

**SUNSHINE ORDINANCE
TASK FORCE**



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

ORDER OF DETERMINATION
October 31, 2018

DATE DECISION ISSUED
October 3, 2018

CASE TITLE – Patrick Roddie v. Department of Public Health (17129)

FACTS OF THE CASE

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

Complaint filed by Patrick Roddie against the Department of Public Health for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On January 23, 2018, the Complaint Committee, acting in its capacity to hear petitions/complaints heard the matter.

Patrick Roddie (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Roddie summarized the reason for his records request and stated that if the department has access to public records held by other organizations they must retrieve and provide them. Linda Acosta, Department of Public Health (Respondent), provided a summary of the department's position. Ms. Acosta stated that the department is unable to and are not required to create records or reports as requested by Mr. Roddie. Ms. Acosta stated that the records in question are in possession of the State Department of Public Health and is not under the control of their department. In addition, Ms. Acosta stated that the California Department of Public Health has advised that public records request in question must be made directly to them pursuant to Government Code, Sections 6254(c) and 6254(g). A question and answer period occurred.

Acting Chair Hinze, seconded by Member Fischer, moved to find that the Sunshine Ordinance Task Force (SOTF) has jurisdiction and refer the matter to the SOTF for hearing with a recommendation to find no violations of Administrative Code (Sunshine Ordinance), Section 67.21 (timely response to public records request).

The Complaint Committee referred the matter to the SOTF.

On February 7, 2018, the SOTF held a hearing to review the recommendation from Complaint Committee and/or to review the merits of the petition/complaint.

Patrick Roddie (Petitioner), provided a summary of the complaint and requested the SOTF to find violation. There were no speakers on behalf of the Petitioner.

Linda Acosta, Department of Public Health (Respondent), provided a summary of the department's position. Ms. Acosta stated that the California Department of Public Health own and maintains the requested death records and has stated that all requests for information must be submitted directly to the California Department of Public Health.

There were no speakers on behalf of the Respondent. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

Member Maass noted that certain subsections of the San Francisco Department of Public Health has publish documents (link listed below) that contains related death records that may have relevant information and should have been provided to the Petitioner. The SOTF requested that the parties review the new information and determine if the department may have additional records that has already been publicly released that should have been provided to the Petitioner.

<https://www.sfdph.org/dph/hc/HCAgen/HCAgen2016/May%2017/2016CHNAAppendices.pdf>

<https://www.sfdph.org/dph/hc/HCAgen/HCAgen2016/May%2017/2016CHNA-2.pdf>

The SOTF continued the matter to the call of the Chair.

On March 7, 2018, the SOTF, acting in its capacity to hear petitions/complaints heard the matter.

Patrick Roddie (Petitioner), provided a summary of the complaint and requested the SOTF to find violation. Mr. Roddie stated that California statutes does not apply and provided reason why California Department of Public Health provided documents are not useable for research purposes. There were no speakers on behalf of the Petitioner.

Linda Acosta, Department of Public Health (Respondent), provided a summary of the department's position. Ms. Acosta stated that the California Department of Public Health and the Office of the City Attorney has advised that the requested

death records must be obtain directly from the state pursuant to the California Health and Safety Code, Sections 102230a and 10231. There were no speakers on behalf of the Respondent.

A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

The SOTF requested that Erika Campos, Vital Records, Department of Public Health, attend the Committee and SOTF meetings to answer questions related to the processing and filing of records related to deaths in San Francisco. In addition, the SOTF has posed the following questions:

Is there any information maintained by the City and County of San Francisco that is being withheld (related to records of death)?
Can San Francisco numbers be provided regarding death over a certain time period (from CCSF maintain records)?
How does California Health and Safety Code, Section 102231, apply to records being maintain by the City and County of San Francisco?

The SOTF continued the matter to the call of the chair and refer the matter to the Compliance and Amendments Committee. The SOTF requests that a person knowledgeable of the methods used by the City and County of San Francisco to report and track death that occurred attend the Committee and SOTF meetings.

On May 15, 2018, the Compliance and Amendments Committee held a hearing to review the recommendation from the Committee and/or review the merits of the Petition/Complaint.

Patrick Roddie (Petitioner/Complainant) provided a summary of his complaint and requested that the SOTF find violations. Mr. Roddie stated that he is investigating how many people died on days where there was spraying in San Francisco. Mr. Roddie stated that the Department of Public Health (DPH) has been stalling since August. Mr. Roddie stated that the Department of Public Health should have responded to his request or invoked HIPPA laws to deny the request immediately. Mr. Roddie noted that he never received a response to his second request for public records sent to the Department of Public Health and the Office of the Medical Examiner.

