

Sunshine Ordinance Task Force (SOTF) complaint

File No. 22023: Complaint filed by Lance Carnes against Public Works for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.21, by failing to respond to a public records request in a timely and/or complete manner.

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Good evening, Committee members. My name is Lance Carnes, a resident of North Beach and a long time tree advocate. I have fought tree removal battles with DPW since 2019, to try to keep as many trees in place as possible. San Francisco has one of the smallest tree canopies of any major city in the U.S.

Summary

August 30, 2021 I submitted a Public Records Request to Public Works for a list of 32 Market Street trees that would be removed due to renovations of BART stations. The request was fulfilled within time.

September 2021 I later learned that 4 of the 32 trees on the list were not pertinent to the request.

I asked Public Works for clarification and received what I believe was a curious response via email.

December 15, 2021 The list of trees was further altered by DPW in the course of the Board of Appeals hearing.

January 16, 2022 The Board of Appeals voted on and accepted the altered list, not the list originally returned per the Public Records Request.

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PRR information was inaccurate.

Background. Why remove 32 trees on Market St.? BART's proposed entrance canopy, to be placed over each station entrance.

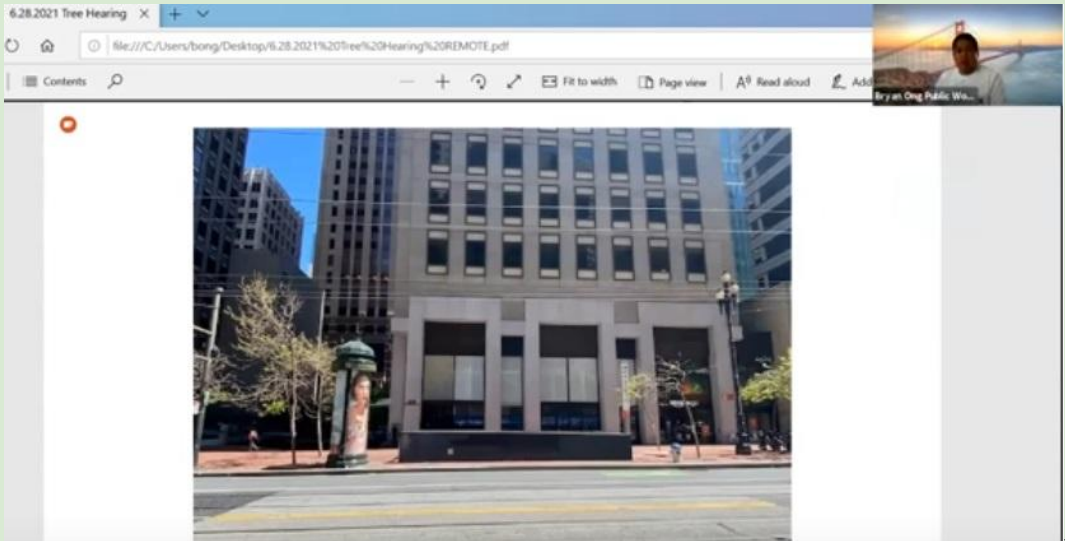


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July 30, 2021: DPW issued Order Number 205249 to remove 32 trees on Market St to accommodate entrance covers (shown above).

(shown above).

All removal tree candidates are within 20 feet of a BART entrance, see below (from 6-28-2021 DPW Removal Hearing video)



August 2021: 4 citizens, including myself, appealed the DPW Order Number 205249 to the Board of Appeals.

Above is an example subway entry at 575 Market St, from video of the 6-28-2021 DPW Removal Hearing. Each side of the entry has two trees. If the trees are too close to the entry, they will have to be removed to accommodate placement of covers.

Initial Public Records Request - PRR# 21-4639

For the 32 trees listed in PW Order 205249 provide a "SF Tree Information" report for each.

