

File No. 11084

SOTF Item No. 7
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

- | | | |
|--------------------------|-------------------------------------|------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Memorandum |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Order of Determination |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Complaint and supporting documents |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |

OTHER

- | | | |
|--------------------------|--------------------------|----------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <u>Notice of reconsideration</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

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.



Request for Reconsideration of Complaint 11084

SOTF to: libraryusers2004, Pontious, Susan

03/16/2012 03:21 PM

Sent by: Andrea Ausberry

Cc: Hope Johnson, Jerry Threet

NOTICE TO ALL PARTIES in Complaint No. 11084, Library Users Association v. Arts Commission:

Please be advised the Task Force learned new information in this matter, and I am requesting reconsideration of the decision on the complaint based on Section E of the Sunshine Ordinance Task Force's complaint procedures.

Based on the information provided to the Task Force at the hearing held on December 14, 2011, the Task Force found the Visual Arts Committee in violation of 67.14(c) for failure to record meetings. However, Section 67.14(c) applies only when meetings are held at City Hall. The Task Force has since learned that the Visual Arts Committee does not hold its meetings at City Hall. At the time of the hearing, the Task Force was not provided with this information and therefore did not take up discussion of other possibly applicable sections of the ordinance.

The Task Force will consider at its next scheduled meeting whether or not to hold a new hearing on this matter. Pursuant to Section E of the complaint procedures, if the Task Force grants the reconsideration, a new hearing will be held at the next following scheduled Task Force meeting.

Thank you for your cooperation and patience in this matter. Please contact the SOTF Administrator with any questions or concerns.

Hope Johnson, SOTF Chair



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

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

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: December 13, 2011
RE: Complaint No. 11084: Library Users Association v. S. F. Arts Commission

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Library Users Association ("LUA") alleges that the San Francisco Arts Commission (the "Commission") violated section 67.14(b) of the Ordinance by failing to provide LUA an opportunity to review an audio recording of the meeting of the Visual Arts Committee ("VAC") meeting held on August 17, 2011.

COMPLAINANT FILES COMPLAINT:

On October 11, 2011, Complainant filed a complaint with the Task Force alleging a violation of section 67.14(b).

JURISDICTION

The Commission is both a department and a Charter commission. Therefore, in general, the Task Force has jurisdiction to hear public meeting and records complaints against the Arts Commission. However, the Commission contests jurisdiction on the basis that the VAC is an advisory body under the Ordinance and therefore not subject to the provisions of section 67.14(b). Whatever the merits of that argument, it does not appear to be one that goes to the jurisdiction of the Task Force to hear this matter, but rather speaks to whether there was a violation by the Commission.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.14(b) governs the requirement that boards and commissions enumerated in the Charter audio record their special and regular meetings.

APPLICABLE CASE LAW:

None.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 2
RE: *Complaint No. 11084: Library Users Association v. S. F. Arts Commission*

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that the Commission violated the Ordinance by failing to audio record the August 17, 2011 meeting of the VAC and subsequently failing to provide LUA with an opportunity to review such an audio recording of that meeting.

The Commission does not dispute the above facts, but admits that it did not and does not cause the VAC meetings to be audio recorded. Rather, the Commission argues that section 67.14(b) does not require audio recordings of the VAC. The Commission argues that the VAC is an "advisory committee" under the Ordinance and therefore is not subject to the requirements of section 67.14(b).

