

**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

April 17, 2009

DATE THE DECISION ISSUED

March 24, 2009

JOSHUA ARCE AND ERIC BROOKS V PUC (09006)

FACTS OF THE CASE

Complainants represent environmental and social justice organizations that have spent the past several years seeking closure of the Potrero Power Plant in Southeast San Francisco without the construction of new power plants to replace it. Complainant Joshua Arce represents the Brightline Defense Project and Complainant Eric Brooks represents the San Francisco Green Party, Sustainability Working Group.

On May 14, 2008, Joshua Arce as Executive Director/Staff Attorney for the Brightline Defense Project made a Public Records Request for all communications between the San Francisco Public Utilities Commission ("SFPUC") staff and the California System Operator ("Cal-ISO") state regulatory body during the period of March 1, 2008 through May 13, 2008. To this request, the SFPUC provided 8 e-mails.

Joshua Arce and Eric Brooks believed that there should be more e-mails since what was provided alluded to other communications that were ongoing between the SFPUC and Cal-ISO. From May 16 through June 11, 2008, complainants communicated with the SFPUC in their effort to obtain other e-mails that the Complainants believed were being withheld by the SFPUC. The SFPUC responded that they did not have any further records.

The Complainants made an identical Public Records Request with Cal-ISO and received 20 e-mails.

COMPLAINT FILED

On January 26, 2009, Joshua Arce and Eric Brooks filed a complaint against the SFPUC for its alleged failure to disclose e-mails under Section 67.21 and/or its willful failure to maintain and preserve correspondence and records under Section 67.29-7.

The complainants further allege that the willful failure to maintain correspondence was official misconduct as defined in Section 67.34.

HEARING ON THE COMPLAINT

On March 24, 2009, complainant Joshua Arce and co-complainant Eric Brooks appeared before the Task Force and presented their claims. Respondent Agency was represented by Tony Winnicker, the Agency's director of communications.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds that even though staff at the SFPUC have authorization to delete emails that they deem not important, the task should have been undertaken judiciously and from the viewpoint of the public. The Task Force also found that the department did not err on the side of openness and it failed to seek the City Attorney's advice on the issue.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section 67.29-7 of the Sunshine Ordinance for not maintaining and preserving in a professional and businesslike manner all documents and correspondence. The agency shall review their backup tapes for additional records and appear before the Compliance and Amendments Committee on May 12, 2009.

Further, the Task Force requests that the PUC search for additional email records in their email backup files and provide them to the complainants as soon as possible.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 24, 2009, by the following vote: (Goldman / Johnson)

Ayes: Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Chu

Recused: Craven, Williams

The enforcement of this Order of Determination is referred to the Compliance and Amendments Committee to work with the PUC to provide all additional emails produced during the period in question.



Kristin Murphy Chu, Chair
Sunshine Ordinance Task Force

c: Rosa Sanchez, Deputy City Attorney
Ernie Llorente, Deputy City Attorney
Joshua Arce, complainant
Eric Brooks, complainant
Tony Winnicker, respondent