

Legal Training

San Francisco City Attorney's Office

2020

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Part I

Role of the SFMTA and The SFMTA Board

January 7, 2020



SFMTA Exclusive Authority, Charter § 8A

- over acquisition, construction, management of its property, including its real, personal, and financial assets;
- over contracting, leasing, and purchasing for the Agency
- to adopt rates, fees, fares
- to enter into agreements for fare media
- to enter into joint arrangements with other public entities for the common use of transit facilities and for through-ticketing
- to legislatively adopt, and to enforce parking and traffic regulations
- applying for, accepting, and expending grants



Exclusive Jurisdiction is Limited by Charter

Examples:

- Agency must comply with ordinances of general application passed by Board of Supervisors
- Board of Supervisors has review of certain SFMTA decisions



Role of the SFMTA Board

- Provide policy direction to the Agency
- Appoint/remove Director of Transportation and Secretary
- Approve settlements recommended by the City Attorney
- Approve rates, fees , fares and charges
- Approve MTA Budget
- Approve contracts and collective bargaining agreements
- Inquire into any matter within the MTA's jurisdiction



SFMTA Board–Administrative Interference

- The MTA Board and individual members may seek information from the Director about MTA operations
- With approval from the Director, individual Board members may seek information from subordinate staff
- Dictation, suggestion, or interference by a Board member in the administrative affairs of the MTA, other than through the Director, is official misconduct



SFMTA Board-Power of Hearing & Inquiry

- Administrative Interference prohibition does not affect full Board's powers of hearing and inquiry
- Board can call any MTA officer or employee before the Board to answer questions regarding MTA operations



SFMTA Board - Approving Budget

- MTA must submit balanced 2-year budget to Mayor and Board of Supervisors by May 1 in even numbered years; In odd numbered years, MTA must submit a budget amendment only if it seeks increased appropriations, fare increases, or route abandonments
- Budget is approved by operation of law unless rejected by 7/11 vote of Board of Supervisors
- Requested increase in general fund spending over guaranteed base amount requires normal budget approval from Mayor and Board;
- With Board of Supervisors approval, MTA may incur debt secured by Agency revenues without voter approval



SFMTA Board - Policy Direction

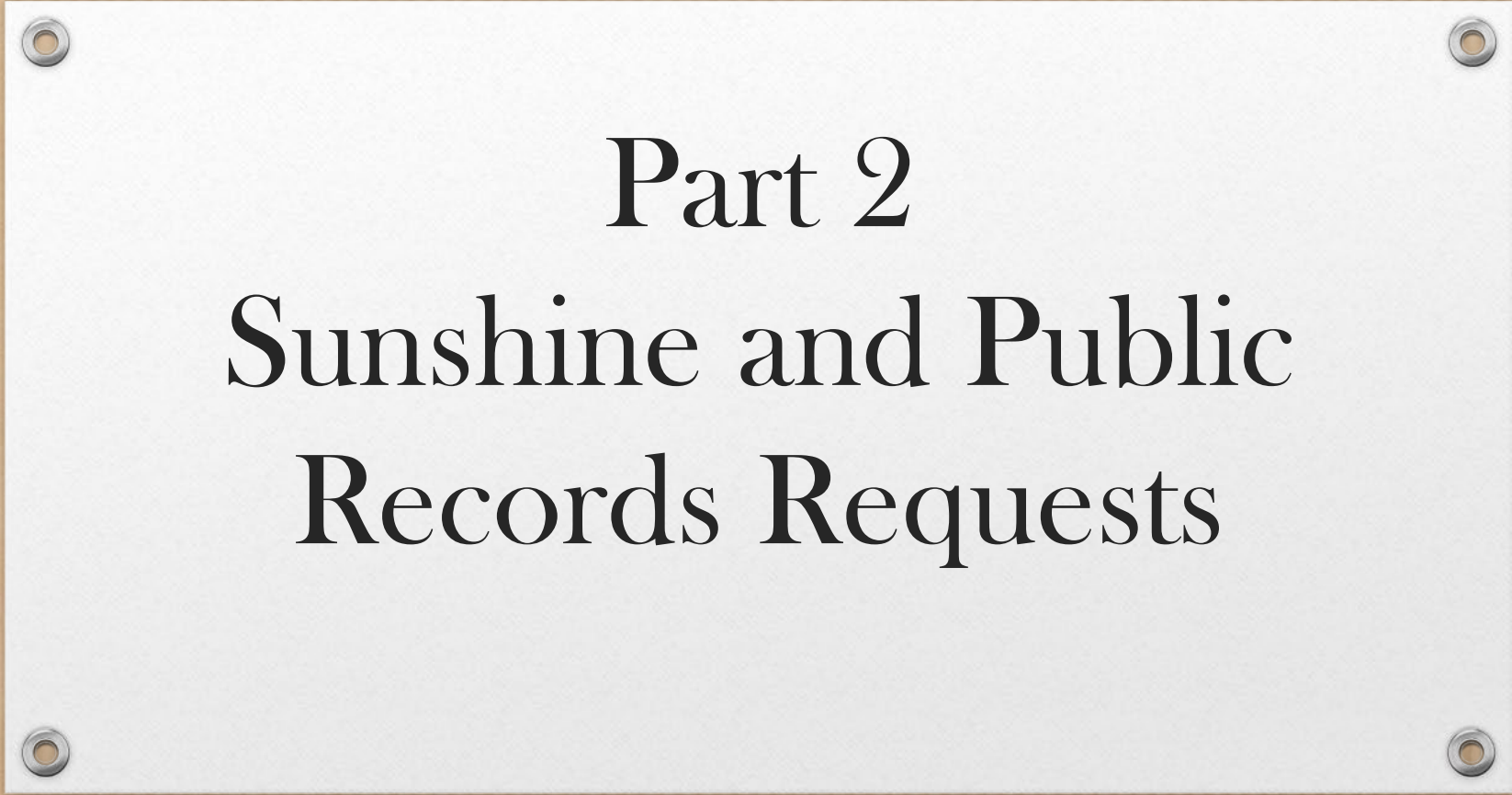
- The Board sets policy for the Agency, consistent with City legislation, and gives direction to staff through the Director of Transportation
- Board can require the Director to obtain Board approval of specific actions



