

**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

August 17, 2010

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

Referral of Sunshine Ordinance Complaint #10018, Svetlana Ptashnaya v. Department of Aging and Adult Services

This is a referral from the June 22, 2010, Order of Determination from the Sunshine Ordinance Task Force against the Department of Aging and Adult Services for failure to comply with the Order of Determination in that it did not provide information related to an internal investigation of a department employee. The referral is made pursuant to Sunshine Ordinance Section 67.30(c).

Background

On May 19, 2010, Svetlana Ptashnaya filed a complaint with the Sunshine Ordinance Task Force alleging that the Department of Aging and Adult Services failed to respond adequately to her February 11, 2010, Public Records Request to Julie Peck, Program Manager for Adult Protective Services ("APS"), for the results of APS's investigation into Ms. Ptashnaya's complaint against APS employee Ethelbert Ogbuehi.

Task Force Hearing and Order of Determination

The matter was heard on June 22, 2010, and it was noted that the Department did not send a person knowledgeable on the issue to the hearing as required under Section 67.21(e) of the Sunshine Ordinance. The Department had earlier informed the Task Force by fax that the information Ms. Ptashnaya requested was "statutorily protected under the Welfare and Institutions Code, Sections 15630 and 10850."

The Task Force agreed with the Department that state law covered information related to the Department and its clients, but Ms. Ptashnaya's request was on a distinctly separate issue, the alleged misconduct of a public agency employee. Her request, Task Force members said, was for information related to an employee's disciplinary hearing, and documents related to it should have been released pursuant to Section 67.24(c)(7) of the Ordinance. The Task Force said the Department could redact or delete parts of the document or documents that contained confidential information related to any welfare issue; the Task Force pointed out that under

the Sunshine Ordinance and the California Public Records Act, disclosable portions of records containing both disclosable and exempt information must be provided to requestors.

In light of the foregoing, the Task Force found the Department of Aging and Adult Services in violation of Section(s) 67.21(c), 67.21(e), 67.24(c)(7) and 67.27 of the Sunshine Ordinance for not assisting the requestor, for not sending a knowledgeable representative to the hearing, for not releasing documents related to employee misconduct and for not providing written justification to the requestor for withholding information. The Department was directed to produce copies of the documents that Ms. Ptashnaya requested within five calendar days of the issue date of the Order of Determination and to appear before the Compliance and Amendments Committee on July 13, 2010, to discuss compliance with the Order of Determination.

Hearings at the Compliance and Amendments Committee

A hearing on the status of the Department's compliance with the Order of Determination was held on July 13, 2010. Cindy Rasmussen, Supervisor of the Department's Adult Protection Services division, informed the Task Force that all documents within a welfare client's file were confidential and could not be disclosed. Members asked her if portions of the investigation report could be segregated by redacting or deleting welfare-case issues. Ms. Rasmussen said such segregation was not possible, and that all documents that can be released have been provided to Ms. Ptashnaya. Members then voted to send the matter to the next full Task Force meeting for referral to an enforcement agency for failure to comply with the Order of Determination.

Referral by Task Force

At the Task Force hearing on July 27, 2010. Ms. Ptashnaya again said she had not received anything from the Department. It was noted that the department was again not represented at the hearing.

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 June 22, 2010, Task Force Order of Determination, (2) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, (3) the minutes from the

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Task Force meetings on June 22, 2010, the minutes from the Compliance and Amendments Committee meeting on July 13 and the draft minutes from the Task Force meeting on July 27, 2010.

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



Richard A. Knee, Chair
Sunshine Ordinance Task Force



David Snyder, Member, Seat #1*
Sunshine Ordinance Task Force

cc: Jerry Threet, Deputy City Attorney
Jana Clark, Deputy City Attorney
Svetlana Ptashnaya, Complainant
Trent Rhorer, Respondent
E. Anne Hinton, Respondent
Julie Peck, Respondent
Cindy E. Rasmussen, Respondent

*Seat #1 on the Task Force is designated for an attorney nominated by the Society of Professional Journalists, Northern California Chapter.