August 30, 2021

Document(s) Released

rptTreeDetailWithActions 13512.pdf

rptTreeDetailWithActions 13513.pdf

rptTreeDetailWithActions 13514.pdf

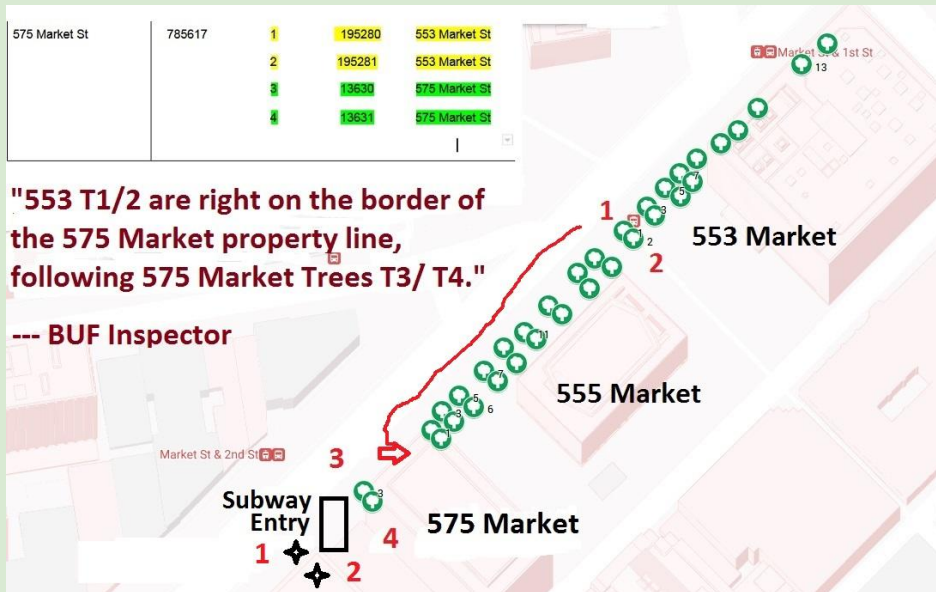
rptTreeDetailWithActions 13515.pdf

...

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A "SF Tree Information" report provides information on trees. With a TREEID such as 13512 (shown), one can get e.g. Longitude and Latitude points for making a map. I made this Public Records request in August 2021 in order to map the locations of all trees that were proposed for removal.

Trees, 553-1 and 553-2, are **300 feet** from the subway entrance. Removal trees are typically 10-15 feet from a Subway Entry.



Here is a Google map made from the PRR # 21-4639 tree list. The map shown was made using Latitude and Longitude points from the DPW tree database. At the upper right are trees 553-1 and 553-2 Market, at the lower left, 300 feet away is the subway entrance. Since the trees at 553 Market are not close to the subway entrance they should not have been included in the Public Records Request list of trees.

553 Market St, Trees 1 & 2, erroneously included in PRR # 21-4639 list of tree removals. These trees are 300 feet from a BART entry, and therefore not part of the removals.



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August 2021: I wrote to the Bureau of Urban Forestry (BUF) asking about these invalid trees that were too far from a BART entrance. A few days later I received a reply from BUF, saying they didn't know the exact locations, but these 2 trees were somewhere near 575 Market St. According to the email, this response was From: Susan Nawbary, (BUF). This was confusing, since the response to my PR request clearly identified these two trees as being located at 553 Market St., about 300 feet from 575 Market St.

I wrote to DPW and said two of the trees on the removal list were wrong, 553-1 and 553-2, since they are 300 feet from a subway entrance and would not interfere with placement of the new canopy.

In reply I received this email, supposedly from Urban Forest Inspector, Susan Nawbary:

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October 26, 2021: This answer was not satisfactory. Additionally, despite the fact that the email indicated it was From: Susan Nawbary the SPF (email fingerprint) appears to indicate the email was from another sender.

On Tue, Oct 26, 2021 at 9:42 PM Nawbary, Susan (DPW) <susan.nawbary@sfdpw.org> wrote:

Hi Lance, we'll check with the inspector regarding the accounting of trees for Permit 785617.

...

