

**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**

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

Referral of Sunshine Ordinance Complaint #09042, Peter Warfield v. Public Library

This is a referral from the September 1, 2009, Order of Determination against the Public Library, through its representative Sue Blackman, Secretary of the Library Commission, and from the Motion on October 27, 2009, finding that the Library should be found in violation of the Sunshine Ordinance sections 67.21(e) and 67.34 for failure to send knowledgeable representative to Task Force and committee meetings. The referral is made pursuant to Sunshine Ordinance sections 67.30(c) and 67.34.

Background

On August 11, 2009, Peter Warfield filed a complaint with the Sunshine Ordinance Task Force alleging that the Library administration refused to provide copies of the Park Branch's renovation plans, which he was given a prior opportunity to inspect and copies of which had been promised to him. The Library asserted that the documents were "draft" documents exempt from disclosure.

Task Force Hearing and Order of Determination

The matter was heard on September 1, 2009. Mr. Warfield presented his case and Ms. Blackman presented the Library's response. The Task Force initially noted that Sec 67.24 (a)(i) was passed to make it clear that, unlike state law, draft documents should generally be produced to members of the public. If, however, the draft documents requested are not the type of documents the Department normally retains, then in that narrow circumstance "recommendations" of the authors/reviewers may be redacted (for example, notes in margins) but the remainder of the draft documents must be released. However, there was no evidence in this case that "50% Construction Plans" that were shown to Mr. Warfield and circulated to various interested parties either were the type of draft not retained by the Department or contained "recommendations" and notes of the author subject to redaction. Therefore, there are no grounds on which the plans could be withheld as "drafts" under the Ordinance.

Moreover, when it comes to competitive bidding, under state law the items that are typically excluded from public production are the bid responses that are submitted by bidders, in order to prevent any party from gaining an unfair advantage in the negotiation process. That situation does not apply to draft development plans, which members of the public should have the opportunity to inspect before they are final and subject to bidding. Otherwise members of the public would not be able to review the design of projects until the plans were “final” and sent out to bid; too late for meaningful public input.

Finally, even if the plans were exempt from disclosure, by showing the plans to Mr. Warfield (and possibly by also circulating copies of the “50% Construction Documents” to various interested parties, including the Friends of the San Francisco Public Library), the Department waived any claim to an exemption from disclosure.

The Task Force issued an Order of Determination finding that the Library violated section 67.21 by failing to provide responsive documents and ordering the Library to provide Mr. Warfield with the documents he requested within five days after issuance of the Order of Determination.

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. Blackman that the Library would not be attending the meeting, but that the Library would be providing the previously withheld documents to Mr. Warfield for his inspection and/or copying. After debating among members, the Committee agreed that since there were indications that the Library would comply and because the Order of Determination did not specify the response time, Ms. Blackman would be asked to appear at the next Compliance and Amendments Committee meeting.

The Compliance and Amendments Committee heard the matter again on October 13, 2009. Again, no representative from the Public Library was present. But Ms. Blackman had informed the Task Force administrator verbally that she had provided the complainant with a copy of the “50% Construction Plans.” Mr. Warfield, however, informed the Task Force that what had been provided to him was not the full size set of original plans, but a copy of a reduced size set. Mr. Warfield was told by the Library that the full-size original plans had been destroyed.

The Compliance and Amendments Committee had numerous questions for the Library that could not be answered because the Library failed to send a representative. The questions included when did the Library discover that the original full-size plans had been destroyed, why the original set of plans had been destroyed, the Library’s practice for maintenance and preservation of planning documents, and why a full size copy could not be reproduced for Mr. Warfield from electronic records (which are normally maintained by public agencies). The Committee was concerned because reduction of the

plans could have compromised review of the scale in the drawings/plans and otherwise inhibited the public's ability to comment on the plans (e.g., if reduction removed or failed to capture notations made on the plans).

A motion was made for the Committee chair to write a letter to the Library expressing displeasure at its officials' failure to appear at the hearings, asking why the original and/or a full size set of the documents were not provided and why, instead, a reduced size copy of the plans were provided after the five-day deadline imposed by the Order of Determination. The Library was also to respond as to when the original was destroyed and whether could it provide full-sized copies of the plans from other sources. The Library was told that if there was no response to the Compliance and Amendments Committee within five days following receipt of the letter, the Committee would to recommend a hearing on the status and potential referral at the next full Task Force meeting.

Referral by Task Force

The Library did not respond within five days of the Compliance and Amendment's Committee letter, so the matter was set for hearing at the October 27, 2009, full Task Force meeting. Ms. Blackman, who was present on behalf of the Library, told the Task Force that the Library honestly tried to comply but that it was miscommunication over the size of the document that caused the problem. She also brought Mindy Linetzky of the Department of Public Works, who said it was not the Department's policy to keep or retain hard copies of design documents until the design was in its final stage. She, however, did produce a full size copy of the "50% Construction Plans," printed from an electronic source for Mr. Warfield's inspection and/or possession provided he pay for the cost of reproducing the full-size document. Mr. Warfield responded that he had been quite clear about what he wanted to view and have copied, but the Library failed for months to comply with his request and the Order of Determination.

The Task Force voted, first, on a motion to refer the Library to the Ethics Commission for its failure to comply with the Order of Determination, requiring providing Mr. Warfield with access to the construction plans within five days after issuance of the Order of Determination. That vote failed, 4-3.

The Task Force then voted on a motion to refer the Library to the Ethics Commission for violating sections 67.21(e) and 67.34 of the Ordinance by failing to send a representative to all Task Force and committee hearings on this matter. That vote passed, 7-0.

This request and referral are made under Sections 67.30(c) and 67.34 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 and referrals shall be made to the Ethics Commission based on findings of willful failure to comply with the 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) correspondence between the Task Force and the Library regarding this matter; (3) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, (4) the minutes from the Task Force meetings on August 25, 2009, October 27, 2009, and (5) 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.



Richard A. Knee, Chair
Sunshine Ordinance Task Force

cc: Peter Warfield, complainant
Sue Blackman, respondent
Jerry Threet, Deputy City Attorney