mr. Monette-Shaw lost his civility and courtesy when he asked Johnston 'Is English your first language,' when Monette-Shaw concluded Johnston was <i><u>stonewalling</u></i> him."</p>
120. Nicole Dogwill	<p>My trouble here is that he requested certain documents, and he was sent certain documents by the Mayor's office, and he comes back and says page 30 is missing.</p> <p>But if it wasn't in the Mayor's Office possession, I don't see ... and if he referred him to the Department of Telecommunications to see what the problem was, I don't see where he was in error there.</p>	<p>Dogwill never "got it" that <u>there were two versions of the Budget Summary</u>: One <i><u>with</u></i> errors and another <i><u>without</u></i> errors ... <u>and the two document versions were distinct public records.</u></p> <p>Dogwill didn't <i><u>get it at all</u></i>: <u>The Mayor's office does, and did, have this missing page in its possession</u> and simply didn't want to release it, so the referral to DTIS was a <i><u>wild goose chase</u></i>. If Dogwill <i><u>still</u></i> doubts me, I can send her the document that <u>Johnston finally bent over and coughed up four months after</u> I first asked him for the correct "page 30" on June 21.</p>
121. Garrett Jenkins	<p>If the Mayor was compiling summaries of all of the departments ... and as I understand it, <u>the Budget Director within the Mayor's Office would have had to produced that document ... you know, the summaries for all of the departments, so... the document obviously existed.</u> It's just ... that, for some reason [page 30] it wasn't printed within the Budget Summary [booklet]. So I have to say, well, did Mr. Johnston know that? OK? <i>This is common sense as far as I am concerned.</i> OK, look: "Page 30 is missing, I know where it is, I know where it can be found ... do I send him to the Library where I know it is going to be the same [<i><u>incorrect</u></i>] information, or do I go to the Budget Director and say 'Hey, this fellow needs this information [that is missing] here.' "</p>	<p><i>Eureka! Light bulb goes off in Jenkins' head and he finally got it!</i> Sadly, Dogwill apparently failed to understand the significance of Jenkins' point, as she subsequently cast the lone dissenting "No" when the roll call was taken on the Motion. Apparently, common sense is not good enough for Ms. Dogwill.</p>
122. Alexandra Nickliss	How do we actually know ... you know, you could just have incorrect pagination here. ...	
123. Monette-Shaw	No, it is <i><u>not</u></i> a pagination issue.	
124. Alexandra Nickliss	I'm just raising a question; I'm just asking how do we know that that missing page actually existed in the Mayor's budget?	<p>The "common sense" that Chair Jenkins had just discussed went right over Nickliss' head, too. <u>This suggests to me that some of the Sunshine Task Force members need to be replaced immediately.</u> because some of them appear to be <i><u>lacking common sense entirely.</u></i></p>
125. Garret Jenkins	Because each Department ...	

