

San Francisco Sunshine Ordinance Task Force

PUBLIC COMPLAINT PROCEDURE

Consistent with the language and spirit of the San Francisco Sunshine Ordinance (Ordinance) to provide the most open government possible (see City Administrative Code Section (§) 67.1), all inferences and evidence shall be viewed in the light most favorable to the petitioner.

Revised on: 4/26/2005; 5/22/2007; 3/25/2008; 4/28/09; 11/05/14

The Sunshine Ordinance Task Force (SOTF) has an obligation under San Francisco Administrative Code §§67.21 (e), 67.30(c) and 12L.1-10 to respond to public complaints.

A. INQUIRIES IN PERSON OR BY PHONE

It is the goal of the SOTF to help the public gain access to public records and meetings. The staff of the SOTF will therefore work with members of the public to help achieve such access in order to avoid the need for filing complaints with the SOTF.

1. The Administrator shall discuss the request with the member of the public and attempt, with the assistance of the City Attorney, to mediate the request.
2. If unable to facilitate access to a desired record or to a public meeting, the SOTF staff shall advise the members of the public of his/her right to file a petition with the Supervisor of Records (the City Attorney's Office) and to pursue the SOTF complaint process, and shall send the Complainant the SOTF Complaint Procedure.

B. FILING A COMPLAINT WITH THE SOTF

1. A letter or complaint form may be submitted to the SOTF via mail, fax, electronic mail (e-mail), or in person. Once filed a copy of the complaint shall be sent to the Chair of the full Task Force and the SOTF Deputy City Attorney.
2. Upon filing a complaint, the complainant shall be given a summary of the Complaint Procedure (see addendum). The responding City department/agency (respondent) shall be sent written notice of the complaint, with a request to respond to the charges in the complaint within 5 business days. The Deputy City Attorney who advises City departments/agencies may assist the respondent in preparing a response to the complaint.
3. Hearing Schedule: Upon review of a complaint the Chair of the SOTF shall assign the complaint to the Complaint Committee or the Full Task Force.
4. The Administrator shall advise the complainant and the affected department/agency of the date, time and location of the Complaint Committee

and/or Full Task Force meetings at which the complaint will be discussed. The respondent shall have a knowledgeable representative and/or its custodian of records at the meeting. The Administrator shall inform both parties of the deadline to submit any supporting documentation. Both parties shall be held to the stated deadlines: five working days before the hearing.

5. The Administrator shall gather all relevant documents prior to the forthcoming hearing and shall send the documents to the members for their review. When the documents exceed 25 pages, the complaint will be forwarded without its full exhibits, with an indication that the full exhibits are on file with the Administrator.
6. Complaint Committee Hearings:
 - (a.) The SOTF Deputy City Attorney, shall provide a written opinion to the Complaint Committee as to whether the SOTF has jurisdiction over the complaint and provide a summary/review of the complaint.
 - (b.) The Complaint Committee shall review a complaint to determine whether the SOTF has jurisdiction. The Committee shall also focus the issues for the complainant, respondent and SOTF, or otherwise assist the parties and provide a recommendation to the SOTF if possible.

When the Complaint Committee provides their recommendations it shall do so at the next possible regular SOTF meeting.

7. Continuances:
 - (a) A complainant may waive the 45-day rule and request a continuance. If the request is received five business days in advance of the scheduled hearing it shall be granted. For requests submitted less than five business days in advance or for requests for subsequent continuances, the request may be granted by a simple majority vote of the members present.
 - (b) If a respondent submits a request for continuance at least five business days in advance, upon agreement of the complainant the continuance shall be granted. If the complainant does not agree to the continuance, the request for continuance is not made within five business days, or the respondent is requesting a subsequent continuance, such continuance shall be granted by a simple majority vote of the members present.

C. SOTF PUBLIC HEARING PROCEDURE

If jurisdiction is not contested or the Complaint Committee recommends jurisdiction, the complainant and respondent shall receive a written notice of the specific issues that shall be before the SOTF for a hearing, and they shall be advised to submit any evidence no later than 5 working days prior to the hearing.

Documentation

For a document to be considered, it must be received at least 5 working days before the hearing. At the hearing before the Task Force, should the complainant submit additional documentation that has not been submitted to all parties, he or she shall be given the following options:

- (1) Proceed with the hearing without SOTF consideration of the additional documentation;

(2) Waive his/her right to a hearing within 45 days and ask for the hearing to be continued; but

(3) If the additional documentation raises a new issue, the complainant may:

- proceed with the hearing and file a new complaint on the additional issue(s), or
- withdraw and amend the complaint to include the new issue(s).

D. HEARING AND FINDINGS OF THE TASK FORCE

1. Prior to the meeting, the SOTF Deputy City Attorney shall prepare an instructional letter to assist the SOTF in understanding the issues. All members of the SOTF are responsible for being familiar with the complaint issues prior to the meeting.
2. The SOTF shall conduct the public hearing with the complainant and respondent present.
3. After hearing all testimony, the SOTF shall vote on an Order of Determination or other directives written by the Chair on behalf of the Task Force stating whether the record is public and/or whether the open meeting laws were obeyed.

