



PUBLIC WORKS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

London N. Breed, Mayor

Correspondence Log

September 16, 2022 through October 20, 2022

Date Received	From	Subject
October 5, 2022	Yuli Huang	Complaint of determination of lack of a public record requested

From: [Yuli Huang](#)
To: [DPW-Public Works Commission](#)
Subject: Complaint of DPW's determination and conduct
Date: Tuesday, October 4, 2022 1:13:12 PM
Attachments: [Request 22-5498 - NextRequest - Modern FOIA & Public Records Request Software.pdf](#)
[1_1000015025-Project Manual 1 of 2.pdf](#)
[1000015025-Project Manual 2 of 2.pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Commission Leadership Team,

May I respectfully submit a complaint of Department of Public Works' determination and conduct?

A public record request #22-5498 duplicated in the attachment was filed to obtain a copy of a Contractor's submittal and the corresponding approval document by Public Works. Public Works' determination was that such documents do not currently exist and, therefore, they do not make them available.

The grounds of complaint are summarized as follows:

- Appellate courts have generally concluded that records related to public business are subject to disclosure if they are in an agency's actual or constructive possession. (See, e.g., Board of Pilot Comrs. for the Bays of San Francisco, San Pablo and Suisun v. Superior Court (2013) 218 Cal.App.4th 577, 598, 160 Cal.Rptr.3d 285 ; Consolidated Irrigation Dist. v. Superior Court (2012) 205 Cal.App.4th 697, 710, 140 Cal.Rptr.3d 622)
- The Court concluded that an agency has constructive possession of records if it has the right to control the records (Consol. Irrigation Dist. v. Superior Court of Fresno Cnty., 205 Cal.App.4th 697, 140 Cal. Rptr. 3d 622 (Cal. Ct. App. 2012)).
- The requested documents are a submittal and approval mandatorily required by a provision of the Contract Documents. The requirement is not optional nor ambiguous. Public Works has knowledge of and a contractual ownership interest and the right to possess this document.
- Therefore, Public Works has constructive possession of the requested documents and is obliged to make the documents available for public inspection. They may not currently have the documents, but they shall seek to obtain them.

Equally importantly, from an engineering perspective of the commission's interest, there have been well-established calculation guides. They were published by the Federal Transit Administration (Transit Noise and Vibration Impact Assessment Manual) and the California Department of Transportation (Transportation and Construction Vibration Guidance Manual). These calculations are deemed essential by the engineering community. DPW acknowledged the potential risk of the Contractor damaging an adjacent property in the course of their work. DPW also claimed that Public Works places the health, safety, and welfare of the public as the No. 1 priority in its work. However, DPW is reluctant to conduct its work in accordance with the Contract Documents and has no installation design approved before issuing NTP. Would you imagine the construction in your neighborhood has no installation design and got no approval? I am seriously concerned that such ongoing practice has been damaging public safety, which is paramount to all of us.

With these very concerning observations, I would like to bring them to the commission's attention.

Best,
Yuli

Request Visibility:  Published  **Request 22-5498**  **Closed**

1 of 9 with filters active

Dates**Received**

September 26, 2022 via web

Requester yulihuang@gmail.com yulihuang@gmail.com**Staff Assigned****Departments**

Public Works

Point of contact

David A. Steinberg

Request

IMMEDIATE DISCLOSURE REQUESTS

PUBLIC RECORDS REQUEST

Pursuant to the California Public Records Act, California Government Code Section 6250, and the SF Sunshine Ordinance (Chapter 67 of the SF Admin. Code), this is to request that the San Francisco Department of Public Works produce the following public records, as defined in Gov. Code Section 6252 (c) and (e), in DPW's constructive possession or control, even if they might have a different caption.

1. The suitable installation method for steel sheet piling proposed and submitted by the Contractor, in accordance with Contract Documents -- Project Manual § 31 23 33 "Trenching and Backfilling" Part 2, Section 2.2, Subdivision A.
2. The approval document by the San Francisco Department of Public Works in accordance with Contract Documents -- Project Manual § 31 23 33 "Trenching and Backfilling" Part 2, Section 2.2, Subdivision A.

Despite Public Works' possible claim of no actual possession of the requested public records, they are submittal and approval required by the Contract Documents; Public Works' constructive possession exists because it has knowledge of the documents and the ability to control them. Therefore, the requested public records must be disclosed unless a statutory exception is shown.

[Show less](#)**Timeline** **Documents** **Request Closed** 

Public

We have finished conducting a diligent search and found no documents responsive to your request.

Our engineering staff said that this request seems to be for the same document as your previous requests and that these documents do not exist.

The Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Please see California Government Code § 6253(b).) The City's obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in its custody. (See San Francisco Administration Code § 67.20(b).) There is no requirement that a department or officer construct a document to meet the specifications of the request.

We now consider your request closed.

Regards,

David A. Steinberg

Custodian of Records

San Francisco Public Works

 **External Message** 

Public

We received your Immediate Disclosure Request, dated Sept. 26. You have requested the following records:

1. The suitable installation method for steel sheet piling proposed and submitted by the Contractor, in accordance with Contract Documents -- Project Manual § 31 23 33 "Trenching and Backfilling" Part 2, Section 2.2, Subdivision A.
2. The approval document by the San Francisco Department of Public Works in accordance with Contract Documents -- Project Manual § 31 23 33 "Trenching and Backfilling" Part 2, Section 2.2, Subdivision A.

Although you labeled your request as an Immediate Disclosure Request, it is not "simple, routine, or otherwise readily answerable," as is required by San Francisco Administrative Code Section 67.25(a). For this reason, we are treating your Immediate Disclosure Request as a standard public records request, subject to the normally applicable 10-day response time, with a possible extension. Accordingly, we will be in touch with you regarding the request by no later than Oct. 6.

Please see Pages 4-5 of the City Attorney's Opinion at <https://sanfrancisco.nextrequest.com/documents/9556982/download> for an explanation of the requirements for an Immediate Disclosure Request.

It is not necessary to create a NextRequest account to view responsive records. Once they have been released, a link, valid for 30 days, will be provided to view the records. Additionally, unless privacy concerns prevent it, Public Works makes all records requests visible to the public. You may search for requests at <https://sanfrancisco.nextrequest.com/>.

Regards,

David A. Steinberg

Custodian of Records

San Francisco Public Works

September 27, 2022, 9:07am by David A. Steinberg, Custodian of Records (Staff)

 **Department Assignment**

Public

Public Works

 **Request Opened**

Public

Request received via web