

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

December 21, 2009

DATE THE DECISION ISSUED

December 1, 2009

ASIAN LAW CAUCUS V. MAYOR'S OFFICE (09069)

FACTS OF THE CASE

The Asian Law Caucus said that on Sept. 2, 2009, it submitted an Immediate Disclosure Request to the Mayor's Office for a copy of a City Attorney Office memo that was allegedly leaked to the San Francisco Chronicle newspaper and for copies of any communications the Mayor's Office had with the Chronicle regarding the issue. The Asian Law Caucus alleges that the Mayor's Office responded late to the first request and not at all to the second request.

COMPLAINT FILED

On October 13, 2009, the Asian Law Caucus filed a complaint with the Sunshine Ordinance Task Force.

HEARING ON THE COMPLAINT

On December 1, 2009, Asian Law Caucus staff attorney Angela Chan presented the organization's case to the Task Force. The Mayor's Office was not represented. There was also no one in the audience who spoke or presented facts or evidence on behalf of the respondent. Chair Richard Knee did note that Brian Purchia of the Mayor's Press Office was in the audience earlier, but left a note to say that he had to leave to respond to press requests.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Chan told the Task Force that the Mayor's Office responded late to her first request by sending her a link to the City Attorney's website where the memo in question had been posted. When Ms. Chan followed up on the status of the second request, she was told that the previous email completed the Mayor's Office's response. Ms. Chan sent another email, warning the Mayor's Office that if it did not respond, she would file a Sunshine complaint. The Mayor's Office has not responded and has not provided justification for withholding the documents relevant to her second request as provided by Sec. 67.27, she said. The Mayor's Office has a duty to maintain records of these communications under Sec. 67.29-7 (a) and these communications must be kept in accordance with Sec. 67.29-1, regardless of

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the replacement, retirement or transfer of public officials, she said. The documents are public records covered by CPRA 6252 (e) and (g) and must be kept under Sec. 67.20 (b) of the Ordinance, she said. Ms. Chan argued that there was no privilege or exclusion for the documents and no attorney-client privilege existed because the Mayor's Office has released the document. She said Mayor Gavin Newsom needs to explain to the residents of San Francisco by whom, why and how the document was leaked.

DECISION AND ORDER OF DETERMINATION

The Task Force was troubled by the fact that the Mayor's Office representative left before the matter was called, because Task Force members needed to know the Mayor's position and response. After further debate the Task Force voted to continue the matter of whether documents had been impermissibly withheld by the Mayor's Office to its next meeting on January 5, 2010, to allow the Mayor's Office to respond to Ms. Chan's allegations.

However, the Task Force did find the Mayor's Office:

- in violation of Sec. 67.21 (e) for failure to appear, by the following vote (Cauthen / Washburn)

Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee
Excused: Johnson, Chu, Chan, Williams

- in violation of Sec. 67.27 for failure to provide justification for withholding, by the following vote (Cauthen / Washburn)

Ayes: Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee
Noes: Craven-Green
Excused: Johnson, Chu, Chan, Williams

The motion to continue was by the following vote (Knee / Craven-Green)

Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee
Excused: Johnson, Chu, Chan, Williams



Richard Knee
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Asian Law Caucus, Complaint
Mayor's Office, Respondent