

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

January 29, 2010

DATE THE DECISION ISSUED

January 5, 2009

MELVYN BANKS v. DEPARTMENT OF PUBLIC HEALTH (09082)

FACTS OF THE CASE

Complainant Raymond Banks said the Department of Public Health (DPH) failed to respond in timely fashion to an Immediate Disclosure Request (IDR) for a copy of the San Francisco Share Mandate Policy related to the new ARIES reporting system, which Mr. Banks made to Maria Martinez on October 30, 2009,. On November 16, 2009, DPH responded by email to Mr. Banks' request by providing him with a copy of the local share policy regarding the Reggie reporting system, but stated that there was no local share policy with regard to the ARIES reporting system that is replacing Reggie.

COMPLAINT FILED

On November 16, 2009, Mr. Banks filed a Sunshine complaint against DPH. On December 28, 2009, Mr. Banks sought to amend his complaint to add allegations of violations of the California Public Records Act due to the failure by DPH to assist him in accurately identifying the information he sought. Mr. Banks was advised that if he wished to amend his complaint so close to the hearing date, it would require that his complaint be continued to a later meeting to allow DPH adequate time to respond to the additional allegations.

HEARING ON THE COMPLAINT

On January 5, 2010, Melvyn Banks presented his claim. The respondent submitted a letter but was not represented at the hearing and no one in the audience spoke or presented facts or evidence on behalf of the respondent.

Mr. Banks said that the previously existing Reggie client reporting system was developed in cooperation with the community of individuals receiving HIV services and respected their desires to maintain confidentiality in the reporting system. Mr. Banks further stated that DPH is proposing that the shift to the state-mandated ARIES reporting system be accompanied locally by a requirement that any client accepting HIV related services must agree that their private information will be shared among all service providers in the ARIES reporting system, or lose the ability to access services. Mr. Banks stated that the proposed policy change affects 20,000 people and it violates their constitutional privacy rights. He

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wanted to know why DPH created a policy that was against the confidentiality requirements of the Health Insurance Portability and Accountability Act ("HIPAA") of 1996.

Mr. Banks further stated that the change in policy was first described to him by DPH officials as a "local share mandate" policy that was being considered by DPH. After he requested the document that represented the "local share mandate," Mr. Banks was told by DPH that there was no local share mandate, since the policy was a part of the state mandated ARIES reporting system. Mr. Banks presented further evidence that showed that the ARIES reporting system mandated by the state allows, rather than requires, a local share mandate to be adopted as policy by local governments. Nevertheless, DPH stated in its written response to Mr. Banks' IDR that it had provided him with the only document that reflected a local share policy that associated with the previously existing Reggie reporting system. DPH stated that there was no document reflecting a local share mandate policy under the new ARIES system.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that DPH had referred to a local share mandate policy document in communicating with Mr. Banks, but had failed to produce the document referred to in response to Mr. Banks' IDR. In the absence of a DPH representative, the Task Force concluded that DPH possessed responsive documents that it failed to provide to Mr. Banks.

DECISION AND ORDER OF DETERMINATION

The Task Force found that the agency violated Sec. 67.21 (b) and (e), Section 67.25 and CPRA Section 6253.1 (a) 1, 2 and 3. (Washburn / Goldman)

The respondent is hereby directed to provide the San Francisco Share Mandate Policy related to the new ARIES reporting system to the complainant within 5 business days after receiving this Order of Determination and to provide assistance to the complainant in further identifying documents that would be responsive to his request. This matter is referred to the Feb. 9, 2010, Compliance and Amendments Committee meeting.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on Jan. 5, 2010, by the following vote: (Washburn / Goldman)

Ayes: Manneh, Washburn, Knoebber, Chu, Goldman, Williams, Knee



Richard A. Knee
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Melvyn Banks, Complaint
Eileen Shields, Respondent