

File No. 12006

SOTF Item No. 18  
CAC Item No. \_\_\_\_\_

**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: April 4, 2012

Compliance and Amendments Committee

Date: \_\_\_\_\_

**CAC/SOTF**

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Completed by: Andrea Ausberry Date March 27, 2012

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

\*An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file.



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

Direct Dial: (415) 554-3914  
Email: jerry.threet@sfgov.org

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
FROM: Jerry Threet  
Deputy City Attorney  
DATE: March 22, 2012  
RE: Complaint 12006 – Hartz v. Clerk of the Board of Supervisors

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### BACKGROUND

Complainant Ray Hartz ("Complainant") alleges that the Clerk of the Board of Supervisors (the "Clerk") violated the Sunshine Ordinance by failing to provide the Sunshine Ordinance Task Force with sufficient administrative support to meet the obligations of the Sunshine Ordinance. Specifically, Complainant alleges that the Administrator failed to timely complete and provide to him the draft minutes of the December 14, 2010 meeting of the Task Force.

### COMPLAINT

On January 13, 2012, Mr. Hartz filed a complaint with the Task Force alleging a violation of Section 67.31 of the Ordinance.

### JURISDICTION

The Clerk has not contested jurisdiction to hear the complaint.

### APPLICABLE STATUTORY SECTION(S):

#### Section 67 of the San Francisco Administrative Code:

- Section 67.16 governs requirements for minutes for boards and commissions enumerated in the Charter, including when draft minutes of each meeting shall be available for inspection and copying.
- Section 67.31 governs administrative duties for the Sunshine Ordinance Task Force.

### APPLICABLE CASE LAW:

None.

### ISSUES TO BE DETERMINED

**Uncontested/Contested Facts:** Complainant alleges that on January 11, 2012, he made an immediately disclosure request ("IDR") via email to then Task Force Administrator Chris Rustom for a copy of the draft minutes of the December 14, 2010 meeting of the Sunshine Task Force. On January 12, 2012, Mr. Rustom responded via email that he had no responsive documents. On January 13, 2012, Complainant filed this complaint.

**MEMORANDUM**

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**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:**

- Does including the 150 word summary as an addendum to the meeting minutes, with a reference in the body of the minutes, violate §67.16?
- Does the action of the Library and Commission, through the actions of Ms. Blackman, in doing so, knowing that the Task Force has previously ruled that summary must be included in the body of the minutes, constitute willful failure under §67.34?
- Does Mr. Herrera's failure to instruct Ms. Blackman to follow the instructions of the previous order of the Task Force in creating the minutes in question constitute "willful failure"?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

**Under Section 67.16 of the Ordinance:**

- Does the requirement of §67.16 that board and commissions enumerated in the Charter shall provide copies of draft meetings of their minutes within 10 days of the meeting, apply to the Sunshine Ordinance Task Force?

**Under Section 67.31 of the Ordinance:**

- Can the failure of the Administrator to adequately complete his administrative duties be legally attributed to the Clerk, such that this failure also would constitute a violation of Section 67.31?
- Does Section 67.31 require that the Clerk ensure that the Administrator meet a 10 day requirement to provide draft meeting minutes?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

**MEMORANDUM**

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**CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)****SEC. 67.16. MINUTES.**

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes. The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

**SEC. 67.31. RESPONSIBILITY FOR ADMINISTRATION.**

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2012 JAN 13 AM 9:29

AK

SUNSHINE ORDINANCE TASK FORCE  
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102  
Tel. (415) 554-7724; Fax (415) 554-7854  
<http://www.sfgov.org/sunshine>

**SUNSHINE ORDINANCE COMPLAINT**

Complaint against which Department or Commission BOARD OF SUPERVISORS

Name of individual contacted at Department or Commission ANGELA COLVILLO, CLERK OF THE BOARD

Alleged violation public records access  
 Alleged violation of public meeting. Date of meeting 12/14/2011 SOTF

Sunshine Ordinance Section SECTION 67.31 RESPONSIBILITY FOR ADMINISTRATIVE ACTION  
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

FAILURE TO PERFORM ADMINISTRATIVE DUTIES FOR  
SUNSHINE ORDINANCE TASK FORCE REQUIRED PURSUANT  
TO THE SUNSHINE ORDINANCE (SEE ATTACHED)

Do you want a public hearing before the Sunshine Ordinance Task Force?  yes  no  
Do you also want a pre-hearing conference before the Complaint Committee?  yes  no

(Optional) Name Ray W Hart Address 839 LOWENWORTH ST #304  
SAN FRANCISCO CA 94109

Telephone No. (415) 345-9144 E-Mail Address RWHARTZTR@SBOC.GLOBAL.NET

Date 12/13/2012 Signature Ray W Hart

I request confidentiality of my personal information.  yes  no

<sup>1</sup> NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Peter Warfield <[libraryusers2004@yahoo.com](mailto:libraryusers2004@yahoo.com)>  
Date: 01/11/2012 12:49 PM  
Subject: IMMEDIATE DISCLOSURE REQUEST

IMMEDIATE DISCLOSURE REQUEST

Chris Rustom  
Sunshine Ordinance Task Force

Mr. Rustom,

This is a request for the draft minutes of the the meeting of the Sunshine Ordinance Task Force on December 14, 2011. As the date of this request is Wednesday, January 11, 2011 and should involve only a few documents, I would hope to receive the by close of business on Thursday January 12, 2012.