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126. Monette-Shaw	May I <i>please</i> say something?	
127. Garrett Jenkins	No you may not; please remain quiet while we deliberate here. <u>Each department ... each department's budget is summarized. OK? We know that happens. That's been done for years, and years, and years.</u> It just so happens that this particular year that budget summary [for the Police Department] was <i>not</i> put into in the booklet.	Here Jenkins had to spell out the not-rocket-science common sense that neither Members Dogwill nor Nickliss had yet understood.
128. Alexandra Nickliss	Was <i>not</i> put into the booklet?	
129. Garrett Jenkins	It could have been done because ...	
130. Monette-Shaw	It is nowhere to be found in the document! [Waving the Budget Summary booklet from the back of the room]. It is <i>not</i> in here!	
131. Garrett Jenkins	Because ... Now it could have been done because of a printing error, it could have been done because of DTIS not sending the correct ... all of the information over, <u>but ... the document exists</u> , we know that. As far as I'm concerned, we know that it exists. <u>And I believe that the Mayor's Office knew that it exists</u> , as well, and where it could be found, besides [at] the Library.	<i>Smoking gun #2:</i> Despite Jenkins' conclusion that he suspected the Mayor's Office knew precisely where this page could be found (in the Office of the Mayor's own hands!), Jenkins then failed to convince the rest of the Task Force members that Johnston was in willful noncompliance of the Sunshine Ordinance, which is official misconduct. <u>When will willful noncompliance involving official misconduct ever rise to the level of Ethics Commission violations if the Sunshine Task Force is too chicken-shit to refer such a clear-cut case of willful official misconduct over to the Ethics Commission for a proper hearing?</u>
132. Doug Comstock	And I think that Mr. Monette-Shaw followed up in good faith trying to find out if was merely an error at the printers. I mean ... and he requested that information so that he could see if the error was at the printer's, if the error was in the Mayor's Office, or where it was, <i>and he just got blackballed.</i>	<i>Comstock got it. I was blackballed!</i>
133. Garrett Jenkins	I concur. I believe that both parties acted in good faith in the beginning. OK? But when he comes back and says "Look, page 30 is missing," you know, it's like, [Johnston's response should have been] " <u>Gee, OK, let's go to the Budget Director and get it.</u> " Boom. That should have been it [should have ended it]. Ms. Williams?	Aside: Jenkins had no factual basis to believe Johnston had acted in good faith at the beginning; all of the evidence and facts presented during the hearing showed that <u>Johnston had not acted in good faith beginning on June 21ST!</u>
134. Marjorie Ann Williams	Mr. Chairman; not getting off that same point, but I just wanted to direct something to Member Sterner. When the Compliance and Amendments Committee met and started making [draft] amendments [to the Ordinance]... they were very, very good. And I think Dr. Nickliss and Member Knee have really put some teeth in[to] compliance. <u>I don't see Sunshine as being used as a tool to beat Departments over the head.</u> When you held that meeting out in Bayview Hunters Point, there weren't many people there [who attended] but the word got out that the City came to them. And they were very, very impressed. And that's what Sunshine is all about. So I commend Members Knee and Nickliss for what they are doing, bringing Sunshine to the community where people can really open up. Now, all of us have different personalities;	In fact, Member Williams <i>did</i> get off the point Jenkins had just made, as well as getting off of the subject matter at hand, and she went back to implying that my <i>sole motive</i> was to "beat up" a City department (which is untrue; that was <i>not</i> my motive!) when, in fact, my only motive was attempting to obtain a document I had been blackballed from obtaining.

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	some are aggressive or dominant, and assertive or whatever, but being public servants, we know that sometimes we just have to take it and swallow it. You know and we can't go for either side. It's either right ... it's a violation or it's not a violation. And I need to hear more, to see how I'm going to vote. But I just wanted to direct that to you. Member Knee had really worked on a good piece of work, him and the doctor [Member Nickliss] and it is excellent, and it is working.	Williams, and other Task Force members, also <u>falls for the assumption that a single e-mail rises to the level of "abuse"</u> ... in the <u>absence</u> of a clear definition of what constitutes "abuse."
135.	Garrett Jenkins	All right. So ... I think we need to look at the motion once again.
136.	Doug Comstock	I will restate the motion as I have it written: "The Office of the Mayor is in violation of Section 67.21(c) and Section 67.25. The Mayor's office is directed to make all documents available to Mr. Monette-Shaw that have been requested, and that anyone wishing to request public information using the Sunshine Ordinance remain civil and courteous to the custodians of public documents. "
137.	Garrett Jenkins	Now in regards to the willfully not producing documents, or just ignoring him. Do we address that? Once again, Jenkins attempts to reintroduce willful noncompliance of the Sunshine Ordinance as an issue rising to the level of referral Ethics Commission , but member Sterner then railroads the Ethics violation discussion (in Line 139 below) by focusing only on whether a City employee may " <i>feel</i> " they are being "harassed." The issue is <i>not</i> about "feelings"; <u>the issue is whether a City employee can simply ignore public records requests.</u>
138.	Doug Comstock	Well, that's a lot clearer violation.
139.	Heather Sterner	Yeah. I think we might address that by suggesting <u>that if a public servant feels that he or she is being personally harassed, that they refer the matter to another person in the department.</u> Sterner's suggestion was designed to let Johnston and the Mayor's Office off of the " <u>willful violation</u> " hook by dissembling about referring <i>future matters for a response</i> to other employees. She totally ignored both Comstock's "blackballing" remark and Jenkins' conclusion that the materials were clearly produced in the Mayor's office ... and rather than referring me to the Mayor's Budget Director (which would have been the <u>proper</u> referral), Johnston had instead sent me on a goose chase to the Library and to DTIS. <u>Sterner completely avoided facing the matter at hand: Johnston's past failure to even bother himself by referring the matter to another employee in the department.</u> which, after all, was the focus of this hearing; the hearing was <i>not</i> focusing on what might happen in the <i>future</i> , but what Johnston had failed to do in the <i>past</i> .
140.	Doug Comstock	I would, if I were put ... but he [Johnston] did not. But that did not happen in this case. <u>That's not in this case before us.</u> And Comstock appears to be gently trying to tell Sterner that she had ignored the " <u>case that was before them.</u> "
141.	Garrett Jenkins	It's not like ... <u>if it goes to Ethics [if we refer it to the Ethics Commission] that it will be done in the next couple of months.</u> In regards to the "willful," or not complying, or not doing their job ... [inaudible]. Jenkins wrongly advocates <i>not</i> to send it to the Ethics Commission because Johnston only has a few months remaining on the job when a new Mayor is sworn in. <u>Jenkins' argument is not a valid justification for failing to refer a clearly willful official misconduct charge</u>

