

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

March 12, 2012

DATE THE DECISION ISSUED

December 14, 2011

RAY HARTZ v PUBLIC LIBRARY (CASE NO. 11083)

FACTS OF THE CASE

Complainant Ray Hartz alleges that the San Francisco Public Library ("Library") and City Librarian Luis Herrera violated the Sunshine Ordinance by failing to appropriately respond to his July 21, 2011 Immediate Disclosure Request ("IDR") for assistance identifying the existence, form, and nature of documents related to the financial relationship between the Library and the nonprofit Friends of the San Francisco Public Library ("Friends").

COMPLAINT FILED

On October 4, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against the Library and Mr. Herrera alleging violations of Sunshine Ordinance Sections 67.21(c), 67.21 (d), and 67.21(e).

HEARING ON THE COMPLAINT

On December 14, 2011, Ray Hartz presented his case to the Task Force. Library Commission Secretary Sue Blackman represented respondents Luis Herrera and the Library as their Custodian of Records.

Mr. Hartz submitted an IDR to Mr. Herrera on the evening of July 21, 2011, requesting assistance identifying documents that would provide enough information on the financial relationship between the Friends and the Library to enable him to identify and request specific records. He wanted to identify documents related to the amount of funds raised by Friends for fiscal years 2008 to 2010 and the actual amount received by the Library from Friends during that same time period.

On July 25, 2011, Mr. Hartz contacted Ms. Blackman to discuss his request. He alleged he advised her that he was requesting assistance identifying existing documents rather than the production of documents. He stated he specified his request included indentifying audited documents provided by the Library to the Board of Supervisors, the Mayor's Office, and the Controller's Office accounting for specific use of funds from the Friends.

Ms Blackman responded the same day. She produced several documents, advised that the request would be considered a standard request because it did not meet the criteria of an IDR, and invoked a 14 day extension of time to respond based on the voluminous nature of the request and the need to retrieve records from storage. Mr. Hartz stated only one of the documents received was responsive to his request. He responded to Ms. Blackman on July 26, stating the documents were nonresponsive and that by failing to assist him in identifying documents, she was limiting his search.

On August 4, 2011, Ms. Blackman produced additional documents in her final response. Mr. Hartz disputed the final production date, alleging final production was not made until August 25 and consisted of six electronic files totaling 13 pages. He alleged the Library failed to appropriately respond to his request for assistance because Ms. Blackman did not identify any audited expenditures by the Library and did not direct him to other knowledgeable departments or staff. He stated the documents produced identify the Library receiving or requesting funds from Friends but not how those funds were received or spent, indicating some documents were withheld. He stated one document included an entry for City Librarian Discretionary Funds of \$65,000 but no additional information on receipt or distribution.

Ms. Blackman stated the current complaint is similar to Mr. Hartz's Complaint No. 11055 heard by the Task Force on August 23, 2011. She stated no violation was found in the previous case and this new complaint should be dismissed. She further stated Mr. Hartz's claim that this is a new case with new facts is counter to Deputy City Attorney Jerry Threet's instructional letter indicating no new facts have been alleged.

Ms. Blackman stated the complaint should also be dismissed because the Library has fully responded to Mr. Hartz's request by providing him with all responsive documents. She stated she believed the request was related to the amount of money the Library received, and she had produced all documents she believed were responsive after a diligent search which included contacting the Librarian and Department Heads.

Upon further questioning by the Task Force, Ms. Blackman stated Friends pays for some material purchases directly and no funds are handled by the Library. She explained the City Librarian Discretionary Funds are received from Friends and used for additional funding of various programs. She stated she does not know whether receipts exist that document the use or breakdown of these funds, and indicated she would need to investigate further with accounting to identify such documents. She advised the Task Force that the Library is working with Friends to post expenditure documents online.

Ms. Blackman stated she had determined Mr. Hartz's request was not an IDR based on advice provided by the City Attorney's Office. She indicated the City Attorney's Office had since advised the Library that although it is within its right to invoke an extension of time to respond, the requester is the only one to determine if a request is intended to be an IDR.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that although the Library incorrectly reclassified the IDR as a standard request, it then treated the request as an IDR and responded in a timely manner.

The Task Force did not find persuasive respondents' statements that documents accounting for the use of funds may not exist. Based in part on Ms. Blackman's admission that she has no knowledge of whether documents exist related to Library expenditure of Friends' funds and in part on City policy requiring accounting for gifts, the Task Force found that the Library did not fully respond to the request. Based on written responses and statements at the hearing, the Task Force further found that the requester was not directed to contact other departments or staff that might have information such as the Library's accounting department or the City Controller's Office as required by Sunshine Ordinance Section 67.21(c).

DECISION AND ORDER OF DETERMINATION

The Task Force finds City Librarian Luis Herrera in violation of Sunshine Ordinance Sections 67.21(c) for failure to direct Mr. Hartz to the proper office or staff person to respond to his request to identify documents related to Library expenditures of Friends' funds and 67.26 for failure to keep withholding to a minimum by not including documents related to Library expenditures of Friends' funds in the documents identified.

Mr. Herrera shall investigate the existence of the requested documents related to audited Library expenditures of Friends' funds, identify the documents within 5 business days of the issuance of this Order, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00 p.m. in Room 408 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on December 14, 2011, by the following vote: (Wolfe/Knee)

Ayes: 7 – Knee, Manneh, Washburn, Costa, Wolfe, West, Johnson

Noes: 2 – Snyder, Cauthen

Absent: 1 – Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Ray Hartz, Complainant
Luis Herrera, Respondent
Sue Blackman, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.