

August 16, 2023

Ms. Lila LaHood, Chair
Sunshine Ordinance Task Force
Compliance and Amendments Committee
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

RE: File No. 22052; Fine Arts Museums of San Francisco

Dear Chair LaHood:

This letter responds to the order issued by the Sunshine Task Force on July 25, 2023 regarding disclosure obligations of the Fine Arts Museums of San Francisco ("FAMSF") under the City's Sunshine law and state's Public Records Act (copy attached), and is being submitted in connection with the August 22, 2023 meeting of the Task Force's Compliance and Amendments Committee. As stated at the July 25th meeting and in earlier correspondence with the Task Force, FAMSF takes its public disclosure obligations seriously, but does not agree with the conclusion reached by the Task Force at that meeting. We hope this letter will further clarify the relationship between FAMSF and the Corporation of the Fine Arts Museums of San Francisco ("COFAM") and the legal justifications for FAMSF's responses to Mr. Heidhues' requests.

The Task Force's conclusion was based on the belief that COFAM, a 501(c)(3) nonprofit corporation, receives funding from the City to operate the de Young Museum and Legion of Honor. Instead, COFAM operates the museums with funds raised from private sources and in fact does not receive any funding from the City. Pursuant to the original grant from the de Young family to the City and provisions in the City Charter, the artwork and the buildings are owned by the City, and the buildings sit on City land. Additionally, the museum guards, some facilities personnel, admissions staff and certain curators are employees of the City, as is the Director (though the Director's salary is supplemented by COFAM). FAMSF is a City department run by a City Commission, whereas COFAM is a nonprofit run by a Board of Trustees.

The Task Force was correct in noting during the July meeting that the relationship between COFAM and the City is unique. However, analogizing COFAM to a nonprofit organization which the City is paying to provide a particular City service is not an accurate characterization of this relationship. COFAM is also very different from the "Friends" groups which provide monetary support to other City departments.

FAMSF has always complied with, and will always comply with, the City's Sunshine laws, the Brown Act, and the California Public Records Act. Even though the Director's emails are maintained on a server that is owned and operated by COFAM, not the City, FAMSF has responded to numerous Sunshine requests, with the support of COFAM, by producing the Director's email correspondence which is responsive to the request.

Responses to Mr. Heidhues' Requests

Pursuant to these compliance procedures, FAMSF produced documents in response to Mr. Heidhues' initial April 8, 2022 request:

I am making an 'Immediate Disclosure Request (IDR)' to obtain all communication concerning the Corporation of Fine Arts Museums (FAMSF) with the office of District 1 San Francisco Supervisor Connie Chan.

San Francisco Ethics Commission records clearly state Supervisor Chan and/or her legislative staff have met with Platinum Advisors, lobbyist for the FAMSF, 13 times between March 10, 2021- February 23, 2022.

I am requesting all communications between Supervisor Chan, her legislative staff and FAMSF staff including but not limited to; Thomas Campbell, Dede Wilsey, Megan Bourne, Paria Dea, Karen Berniker, Sheila Pressley, Jason Moment and David Fraze.

The IDR includes the period beginning January 1, 2021, up to and including the date of the response to the Request. Responsive documents include all communication involving John F. Kennedy Drive in Golden Gate Park, the underground garage adjacent to the De Young Museum, The Corporation of Fine Arts Museums, The Fine Arts Museums San Francisco (FAMSF), Platinum Advisors, their agents, employees, and any other lobbyist not shown on the attached document.

Electronic correspondence includes any transmissions routed through the 'sf.gov' account or any personal email account of any individual, entity, or organization. The referenced written communication is defined as any communication be it records of meetings, agendas, e-mail, formal letters, notes, and transcripts of telephonic conversations.

The San Francisco Ethics Commission database shows that Supervisor Chan and/or her legislative Staff held 13 meetings with lobbyists for the Corporation of Fine Arts Museums as follows through February 2022 per the attachment from the Ethics Commission website.

3.10.2021 Ryan Blake
3.12.2021 Ryan Blake
3.18.2021 Ryan Blake
3.23.2021 Ryan Blake
5.05.2021 Ryan Blake
5.08.2021 Ryan Blake
5.26.2021 Ryan Blake
8.10.2021 Ryan Blake
9.15.2021 Paul Murre
9.16.2021 Paul Murre
2.11.2022 Ryan Blake
2.17.2022 Ryan Blake
2.23.2022 Paul Murre

In addition, I am requesting all records of any lobbyist meetings involving Supervisor Chan and the Corporation of Fine Arts Museums which have taken place during March and April 2022.

Please send me the responsive documents via pdf attachment or advise me when the requested data will be ready for review and copying.

Thank you,

Lee Heidhues

- In response to this request, FAMSF produced communications between Thomas Campbell and Supervisor Chan because Director Campbell is a City employee and the emails related to City business. Director Campbell did not have any emails with Supervisor Chan's Legislative Staff and the other people listed in the request are not City employees.
- No other FAMSF/City employees had responsive records.
- For clarification purposes, Diane Wilsey, Jason Moment and David Fraze are FAMSF Trustees, not FAMSF employees; there were no e-mails or other communications to or from these Trustees which were responsive to this request.
- Megan Bourne, Paria Dea, Karen Berniker and Sheila Pressley are employees of COFAM, not FAMSF, so their emails and other communications are not subject to the Sunshine law or the Public Records Act.
- Platinum Advisors was retained by COFAM, not FAMSF, and no City funds were used to compensate the firm. Communications between Platinum Advisors and COFAM are private and not subject to the Sunshine law or the Public Records Act. (As detailed later in this letter, information about COFAM's payments to Platinum Advisors are available on the San Francisco Ethics Commission's website.)

