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Via E-Mail & Interoffice Mail

June 15, 2011

Richard Knee, Chair
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

RE: Ethics Complaint No. 04-100218

Dear Chairperson Knee:

The Sunshine Ordinance Task Force ("Task Force") referred Complaint No. 09057 (Ethics Complaint No. 04-100218) to the Ethics Commission on February 18, 2010. According to the referral letter, the complaint was referred to the Ethics Commission, pursuant to section 67.30(c) of the Sunshine Ordinance, for the failure of the Clerk of the Board of Supervisors, "through its representative Legislative Deputy Director Rick Caldeira" ("Clerk"), to comply with the Task Force's Order of Determination and for its "continued failure to provide contact information for members of boards and commissions to members of the public."

Pursuant to section VI.D of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings ("Regulations"), staff's recommendation was submitted to the Ethics Commission for consideration to be calendared at the Regular Meeting of the San Francisco Ethics Commission on June 13, 2011. The matter was not calendared and staff's recommendation was thus accepted. The Ethics Commission has dismissed this matter for the reasons stated below.

This matter originated from a document request made by Peter Warfield. Mr. Warfield made an oral request for "information from the Clerk of the Board of Supervisors that included information about the current membership of the Library Citizens Advisory Committee (LCAC), of which" he was a member. After being told to return in three hours so that redactions could be made, Mr. Warfield then requested "just the two-page current member roster." He was promptly provided the roster, but the document was redacted. He filed a complaint with the Task Force on September 9, 2009.

On October 27, 2009, the Task Force held a hearing regarding this matter and found the Clerk's Office in violation of sections 67.21(a) and (b) for failure to provide

records for inspection or review on a timely basis and for making impermissible redactions. The Clerk's Office was ordered to produce unredacted copies of the requested documents and appear at the next Compliance and Amendments Committee ("CAC") meeting.

On November 10, 2009, the CAC held a meeting regarding this matter. Madeleine Licavoli, Deputy Clerk of the Board, appeared and Mr. Warfield was not present. The CAC members continued the meeting in order to see the new written policy of the Clerk's Office regarding future redactions.

At the December 8, 2009 CAC meeting, Ms. Licavoli stated that the new redaction policy had been implemented and came into effect on November 10, 2009. She stated that, under this policy, Mr. Warfield would have access to the unredacted version of the requested documents. However, the CAC members disagreed with the Clerk's Office new policy of future redactions and referred the complaint to the full Task Force for "failure to comply with the Order of Determination." The Task Force heard the matter on January 5, 2010 and also disagreed with the Clerk's Office new policy. The Task Force then referred the matter to the Ethics Commission.

In the Task Force's Order of Determination, the Clerk's Office was directed to do two things: 1) produce unredacted copies of the documents Mr. Warfield requested; and 2) appear at the November 10, 2009 CAC meeting. Ms. Licavoli informed the CAC members that Mr. Warfield had access to unredacted copies of the documents he had requested. She also appeared at all CAC meetings and the January 5, 2010 Task Force meeting. Therefore, prior to referral to the Ethics Commission, the Clerk's Office had complied with the Task Force's Order of Determination.

However, on January 19, 2010, the Task Force sent a letter to the Clerk's Office regarding this complaint, inaccurately stating that the Task Force had found that the Clerk's Office had "willfully violated the Sunshine Ordinance by failing" to comply with the Order of Determination. The Task Force also stated in the letter that Ms. Licavoli had confirmed that Mr. Warfield "could see the LCAC's membership list without redactions," but that Mr. Warfield "said this did not satisfy him because members of the general public would not get the unredacted list. The Task Force agreed with his position in finding your Office in willful violation."

Mr. Warfield's complaint did not include "members of the general public" as Complainants. Mr. Warfield specifically requested a membership roster of the LCAC. After the Order of Determination was issued, he was provided with an unredacted membership roster of the LCAC. In addition, the Task Force never found a willful violation regarding this matter.

The Task Force stated in its referral letter that "if a person serving on a government body provides contact information to the City, that information should be disclosed to the members of the public." The Task Force stated in the Order of Determination that individuals who choose to serve on policy-making bodies or passive bodies can "protect their privacy if they wish by opening a Google email account and/or a Post Office Box to use for City business to avoid releasing his or her home contact information." Creating a separate e-mail account or purchasing a mailbox would be burdensome and unnecessary. Members of the public may access

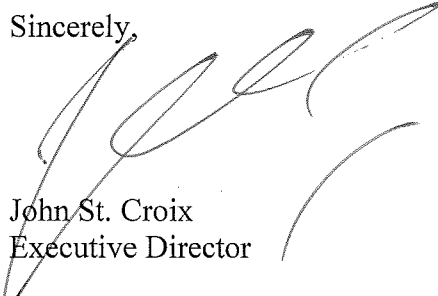
individuals who serve on policy-making bodies or passive bodies both at the bodies' set meeting times and through clerks and staff.

In addition, the Office of the City Attorney "has consistently advised that personal e-mail address of members of boards, commissions, task forces, and other City bodies should not be disclosed to the public without the consent of the person whose e-mail address is being sought." The Office of the City Attorney addressed this issue in a 2007 memorandum to the Task Force and found "no reasonable justification under applicable public records laws for requiring disclosure of a commissioner's personal e-mail address."

The Ethics Commission finds that the Clerk's Office complied with the Task Force's Order of Determination. Therefore, no violation of law occurred. The Ethics Commission does not anticipate taking any further action on the matter.

If you have any questions regarding this matter, please call enforcement staff at (415) 252-3100.

Sincerely,



John St. Croix
Executive Director

Cc: Peter Warfield
Madeleine Licavoli, Office of the Clerk of the Board