



SUNSHINE ORDINANCE TASK FORCE

Complaint Committee

CITY AND COUNTY OF SAN FRANCISCO

MINUTES

**Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689**

**October 23, 2018
5:30 PM – 7:30 PM**

Regular Meeting

Members: Leuwam Tesfai (Chair), Fiona Hinze and Matthew Cate

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES.

Acting Chair Fiona Hinze called the meeting to order at 5:30 pm. On the call of the roll Acting Chair Hinze, Members Hyland and Cate were noted present. Chair Tesfai was noted not present. There was a quorum.

There were no agenda changes.

2. Approval of the September 25, 2018, Complaint Committee meeting minutes.

Member Cate, seconded by Member Hyland, moved to approve the September 25, 2018, Complaint Committee meeting minutes.

Public Comment:
None.

The Motion PASSED by the following vote:

Ayes: 3 - Cate, Hyland, Hinze
Noes: 0 - None
Absent: 1 - Tesfai

3. **Public Comment:** Members of the public may address the Committee on matters that are within the Committee's jurisdiction but not on today's agenda.

Public Comment:
None.

The Complaint Committee (Committee) shall hold hearing(s) on File No. 18049 to: 1) to determine if the Sunshine Ordinance Task Force (Task Force) has jurisdiction; 2) review the merits of the complaints; and/or 3) issue a report and/or recommendation to the Task Force. The Task Force, upon receipt of the report and/or recommendation from the Committee, shall schedule and conduct a hearing on the merits of the complaint.

4. **File No. File No. 18049:** Complaint filed by Robert M. Smith against the Fine Arts Museums of San Francisco (FAMSF) for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a request for public records in a timely and/or complete manner.

Robert Smith (Petitioner) provided a summary of his complaint and requested the Committee find a violation. Mr. Smith stated that this is the third time he has been before a Sunshine Task Force Committee and that he has not received any documents from the FAMSF. Mr. Smith stated that he had three points to make:

- (1) Mr. Smith recently asked the Museums if they had received funding from the Saudis. Mr. Smith stated that the Museums stated that they would get back to him with an answer and needed a fifteen-day extension. Mr. Smith stated that upon researching the Museum, Mr. Smith discovered that one of the curators had been a guest of the Saudis.
- (2) In a recent response to one of Mr. Smith's public record requests, the Museums redacted many names to which Mr. Smith asked why so much redaction and on what legal grounds. Mr. Smith stated that Ms. Powers said that the redacted material provided no insight into the City workings of government.
- (3) Mr. Smith stated that Museums have assured him many times that they would provide the information he is seeking on a rolling basis. Mr. Smith stated that his case began nearly one year ago and that the Museums have never told him that he is not entitled to the documents.

Melissa Powers, Manager of Board Relations and Special Projects, FAMSF (Respondent) provided a summary of the department's position. Ms. Powers stated that this is her third time before the Committee and that she wanted to address Mr. Smith's first point about his requests regarding the payments received for Saudi Arabia. Ms. Powers stated that this particular matter has its own file number which was received on October 15, 2018. Ms. Powers stated that this request is not related to the file and that this request is not as narrow as Mr. Smith is stating. Ms. Powers stated that the second request Mr. Smith is referring to was made on September 3, 2018, that the Museums responded to in a timely manner. Ms. Powers stated that the request that is currently pending is very large and that the outstanding request that was not completed is in regard to the third complaint of this file which had two specific areas: (1) Mr. Smith requested all the correspondence

between the corporation of the Fine Arts Museums of San Francisco and the Fine Arts Museums of San Francisco and (2) the Foundation of the Fine Arts Museums of San Francisco and the Fine Arts Museums of San Francisco. Ms. Powers stated that she had recently sent Mr. Smith emails and documents related to the second request. Ms. Powers stated that she inherited these requests and that she is trying to respond to the most current ones in a timely manner with the staff at the Museum. Ms. Powers requested that Mr. Smith provide search terms to narrow the scope of his requests and the search between Fine Arts Museums of San Francisco and Co-FAM. Ms. Powers stated that she is dealing with over 250,000 emails. Ms. Powers stated that there has been no malintent and negligence only time need to provide due diligence with the limited resources available.

Member Cate inquired as to what email domain the employees use. Ms. Powers stated that all employees at the Fine Arts Museum use @FAMSF.org as their email domain and that they still need to review emails to see if they pertain to City business or 501(c)(3) and need to look at the content. Ms. Powers stated that the archive of the emails is Co-FAM which does not provide City money and helps support the Museum.

Ms. Megan Bourne, Chief of Staff, Fine Arts Museums, stated that the City appropriation of the Fine Arts Museums does not receive any funds from the City. Ms. Bourne stated that she has been with the Museums nine years and has responded to many public records requests and their perceived lack of responsiveness is not because they are ignoring the issues; that the staff has put in over one hundred hours on this request including multiple conversations with their City Attorney. Ms. Bourne stated that they tried to narrow the search and came up with over 250,000 emails which crashed their server. Ms. Bourne stated that they need to narrow the terms.

Mr. Smith stated that he used to be an investigative reporter. Mr. Smith stated that there are three silos of the Museum; one raises money which the Museum says is private; one silo manages it which is private and one is public and the City provides the building. Mr. Smith stated that he asked for documents that were in the public silo, which he has not received and believes that he is entitled to. Mr. Smith stated that also he has not received documents promised one year ago and on a rolling basis.

Member Hyland asked if Mr. Smith would rephrase the questions differently to get the information that he is looking for and can they be moved to the front of the list and be given a timeline? Mr. Smith stated that he would like the information on the Saudi donations over the last two years. Mr. Smith stated that of the information he has requested he has received a very little bit. Mr. Smith stated that through one way or another most emails have ended up in silo one and therefore are public. Member Hyland asked Mr. Smith to prepare a list of what he has received thus far. Mr. Smith stated that any member of the public should be entitled to all documents no matter how many silos exist. Mr. Smith stated that he does not know how you can communicate through the Museum from silo two and silo three and not have communications within silo one. Ms.

Smith stated that the Fine Arts Museums are a City Museum and that members of the public should know how it is managed.

Member Cate request that the SOTF Deputy City Attorney review the merits of this case and the silo issue. Member Cate stated that the Museum is carrying out public business and the issue should not be the structure. ***Member Cate requested that the SOTF Deputy City Attorney review the overlapping of the public and private entities, does it draw in the nonprofit entities into the coverage of the CPRA and Sunshine Ordinance?***

Member Hyland, seconded by Member Cate, moved to continue this matter to the call of the chair.

The Committee requested the SOTF Deputy City Attorney to review Mr. Smith's documents regarding silos (page 125 of the 10/23/18 Committee Packet) and provide a legal opinion on the applicability of the Sunshine Ordinance and the California Public Records Act to "silo one, two and three" and break down FAMSF, Co-FAM and the City and County of San Francisco entities, where the SOTF's jurisdiction extends to and how much the SOTF can persuade them to provide information.

Public Comment:

None.

The Motion PASSED by the following vote:

Ayes: 3 - Hyland, Cate, Hinze

Noes: 0 - None

Absent: 1 - Tesfai

5. ADJOURNMENT

There being no further business the meeting was adjourned at 6:25 p.m.

APPROVED: 11/27/18

Complaint Committee

Sunshine Ordinance Task Force

N.B. The Minutes of this meeting set forth all actions taken by the Sunshine Ordinance Task Force on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.