Mr. Heidhues' second (amended) request, dated April 19, 2022, requested similar documents. FAMSF responded to Mr. Heidhues confirming that it had provided all its responsive records already on April 18, 2022.

We understand that there is public interest in COFAM's efforts to reopen JFK Drive in Golden Gate Park. But despite the assertions in Mr. Heidhues' July 24, 2023 letter, the fact that there is public interest in an issue does not make private documents held by a private entity subject to the Sunshine law or Public Records Act. COFAM has fulfilled all its legal obligations as it relates to public disclosures in this matter. COFAM disclosed all of its monetary and in-kind support of these campaigns on public reports which are easily accessible on the Ethics Commission's website. (<https://public.netflix.com/pub2/?aid=sfo>.) COFAM also disclosed its efforts to lobby the Board of Supervisors and any other officials

regarding the reopening of JFK Drive on Expenditure Lobbyist reports, which are also accessible on the Ethics Commission's website; these reports included amounts that COFAM paid to the consulting firm Platinum Advisors in connection with these lobbying activities. (<https://netfile.com/lobbyistpub/#sfo-exp>.) Mr. Heidhues and other members of the public could also obtain email correspondence between COFAM and City officials about COFAM's efforts to re-open JFK Drive by submitting a Sunshine request to members of the Board of Supervisors and/or other City officials and departments (and may in fact have already done so).

However, correspondence between private individuals, and private agreements between a nonprofit and its vendors, are not subject to the Sunshine law or Public Records Act. Mr. Heidhues' assertion that COFAM is required to disclose, in response to a Sunshine request, information about the lobbying or campaign reports which it files with the Ethics Commission is simply not true. COFAM is one of dozens of private entities which file lobbying and campaign reports with the Ethics Commission, and that information is available through the Ethics Commission's website, not through a Sunshine request to the filer.

Review of Epstein and National City Cases

The Task Force's order also directed FAMSF to request COFAM review Mr. Heidhues' requests in light of the Epstein v. Hollywood Entertainment, District 2 and Community Athletic Center v. City of National City court cases. Per this instruction, FAMSF shared this request with COFAM; COFAM has re-reviewed these cases and determined that neither are relevant in this situation, and neither provides legal authority to compel COFAM to produce the requested documents.

Epstein concerned an ordinance passed by the Los Angeles City Council to create a Hollywood "Business Improvement District" ("BID") and a nonprofit organization, the Hollywood Property Owners Association ("POA"), to operate the BID. The court concluded that the POA's board of directors was a "legislative body" under the Brown Act (see Cal. Govt. Code section 54952), but the reasons why the court concluded that the POA is a legislative body are absent from this matter. In Epstein, the City specifically adopted an ordinance creating a nonprofit to run the BID; the City retained decision-making authority over the BID; the City had the power to overturn any actions taken by the POA; and the City could even decide to dissolve the POA and create a new entity to manage the BID. The Epstein court explicitly reached its conclusion because the City "created" the POA. (87 Cal.App. 4th 862, 864.)

COFAM was not created by the Board of Supervisors, FAMSF or any other City department, and the City has no decision-making authority over COFAM's operations. The Task Force contends that the language in Charter section 5.105 that allows the FAMSF Board to "enter into agreements with a not-for-profit or other legal entity to develop or operate the museums and to raise and maintain funds for the museums' support" is analogous to the situation in Epstein. However, this Charter language does not direct a City department to create a nonprofit to manage FAMSF, as occurred in Epstein, but merely allows FAMSF to enter into agreements with outside entities if it so chooses. In sum,

Epstein is not relevant legal authority and does not compel COFAM to produce the requested documents.

The National City case concerned documents maintained by a consulting firm retained by National City to produce an analysis of certain blighted properties. The court concluded that the City had to obtain the underlying data used to prepare the report from the consultant and then produce it under the Public Records Act, relying on the fact that the consultant was being paid by the City to produce a report, so that the City effectively retained an ownership interest of the underlying data. Perhaps more notably, the court relied on the fact that National City had effectively admitted that the requested documents were public records, so ordered the City to locate them even though the documents were technically not within the City's possession. (220 Cal.App.4th 1385, 1425.)

FAMSF has not contracted with COFAM to produce a report and is not paying COFAM to operate the museums. The public records laws may apply if FAMSF were to, for example, retain a consulting firm to analyze storage facilities for the artwork owned by the City – but that is not what is occurring here. The facts which the court relied on to conclude that the consultant's data was a public record are not analogous to the relationship between COFAM and the City.

* * *

Again, FAMSF and COFAM support transparency in the conduct of City business, and FAMSF will always produce emails and other documents, when responsive and disclosable, relating to City matters. The law does not, however, require COFAM to produce private information, such as Mr. Heidhues' requests outlined above.

We trust that this letter responds to any questions that the Compliance and Amendments Committee may have about the status of these document requests. Thank you for including this letter in the Task Force's file regarding this matter.

Sincerely,

Paria Dea

Paria Dea
Senior Government Affairs Manager