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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. 02-100120

Dear Chairperson Knee:

The Sunshine Ordinance Task Force ("Task Force") referred Complaint No. 09044 (Ethics Complaint No. 02-100120) on January 20, 2010.

According to the referral letter, the complaint against the Board of Appeals ("Board") was referred to the Ethics Commission for "comment and advice, and potential enforcement with a finding of willful failure to comply with the Sunshine Ordinance and to comply with the Order of Determination with respect to the Board's new policy of redacting personal e-mail addresses from correspondence before it is provided to members of the public for their review/copying."

However, upon review of the recordings of the Task Force's meetings, the matter was actually referred for "failure to comply with the Order of Determination pursuant to section 67.30 of the Sunshine Ordinance regarding the continued redaction of e-mail addresses." A motion made regarding a finding of willful failure failed.

Pursuant to section VI.D of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings, 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 is thus accepted. The Ethics Commission has dismissed this matter for the reasons stated below.

On August 5, 2009, the day of an appeal hearing, Peter Warfield visited the Board's office and orally requested to review a file pertaining to an appeal for a permit to demolish a library on Ortega Street. He stated in his Task Force complaint that he sought to "review...and...obtain selected copies of letters supporting and opposing" the demolition permit. The Board staff allowed Mr. Warfield to review the file, but,

since there was no time to redact exempt information from the file before the hearing, he was asked not to copy or take notes concerning information in the file which were exempt from disclosure by privacy or other applicable public meeting laws.

On August 11, 2009, Mr. Warfield filed a complaint with the Task Force alleging that the Board had interfered with his ability to review and receive copies of documents. He stated that the Board refused to allow him access to names, addresses, or contact information contained within the documents he had requested. On August 20, 2009, Cynthia Goldstein, the Executive Director of the Board, responded to the complaint. She stated that both state and local law recognize and protect personal privacy and cited various reasons for withholding, including California Government Code sections 6254(c) and (k), Sunshine Ordinance ("Ordinance") section 67.1(g), and San Francisco Administrative Code Chapter 12M.

The Task Force held a hearing on this matter at its August 25, 2009 meeting. The Task Force noted on the record that it has consistently held that names and contact information of members of the public submitting public testimony are public records and should be released upon request. It did note reasons when names or contact information could be withheld.

In its Order of Determination, dated September 1, 2009, the Task Force found that the Board violated sections 67.1(g) and 67.21 of the Ordinance. The Task Force directed the Board to release the "names and contact information for individuals and entities who submitted public testimony to the Board of Appeals" to Mr. Warfield and to appear at the Compliance and Amendments Committee ("CAC") meeting on September 8, 2009.

Prior to the CAC meeting, Ms. Goldstein responded to the Order of Determination. She stated that the Board would, in the "special context of building, planning, and other land-use-related permits," disclose names and home addresses contained in communications pertaining to such permits that are in the public review file. Ms. Goldstein stated the reason for the Board's disclosure of this personal information in these specific cases was because "the residence of individuals who submit testimony to the Board bears on the decision-making process." Ms. Goldstein also stated that the Board would continue to redact home telephone numbers and e-mail addresses. At the September CAC meeting, the Committee members continued the matter.

On September 15, 2009, Ms. Goldstein reiterated the Board's position regarding the redaction of home telephone numbers and personal e-mail addresses. She also stated that the Board had released the names and contact information in the documents responsive to Mr. Warfield's request. The CAC met on October 13, 2009 and concluded that the redaction of home telephone numbers was acceptable. The CAC sent the matter back to the full Task Force for referral to the Ethics Commission, regarding only the continued redaction of e-mail addresses. The Task Force met on October 27, 2009, but the matter was continued.

At the December 1, 2009 Task Force meeting, Ms. Goldstein appeared and again reiterated the Board's position regarding future redactions. The Task Force then referred the matter to the Ethics Commission.

In the Task Force's Order of Determination, the Board of Appeals was directed to do two things: 1) produce the information that was withheld to Mr. Warfield; and 2) appear before the CAC on September 8, 2009. The Task Force found that the Board failed to comply with its Order of Determination. However, according to the record from the Task Force, the Board of Appeals had complied with the Order of Determination prior to referral to the Ethics Commission.

In a letter to the Task Force dated September 15, 2009, Ms. Goldstein stated that the Board was "prepared to provide [Mr. Warfield] with copies of" unredacted letters that he requested, therefore complying with the Order of Determination. Ms. Goldstein stated that the Board was awaiting response from Mr. Warfield at that time. Therefore, the Board had complied with the Order of Determination by September 15, 2009.

However, in her September 15, 2009 letter, Ms. Goldstein also mentioned that the Board would continue to redact home telephone numbers and e-mail addresses from correspondence *in the future*, adhering to advice from the Office of the City Attorney. The CAC disagreed with the Board's position of withholding e-mail addresses in the future and continued the item, even after the Order of Determination had been complied with and Mr. Warfield had been given the opportunity to review the unredacted documents he had requested. The Board's "new policy of redacting personal email addresses" did not exist when Mr. Warfield filed the complaint and was not included as part of his complaint.

The documents Mr. Warfield sought to review were within an appeals file of a demolition permit. Mr. Warfield or any other member of the public has the ability to see the name, and, in this case, home address of those who corresponded with the Board regarding this matter. The Ethics Commission finds that the Board's policy of disclosing names of people who correspond with the Board (and home addresses, when in the context of building, planning, or other land-use-related permits, as an individual's residence may shed light on the decision-making process) does not compromise that person's privacy and the policy provides an open and public process, as stated in section 67.1(g) of the Sunshine Ordinance.

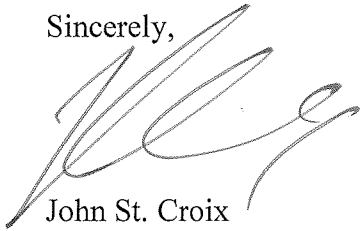
However, the Ethics Commission also finds that it is proper to redact e-mail addresses from correspondence of members of the public to City agencies, as an individual corresponding with the Board of Appeals, or any City agency, via e-mail in support or opposition of a matter would not necessarily assume his/her e-mail address would become public.

The Order of Determination also directed the Board to appear at the September 8, 2009 CAC meeting. No one from the Board appeared, but Ms. Goldstein advised the CAC in advance of the meeting that she would not appear. At its December 2009 meeting, the Task Force noted that Ms. Goldstein had been extremely responsive regarding this matter. As the Task Force noted Ms. Goldstein's cooperation and did not find a violation, the Commission cannot conclude that the Task Force referred this complaint because of the Board's absence at the September 2009 CAC meeting.

The Ethics Commission finds that the Board of Appeals 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 contact enforcement staff at (415) 252-3100.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. St. Croix', written in a cursive style.

John St. Croix
Executive Director

Cc: Peter Warfield
Cynthia Goldstein, Board of Appeals