

11/24/08

To: Members of the Rules Committee
From: Bert Robinson, Sunshine Reform Task Force

The California Public Records act does not provide much clarity regarding the speed with which public agencies should respond to records requests. The city's public records protocol, with its reliance on the vague word "promptly," is little better. Most sunshine laws make an effort to give citizens a more specific expectation of when their request will be met. The Sunshine Reform task force recommends that San Jose follow suit.

Specifically, we recommend that the city commit to respond to most requests no later than the next business day. In practice, the city usually does this now. But citizens don't know to expect that – and at times city officials furnish vague guidance that leads to frustration rather than simple responsiveness. In the worst cases, citizens may wait days for information that could be provided more promptly. The city's commitment to a clearer policy could help avoid such circumstances.

Background: The California Public Records act states that public records should be available for inspection during the office hours of the government agency. It includes only one mention of a time frame for responsiveness. If a copy of a record is requested, the agency is supposed to determine within 10 days whether the records requested are disclosable and then provide a date for disclosure. By implication, the 10-day clock applies only when there is a question about the public nature of the record. But it is not unusual for agencies to use the 10-day limit as the time frame to provide any information. That is far longer than necessary in most cases – and not the level of responsiveness the public deserves.

Other Sunshine laws: Recognizing this problem, the Sunshine laws that the Sunshine Reform Task Force reviewed as models lay out more specific guidelines for responsiveness. In no cases are these guidelines absolute. Instead, they apply to "simple, routine or otherwise readily answerable" requests (in the words of the Milpitas ordinance; others are similar).

Milpitas, Contra Costa County and San Francisco suggest that such requests can be answered by the end of the next business day. Oakland lays out a time frame of three business days. Benicia chooses five days.

The Task Force's approach: After consultations with San Jose city staff, the Task Force decided that a one-business day turnaround was appropriate. However, the Task Force was concerned about one issue that sometimes makes responsiveness difficult: When public records requests fall into the hands of an official who does not regularly deal with them, it sometimes takes time for the requests to find their way to the correct place. The Task Force suggests that requests made to an official who does not normally handle them should be forwarded to a responsible official by the end of the business day on which the request is made.