E. RECONSIDERATION OF TASK FORCE FINDINGS

1. Within 10 days of receipt of the Order of Determination, either the complainant or respondent may petition the SOTF for reconsideration only if information exists that was not available at the time of the hearing and the petitioning party must present an offer of proof as to the new information.
2. The Task Force shall consider the petition at its next scheduled meeting. If a petition for reconsideration is granted, a new hearing on the complaint shall be scheduled at the next SOTF meeting. (Approved by Task Force 10/26/04)
3. Other actions of the SOTF cannot be reconsidered (Filed, Tabled, Continued, and/or Concluded/No Violation.)
4. The actions of the Task Force committees cannot be reconsidered.

F. DEPARTMENT TO COMPLY WITH DETERMINATION OF THE SOTF

1. The Administrator shall send the Order of Determination to the complainant and the respondent and request a written response within business 5 days of the receipt of the Order and as necessary request a written response, which shall be monitored by the SOTF Compliance and Amendments Committee and/or any committee recommended by the Chair. If a public records violation is found, the custodian of records shall be ordered to provide the record to the complainant within 5 business days after the issuance of the Order of Determination. The

Compliance and Amendments Committee shall review whether there has been compliance with the Order of Determination.

2. If there is a failure to comply, a Committee of the SOTF may recommend that the SOTF notify the District Attorney, the California Attorney General, the Board of Supervisors and/or the Ethics Commission, who may take measures they deem necessary to ensure compliance with the Ordinance. A copy of the Order of Determination shall be included with such notification.
3. If appropriate, the respondent and complainant shall be sent a notice that the District Attorney, California Attorney General, Board of Supervisors and Ethics Commission have been contacted, and of the complainant's independent right to pursue the issue in court.

G. Documentation and Information Regarding Individual Complaints:

1. The Administrator shall keep a file of all documents and a log of all petitions filed with the SOTF, including the date of each petition, the department/agency against which it was made, the nature of the complaint and its status. This shall be in compliance with its records and retention schedule.
2. Copies of all correspondence relating to a complaint shall be sent to all parties.

Addendum

Complaint Process

1. You may fill out a complaint form or access a form online at sfgov.org/site/sunshine, or you may send your own letter or e-mail filing a formal complaint. File the complaint with the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Pl., Room 244, San Francisco, CA 94102-4689; or you may send it by fax to (415) 554-5163 or e-mail to sotf@sfgov.org.
2. After you file a complaint, the Complaint Committee; the Sunshine Ordinance Task Force (SOTF) and/or the Administrator of the SOTF shall review the complaint to determine if the SOTF has jurisdiction.
 - Jurisdiction is defined as the authority to address a given issue(s), as specified in the Sunshine Ordinance.
3. If it is found that the SOTF has no jurisdiction over the violations alleged in the complaint, the complainant is notified of the decision and the complainant may request reconsideration before the SOTF at its next scheduled meeting. Should the SOTF find jurisdiction, a full hearing on the merits will be scheduled.
 - If the Complaint Committee finds the SOTF has jurisdiction they will review the merits of the complaint to focus on the relevant issues and provide a recommendation to the SOTF if possible.
4. The complaint is then scheduled for a hearing at the next meeting of the SOTF.
5. If additional information is to be submitted by the complainant or respondent, it must be submitted to the Administrator at least five working days before the scheduled hearing before the Task Force.

If either party submits additional material after the deadline, they will be informed that

 - a. The Task Force may proceed without considering the new material.
 - b. The complainant may waive the 45-day time limit and continue the hearing to the next Task Force meeting.
 - c. The complainant may withdraw the complaint and file a new complaint.
 - d. The complainant may proceed to hearing with their current complaint and file a new complaint and use the new information to support the freestanding separate complaint.
6. After the public hearing, the Task Force may make an Order of Determination regarding the complaint.
7. For further information, contact the Sunshine Ordinance Task Force Administrator, at (415) 554-7724.

SUMMARY OF SOTF COMPLAINT PROCESS

1. The Complainant may submit a complaint to the SOTF via a complaint form or letter/e-mail.
2. The complaint shall be reviewed and assigned to the Complaint Committee or the Full Task Force for hearing.
3. The SOTF staff shall refer the complaint to the Respondent who has 5 days to respond.
4. Upon receipt of the response from the Respondent the Complainant shall state if they are satisfied with the response or wish to proceed to hearing within 5 days. If no response is received from either party the complaint shall be scheduled for hearing before the Complaint Committee.
5. It is the goal of the SOTF to hear matters related to public records within 45 days schedule permitting.
6. SOTF staff shall notify both parties of scheduled hearing date.
7. Supporting documents must be received 5 working days prior to the hearing date to be considered and included in the packet material.
8. At the hearing, the SOTF shall: a) determine jurisdiction; b) hear the merits of the complaint; and c) determine if a violation has occurred.
9. If violations are found, an Order of Determinations shall be written and provided to all parties. At the discretion of the Chair the matter shall be referred to committee for follow up.
10. If needed the SOTF has the ability to refer the complaint to the Ethics Commission and/or the Board of Supervisors for enforcement.