

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

March 14, 2011

DATE THE DECISION ISSUED

February 22, 2011

WILLIAM CLARK V CITY ATTORNEY'S OFFICE (CASE NO. 11002)

FACTS OF THE CASE

Complainant William Clark alleges that the City Attorney's Office ("CAO" or "Respondent") violated Section 67.21(i) of the Sunshine Ordinance by acting as legal counsel for the custodian of records of the Street Artists Program of the Arts Commission for purposes of denying public access to public records requested pursuant to the Ordinance.

COMPLAINT FILED

On January 11, 2011, the Complainant filed a complaint with the Task Force alleging a violation of Section 67.21(i).

HEARING ON THE COMPLAINT

On February 22, 2011, Complainant presented his case to the Task Force. The Respondent was not represented and no one in the audience spoke or presented facts and evidence in support of the Respondent.

Mr. Clark told the Task Force that Sunshine Ordinance Section 67.21(i) clearly states that the City Attorney's Office should not act as a legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public, and that all communications, including petitions, requests for opinion, and opinions are public records. He said the emails exchanged between the Arts Commission and the CAO during 2009 and 2010 and submitted as evidence refer to sunshine disclosure requests. He said the emails, which also include drafted responses, are a clear sign that the Arts Commission was using the CAO as its legal counsel. In one exchange, he said, the Arts Commission thanks a deputy city attorney for reviewing a response. He said there may be legitimate city attorney advice being given, but when the email says "please look over or edit my document," it means they are going beyond where they should go.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judging from the evidence presented, the Task Force found numerous instances where the CAO was definitely providing legal assistance to the Arts Commission. The Task Force noted that some emails had attachments and could be draft letters for the Arts

Commission's use. The Task Force, noting the tone of the emails, voiced concern that the practice of providing legal counsel could be widespread especially on matters that come before the Task Force. The Task Force Chair was also, in light of one of the emails, urged to inform the Arts Commission that the printing of a document is not akin to creating a document and that the printing, per Sunshine, was called producing a document.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the CAO violated Sunshine Ordinance Section 67.21(i) by providing the Arts Commission with legal advice concerning sunshine matters and Section 67.21(e) by not sending a knowledgeable representative to the hearing.

Mr. Song is to appear before the Education, Outreach and Training Committee on April 14, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on February 22, 2011, by the following vote: (Wolfe/Washburn)
Ayes: Washburn, Knoebber, Wolfe, Chan, Johnson, Cauthen, Knee
Excused: Snyder, Manneh



Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: William Clark, Complainant
Jack Song, Respondent
Jerry Threet, Deputy City Attorney