

Patrick Monette-Shaw

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October 4, 2003

Donna L. Hall
Administrator
Sunshine Ordinance Task Force
City Hall, Room 409
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4683

Re: Complaint Against the Office of the Mayor

Dear Ms. Hall,

Complaint against which Department or Commission: • Office of the Mayor

Name of individual **responsible** at Department or Commission • P.J. Johnston, Press Secretary for the Mayor

Alleged Violation:

☒ Public Records Access ☐ Public Meeting

Sunshine Ordinance Section §67.21(b), 67.25, and possibly others

Do you wish a public hearing before the Sunshine Ordinance Task Force? ☒ Yes ☐ No

Please describe alleged violation.

Summary and Timeline

On May 15, 2003 I first placed a public records request concerning the status of union contract negotiations with P.J. Johnston in the Mayor's office. Between May 15 and June 21, I e-mailed Mr. Johnston a total of six times following up on related aspects of my public records request, which I had expanded to include the Mayor's Budget Summary for 2003–2004; each of my e-mails to him during this period were very polite.

On June 23 I received an e-mail from Mr. Johnston in which he told me to go to the public library to obtain public records. I replied on June 24 that that was the “wrong answer,” and I asked him if English was his first language, as I thought perhaps he had not understood my heretofore polite, precise questions. On June 25 Johnston wrote me that:

- My e-mails to him had “become increasingly unreasonable and offensive.”
- I was “abusing the Sunshine Ordinance for the purpose of insulting city employees and wasting valuable staff time.”
- He was “tuning [me] out. Do not contact me again; I will not respond.”

In fact, my June 24 e-mail — my seventh to him — was the only one in which anyone could have found anything even remotely offensive in my correspondence. Mr. Johnston never responded to a subsequent document disclosure request I submitted in a polite 8th e-mail to him on July 6.

<u>May 15–June 21</u>	<u>June 23</u>	<u>June 24</u>	<u>25-Jun</u>	<u>July 6</u>
6 Polite E-mails Submitted to P.J. Johnston	P.J. Johnston Suggests Going to the Public Library To Obtain Documents Requested	7th E-mail Suggests Johnston's June 23 E-mail is the "Wrong Answer"	P.J. Johnston Indicates He Will No Longer Respond to Public Records Requests; Advises Not To Contact Him Again; Never Supplies Documents Requested	8th E-mail Politely Requests Documents Concerning the Mayor's AIDS Czar; No Response Received From P.J. Johnston

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Detailed Complaint

1. On June 21, 2003 (Enclosure 1), I e-mailed P.J. Johnston a public records request as a follow-up to a verbal meeting we had had the day before. In that e-mail, I indicated that some of the hyperlinks on the Mayors web site were broken, and that I could not access several of the files from my home computer, either by trying to open the files on-line or by saving them to my hard drive and trying to open them in Adobe Acrobat. I asked that the broken links be checked and fixed, if necessary.

I also noted that a hardbound copy of the Mayor's Budget Summary contained an error page 30, which instead of being a summary of the Police Department's and probably two other agencies' proposed budgets, contained a duplicate of a summary that was contained on page 43. I asked that if the same error occurred in the on-line version of the Budget Summary, that the PDF file be corrected and re-posted to the Internet.

Finally, I asked in my June 21 public records request for documents concerning the production, printing, and publication of the Budget Summary document, in addition to requesting the correct version of page 30.

2. I received an e-mail response from Mr. Johnston on June 23 (Enclosure 2), in which he stated:

"I'm sorry, but I am not a member of the Department of Telecommunications and have [no] documents responsive to your request. I will not create or change documents, nor will I attempt to perform duties that are outside of my area of expertise. Meanwhile, I will remind you that all existing budget summaries are on file and available at the public library."

In a second e-mail from Mr. Johnston also dated on June 23 (not attached), he informed me: that his staff had tested the hyperlinks on various computers and the hyperlinks worked fine. Rather than using another enclosure, his second e-mail read:

"For your information: Staff tested the links and PDFs on three separate computers (one Apple and two PCs) and found the links and PDFs working properly, using recent versions of both Netscape and Explorer. Also, if anyone wants to save the PDFs to disk all they need to do is click on the disk icon in the upper left side of the Adobe Acrobat Reader/browser window, once the PDF is displayed in the window. I'm a terrible computer guy, so that's all I'm going to attempt to be helpful on this issue."

