

# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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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. 18-100830**

Dear Chair Johnson:

On August 24, 2010, the Sunshine Ordinance Task Force ("Task Force") referred Complaint No. 10015 (Ethics Complaint No. 18-100830). The referral stated that the Planning Department violated sections 67.21, 67.25, 67.26, and 67.27 of the Sunshine Ordinance, without citing to any specific subsection.

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 is thus accepted.

This matter originated from a complaint filed by Ellen Tsang with the Task Force on April 14, 2010. Ms. Tsang alleged violations of Sunshine Ordinance sections 67.21(a), (b), (c), (d), and (l); 67.21-1(a) and (b); and section 67.34. Ms. Tsang identified Jonas Ionin and Elizabeth Skronidal, two Planning Department employees, as the respondents.

On March 11, 2010, Ellen Tsang made a public records request in writing to the Planning Department seeking the following:

1. Architect Mittelstadt's final reversion stamped and signed set of revised drawings provided to you on 02/13/2009,
2. Architect Mittelstadt's two sheets of photos of the rear of the building provided to you on 02/13/2009,
3. Architect Mittlestadt's "legal description of Lot 17 that gives the size and purpose of the easement" provided to you on 06/20/2008,

4. "A cartoon of my Plot Plan with the dimensions you requested" provided to you on 6/20/2008 by Architect Mittelstadt, and
5. "A cartoon of my Second Floor Plan with the dimensions of the balcony" provided to you on 6/20/2008.

The Planning Department did not respond to the March 11, 2010, request. However, on March 10, 2010, Ms. Tsang had made an identical request for the same documents. Both requests were made to Jonas Ionin. On March 10, 2010, Mr. Ionin, a Senior Planner, responded stating that "[t]he stamped and signed drawings you are referring to were submitted to the Dept. of Building Inspection as revisions to the building permit application, which have since been forwarded back to them. You may request to view the stamped plans from them, however, they should be essentially the same as the .pdf'd plans already forwarded to you. If they have been issued they would be located in DBI's Records Division. All of the other information still in possession of the Planning Department have been made available to you."

On May 25, 2010, the Task Force held a hearing on the matter. The Task Force voted to find a violation of Sunshine Ordinance sections 67.21, 67.25, 67.26, and 67.27. No individual was named in the motion and no motion was made to order the release of documents. No subsections were included in the motion. A written Order of Determination was issued on June 14, 2010, which found that the "agency" violated the above sections of the Ordinance and ordered the records to be released within five business days.

On June 22, 2010, the Task Force held a second hearing on the matter. The Task Force voted to "refer as a willful violation" and send the matter to the Ethics Commission. No individual was named in the motion. The written referral to the Ethics Commission issued on August 24, 2010, stated that the referral "stems from the Planning Department's failure to comply with an Order of Determination," and that the referral was made under section 67.30(c). The written referral did not reflect the vote to refer the matter as a willful violation and did not name a respondent apart from the Planning Department.

The Ethics Commission has dismissed this matter for the reasons stated below.

Section 67.30(c) provides that the Task Force may make referrals to a "municipal office with enforcement power." Section 67.35 outlines the enforcement provisions under the Sunshine Ordinance. Subsection (d) is the only part of section 67.35 pertinent to the Ethics Commission, which states: "[a]ny person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed." The enforcement power of the Ethics Commission provided for "under this act" is outlined in section 67.34.

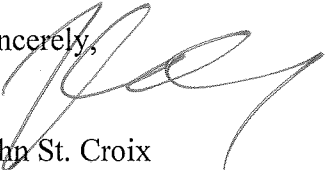
Under the Sunshine Ordinance the Ethics Commission may "handle" allegations of willful violations of the Ordinance under section 67.34. It states that the willful failure to discharge the duties of the Ordinance is deemed official misconduct, and specifically provides that the Ethics Commission can only handle complaints involving allegations of willful failure by elected officials or department heads.

The Task Force referral lacked clarity as no individual respondent was named, and no reference to a violation of a specific subsection was made. The written referral also did not reflect the vote to refer the matter as a willful violation. Because the actual motion was to refer a willful violation, the Ethics Commission has no enforcement power in this matter. No willful violation can be found against an agency, and neither Mr. Ionin nor Ms. Skrondal is a department head or elected official.

In addition, the Planning Department had responded to an identical request it had received the day before the records request of March 11, 2011, in which it stated that Ms. Tsang had been provided with the requested documents. In that response, she was directed to the Department of Building Inspection for the documents not held at the Planning Department. The Task Force did not consider that the identical request had already been responded to and that Ms. Tsang had been provided the documents or directed to the Department of Building inspection to request the documents held at that office.

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

Sincerely,



John St. Croix  
Executive Director

Enclosures

Cc: Ellen Tsang, Complainant  
Jonas Ionin, Respondent  
Bruce Wolfe, Vice Chair SOTF  
David Snyder, Esq., Member SOTF  
Richard Knee, Member SOTF  
Sue Cauthen, Member SOTF  
Suzanne Manneh, Member SOTF  
Allyson Washburn, Member SOTF  
James Knoebber, Member SOTF  
Jay Costa, Member SOTF  
Hanley Chan, Member SOTF  
Jackson West, Member SOTF