

**SUNSHINE ORDINANCE
TASK FORCE**



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San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco CA 94102

Referral of Sunshine Ordinance Complaint #09044, Peter Warfield v. Board of Appeals.

This is a referral from the September 1, 2009, Order of Determination from the Sunshine Ordinance Task Force against the Board of Appeals, through its representative Executive Director Cynthia Goldstein, for failure to comply with the Order of Determination in that it did not provide email addresses in response to public record requests. The referral is made pursuant to Sunshine Ordinance section 67.30(c).

Background

On August 11, 2009, Peter Warfield filed a complaint alleging that the Board of Appeals had interfered with his ability to review and receive copies of documents in a Board of Appeals file when the Board provided Mr. Warfield a copy of the requested file but instructed him that while he could review the file, he would not be allowed to write down any names, addresses or contact information of individuals and entities who had submitted letters in support of or in opposition to the proposed demolition of the Ortega branch library. Copies of documents from the file were later provided to Mr. Warfield, however the contact information was redacted. Mr. Warfield complained that by refusing him access to names, addresses and other contact information from the file, the Board of Appeals had violated his rights under the Sunshine Ordinance.

Order of Determination

The matter was heard on September 1, 2009. The Task Force noted that it has consistently ruled that – unless a member of the public has requested anonymity, is a

whistleblower, or is someone who could otherwise face retribution if his/her name and contact information were released – the name and contact information of members of the public submitting public testimony is a matter of public record and should be released upon request.

As there were no facts or evidence introduced by the Board of Appeals to show that the members of the public whose names and contact information were withheld from Mr. Warfield fell within those exemptions, the Task Force issued an Order of Determination that the Board of Appeals violated Sunshine Ordinance sections 67.1(g) and 67.21 by restricting Mr. Warfield's ability to see and copy the names and contact information of individual and entities who submitted public testimony to the Board of Appeals and/or by redacting the same from public records.

Hearings at the Compliance and Amendments' Committee

The matter was initially heard by the Task Force's Compliance and Amendments Committee on September 8, 2009. At that time the Committee was informed in a letter from Ms. Goldstein that the Board of Appeals had issued a new, written policy regarding public access to contact information in Board of Appeals' files in response to the Order of Determination. Under the new policy the names and addresses of all persons and entities providing public testimony would be released. However, the Board confirmed that it would continue to withhold and/or redact the telephone numbers and email addresses of private persons (not of organizations, entities, or persons representing organizations or entities).

After debate among the Committee members, the Task Force agreed that since this was such an important and recurring issue, Ms. Goldstein would be asked to appear at the next Compliance and Amendments Committee meeting to discuss the continued withholding of personal phone numbers and email addresses. A letter was sent to Ms. Goldstein explaining the Committee's concerns and inviting her to appear at the next hearing (see attached).

The matter was heard again on October 10, 2009. No representative from the Board of Appeals was present, but Ms. Goldstein submitted a letter discussing the Board's new policy (see attached).

After further debate among the Committee members, including a discussion of whether receiving an email is as intrusive as receiving a phone call, the Committee members voted to send this issue back to the full Task Force for a hearing on whether to refer this matter

to the Ethics Commission for investigation and potential enforcement with respect to the redaction and/or withholding of email addresses only – as members of the Committee agreed that public release of email addresses would have a negligible impact on someone's privacy, assuming but not finding that members of the public had some expectation of privacy in their contact information when submitting public testimony to the Board of Appeals.

Referral by Task Force

The referral first came up for discussion at the October 27, 2009 full Task Force meeting. However, because no representative from the Board of Appeals was present to discuss the Board's new policy and continued redaction of personal email addresses and phone numbers, the Task Force voted to continue the issue of referral to the Ethics Commission to its next meeting.

The matter was again heard at the Task Force's December 1, 2009, special meeting. No one was present from the Board of Appeals. However, recognizing that the issue of public access to emails, particularly those submitted by members of the public in support or opposition to a proposal without any expectation or promise of privacy, is an important matter that will continue to arise, the Task Force ordered that the attached complaint #09044 of Peter Warfield and the September 1, 2009, Task Force Order of Determination be referred to the Ethics Commission for comment and advice, and potential enforcement with a finding of willful failure to comply with the Sunshine Ordinance and to comply with the Order of Determination with respect to the Board's new policy of redacting personal email addresses from correspondence before it is provided to members of the public for their review/copying

This request and referral are made under Section 67.30(c) of the Sunshine Ordinance whereby the Task Force shall make referrals to a municipal office with enforcement power under this Ordinance whenever it concludes that any person has violated any provision of this Ordinance.

Supporting Materials

The enclosed CD contains material in reference to this referral including (1) the September 1, 2009, Task Force Order of Determination, (2) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, (3) a letter from the Chair of the Compliance and Amendments Committee to Ms. Goldstein; and (4)

the minutes from the Task Force meetings on August 25, 2009, October 27, 2009, and December 1, 2009; and the minutes from the Compliance and Amendments Committee meetings on September 8, 2009, and October 13, 2009.

If you need any further information, including audio recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator at (415) 554-7724.

A handwritten signature in black ink that reads "Richard A. Knee". The signature is written in a cursive, flowing style.

Richard Knee, Chair
Sunshine Ordinance Task Force

cc: Peter Warfield, complainant
Cynthia Goldstein, respondent
Jerry Threet, Deputy City Attorney