553 (as you know, since the numbers are smaller going toward Embarcadero) T1/2 are right on the border of the 575 Market property line, following 575 Market Trees T3/T4. ArborPro mislabeled them as belonging to 553/555 Market, but really, they should probably be called 575 T5/6. For the sake of clarity, we didn't want to correct ArborPro's label. It's not easy to tell where the lot lines are on the ground, so I don't think they realized at the time either.

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I have worked with Susan Nawbary during the past 4 years and have found her to be professional and accurate. I believe this confusing email was not written by her.

Original Message

Message ID <SJ0PR09MB68296AA1BF4926BDCA308B0DFC859@SJ0PR09MB6829.namprd09.prod.outlook.com>

Created at: Tue, Oct 26, 2021 at 9:41 PM (Delivered after 23 seconds)

From: "Nawbary, Susan (DPW)" <susan.nawbary@sfdpw.org>

To: Lance Carnes <lacarnes@gmail.com>

Subject: RE: Erroneous trees in Market Street BART canopy tree appeals (Appeal Nos. 21-076-21-079)

SPF: PASS with IP 2a01:111:f400:7d04:0:0:0:60c [Learn more](#) **"Email Fingerprint"**

DKIM: 'PASS' with domain sfdpw.org [Learn more](#)

DMARC: 'PASS' [Learn more](#)

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Ms Nawbary's email information, extracted by GMail. I immediately recognized this "Email Fingerprint" which points to a DPW employee's home computer — but not Ms Nawbary's. (All Bureau of Urban Forestry staff worked from home in 2021–2022 due to the pandemic).

Permit Address	Permit	Tree Site #	Tree	Tree Address	Approv	Health	DBH
575 Market St	785617	1	195280	553 Market St	approve	poor	3
		2	195281	553 Market St	approve	poor	4
		3	13630	575 Market St	approve	poor	5
		4	13631	575 Market St	approve	poor	5



Original tree removal list shown at the 12-15-2001 BOA hearing.

Bogus removals 553-1 553-2

Permit Address	Permit	Tree Site #	Tree ID	Tree Address	Approv	Health	DBH		
575 Market St	785617	1	195280	13603	553 Market St	555 Market St	approve	poor	3
		2	195281	13604	553 Market St	555 Market St	approve	poor	4
		3	13630		575 Market St		approve	poor	5
		4	13631		575 Market St		approve	poor	5

January 26 2022. Tree list after trees 553-1 553-2 are crossed out. This altered list, that appellants had never seen before, was submitted to the BOA for final approval.

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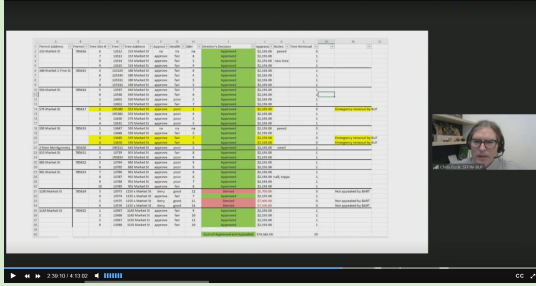
Public Works edited tree list at the BOA. Notice that 553-1 553-2 were removed from the final list by crossing them out. The table columns were widened to allow room for the substituted trees. As you can see the lower spreadsheet is incorrect. Someone at DPW took great pains to include these irrelevant and confusing trees, but then struck them from the final list just before the Board of Appeals voted to accept the list in their final decision.

