

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
June 22, 2020

DATE DECISION ISSUED
September 4, 2019

CASE TITLE – Ray Hartz v. Dennis Herrera and Bradley Russi, City Attorney’s Office.
File No. 17086

FACTS OF THE CASE

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 17086: Complaint filed by Ray Hartz against Dennis Herrera and Bradley Russi, Office of the City Attorney, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(i), by acting as legal counsel for city employees or any person having custody of public records for the purpose of denying access to the public.

HEARING ON THE COMPLAINT

On February 20, 2018, Education, Outreach and Training Committee acting in its capacity to hear petitions/complaints heard the matter.

The Petitioner was not present at the meeting.

John Cote, Office of the City Attorney (Respondent), was present but did not speak on the matter.

Member Eldon, seconded by Chair J. Wolf, moved to table/close the matter pursuant to the SOTF Complaint Procedures which states “If the Complainant fails to appear at a SOTF or Committee hearing regarding their complaint without prior communication the matter shall be tabled without prejudice (Tabled complaints are considered closed and no further actions are to be taken.) The Complainant shall be notified of the action and may request that their complaint be reopened in writing if requested within 60 days. The SOTF or its Chair shall determine if the complaint shall be reopened.”

On June 26, 2018, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Ray Hartz (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Hartz stated that the Friends of the San Francisco Public Library have been withholding public records on the advice of the City Attorney. Mr. Hartz also stated that the San Francisco Public Librarian was unlawfully advised to not turn over fund raising documents. Mr. Hartz stated that the Friends of the Public Library is unaware of how Library money is raised and spent.

John Cote, Office of the City Attorney (Respondent), provided a summary of the department's position. Mr. Cote stated that Mr. Hartz has no claim regarding noncompliance with the Sunshine Ordinance against the City Attorney's Office. Mr. Cote stated that Deputy City Attorney Brad Russi wrote a memo requested by the Public Library addressing Sunshine Ordinance, Section 67.29-6, regarding how the Friends of the Public Library should comply with the Sunshine Ordinance. Mr. Cote stated that pursuant to the San Francisco Charter the Office of the City Attorney is required to provide legal services to all city agencies and that it supersedes the Sunshine Ordinance.

Member B. Wolfe requested the SOTF Deputy City Attorney provide written advice/comment regarding the Public Library's position that the Friends of the Public Library is a third-party entity that is only required to comply with Administrative Code (Sunshine Ordinance), Section 67.296-6, and not the entirety of the Sunshine Ordinance. Member B. Wolfe also requested the SOTF Deputy City Attorney to provide written advice regarding the Respondents statement that the City Charter supersede the Sunshine Ordinance.

Chair Tesfai stated that the city attorney did not advise the library to not comply with the Sunshine Ordinance but instead advised how to implement provisions of the Sunshine Ordinance.

Member B. Wolfe, seconded by Member Hinze, moved to find jurisdiction and referred the matter to the SOTF for hearing.

On September 4, 2019, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Ray Hartz (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Hartz stated that the City Attorney is always taking the side of the agency advising to withhold public records. Mr. Hartz stated that the Library Commission has been advised by the City Attorney to not put the Friends of the Public Library at risk of disclosure. Mr. Hartz stated that at Library Commission hearings he has asked them to report donations made to the

Library. Mr. Hartz stated that the Friends of the Public Library is required to provide fund raising information to the public.

John Cote (City Attorney's Office) (Respondent), provided a summary of the department's position. Mr. Cote referred the SOTF to the written responses included in the packet. Mr. Cote stated that the issue before the SOTF is not about funding but an allegation of a violation of Sunshine Ordinance, Section 67.21(i). Mr. Cote stated that the City Attorney did not provide advice to deny access to the public record and that there is no violation. Mr. Cote referred to the *Grossman v. St. Croix* case.

Vice-Chair J. Wolf opined that this case is about a violation of 67.21(i). Vice-Chair Wolf stated that this matter is about a violation of the Sunshine Ordinance by the City Attorney. Vice-Chair J. Wolf opined that the role of the City Attorney is to provide advice on legal matters. Member Cate stated that under the City Charter the City Attorney's Office is to provide legal advice or written opinion to a department head or officer. Member Cannata opined that the Deputy City Attorney memo provides for a subjective call and questioned whether or not it was written to not produce records.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the City Attorney's Office violated Administrative Code (Sunshine Ordinance), Section 67.21(i)

DECISION AND ORDER OF DETERMINATIONS

On September 4, 2019, Vice-Chair J. Wolf, seconded by Member Cannata, moved to find that the Office of the City Attorney violated Administrative Code (Sunshine Ordinance), Section 67.21(i).

The motion FAILED by the following vote:

Ayes: 3 - J. Wolf, Cannata, B. Wolfe
Noes: 6 - Yankee, Martin, Tesfai, LaHood, Cate, Hinze
Absent: 1 - Chopra
Excused: 1 - Hyland



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Ray Hartz (Petitioner/Complainant)
Dennis Herrera, Bradley Russi, John Cote, City Attorney's Office (Respondents)