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**Via Email and Interoffice Mail**

May 10, 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. 03-100216**

Dear Mr. Knee:

The Sunshine Ordinance Task Force ("Task Force") referred Complaint No. 09039 (Ethics Complaint No. 03-100216) to the Ethics Commission on February 15, 2011, alleging that the Mayor's Office of Housing, through its representatives Douglas Shoemaker and Oliver Hack, violated section 67.21(e) of the Sunshine Ordinance for failure to comply with the Order of Determination and failure to appear at Task Force hearings. The referral was made to the Ethics Commission under sections 67.30(c) and 67.34. The referral letter stated that the Task Force was sending the matter to the Ethics Commission for "investigation and enforcement" based on the willful failure "to comply with the Order of Determination and repeated failure to send a representative to the hearings."

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 May 9, 2011. The matter was not calendared and staff's recommendation was thus accepted. The Ethics Commission has dismissed this matter for the reasons below.

The Task Force set a hearing on August 25, 2009. Oliver Hack, Chief Operations Officer for the Mayor's Office of Housing, represented the department at the hearing. The matter was continued to the next full Task Force hearing on September 22, 2009. Mr. Hack also attended that hearing. At the hearing, the Task Force found that the Mayor's Office of Housing violated section 67.21 for failing to produce requested records, and 67.29-7(a) for failing to maintain records as required by the Sunshine Ordinance.

The Task Force issued a written Order of Determination on October 6, 2009. The Order specifically directed the Mayor's Office of Housing to "ask the Department of Technology to restore Ms. Melgar-Iton's emails that fall within the time frames Ms. O'Flynn requested during her original request. This Order is limited to Ms. Melgar-Iton's emails, as the evidence provided indicated that Ms. Melgar-Iton's emails were not produced and subsequently deleted (as opposed to other members of the MOH as to whom no showing had been made that emails have been improperly deleted). The cost to restore and review Ms.

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Melgar-Itons' records for responsive emails is to be borne by the MOH. The agency shall appear before the Compliance and Amendments Committee on October 13, 2009, to discuss compliance."

On October 13, 2009, at the Compliance and Amendments Committee meeting, the Mayor's Office of Housing was represented by Douglas Shoemaker to discuss compliance with the Order. The matter was continued to the next Compliance and Amendments Committee meeting on November 10, 2009. No representative from the Mayor's Office of Housing attended the November 10 meeting, or the next Compliance and Amendments Committee meeting held on December 8, 2009.

The referral of this complaint was sent to the Ethics Commission by the Task Force based on the department's alleged failure to comply with the Order and failure to attend Task Force hearings. The written Order of Determination issued by the Task Force specifically directed the Mayor's Office of Housing 1) to restore and review Ms. Melgar-Iton's email box, and 2) to attend the Compliance and Amendments Committee on October 13, 2009.

First, the evidence showed that the Mayor's Office of Housing restored the email box for Ms. Melgar-Iton as ordered by the Task Force. The department reviewed the email box using the relevant search terms and then provided the results to Ms. O'Flynn. The Task Force was made aware of this at the Compliance and Amendments Committee meeting held on November 10, 2009.

Second, Mr. Hack represented the Department at the hearing determinative on whether the requested record was public. Although Task Force committee meetings are not hearings enforceable under section 67.21(e), Mr. Shoemaker attended the Compliance and Amendments Committee meeting on October 13, 2009, to discuss compliance as stated in the Order of Determination.

The Ethics Commission finds that the Mayor's Office of Housing did exactly as it was ordered to do by the Task Force. Further, the Mayor's Office of Housing sent a representative to the hearing that was determinative of the records request. Therefore, there was no violation of section 67.21(e), either for the failure to comply with the Order of Determination or for the failure to attend Task Force hearings. The Ethics Commission does not anticipate taking any further action on the matter.

Sincerely,



Garrett Chatfield  
Investigator

Cc: Rita O'Flynn  
Oliver Hack  
Douglas Shoemaker