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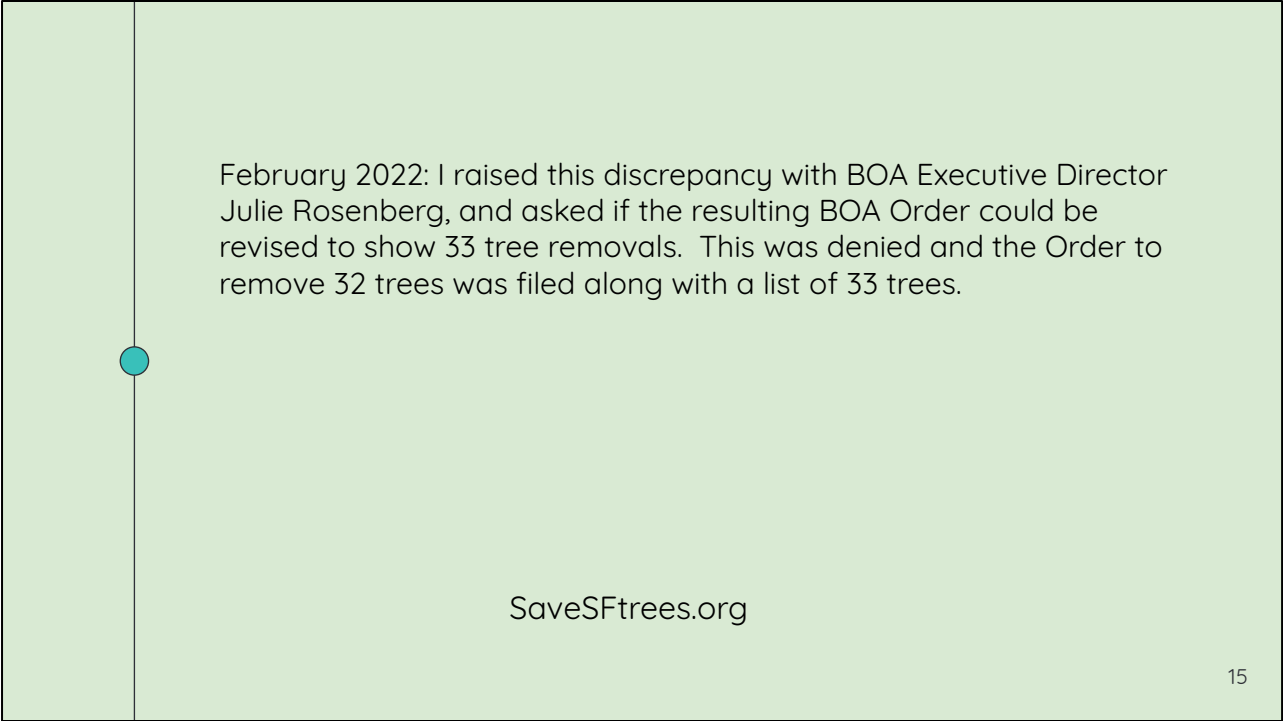
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The final list of trees filed with the Board of Appeal's decision does not include the two trees at 553-1 and 553-2 Market St. (See the alteration of the tree list to strike out the trees at 553-1 and 553-2 Market St.) This alteration shows clearly that someone at DPW knew the list was in error.

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The big switch. After all the trouble of inserting 2 bogus trees, Buck or someone at Public Works now has to remove them somehow for the Board of Appeals. Note that a pen was used to cross them off the list and write in the correct trees.



February 2022: I raised this discrepancy with BOA Executive Director Julie Rosenberg, and asked if the resulting BOA Order could be revised to show 33 tree removals. This was denied and the Order to remove 32 trees was filed along with a list of 33 trees.

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Mr Steinberg: Before I respond to your comments, please indicate whether you actually wrote this memorandum. I noticed it is undated, and contains a spelling error – not the letter I would expect from you. You are usually precise in your communications.

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Whenever I receive a communication from DPW, I have the added task of verifying it was from the purported employee.



Director's Office

dpw@sfdpw.org | T. 628.271.3160 | 49 South Van Ness Ave. Suite 1600, San Francisco, CA 94103

TO: Sunshine Ordinance Task Force
FROM: David Steinberg, Custodian of Records, San Francisco Public Works
RE: Complaint #22023
Date: ??

Public Works acknowledges that it is subject to the Sunshine Ordinance and that the records he has requested are public documents; however, the department denies the allegations made by the complainant for File #22023. Mr. Carnes has submitted 236 requests to Public Works in the past 3½ years, and I've worked with our Bureau of Urban Forestry to diligently respond to all of them.

Mr. Carnes' complaint seems to be that the records provided to him in the requests that are the subject of this request were inaccurate and that they were either made up or forged.

