

File No. N/A

SOTF Item No. 4
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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Analysis of Sunshine Survey deficiencies

OTHER

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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.

Hope Johnson notes from various sources analyzing Sunshine Survey deficiencies:

(a) promotes political retaliation

Survey gives disgruntled officials an opportunity to vent against those who keep them honest.

In Sept. 2011, SOTF referred Supervisor Wiener to Ethics just before he initiated the survey in secret on 12/13/11. Other Supes not informed of survey until 02/09/11, after a Sunshine request for the survey went out on 01/31/12.

Arts Commission claimed SOTF in collusion with William Clark and Robert Clark (also see negative respondent bias under section (b))

Some DPH and MTA respondents were people involved in the Laguna Honda whistleblower issue.

(b) employs biased and incomplete research methodology

Requests information on both Sunshine responses and "formal" Sunshine requests but does not define terms

Does not differentiate costs related to local Sunshine laws from those related to state mandates such as the CPRA, Brown Act

One department told a member of the public who requested clarification on job classifications on the survey that the employee's salary was reported for her duties to post official meeting notice and record minutes.

Departments lump Sunshine requirements with their long-standing obligations to provide information to the public. City departments were answering all kinds of public inquiries long before the Sunshine Ordinance was enacted. Then CPRA and the Brown Act came in and the Survey makes no effort to separate these from the Sunshine Ordinance.

Elections Dept. first claimed 28,000 hours providing public information and \$1,046,853 of copying costs but reported responding to only 6 formal Sunshine Requests using 8.75 hours. Hours now revised down to 4,847 for general public information with no copying costs. 4,847 hours must include functions of required duties and not just Sunshine Ordinance work per se. Elections explained the revision now excludes "time and money spent to proactively provide public information which is a major function of the department."

The City Attorney responded to this "Survey on Costs of Compliance with City Sunshine Ordinance" by reporting an expense of \$1,112,652 in "attorney and paralegal time" that was the cost of "advising City Departments and Officials regarding Sunshine, PRA and Brown Act and litigating writ proceedings." This expense is not broken down into categories of costs so costs associated with State are being used to respond to a survey specifically about costs of local Sunshine Ordinance.

Some Sunshine complaints were filed against non-profits, Boards, and Commissions that are not City departments but survey only sent to City Departments. Six or seven departments were not surveyed.

Duplicate reporting across departments and within the same department, across sections of the survey instrument; errors in job classification codes, and errors in hours reported.

Costs inaccurate because departments responded based on average of salary level pay instead of actual pay. An 1844 Senior Management Assistant has five salary steps, the average is \$35.5875/hour.

One department submitted revised survey response because first response reported hourly wage for wrong classification, and that job should and may have been reported by a different dept.

One department reported 20 hours of DCA time but 11 of those hours had already been reported by the Mayor's office (again discovered by a member of the public)

Negative respondent bias and the resultant overstatement of estimated costs.

Examples from Arts Commission response: "A few determined individuals use the good intentions of the Sunshine Ord. to harass Arts Commission personnel...fostering a hostile work environment for the staff..." and "There is no standard of reasonableness here with either the number or type of requests, or in judgement by the Sunshine Task Force." It is documented that a number of Arts Commission personnel resigned after financial improprieties discovered including an audit that found over \$18,000 missing from Street Artists program after artists complained (including Clarks at the SOTF). The Audit found that the \$18,875 in "management and supervisory charges were unsupported", \$4,000 was overcharged and \$2,741 had been mis-deposited, among other lapses.

Methods available to structure a Survey to counter-balance negative respondent bias not used. One is inserting a question about fiscal benefits of the Sunshine Ordinance. As in the case of the LHH Patient Gift Fund, Sunshine Requests can reveal waste, fraud and abuse, leading to the recovery of public funds. Analyzing both costs and benefits better addresses Supervisor Wiener's request "to evaluate the effectiveness and efficiency of our implementation of the Ordinance." Instead, Survey signals you are only looking for burdens and costs, a one-sided approach that elicits conforming responses and will lead some respondents to overstate costs such as MTA's data entries (MTA first estimated 1871 requests then reduced it to 331 after a member of the public asked for supporting documentation for the 1871 number.)