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		<p><i>to the Ethics Commission based on the number of days remaining in a City employee's tenure.</i></p> <p><u>To compare and contrast Jenkins' line of reasoning, consider this:</u> Pretend for a moment that Dan White had shot and murdered former San Francisco Mayor George Mascone and Supervisor Harvey Milk while Dan White was a sitting member of the Board of Supervisors and had only 60 days remaining in his term of elected office. Would Jenkins' have dared to suggest that there would be no point in referring the case to the District Attorney for prosecution simply because the case could not have been scheduled for a hearing within White's remaining 60 days in office?</p> <p>While official misconduct does not rise to the same level of egregious behavior as does murder, the comparison is valid if for no other reason than <u>the length of time someone is to remain on the job is not contained in any law anywhere in this country (that I am aware of) as a loophole to dismiss pressing charges of breaking the law.</u></p> <p>[Note: Jenkins' bizarre rationale is matched by Llorente's bizzare logic at Speaker # 144.]</p> <p><u>Note to Task Force:</u> When you revise the Sunshine Ordinance, you should <i>clearly</i> state that <i>all</i> cases of willful noncompliance and official misconduct will be referred to the Ethics Commission <i>regardless</i> of how long a public servant will remain on the job. This should not be a decision left to the whim of future Task Force members, and the Ordinance should be crafted I such a way as to prevent future Task Force appointees from being able to use such a shoddy tactic in letting the "powers-who-be" off the accountability hook.</p> <p>After all, paragraph 67.34 of the Ordinance states that "The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct [and] shall be handled by the Ethics Commission." There is no language in paragraph 67.34 permitting the Task Force to consider the length of time remaining on the job as a reason <i>not</i> to refer a case involving willful failure to comply with the Ordinance to the Ethics Commission.</p>