Thank you for your attention to this request.

Sincerely,  
Ray W. Hartz, Jr.  
Director, San Francisco Open Government

IMMEDIATE DISCLOSURE REQUEST

**From:** Hope Johnson (hopeannette@earthlink.net)  
**To:** rwhartzjr@sbcglobal.net;  
**Date:** Fri, January 13, 2012 6:42:44 AM  
**Cc:** sotf@sfgov.org; chaffeej@pacbell.net; libraryusers2004@yahoo.com; sotf@brucewolfe.net;  
**Subject:** Re: IMMEDIATE DISCLOSURE REQUEST

Mr. Rustom is responsible for the draft minutes and, therefore, the person knowledgeable about the status.

His response yesterday was that there are no draft minutes for 12/14/11.

Hope Johnson

Sent from my iPhone

On Jan 13, 2012, at 6:12 AM, Ray Hartz Jr <rwhartzjr@sbcglobal.net> wrote:

Dear Hope and Bruce,

I'm sending this just for verification.

Mr. Rustom seems to be saying that a month after the last full Task Force meeting there are still no draft minutes.

Can this be correct?

Ray

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**From:** "sotf@sfgov.org" <sotf@sfgov.org>  
**To:** Ray Hartz Jr <rwhartzjr@sbcglobal.net>  
**Cc:** James Chaffee <chaffeej@pacbell.net>; Hope Johnson <hopeannette@earthlink.net>; Peter Warfield <libraryusers2004@yahoo.com>; MSW Bruce Wolfe <sotf@brucewolfe.net>  
**Sent:** Thu, January 12, 2012 3:32:48 PM  
**Subject:** Re: IMMEDIATE DISCLOSURE REQUEST

Mr. Ray Hartz,

I do not have any responsive document.

Chris Rustom  
Sunshine Ordinance Task Force  
City Hall, Rm. 244, San Francisco, CA 94102  
sotf@sfgov.org, (415) 554-7724, fax: (415) 554-7854

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>  
To: SOTF <sotf@sfgov.org>  
Cc: Hope Johnson <hopeannette@earthlink.net>, MSW Bruce Wolfe <sotf@brucewolfe.net>, James Chaffee <chaffeej@pacbell.net>,

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 544-5227


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MEMORANDUM

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Date: February 1, 2012  
To: Sunshine Ordinance Task Force  
From:  Angela Calvillo, Clerk of the Board  
Subject: Sunshine Ordinance Complaint, #12006 – Ray Hartz v. Angela Calvillo,  
Clerk of the Board

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Thank you for your January 27, 2012, e-mail notifying us of Sunshine Complaint #12006.

From my understanding, the complaint filed by Mr. Ray Hartz indicates that the Clerk of the Board has failed to perform administrative duties for the Sunshine Ordinance Task Force pursuant to Section 67.31. In reviewing Mr. Hartz' complaint it appears that this violation is specifically related to not making the minutes of December 14, 2011, available within the required timeframe pursuant to Section 67.14.

In response to this complaint, I would first like to apologize for the delay in uploading the December 14, 2011, 'draft' minutes to the website. I would also like to reassure the Members that the 'draft' minutes in question have been uploaded to the website as of January 19, 2012. There is no excuse for this delay and we have internal processes which require that 'draft' minutes should be uploaded within 48 hours of the meetings. In addition, our internal processes further indicate that staff are required to notify me when the internal 48 hours timeline is not met, including an explanation and circumstances surrounding such delay. This did not happen in this instance.

In reviewing this complaint with my staff, your Clerk, Chris Rustom, it appears that in accordance with Section 67.14, the due date for uploading these minutes would have been December 29, 2011. Mr. Rustom has indicated that he worked diligently with Chair Johnson the week of December 19<sup>th</sup> in contacting



February 1, 2012

complaintants and respondents to finalize the calendar for the January 3, 2012, special meeting. In addition, due to the mandatory minimum staffing days the last week in December and other very serious extenuating circumstances, Mr. Rustom was out of the office for almost a month and not able to complete the required tasks of the Sunshine Ordinance Task Force.

In an effort to improve the performance of administrative duties, Mr. Rustom was reassigned to the Legislative Division in August 2010 in an effort to evaluate the current processes and to assist with best practices for clerking the Sunshine Ordinance Task Force. During this transition we have offered Mr. Rustom assistance, by other Clerks, to cover during his scheduled and unscheduled absences. In accordance with standard office procedures, Mr. Rustom is required to inform his supervisor of any pending duties or matters which must be handled during such absences. Again, this did not happen in this specific instance.

I would like to again apologize for this oversight and would like to reassure the Members that checks and balances have been put into place to ensure that these oversights do not happen in the future, up to and including adequate coverage during Mr. Rustom's scheduled and unscheduled absences. As always, I thank you again for the opportunity to provide additional information to resolve this matter.