Complaint #1: "Several of the ... tree lists were inaccurate."

Response: The complainant submitted multiple requests for tree records, and in each case the department released the responsive records as they then existed in its tree database. Mr. Carnes had questions about how BUF numbered trees and this resulted in some confusion. Several times Mr. Carnes followed up with BUF with questions about the identification of specific trees, and our staff worked with him to answer his questions and provide clarity. It is important to understand that the tree database is always being updated to correct inaccuracies or improve identification of the lists. Although there may have been disagreements over the numbering and identification of some trees, in no case did the department withhold records.

Complaint #2: "In Sunshine request 22-994, many of which were fabrications and possible forgeries."

Response: The department categorically denies that any of the records provided were fabrications or forgeries and Mr. Carnes should be required to provided evidence or withdraw such a serious allegation of misconduct. Further, the Task Force is not the proper forum for lodging this type of complaint.

Mr Steinberg's memorandum has no date, and contains a spelling error.

David Steinberg rebuttal to Complaint 22023

Carnes: Complaint #1: “Several of the tree lists were inaccurate.”

Steinberg: The complainant submitted multiple requests for tree records, and in each case the department released the responsive records as they existed in its tree database

Carnes: During the Board of Appeals hearing tree lists were in Excel spreadsheets, and did not match the DPW tree database. I filed successive Sunshine Requests for copies of the Excel files to stay abreast.

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Carnes: Complaint #1: “Several of the tree lists were inaccurate.” (continued)

Steinberg: “Several times Mr. Carnes followed up with BUF [Bureau of Urban Forestry] with questions about the identification of specific trees, and our staff worked with him to answer his questions and provide clarity.”

Carnes: My initial question to BUF was, why were two trees located next to a Muni bus shelter 300 feet from the nearest BART entrance included in the removal list, since they would obviously not be in the way of installing the covers.

The response, supposedly written by Urban Forest Inspector Susan Nawbary, said the trees were probably not numbered or identified correctly, but were somewhere near the 575 Market St BART entrance.

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Carnes: Complaint #1: "Several of the tree lists were inaccurate." (continued)

Steinberg: ... in no case did the department withhold records.

Carnes: None of the tree lists requested included information on trees 555-1 or 555-2 Market St. These two trees appeared in spreadsheets at BOA hearings, but were never sent to appellants.

From August 30, 2021 when my initial Public Records Request was made, until the BOA hearing in January 2022, the trees 555-1 and 555-2 Market St. never appeared on a tree list that we requested, and were withheld.

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Carnes: Complaint #2: “In Sunshine request 22-994, many of which were fabrications and possible forgeries.”

Steinberg: “The department categorically denies that any of the records were fabrications or forgeries”

Carnes: One image in that request is **553 Market St. Tree 1 575 Market Emergency removal.jpg** (left) and presumably showed a photo of 553 Market St Tree 1. The correct image of 553 Market St. Tree 1 is on the right (foreground).



What I would like this Committee to do:

I have determined from PRR 23-1456 that at least 3 and possibly more emails were from unknown senders, contained erroneous information, and now exist in the DPW archive. I would like these and other similar emails to be expunged, so that I and other citizens requesting information from DPW will not see this misleading information through PRRs.

Asks of SOTF. End - thank you.

What I would like this Committee or someone in Public Works or the City Attorney's Office to do:

Locate the mysterious DPW employee who sends emails posing as other DPW employees and remove that person's ability to do so.

DPW employees affected (partial list):

Carla Short, Interim Director

David Steinberg, Executive Assistant to the Director & Custodian of Records

Nicholas Crawford, Acting Superintendent of BUF

Susan Nawbary, Urban Forestry Inspector

Bryan Ong, Urban Forestry Inspector

Asks of SOTF or other City agencies.

Regarding the unknown person in DPW who compromises many employees' email and written communications:

As the late Chief Justice and once California Governor Earl Warren stated many years ago,

"When secrecy surrounds government and the activities of public servants, corruption has a breeding place... "

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