

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION**

April 7, 2010

**DATE THE DECISION ISSUED**

March 23, 2010

*SUPERVISOR DALY VS. MAYOR'S OFFICE (10007)*

**FACTS OF THE CASE**

Complainant, Supervisor Chris Daly, alleges that on February 4, 2010, he sent an Immediate Disclosure Request ("IDR") to the Mayor's Office ("Mayor") requesting "all written communication between Michael Yarne and the Planning Department, the Mayor's Office of Housing, and the Controller between October 1, 2009, and January 31, 2010." Mr. Daly further alleges that the Mayor failed to respond to the request by the end of the 10-day extension period he invoked in response to the request, as required by the Ordinance.

**COMPLAINT FILED**

On February 22, 2010, Mr. Daly filed a complaint with the Task Force alleging a violation of Sunshine Ordinance Section 67.25(a).

**HEARING ON THE COMPLAINT**

On March 23, 2010, Mr. Daly's aide April Veneracion presented Mr. Daly's complaint before the Task Force. The Mayor's Office was not represented. There was no one in the audience to present facts and evidence in support of the Mayor. Ms. Veneracion told the Task Force that a document request to the Mayor was made on February 4 and a response requesting a 10-day extension was received on February 5. Ms. Veneracion said that on February 11, the Mayor's Office told Mr. Daly the request was too broad, and would need to be narrowed for a response. Ms. Veneracion said she sent a follow-up email to the Mayor's Office on February 17 and received an "Out of Office" reply, after which she spoke to Laura Houser of the Mayor's Office of Communication, who assured her that the email would go to the appropriate person. Ms. Veneracion also noted that a second request was sent March 2, which covered some but not all of the information in the first request. She emphasized that the second request was not a substitute for the first request. Ms. Veneracion told the Task Force that she received two binders from the Mayor's Office, but upon further inquiry, she was told by a representative of the Mayor's Office that the documents in the binders were related to the second request. She said Mr. Daly's office had not received the documents covered in the first request.

**ORDER OF DETERMINATION****FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Task Force found that the Mayor's Office failed to produce documents responsive to Mr. Daly's first request within the time frame allowed under the Ordinance. The Task Force agreed the first request was not overbroad and was specific enough to allow the Mayor's Office to respond. Moreover, even if the request was considered "overbroad" the rule of reason incorporated into the California Public Records Act section 6255 – where the public interest in disclosure is weighed against the public interest in withholding – is not applicable under the Sunshine Ordinance. The Task Force further found that it was unclear, without testimony from the Mayor's Office, whether any documents were withheld from production in response to Mr. Daly's second request (which covered a subset of information sought in the first request). The Task Force understood that documents may have been withheld because the response from the Mayor's Office was that the City Attorney was reviewing the responsive documents.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the Mayor's Office violated Section(s) 67.21 (b) for failure to produce documents, 67.21 (e) for not sending a knowledgeable representative to the March 23 hearing, and 67.25 (b) for invoking the 10-day extension in response to an immediate disclosure request but not responding within the period allowed. The Mayor's Office is hereby instructed to release all the non-exempt records requested by Mr. Daly within 5 business days after receiving this Order and to appear before the full Task Force on April 27, 2010. Respondent's failure to comply fully with this Order may result in referral of this matter to a City or State entity with enforcement powers including the imposition of fines and penalties.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 23, 2010, by the following vote: ( Craven-Green / Goldman )

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

Absent: Manneh, Johnson



Richard A. Knee, Chair  
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney  
Supervisor Chris Daly, Complaint  
Michael Yarne, Respondent