Survey asks for name and classification of department Custodian of Records "required by Administrative Code Section 67.22 of the Sunshine Ordinance." But no section of the Sunshine Ordinance requires the appointment of a Custodian of Records. Custodian of a public record is defined in Section 67.21 as "every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record)"

No data verification procedure

Elections Department reported a total of 28,014 hours expended "Providing Sunshine Ordinance-related information to the public, separate from responding to formal public information requests (required by 67.21)". Found actual numbers based on a Sunshine request: 28,014 total hours for "provided information to the public;" only 2.75 of these hours are attributed to responding to Sunshine Requests, remainder include Administration (3,120), Ballot Distribution, Processing, Canvassing (9,432), Campaign Services (1,623), Outreach (2,928), Pollworker (520), Precinct Services (2,008), Publications (4,768), Voter Services (1,635), Warehouse (1,104) and others related to election duties.

Health Services System reported 0 hours responding (skews results)

Emergency Management Department reported wild estimated hours. Two 8238 Public Safety Dispatchers reported 3,132 hours (104.4 x 30) responding to formal Sunshine Requests, whereas other staff are allotted 313.2 hours. Is one number caused by a decimal point error?

MTA reported attending 41 Sunshine Ordinance Task Force (SOTF) hearings and 17 compliance hearings for 2011. According to the SOTF Annual Report, SOTF received 98 complaints from all sources in 2011, and only 9 were against the MTA. The SOTF Complaints Log shows that MTA had 21 SOTF hearing and 12 additional complaint or post-decision hearings in 2011. There is a discrepancy between MTA's reported total of 58 hearings before SOTF and the SOTF's recorded total of 33. Only by combining SOTF hearings for MTA in 2010, 2011, and 2012 do you get 58 total.

MTA reported \$547,000 as "Overhead" costs. No other respondent used "Overhead" as a cost category. What are the components of this expense and how are these costs connected to the SF Sunshine Ordinance?

The City Attorney's Office reported \$223,000 paid to City Attorneys and \$143,000 paid to "Contractors/Vendors." No other department reported hiring "contractors" for Sunshine duties. What are the components of this expense and how are these costs connected to the SF Sunshine Ordinance?

Children & Families Commission claimed an expense of "\$640102" to provide information to the City Administrator's Index of Records. Would an analyst count this as \$640,102 or \$6,401.02.

The Police Department is the only department that has integrated Sunshine duties within its routine work as stipulated in the Sunshine Ordinance. While reporting 350 responses to Sunshine Requests and 8 SOTF hearings, the dept did not count Sunshine costs as extra.

Retrospective recall bias

Survey requests estimated time, not actual time with supporting details. People tend to over-estimate own compliance, and there is a natural tendency among employees to over-state their compliance with tasks that are expected of them.

(c) no comparison analysis of benefits

Would Arts Commission monetary theft have been found earlier if Clarks' SO complaints and TF findings enforced? (see negative respondent bias under section (b)). Results of audits mirrored artists Sunshine complaints and TF findings.

Only other avenue for complainants is litigation, expensive for both parties. (see costs of non-compliance in section (d)).

(d) fails to analyze reasons for costs

Lack of qualified SOTF staff

Ethics has a 17-member staff and an \$8.35 million budget.

Costs of non-compliance by departments

Does not identify departments that skew results such as spending more hours per request, using high-salaried staff to handle Sunshine Requests, inordinate reliance on City Attorney at \$250/hour, frequent complaints and SOTF Hearings, etc. (as seen in responses by MTA, Mayor's Office, Elections)

SO complainant Kelly Lanza filed suit on October 29, 2010. DA settled for \$7,500, just attorney's fees. Interestingly, the case went from SOTF to Ethics in December 2010. In August 2011, Ethics contacted Kelly (8 months later) and "dismissed" it in September, 2011.

Allen Grossman filed October 5, 2009 v Ethics. They settled on 1/19/10 for \$24,900 - attorney's fees. Plus, he got the records he wanted.

Costs of using City Attorneys to justify lack of compliance instead of complying

Lack of training of informational officers and department staff

City Attorney costs include functioning as Supervisor or Records (\$51,949), helping SOTF (\$100,233), advising City agencies re: Sunshine laws (\$1,112,652)

If City departments have not organized their records electronically or paper records were poorly organized, responding to Sunshine requests will be more time-consuming and costly.

(e) no participation by body created to make recommendations

Pursuant to a Sunshine request, on 1/5/12 Mr. Brousseau sought Wiener's permission to contact four departments for background information in preparing the survey: the City Attorney's Office, SOTF, Ethics, and City Administrator (Index of Records). The SOTF was not contacted.