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142.	Doug Comstock	<p>I think Mr. Johnston said that he would turn over the documents, if that were our wish, and I hope that he does, and that we don't see either one of them here [again] for a long, long time.</p> <p>And Comstock, too, sidesteps referring the matter to the Ethics Commission, offering as pabulum that <i>future</i> behavior (if the perpetrator reforms, cleans up his act, and doesn't repeat the same offense) can excuse <i>previous</i> behavior in having broken and violated the law.</p>
143.	Monette-Shaw	<p>It was definitely willful!</p>
144.	Ernest Llorente	<p>Mr. Chairman? Once our determination is made by this Body clarifying what the issue is and the violation, and request that there be compliance, if <u>after that there is no compliance, I think that then you have a case for referral [to the Ethics Commission]</u>. But if [you] state "You've got to comply," its complied with, [then] it's taken care of [you don't have to refer it to the Ethics Commission].</p> <p><u>Llorente's conclusion is so completely sad as to be laughable:</u> It is as if Llorente is arguing that if a serial rapist is sentenced to probation for one set of rapes, and during that person's probation they commit another rape, that the newly discovered rape will then constitute a reason to revoke probation and <i>finally</i> deal appropriately with the <i>first</i> set of rapes that nobody had been willing to deal with to begin with. And that if they do <i>not</i> rape someone else again while serving probation, that the initial set of rapes <i>will simply be overlooked</i>, because the <i>first</i> set of crimes have been atoned for ["have been taken care of" simply because incorrigible behavior was not repeated].</p> <p>[Aside: If I were a rape victim, I would not want Llorente to be anywhere near the prosecution's legal team, whispering this sick, twisted logic into their ears, nor would I want to see Llorente on the rapists' defense team, seeking to let the rapist off the hook by using such a rationale. If I were raped, I'd want to rapist fully punished for his first crime, not slapped on the wrist using Llorente's first-time violators Kafkaesque defense logic.</p> <p>There is absolutely nothing in the Sunshine Ordinance that gives Llorente the legal wiggle room to suggest that if an Order of Determination issued by the Task Force is subsequently complied with, that it will <i>erase</i> the slate of initial non-compliance and the initial violation of the Sunshine law.</p> <p>[Had Llorente used this specious argument in a debate class while in law school, he would have flunked out, and possibly would <i>not</i> have passed the bar and been granted a license to "<i>practice</i>" law.]</p> <p>There is <i>no</i> provision in the current Sunshine Ordinance providing that <i>future</i> compliance — <i>after</i> a violator is ordered to comply with the law — is any excuse for <i>previous</i> non-compliance, and if Llorente is really so inept as to have leaped to such an interpretation, he should <i>not</i> be advising the Task Force on</p>

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		<p>interpretations of our open government “Sunshine” law.</p> <p>After all, Llorente’s rationale opens up an ugly Pandora’s box by enabling (in the worst sense of the definition of “enabling”) all City departments to openly break the Sunshine law knowing that they can get away with a first violation scott-free using Llorente’s “if after that there is no compliance” specious reasoning. Llorente’s logic sends City employees and City departments the message that <i>only</i> if someone catches the employee in the same act a second time and is tenacious enough to pursue a second Sunshine complaint, <u>only then will the Task Force deign to recommend a referral to the Ethics Commission</u>, after two formal, and time-consuming hearings have been heard by the Sunshine Task Force. This is the wrong message to send if you really believe that the Sunshine Ordinance is there to provide open government.</p> <p><u>Note to Task Force: The Ordinance needs to be revised to require first-time referral to the Ethics Commission</u>, not to provide a wiggle-room loophole for excusing first-time violations if their <i>future</i> behavior proves they’ve learned a lesson from the previous flagrantly non-compliant and willful official misconduct.</p>
145.	Garrett Jenkins	Mr. Knee?
146.	Richard Knee	With all due respect to the language of Mr. Comstock’s motion ... with all due respect to the concerns ...
147.	Garrett Jenkins	Excuse me, before we go on. Did we have a second to [Mr. Comstock’s motion]?
148.	Richard Knee	<p>I’ll second it. With all due respect to the language of Mr. Comstock’s motion, particularly the second part of it, and with all due respect to the concerns raised by Mr. Johnston ... <u>I’m troubled by the part of Mr. Comstock’s motion that calls for civil conduct on the part of the requestor of information . The Sunshine Ordinance does not address ... at least [not] yet ... does not address the conduct of people requesting information.</u> The Sunshine Ordinance only addresses the conduct of the agencies or officials from whom information is requested. And I would strongly ... I would ... make a motion that Mr. Comstock’s motion be amended to ... with the language regarding the conduct of the requestor [be] stricken.</p> <p>Singer Joni Mitchell has a line in one of her songs about “We’ve walked on the moon, you be polite,” referring to the subservience people in power expect from people they consider “impolite.” The Sunshine Ordinance should never be revised to require that ordinary citizens have to demonstrate a “sufficient” level of so-called “respect” before being granted access to public records. <u>’Ya hear me, Willie? Johnston?</u></p>
149.	Doug Comstock	That’s a friendly motion ...
150.	Garrett Jenkins	OK.
151.	Richard Knee	OK. The second part of Mr. Comstock’s motion I believe calls for civil conduct on the part of the requestor of the information, and I will offer a friendly amendment to