Complainant responds that this response is a "dangerous argument that would allow circumvention of the clear language [] of Sunshine by [] placing the work of a Charter body into one or more subcommittees. Then, the parent body, rubberstamping the work of the it(s) committee(s), could evade all the requirements applying to a charter board/commission under Sunshine, and the public would have no minutes or tape recordings of meetings at which the real work is done." Complainant further alleges that the "actual work" of the Commission is done by the VAC in the subject area under its purview. Complainant further alleges that the VAC has been in existence for decades, and argues from this allegation that the VAC is a "standing committee of a legislative body" under section 54952(b) of the Brown Act and thus also is defined as a legislative body by that statute.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- How was the VAC created and when? Was it created by formal action of the Commission? By the initiative of a member of a policy body, the Mayor, or a department head?
- What is the composition of the membership of the VAC? Is it composed solely of members of the Commission, or does it also contain members who are not Commission members?
- What is the subject matter considered at VAC meetings? Does it consist solely of matters referred to it for consideration by the Commission?
- What happens to matters once they are considered by the VAC? Are all such matters referred to the Commission for further consideration and action on recommendations by the VAC?
- What is the meeting schedule of the VAC and how is that schedule determined?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Commission complied with the requirements of the Ordinance and the Public Records Act?
- Can the VAC legally be considered the same as the Commission under section 67.14(b)?
- Is the VAC a "passive meeting body" or a "policy body", under the Ordinance?
- Assuming the VAC is an "passive meeting body", do the requirements of section 67.14(b) apply to its meetings?
- Assuming the VAC is a "policy body", do the requirements of section 67.14(b) apply to its meetings?

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 3
RE: *Complaint No. 11084: Library Users Association v. S. F. Arts Commission*

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

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 4
RE: *Complaint No. 11084: Library Users Association v. S. F. Arts Commission*

CHAPTER 67, S F ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.3. DEFINITIONS.**

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

- (a) "City" shall mean the City and County of San Francisco.
- (b) "Meeting" shall mean any of the following:
 - (1) A congregation of a majority of the members of a policy body at the same time and place;
 - (2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or
 - (3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.
 - (4) "Meeting" shall not include any of the following:
 - (A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;
 - (B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or
 - (C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.
 - (C-1)* The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.
 - (D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 5
RE: *Complaint No. 11084: Library Users Association v. S. F. Arts Commission*

(c) **"Passive meeting body"** shall mean:

(1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;

(2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;

(3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.

(4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

(5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating City policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) **"Policy Body"** shall mean:

(1) The Board of Supervisors;

(2) Any other board or commission enumerated in the Charter;

(3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;

(4) Any advisory board, commission, committee or body, created by the initiative of a policy body;

(5) Any standing committee of a policy body irrespective of its composition.

(6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by Charter or by ordinance or resolution of the Board of Supervisors.

(7) Any advisory board, commission, committee, or council created by a federal, State, or local grant whose members are appointed by City officials, employees or agents.

SEC. 67.14. VIDEO & AUDIO RECORDING, FILMING AND STILL PHOTOGRAPHY.

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) Each board and **commission enumerated in the Charter** shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 6
RE: *Complaint No. 11084: Library Users Association v. S. F. Arts Commission*

(c) Every City policy body, agency or department shall audio or video every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

CALIFORNIA GOV'T CODE §§ 54950 ET SEQ. (BROWN ACT)
§ 54952. LEGISLATIVE BODY, DEFINITION

As used in this chapter, "legislative body" means:

- (a) The governing body of a local agency or any other local body created by state or federal statute.
- (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.



Sunshine Complaint

complaints

to:

sotf

10/14/2011 10:12 AM

Hide Details

From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Arts Commission

CONTACTED:Staff person

PUBLIC RECORDS VIOLATION:Yes

PUBLIC MEETING VIOLATION:No

MEETING DATE:August 17, 2011

SECTIONS VIOLATED:Section 67.14 (b)

DESCRIPTION:Art Commission Did Not Provide Audio Recording of its Visual Arts Committee Meeting of August 17, 2011 to Library Users Association.

HEARING:Yes

PRE-HEARING:No

DATE:

NAME:Peter Warfield

ADDRESS:

CITY:

ZIP:

PHONE:753-2180

CONTACT_EMAIL:libraryusers2004@yahoo.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

Library Users Association

P.O. Box 170544, San Francisco, CA 94117-0544

Tel./Fax (415) 753-2180

Tuesday, October 11, 2011

Honorable Members
Sunshine Ordinance Task Force
City Hall
San Francisco
By email: sotf@sfgov.org

Subject: **Complaint #1: Art Commission Did Not Provide Audio Recording of its Visual Arts Committee Meeting of August 17, 2011 to Library Users Association**

Ladies and Gentlemen:

The Art Commission did not provide Library Users Association an opportunity to listen to a recording of its Visual Arts Committee (VAC) meeting of August 17, 2011. A staff member told us that only the meetings of the full Art Commission are recorded -- not committee meetings.