SFMTA Board - Individual v. Board Action

- Board members must set policy and make decisions as a body
- Individual members cannot exercise the powers of the MTA Board
- Board may act only at a noticed meeting attended by a quorum of members and by means of a vote





Part 2
Sunshine and Public
Records Requests

Our Sunshine Policy

The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to **democracy**, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority. (San Francisco Administrative Code 67.1(d))



What's a Public Record

The term “public record” includes:

- any writing
- containing information relating to the conduct of the public's business
- prepared, owned, used, or retained by any state or local agency
- regardless of physical form or characteristics.

(Cal. Gov't Code 6252(e))



Exemptions

- Attorney client communications
- Attorney work product
- Some aspects of the competitive procurement process
- Some investigations
- Trade secrets
- Privacy
- Pending litigation
- Misc. other exemptions



“Writing” is broadly construed

- Includes any “handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile,” (Cal. Gov’t Code 6252(g))
- Includes e-mail attachments.
- **AND TEXT MESSAGES!**



Personal Electronic Devices

Case Law Catching up with new norms

(City of San Jose v. Superior Court)

- Holding: When a city employee or official uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act
- Court emphasized 6 points in its decision.



1. Government employees cannot avoid disclosure under public records law by using personal electronic devices to create public records.

Government employees include officials

- **Communications include:** Emails you send or receive, Text messages you send or receive;
- **Personal electronic devices include:** Private email, telephone accounts, personal computers and cell phones

2. Only communications that relate to the conduct of the public's business are public records

3. Government employees and officials may be required to search their personal electronic devices and retrieve possible public records



4. Existing exemptions from disclosure apply to communications made using personal electronic devices (attorney-client privilege, personnel documents, privacy, etc.)

5. Existing records retention policies apply to communications made using personal electronic devices

- No requirement to keep public records on personal electronic devices, May transfer public records to government-owned devices

6. A public records request may cover communications on personal electronic devices even if not expressly specified



Practice good e-mail and document etiquette

- DO: Be succinct
- DO: Be clear
- DO: Be professional
- DO: Communicate for City business only from designated accounts
- DO NOT: mix non work-related purposes in work-related e-mail or texts.
- DO NOT: express personal thoughts or opinions
- DO NOT: continue to forward long chains
- DO NOT: REPLY ALL with other Directors



Avoid this:



Embarrassing email

Your name here



And This . . .



New Year's Resolution for 2020

1. Get lots of Sunshine
2. Pause before pushing “send” or “reply all”
3. Practice good e-mail and document management etiquette
4. Call our Office with any questions





THE END