

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

June 14, 2010

DATE THE DECISION ISSUED

May 25, 2010

ELLEN TSANG V PLANNING DEPARTMENT (10015)

FACTS OF THE CASE

Complainant Ellen Tsang alleges that the San Francisco Planning Department ("Planning") failed to provide documents and records responsive to her request of March 11, 2010, for documents referred to as having been submitted to Planning in an internal email dated February 12, 2010, which pertained to a property at 2642-2644 Hyde Street, San Francisco.

COMPLAINT FILED

On April 14, 2010, Ms. Ellen Tsang filed a complaint against Planning.

HEARING ON THE COMPLAINT

On May 25, 2010, Ms. Tsang presented her case before the Task Force. Respondent agency was represented by Jonas Ionin, a Planning Department employee.

Ms. Tsang told the Task Force she requested five specific documents from Mr. Ionin on March 11 and filed the complaint when Planning refused. She said several Planning employees, including the department head, were made aware of the complaint on April 21 and were informed that they had to provide a response within five business days. The department, she said, failed to respond to the notification. She also said Planning was told that if it had any additional documents, the Task Force needed them by 4 p.m. on May 18. Again, she said, nothing was forthcoming. The existence of the documents was based on emails between Mr. Ionin and Robert Mittelstadt, the architect of the project, she said. The documents are required by Planning to approve the project and the permit was being appealed before the Board of Appeals. She said she needed the documents before June 30 in order to present her case. She added that she contacted Planning on May 24 and again did not get a response. Anonymous Tenants said this was a simple case that showed Planning does not want the public to have access to public records, especially if it involves another hearing. He said a similar case was brought before the Task Force earlier and it took more than nine months to resolve the issue, but unfortunately it was after the hearing had taken place. He said it seems that the planners have a separated file from what is available to the public. He also said that if members of the public cannot obtain the

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necessary documents, they cannot present a watertight case at the hearing. If Planning does not have the records, it also means that Planning is not maintaining documents in a professional manner, he said.

Mr. Ionin said the department had responded to Ms. Tang's request about the project repeatedly over the course of many years. He then presented a history of the case but was not able to explain the department's refusal of the March 11 request because his five-minute allocation expired.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that the department violated the Ordinance.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.21, 67.25, 67.26 and 67.27 of the Sunshine Ordinance. The agency shall release the records requested within five business days of the issuance of this Order and appear before the Task Force on June 22, 2010.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on May 25, 2010, by the following vote: (Washburn / Wolfe)

Ayes: Snyder Cauthen, Washburn, Wolfe, Chan, Johnson, Williams, Knee

Noes: Cauthen, Knoebber



Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Ellen Tsang, Complainant
Jonas Ionin, Respondent