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Via Interoffice Mail

April 6, 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. 05-100219

Dear Mr. Knee:

The Sunshine Ordinance Task Force ("Task Force") referred Complaint No. 09042 (Ethics Complaint No. 05-100219), alleging that the Public Library, through its representative Sue Blackman, should be found in violation of Sunshine Ordinance section 67.21(e) for failure to send a representative to Task Force committee meetings. The referral was made under Sunshine Ordinance sections 67.30(c) and 67.34.

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 March 14, 2011. The matter was not calendared and staff's recommendation was thus accepted. After a careful reading and analysis of the requirements to attend Task Force hearings concerning a records request denial, the Ethics Commission has dismissed this matter for the reasons below.

The underlying complaint was filed with the Task Force on August 11, 2009, by Peter Warfield. He alleged that the Library refused to provide a copy of the Park Branch Library renovation plans, which he had previously viewed in person.

On August 25, 2009, the full Task Force held a hearing concerning the alleged records request denial, at which Ms. Blackman attended. The Task Force determined that Ms. Blackman violated section 67.21, and ordered the requested document be provided to Mr. Warfield. Two Compliance and Amendments Committee meetings were scheduled, the first on September 8, 2009, and the second on October 13, 2009. Ms. Blackman did not attend either meeting. On October 27, 2009, the full Task Force heard the matter again. Ms. Blackman attended the hearing and the Task Force held a vote and determined that the Library had complied with the Order of Determination and no violation was found. The Task Force then voted to find a violation of section 67.21(e) against the Library for failure to send a representative to Task Force hearings, based on Ms. Blackman's failure to attend the Compliance and Amendments Committee meetings, and to refer the matter to the Ethics Commission.

Section 67.21(e) provides the mechanism for a person to petition the Task Force for a determination on whether a requested record is public when a custodian of records does not comply with a public records request. Section 67.21(e) specifically states, "where requested by the petition," the Task Force may conduct a public hearing concerning the records denial. If a hearing is held, "[a]n authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested."

The requirement to send an authorized representative to "any" hearing refers to the hearing in which the full Task Force is asked to make a determination on whether the record is public, and only if the full Task Force elects to hold the hearing when requested to do so by the petition. The Ethics Commission endeavored to find the authorization to mandate a City official's attendance at a Task Force sub-committee meeting through section 67.21(e); however, the enforcement of 67.21(e) appears to apply only to the full Task Force hearings concerning the records request denial specifically outlined within that section.

The text of section 67.21(e) suggests that a hearing on the matter with the full Task Force is determinative on whether a violation occurred regarding the document request, and it is this full Task Force hearing in which a public official is required to attend. At this hearing, the full Task Force makes its Order of Determination, which is then monitored for compliance by the Compliance and Amendments Committee.

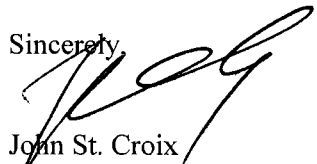
The Task Force By-Laws establish four sub-committees. (By-Laws, Article VI.) The purpose of the committees is to "advise the Task Force on its on-going functions." (By-Laws, Article VI, § 1.) The Compliance and Amendments Committee is one of the committees established in Article VI. Its function related to an Order is that it "shall monitor compliance with the Orders of Determination adopted by the Task Force." (By-Laws, Article VI, § 1(d).)

The By-Laws state that the Compliance and Amendments Committee monitors the Order and reviews whether there has been compliance with the Order. (Complaint Procedures, § F(1).) If there is no compliance with the Order, the Compliance and Amendments Committee may "recommend that the [Task Force] notify the District Attorney, the California Attorney General, the Board of Supervisors and/or the Ethics Commission, who may take measures they deem necessary to ensure compliance with the Ordinance." (Complaint Procedures, § F(2).) There is no language in the By-Laws requiring any authorized representatives to attend the Compliance and Amendments Committee meetings.

Thus, a violation of section 67.21(e) may not be found when a City official does not attend a sub-committee meeting of the Task Force. Although attendance at sub-committee meetings might be included in an order, the Sunshine Ordinance does not provide the mechanism to find a violation of 67.21(e) when a City official fails to attend the sub-committee meeting.

Because Ms. Blackman attended the hearing in which the determination was made on whether the record was public, and because section 67.21(e) makes no reference to sub-committee meetings of the Task Force, the Ethics Commission determined that no violation of law has occurred. Thus, this complaint has been dismissed.

Sincerely,



John St. Croix
Executive Director

Cc: Peter Warfield