3. On June 24, I replied (Enclosure 3) to the first of Mr. Johnston's June 23 e-mails. My June 24 e-mail is the one Mr. Johnston found offensive, for which I apologize. I told him his e-mail was the "wrong answer," because I do not believe that the Sunshine Ordinance allows City agencies to direct people to the Public Library to locate public records. [Note: Indeed, I subsequently went to the library, and the hardcopy of the Mayor's Budget Summary document the Library located contained *exactly* the same error as the hardcopy Mr. Johnston had provided me on June 20; therefore, the trip to the library was a completely unnecessary wild goose chase.] In that e-mail, I stated that I assumed English was his first language, because I wanted to ensure that nothing was being lost in translation; my intent was not to insult him or to have appeared culturally insensitive.

I further wrote that if he was attempting to send me to the Department of Telecommunications and Information Services (DTIS) for resolution of my public records request, that that, too, would likely be a wild goose chase if the Mayor's Office had sent DTIS the same flawed information that was contained in the hardcopy document.

In my June 24 reply to Johnston, I amended my public records request by specifying in precise detail the documents I was formally requesting *from the Mayor's Office* (see paragraphs 3, and 3a through 3e in Enclosure 3.)

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4. On June 25, Mr. Johnston replied (Enclosure 4). He mistakenly presumed that my *only* purpose in questioning his previous responses to my public records request was to insult City employees and waste staff time. While it is true he attempted to provide technical assistance in his second June 23 e-mail concerning the broken hyperlinks, it is untrue that he had already provided me with documents that were completely responsive to the public records requested. He stated that he would “not attempt to recreate old documents which may have once existed,” but the truth of the matter is that drafts and sign-off proof sheets for the Mayor’s Budget Summary could not have been that old, as the Budget Summary had been released within the same month that I had placed the disclosure request seeking to obtain them, and records retention schedules should not have destroyed them inside of 30 days.

He also stated that he had directed me to “the appropriate location” for other documents, but this is a specious answer, for in fact, Mr. Johnston had directed me to DTIS (which is not the agency of record for the hardcopy of the Mayor’s Budget Summary draft documents) and to the Public Library (which, again, is not the agency of record for either the draft versions of the Budget Summary, nor the agency of record for documents pertaining to the contracting and outsourcing for printing and binding of the Budget Summary).

Further, the problem with being able to open the hyperlinked documents on the Mayor’s web site in *not* a problem with my computer, as he alleged, but rather it was a problem inherent with the document itself. Foremost it should be noted that a “page not found, error message #404, as I reported to him on June 21, has nothing to do with the computer attempting to access the document; it has everything to do with the document not being located on the City server to which the hyperlink points. In addition, the second error with the file (“the file does not begin with ‘%PDF’”) means that there is a problem with the way the PDF file had initially been saved, not that there’s a problem with a user’s computer. I had merely asked Mr. Johnston to have the file saved correctly so that the error message does not begin with ‘%PDF’ would be corrected. I have no way of knowing whether someone on Mr. Johnston’s staff, did in fact regenerate the PDF file to get rid of that error message without admitting they had indeed repaired it, but then simply claimed that they had no problem opening it in the various test environments Johnston described. Notably, a friend had also tried to open the documents on his computer, before I reported the problem to Johnston, and he, too, was unable to open them.

[Note: Part of the problem is the manner in which those on-line documents may have been converted to PDF format: Because they are probably scanned pages, which mushroom the size of the files to several megabytes or tens-of-megabytes, many computers cannot open them due to their unnecessarily inflated files sizes. Indeed, if those PDF files had instead been generated by outputting them directly to PDF file format (using “Save as PDF” or “Print to PDF”) from within the native software in which the documents were created, rather than scanning them, the file sizes would have been significantly smaller, allowing more computers to open them, and wider public access to them. Because of their file size, remote users would probably have to have both a DSL line and the most current state-of-the-art computers in order to open them. Additionally, I frequently open many PDF files posted on other City web sites, including the Board of Supervisors many documents, without incident, leading me to conclude the Budget Summary documents were flawed.]

I was not trying to send Johnston or any of his staff on a wild goose chase; indeed, it was he who had sent me on a wild goose chase by telling me to obtain these documents at the Public Library.

Finally, he concluded his June 25 e-mail telling me not to contact him again because he would not respond; I don’t believe the Sunshine Ordinance contains a provision that members of the public can be told by City employees not to place either follow-up requests, or additional public records requests concerning completely separate issues. Notably, as of the date of this complaint (October 4, 2003) Mr. Johnston never supplied the public records concerning the Mayor’s Budget Summary I requested June 24.

