

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

October 6, 2009

DATE THE DECISION ISSUED

September 22, 2009

RITA O'FLYNN v. MAYOR'S OFFICE OF HOUSING (09039)

FACTS OF THE CASE

Complainant Rita O'Flynn has been communicating with and submitting record requests to the Mayor's Office of Housing (MOH) regarding, among other issues, a federal Housing and Urban Development (HUD) Department Lead Abatement Grant for lead abatement at a property owned by Ms. O'Flynn and administered by MOH. In March 2008, Ms. O'Flynn requested the opportunity to review the entire HUD Lead Abatement files with respect to her property at the MOH. After she reviewed the files, she requested that they be copied in their entirety. Upon receiving the copies, she realized that the provided records did not include emails regarding 1672/1674 Great Highway that she had reviewed in person, including an email from a tenant at Ms. O'Flynn's property to the MOH. Ms. O'Flynn then submitted a specific request for all email records regarding the lead abatement grant and her property, and she was told that the email records had been deleted since MOH keeps electronic records for only two years. Ms. O'Flynn also alleged that on September 11, 2009, MOH produced a February 2007 email between two employees of the MOH (Mr. Michael Palmer and Ms. Myrna Melgar-Iton) regarding 1672/1674 Great Highway that Ms. O'Flynn claimed was not produced in response to her original request, and should have been produced from Ms. Melgar-Iton's emails at MOH had those emails not been deleted. Mr. Oliver Hack of the MOH indicated that the Palmer/Melgar-Iton email was found as a result of a subsequent search of Mr. Palmer's email and he produced it because he wasn't sure if Ms. O'Flynn had already received it.

COMPLAINT FILED

On July 20, 2009, Complainant Rita O'Flynn filed a complaint against MOH for its deletion of the email records while the records were the subject of a Sunshine Ordinance Request for Records.

HEARING ON THE COMPLAINT

On August 25, 2009, complainant Rita O'Flynn appeared before the Sunshine Ordinance Task Force and Oliver Hack of the Mayor's Office of Housing appeared for the agency. Ms. O'Flynn presented her case that the MOH had failed to produce copies of responsive emails that she had reviewed and requested copies, and then had impermissibly deleted the original emails. Mr. Hack responded that there was no evidence that any responsive emails had in fact been deleted and not produced to Ms. O'Flynn. The Task Force found that, on the record before it, there was insufficient evidence indicating that the MOH had, in fact,

ORDER OF DETERMINATION

failed to produce copies of the emails and then deleted the originals. In light of the lack of evidence, the Task Force continued the matter for a month to allow Ms. O'Flynn to provide evidence to the Task Force substantiating her position.

On September 22, 2009, Ms. O'Flynn and Mr. Hack appeared before the Task Force again. Ms. O'Flynn's amended submission to the Task Force included specific allegations identifying emails within the MOH that were responsive to her request and should have been produced originally, but were not, including the email between Ms. Melgar-Iton and Ms. O'Flynn's tenant and the email between Mr. Palmer and Ms. Melgar-Iton about Ms. O'Flynn's property. Mr. Hack from the MOH did not respond or address Ms. O'Flynn's specific evidence, but reasserted that the MOH had produced all responsive emails from Ms. Melgar-Iton and other members of the MOH staff and that any deleted emails were properly deleted after two years in accordance with the MOH records retention schedule. Mr. Hack also noted that he produced the February 2007 email between Ms. Melgar-Iton and Mr. Palmer from Mr. Palmer's email as a result from a subsequent search for responsive emails regarding her property.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that Ms. O'Flynn had sufficient evidence to support the claim that responsive emails had not been produced and/or were improperly deleted by the MOH and that the MOH did not adequately rebut Ms. O'Flynn's evidence, including explaining why the February 2007 email was found in Mr. Palmer's active email but not Ms. Melgar-Iton's active email. The Task Force also noted that according to the Mayor's Office's record retention policy all correspondence regarding grants and contracts administered by the Mayor's Office should be kept for four years at a minimum. While the lead abatement work at 1672/74 Great Highway may have been completed in 2005, the O'Flynn's were still obligated to comply with various grant requirements, as shown by the February 2007 draft letter from the MOH, records regarding that property and the grant, should not have been deleted in 2009 under the applicable records retention policy. ..

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Mayor's Office of Housing violated Sunshine Ordinance Sections 67.21 for failure to produce requested records and 67.29-7(a) for failure to maintain records as required by the Administrative Code and Mayor's Office's retention policy. The MOH is directed to ask the Department of Technology to restore Ms. Melgar-Iton's emails that fall within the time frames Ms. O'Flynn requested during her original request. This Order is limited to Ms. Melgar-Iton's emails, as the evidence provided indicated that Ms. Melgar-Iton's emails were not produced and subsequently deleted (as opposed to other members of the MOH as to whom no showing had been made that emails have been improperly deleted). The cost to restore and review Ms. Melgar-Iton's records for responsive emails is to be borne by the MOH. The agency shall appear before the Compliance and Amendments Committee on October 13, 2009, to discuss compliance.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on September 22, 2009, by the following vote: (Craven-Green / Goldman)

ORDER OF DETERMINATION

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

A handwritten signature in black ink, appearing to read "Richard A. Knee". The signature is fluid and cursive, with the first name "Richard" and last name "Knee" being clearly legible.

Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Rita O'Flynn, complainant,
Oliver Hack, respondent