Erika Campos, Chief Deputy Registrar Officer of Vital Records (Department of Public Health) and Christopher Wirowek (Office of the Medical Examiner) (Respondents) provided a summary of the departments' position. Ms. Campos provided an explanation regarding how the city processes death registration. Ms. Campos stated that various bodies such as the Medical Examiner, hospitals and funeral homes enter information regarding deaths into an electronic database. Ms. Campos stated that the information entered by the various bodies into the database is reviewed by the Office of Vital Records prior to transmittal to the

California Department of Public Health. Ms. Campos stated that all counties in California have signed participation agreements with the state which establish requirements and limitations for all counties regarding the registering of deaths and maintenance of related records. Ms. Campos stated that the participation agreement and California Health and Safety Code, Sections 102230 and 102231, prevents DPH from providing the requested records but further stated that they referred Mr. Roddie to the California Department of Public Health who is authorize to provide the requested records.

In response to Chair Cannata's questions, Ms. Campos stated that DPH reviews death information entered into a database by various parties (hospitals, Medical Examiner, funeral homes) prior to transmitting the information to the California Department of Public Health. Ms. Campos stated that DPH can retrieve information from the database to create death certificates but are restricted from creating reports pursuant to the participation agreement and the California Health and Safety Code.

Mr. Wirowek stated that the Office of the Medical Examiner works within the confines of the State system and the requested records must be retrieved from the state. Mr. Wirowek stated that the Office of the Medical Examiner only maintains records for which they have processed which is a small part of the total deaths in San Francisco. Mr. Wirowek stated that the Office of the Medical Examiner moved and that the request for records was not received. Mr. Wirowek agreed to provide the Office of the Medical Examiner's records regarding death from approximately 2013 to 2016.

The Committee opined that the question for the SOTF to determine is whether or not the Sunshine Ordinance supersedes the California Health and Safety Code as the state law prohibits the City and County of San Francisco from disclosing the records in question but the Sunshine Ordinance has language that contradicts the state code. The Committee requested that the SOTF City Attorney representative provide information to advise the SOTF as to which take precedence – the California Health and Safety Code or the Sunshine Ordinance.

The Compliance and Amendments Committee moved to re-refer the matter to the SOTF for hearing with a recommendation to find a violation Administrative Code, Section 67.21, by failing to respond to a public records request in a timely manner and failure to provide further assistance.

On October 3, 2018, the Sunshine Ordinance Task Force held a hearing to review the recommendation of the Committee and/or to review the merits of the petition/complaint.

Member Cannata provided a summary of the Compliance and Amendments Committee hearing and request that the SOTF city attorney representative provide an opinion regarding whether California Health and Safety Code or that the Sunshine Ordinance takes precedence in the complaint. Member Cannata referenced Deputy City Attorney Colla's memo which opined that California Health and Safety Code requirements supersedes the Sunshine Ordinance.

Patrick Roddie (Petitioner) provided a summary of his complaint and requested the Committee find a violation. Mr. Roddie stated that he has been unsuccessful in getting information from the Department of Public Health.

Linda Acosta, Department of Public Health (Respondent), provided a summary of the department's position. Ms. Acosta stated that the State of California owns the requested death records and the department is required to refer all such requests to the California Department of Public Health. Ms. Acosta stated that all records in possession of the San Francisco Department of Public Health have been provided. Ms. Acosta provided an overview of how records are submitted to the state database where a physician of record or mortuaries will record a death. Ms. Acosta stated that authorized parties (such as a family member) can get a death record for \$22.00 per death certificate from DPH.

Member J. Wolf, seconded by Member Cate moved to find that the Department of Public Health violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to public records request in a timely manner.

In addition, the SOTF acknowledged that California Health and Safety Code takes precedence over the Sunshine Ordinance in regards to death records and that the San Francisco Department of Public Health is not allowed to retrieve death records from the state database on behalf of third parties.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the Department of Public Health (Respondent) violated Administrative Code (Sunshine Ordinance), Section 67.21 by failing to respond to a public records request in a timely manner.

DECISION AND ORDER OF DETERMINATIONS

On October 3, 2018, Member Josh Wolf, seconded by Member Cate moved to find that the Department of Public Health violated Administrative Code Section 67.21, by failing to respond to a request for public records in a timely manner.

The motion PASSED by the following vote:

Ayes: 7 - J. Wolf, Cate, Tesfai, LaHood, Cannata, Hinze, B. Wolfe

Noes: 0 - None

Absent: 2 - Hyland, Chopra

A handwritten signature in blue ink, appearing to be 'B Wolfe', enclosed within a hand-drawn oval.

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Patrick Roddie (Petitioner/Complainant)
Linda Acosta, Department of Public Health (Respondent)
Erica Campos, Department of Public Health (Respondent)