5. On July 6, 2003 I submitted a joint public records request (Enclosure 5) to the Office of the Mayor and the Department of Public Health seeking information about the Mayor’s policy adviser on HIV/AIDS policy issues, Mike Shriver. Notably, while Mr. Shriver has been on leave for fully two years, he had served for nearly a full year as the

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mayor's policy adviser before going on disability leave in October 2001. During the year that Mr. Shiver was employed, surely some of the written reports specified in the contract which hired him should have been completed and should be available. As noted in the disclosure request at Enclosure 5, the City maintains that Shriver's workload has been farmed out to other City employees, possibly to other workers in DPH or the Mayor's Office on AIDS policy issues. In addition to requesting written reports that had been contractually defined, I sought to obtain documents related to the Mayor's HIV Scientific Advisory Committee, including that committee's schedules for three years, public notices of the meetings, a roster of the committee members, and the agendas and minutes of the committee meetings.

Notably, I had specifically pointed out that I was making the request to both agencies in order to receive a coordinated, complete response.

6. On July 11, I received an e-mail from the Department of Public Health (Enclosure 6). Ms. Shields noted that she had "looked into" the records request and could find no documents responsive to the request. She did not, however, indicate that she was responding on behalf of both DPH and the Mayor's Office; she made no mention of having coordinated with Mr. Johnston, to whom the request had been jointly addressed in the Mayor's Office, and she did not indicate in which department she was unable to find documents responsive to the request. Her reply reads as if she was simply unable to find documents only within DPH.

Since I filed the request on July 6, I have not received a response of any sort from Mr. Johnston to this records request.

Remedy Sought

Should the Sunshine Ordinance Task Force find that this complaint has merit, I specifically request that the Order of Determination be worded to state that the Office of the Mayor is to provide the documents sought under the original public records request— in particular the documents requested in paragraphs 3, and 3a through 3e of Enclosure 3 (including the correct version of the missing page 30 in the Budget Summary), and the documents requested in Enclosure 5 — within ten days of the Order of Determination and/or to provide a response to the requests immediately.

Sincerely,

Patrick Monette-Shaw

Enclosures (as stated)

Patrick Monette-Shaw

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October 8, 2003

Donna L. Hall
Administrator
Sunshine Ordinance Task Force
City Hall, Room 409
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4683

Re: **ADDENDUM TO: Complaint Against the Office of the Mayor**

Dear Ms. Hall,

Complaint against which Department or Commission: • Office of the Mayor

Name of individual **responsible** at Department or Commission • P.J. Johnston, Press Secretary for the Mayor

Alleged Violation:

☒ Public Records Access ☐ Public Meeting

Sunshine Ordinance Section §67.21(b), 67.25, and possibly others

Do you wish a public hearing before the Sunshine Ordinance Task Force? ☒ Yes ☐ No

Please describe alleged violation.

Addendum Information

In addition to the allegations I raised in my complaint of October 4, 2003, an additional violation of the Sunshine Ordinance by the Mayor's Office and P.J. Johnston has possibly occurred. Please add the following new information to the October 4 complaint.

On September 27, 2003, I filed a public records request with Mr. Johnston seeking to obtain Mayor Brown's written justification refusing to reappoint Mark Dunlop to the HIV Health Services Planning Council (a.k.a., the CARE Council), a community advisory body charged with prioritizing allocation of federal HIV/AIDS healthcare services funds. The law apparently requires the Mayor issue a written justification when he declines to re-appoint a sitting member of this advisory body. Press reports (in the *Bay Area Reporter*) indicate the Mayor's sole justification in failing to re-appoint Mr. Dunlop is because of Hiz-Honor-the-Mayor's *perception* of a "personal affront" to his ten-gallon ego.

The public records request seeking Mayor Brown's written justification for not re-appointing Mr. Dunlop is attached. I ask that it be incorporated as an addendum (Enclosure 7) to my October 4 complaint. As of today's date — October 8 — I have not received a reply from Mr. Johnston regarding my September 27 immediate disclosure request; he has, yet again, violated the 10-day period the Sunshine Ordinance stipulates is required to respond to public records requests.

Hopefully, the addendum to my complaint can be consolidated into a single hearing, saving the Sunshine Ordinance Task Force, myself, and the Mayor's Office the burden of two separate Sunshine hearings. If this addendum *can't* be incorporated into the October 14 hearing to consider the merit(s) of my complaint(s), I ask that the Sunshine Ordinance Task Force consider it as a new complaint to be scheduled for the November 2003 Complaint Committee meeting.

Sincerely,

Patrick Monette-Shaw

Enclosure 7 (as stated)