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Via Electronic Mail

September 13, 2011

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

RE: Ethics Complaint No. 01-110128

Dear Chair Johnson:

On January 27, 2011, the Sunshine Ordinance Task Force ("Task Force") referred Complaint No. 10030 (Ethics Complaint No. 01-110128), alleging that Trent Rhorer, the Executive Director of the Human Services Agency ("HSA"), violated Sunshine Ordinance section 67.21(e) by failing to send a representative to the October 26, 2010 Task Force meeting. The referral was made under section 67.30(c) of the Sunshine Ordinance.

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 September 12, 2011. The matter was not calendared and staff's recommendation was thus accepted.

This matter originated from a complaint that Michael Wright filed with the Task Force on June 4, 2010. Mr. Wright alleged that the HSA had violated section "67.15 etc." of the Sunshine Ordinance. He claimed that he had been denied entry to a May 17, 2010 meeting of the Shelter and Resource Center Directors, which is a part of the Housing and Homeless Division of HSA.

On June 20, 2010, Pamela Tebo, from the Office of the HSA Executive Director, responded to the complaint, stating that the group that met on May 17, 2010 was not a passive meeting body. She also informed the Task Force that "the courts granted a restraining order against Michael Wright protecting [HSA] staff Joyce Crum and Briana Moore" and that they would not attend the Task Force meeting.

On August 24, 2010, the Task Force found that the HSA's Housing and Homeless Division Shelter and Resource Center Directors' group ("Group") that met on May

17, 2010 is a passive meeting body under section 67.3(c)(5) of the Sunshine Ordinance and that HSA violated section 67.4(a). The Task Force directed the agency to appear at its September Compliance and Amendments Committee (“CAC”) meeting and produce a written policy that it will abide by section 67.4(a) of the Sunshine Ordinance.

On September 7, 2010, the Task Force issued an Order of Determination (“Order”), signed by Chairperson Knee and Member Snyder, regarding this matter.

On September 14, 2010, Executive Director Rhorer wrote a letter to the Task Force regarding this matter, stating that the Group did not meet the legal requirements of a passive meeting body or policy body. He informed the Task Force that the interpretation of the Group had been vetted through the Office of the City Attorney and that the City Attorney supported that conclusion. He also stated that there were “real safety concerns” and he would not send HSA staff to a meeting where their safety would be at risk. That afternoon, the CAC met and moved to refer the matter to the Task Force with a recommendation that it be forwarded to the Ethics Commission for enforcement.

On September 28, 2010, Mr. Rhorer delivered various documents to the Task Force in reference to this matter. He reiterated the agency’s position regarding the Group and informed the Task Force that the staff members who are most knowledgeable about this complaint, Joyce Crum and Briana Moore, are protected by court order and would not attend the Task Force meeting. That afternoon, the Task Force met and continued this item.

On October 18, 2010, Chairperson Knee e-mailed Executive Director Rhorer to request his presence at the Task Force meeting on October 26, 2010, in order to discuss his refusal to instruct the HSA to send a “knowledgeable representative to hearings...” Chairperson Knee also requested that Mr. Rhorer provide an opinion from the City Attorney to the Task Force regarding the Group.

On October 26, 2010, the Task Force held a meeting regarding the following matter: “The Task Force has asked Human Services Agency Executive Director Trent Rhorer to appear and explain why he refused to instruct HSA employees to testify on File No. 10030, Michael Wright v HSA.” Mr. Rhorer did not attend the meeting, but provided a letter from the Office of the City Attorney confirming that the Group mentioned in the complaint was not a passive meeting body. The Task Force found Mr. Rhorer in violation of section 67.21(e) for failing to appear at the October 26, 2010 meeting. The Task Force only referred Mr. Rhorer’s violation of section 67.21(e) to the Ethics Commission.

Although the Task Force did not refer the violations found against HSA, the Commission has addressed those issues because it finds that the violations did not occur.

- a. *The Group that met on May 17, 2010, which was part of the Housing and Homeless Division of the HSA, was not a passive meeting body, as defined by Sunshine Ordinance section 67.3(c).*

In his Task Force complaint, Mr. Wright asserted that the May 17, 2010 Shelter and Resource Center Directors' Monthly Meeting was a passive meeting body and should have been open to the public. He noted that a "Stakeholder's" meeting, which was open to the public, occurred directly following the Group meeting. On May 17, 2010, prior to the Group meeting, he was informed by HSA staff that he would not be able to remain in the conference room, as the Group met in private. He later filed a complaint with the Task Force.