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	strike that particular part of the Motion.	
152. Garrett Jenkins	That's a friendly amendment.	The Task Force does not understand that under Roberts Rules of Order, <u>there is no such concept as a "friendly" amendment.</u> [This is according to a parliamentarian who has earned consulting fees instructing our local HIV Health Service Planning Council (a.k.a., the CARE Council) on the finer points of Robert's Rules of Order. The Sunshine Task Force should take a lesson from this parliamentarian — or hire him to present a training session — to learn <u>"friendly amendments" are a fallacy!</u> There are only first and second degree amendments to main motions, because once a motion is made it belongs to the Task Force [as the "body"], not to the maker of the motion, so the maker no authority to accept a "friendly" amendment.]
153. Doug Comstock	So that's a friendly amendment?	
154. Garrett Jenkins	Yeah. If you accept it.	
155. Alexandra Nickliss	If you're willing to accept ...	
156. Garrett Jenkins	OK. So the motion was seconded, which was amended. OK Public comment? Do we have public comment on this?	
157. Ernest Llorente	I don't think you need to because you had public comment before you went into discussion. You don't need to do it again.	
158. Garrett Jenkins	Oh. We've already had it. I'm sorry. It's been a long time. OK. Let's have roll call [on the motion before the Task Force] please.	
159. Donna Hall	Member Williams?	
160. Marjorie Ann Williams	Aye.	
161. Donna Hall	Member Nickliss?	
162. Alexandra Nickliss	Aye.	
163. Donna Hall	Member Parker? [Absent]	
164. Donna Hall	Member Jenkins?	
165. Garrett Jenkins	Aye.	
166. Donna Hall	Member Comstock?	
167. Doug Comstock	Aye.	
168. Donna Hall	Member Cauthen?	
169. Sue Cauthen	Aye.	
170. Donna Hall	Member Sterner?	
171. Heather Sterner	Aye.	
172. Donna Hall	Member Mehra?	
173. Pawan Mehra	Aye.	
174. Donna Hall	Member Knee?	
175. Richard Knee	Aye.	
176. Donna Hall	Member Brugmann? [Absent]	
177. Donna Hall	Member Dogwill?	
178. Nicole Dogwill	I agree with the violation of 67 ...	It appears Dogwill was split on her decision .
179. Garrett Jenkins	It's [either] "Yes" or "No" [Miss Dogwill].	
180. Nicole Dogwill	Then "No."	
181. Donna Hall	<u>Then this Motion carries,</u> [finding that Johnston had, in fact, violated the law].	
182. Monette-Shaw	[Who could not hear Dogwill] Was that unanimous?	

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183.	Ernest Llorente	No.
184.	Richard Knee [For brevity's sake, I did not transcribe Member Knees' closing remark after the Roll Call inviting Mr. Johnston, Mayor Brown, myself, and the public to submit recommendations concerning revising the Ordinance.]	
185.	Monette-Shaw	Thank you, Members [for ruling in my favor tonight].

Of the 9 Task Force Members present, it appears 8.5 of them [Dogwill appeared split on the two Sections of the Ordinance being voted on in the single Motion] — almost unanimously — approved the Motion that the Office of the Mayor had violated the Sunshine Ordinance. Only Member Dogwill voted against the Motion, and had she been allowed to split her vote, it would have been interesting to see which part of 67 [... 21(c) or 25] she concurred or dissented with, just to learn which citation had been unanimous and which citation had a lone dissenting opinion.

The end result: The Mayor's Office was found GUILTY of having violated the Sunshine Ordinance.

Why have I waxed so long providing “interpretive discussion” throughout this transcript, when, in fact, I won my case against the Mayor's Office?

Because the manner in which this hearing was conducted still affords plenty of loopholes for other City departments to repeat the same disgusting behavior exhibited by the Office of the Mayor in preventing citizens from timely access to public records.

And I am *not* prepared to say that the current membership of this Task Force would have ruled differently (i.e., *not* in my favor) had I *not* gotten the “under the skin” of people, as Mr. Comstock so impolitely accused me of in a backhanded-compliment manner. (It's OK, Doug, I'm not *really* offended.)

Postscript: Task Force member Richard Knee is chairing the Compliance and Amendments Committee's latest attempt to revise the Sunshine Ordinance. He encourages written communications providing suggestions on how to modify the Ordinance. I recommend that those who have gotten to the end of this transcript take the time to write Member Knee with your concerns about the ethical implications of how this particular hearing was conducted.