This violates Library Users Association's rights, and the public's, under Sunshine Ordinance Section 67.14 (b), which requires all charter commissions to audio record their meetings, to retain the recordings, and to make the recordings available for inspection. The section reads as follows:

(b) Each board and commission enumerated in the charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Background: This meeting included a presentation, plus discussion and approval, of San Francisco Public Library's imminent plan to completely destroy the existing Bernal Heights Branch Library mural, painted by noted San Francisco muralist Arch Williams, as well as Carlos Alcaya. The mural was designed and painted in a participatory community process over a two-year period, 1980-1982. It includes on the front of the library words by Holly Near, and the famed Chilean Victor Jara in Spanish and English, plus images of Victor Jara and others, which will not be carried over into the planned mural. The new design lacks any words and was called by someone close to the original design sanitized and gentrified.

Library Users Association requests a prompt hearing on this complaint, and thanks you for your time and effort on this matter.

Sincerely yours,

Peter Warfield
Executive Director, Library Users Association

415/753-2180



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

JD BELTRAN
INTERIM DIRECTOR OF
CULTURAL AFFAIRS

PROGRAMS

CIVIC ART COLLECTION
CIVIC DESIGN REVIEW
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PUBLIC ART
STREET ARTISTS LICENSES

ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.554.6080

WWW.SFARTSCOMMISSION.ORG

ARTSCOMMISSION@SFGOV.ORG

October 19, 2011

Honorable Members
Sunshine Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Dear Honorable Members of the Sunshine Task Force:

I am writing in response to complaint #11084 and complaint #11085 submitted on October 11, 2011 by Mr. Peter Warfield, executive director, Library Users Association.

The San Francisco Arts Commission (SFAC) is in compliance with the Sunshine Ordinance and Mr. Warfield's complaints are both outside the jurisdiction of the Sunshine Task Force and without merit because the Sunshine Ordinance does not require the Visual Arts Committee (VAC) which is an advisory committee of the SFAC, to audio record VAC meetings or to keep minutes of VAC meetings.

I. The Sunshine Ordinance does not require audio recordings of advisory committee meetings.

In complaint # 11084, Mr. Warfield states that the SFAC did not provide his organization with an audio recording of the August 17, 2001 VAC meeting, even though the SFAC does not currently record VAC meetings. According to the 2010-2011 Good Government Guide, Part Three, p.133, Section G.I., the VAC, as an advisory subcommittee of the of the full Arts Commission, is not a "board or commission listed in the charter" and thus is not required to audio record its meetings:

G. Records of meetings

I. Audio recordings

"Each board or commission listed in the Charter must audio record regular and special meetings. Admin. Code § 67.14(b). Other policy bodies are not required to audio record their meetings, except for closed session portions of meetings. Admin. Code § 67.8-1(a)." (Emphasis added)

2. The Sunshine Ordinance does not require advisory bodies or committees of parent bodies to keep minutes of their meetings.

In complaint # 11085, Mr. Warfield also states that the SFAC did not provide draft minutes of the August 17, 2011 VAC meeting until more than 10 days after the



CITY AND COUNTY OF
SAN FRANCISCO

meeting. According to the 2010 -2011 Good Government Guide, Part Three, p.135, Section G.2. (c), the SFAC is not required to keep minutes for meetings of the VAC because the VAC is purely an advisory body of the parent body known as the Arts Commission:

G. Records of meetings

2. Minutes

c. Other policy bodies

"Policy bodies that do not fit into one of the above two categories, such as purely advisory bodies and committees of parent bodies, are not required to keep meeting minutes or maintain a record of meetings."

Although not required, the SFAC does keep minutes of all VAC meetings which are available to the public on the sfgov.org website and by request. Minutes for the August 17, 2011 VAC meeting were provided to Mr. Warfield within two days of his request. Those minutes are enclosed for your review.

In short, and for the reasons stated above, the SFAC is in compliance with the Sunshine Ordinance.

Thank you for your attention to this matter.

Sincerely,



Susan Pontious
Public Art Program Director
San Francisco Arts Commission
25 Van Ness, Suite 345
San Francisco, CA 94102
(415) 252- 2587