Commission staff interviewed Ms. Tebo, Ms. Crum, and Ms. Moore regarding the content and purpose of the Group's meeting and reviewed the findings from the Office of the City Attorney regarding the Group. According to the HSA employees interviewed, the Group was a monthly meeting of staff and shelter providers which met to discuss issues that may be common among the different providers. The providers also discussed issues arising from their City contracts. HSA staff confirmed that no policy was discussed or set during these meetings. They also confirmed that the Group was not formed at the initiative of a member of the Human Services Commission, department head, or Mayor and that its purpose was not to advise the Commission, department head, or Mayor. Therefore, the Group is not a "passive meeting body" as defined in section 67.3(c) of the Sunshine Ordinance.

b. Section 67.21(e) of the Sunshine Ordinance is not applicable because this violation involves public access to meetings.

Section 67.21(e) refers entirely to the public's access of *records*. 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. The Task Force may conduct a public hearing concerning a records denial when requested by petition. The requirement to attend a hearing specifically states that "[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.*" (Section 67.21(e) [Emphasis added].) HSA failed to send a representative. However, the matter under consideration by the Task Force was not a public records request denial; the Task Force was considering whether the complainant had been denied access to a public meeting.

The Sunshine Ordinance does not provide any mechanism to compel an individual to attend a hearing regarding a public meeting violation. In fact, section 67.21(e) itself only provides the Task Force with the authority to hold a hearing regarding public records denials.

Nonetheless, the referral from the Task Force includes only its finding that Trent Rhorer violated section 67.21(e) for failing to attend the October 26, 2010 meeting. The Task Force agenda for that meeting stated that it had "asked" Mr. Rhorer "to appear and explain why he refused to instruct HSA employees to testify." There was no mention that the Task Force was convening a hearing. There was no mention that the Task Force could or would make a determination against Mr. Rhorer at that meeting. There was also no allegation that Mr. Rhorer had denied the public's access to records.

In addition, Mr. Rhorer notified the Task Force in writing on two separate occasions that no one from HSA would attend the meeting. The Commission found that the Director provided a legitimate reason why members of his staff would not attend a Task Force meeting.

HSA staff and the Director promptly responded in writing to the Task Force throughout the complaint process and never wavered from the position that no HSA staff members would attend a meeting. Regardless, as stated, section 67.21(e) is not applicable because the allegations in this complaint related to public access to meetings.

In addition, the Task Force did not make a finding that Mr. Rhorer willfully violated any provision of the Sunshine Ordinance under section 67.34. The Commission concurs that there is no willful violation.

As stated above, section 67.21(e) is not applicable because the allegations in this complaint related to public access to meetings. Nonetheless, the Task Force found a willful violation of 67.21(e) against Pamela Tebo on August 24, 2010, but did not refer that matter to the Ethics Commission. Regardless, she is neither an elected official nor a department head. Therefore, the Ordinance could not be enforced with respect to Ms. Tebo, even if the Task Force had referred this matter as a "willful" violation and section 67.21(e) of the Sunshine Ordinance applied to public access to meetings.

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

Sincerely,



John St. Croix
Executive Director

Cc: Michael Decarlo Wright, Complainant
Trent Rhorer, Executive Director of HSA
Bruce Wolfe, Vice Chair of the Sunshine Ordinance Task Force
David Snyder, Esq., Member of the Sunshine Ordinance Task Force
Richard Knee, Member of the Sunshine Ordinance Task Force
Sue Cauthen, Member of the Sunshine Ordinance Task Force
Suzanne Manneh, Member of the Sunshine Ordinance Task Force
Allyson Washburn, Member of the Sunshine Ordinance Task Force
James Knoebber, Member of the Sunshine Ordinance Task Force
Jay Costa, Member of the Sunshine Ordinance Task Force
Hanley Chan, Member of the Sunshine Ordinance Task Force
Jackson West, Member of the Sunshine Ordinance Task Force