

File No. 12001

SOTF Item No. _____
CAC Item No. 6

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: _____

Compliance and Amendments Committee

Date: April 17, 2012

CAC/SOTF

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Complainant
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Response
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Order of Determination
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OTHER

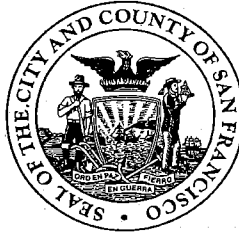
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Completed by: Andrea Ausberry Date April 11, 2012

Completed by: _____ Date _____

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

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
April 5, 2012

DATE THE DECISION ISSUED
March 7, 2012

LIBRARY USERS ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO. 12001)

FACTS OF THE CASE

Complainant Library Users Association alleged that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by improperly redacting contact information on speaker cards responsive to a public records immediate disclosure request made on December 15, 2011.

COMPLAINT FILED

On January 13, 2012, Peter Warfield of the Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against the SFAC alleging violations of Sunshine Ordinance public records provisions.

HEARING ON THE COMPLAINT

On March 7, 2012, Peter Warfield appeared before the Task Force and presented the Library User Association's complaint. Respondent SFAC was represented by Public Information Officer Kate Patterson, who presented SFAC's response.

On December 15, 2011, the Library Users Association requested electronic copies of speaker cards submitted by members of the public at Arts Commission meetings from September through November 2009 and September through December 2011 and at Visual Arts Committee meetings from September through November 2009 and in August 2011. The Library Users Association also requested to inspect the original speaker cards at SFAC's office.

On December 19, 2011, the SFAC secretary produced electronic copies of the existing speaker cards responsive to the request and offered dates for Mr. Warfield to pick up copies of the cards and listen to audio tapes at the SFAC office. When Mr. Warfield inspected the speaker cards on December 20, 2011, he learned that the SFAC had redacted contact information from the cards produced to him the previous day. Mr. Warfield alleged the SFAC had not previously notified the Library Users Association that information had been redacted or provided justification for the redactions.

ORDER OF DETERMINATION

Ms. Patterson stated that the SFAC redacted personal contact information from the speaker cards to protect individuals' rights to privacy pursuant to the California Constitution, Article 1, Section 1. She explained that the City Attorney's Office has advised the SFAC to redact personal contact information. She further explained the SFAC does not want to risk being the subject of a lawsuit for releasing personal information provided by members of the public.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.

The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

In addition, the Task Force found that the SFAC failed to provide the Library Users Association with justification for withholding information at the time the speaker cards were produced.

The Task Force also concluded that the SFAC would benefit the public by placing language on speaker cards that notifies members of the public they are not required to complete a speaker card to speak during a public meeting.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information.

The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Manneh)

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

Noes: 0

ORDER OF DETERMINATION

Absent: 1 - Cauthen
Excused: 2 – Chan, Wolfe
Recused: 0



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Peter Warfield, Library Users Association, Complainant
Kate Patterson, Arts Commission, Respondent
Tom DeCaigny, Director of Cultural Affairs, Arts Commission
Jerry Threet, Deputy City Attorney



DENNIS J. HERRERA
City Attorney

MICHAEL R. KARNS
Deputy City Attorney

Direct Dial: (415) 554-3970
Email: michael.karns@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Michael Karns
Deputy City Attorney
DATE: March 2, 2012
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

BACKGROUND

Complainant Library Users Association ("Complainant") alleges that the San Francisco Arts Commission ("Commission") failed to provide documents responsive to their December 15, 2011 public records request.

COMPLAINT

On January 13, 2012, Complainant filed this complaint against Commission, without specifying which provision of the Ordinance it believed had been violated.

JURISDICTION

Commission is a department under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against Commission. Commission does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.20(b) defines "public information".
- Section 67.21 governs responses to a public records request.
- Section 67.25 governs immediacy of response.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

Section 6250 et seq. of the Cal. Gov't Code

- Section 6252(e) defines "public record".
- Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts

On December 15, 2011, Complainant sent a request for documents to Commission via email. Complainant's email is quoted, in relevant part, here:

1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, November of 2009 (two years ago).

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: March 2, 2012
PAGE: 2
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."

On December 19, 2011, Commission replied to this request via email with an explanation that speaker cards responsive to request #1, those from Arts Commission meetings and Visual Arts Committee meetings of September, October, and November 2009), did not exist. Commission also provided, at this time and over email, PDF copies of speaker cards from the September 12, 2011 and November 16, 2011 Arts Commission meetings, as well as speaker cards from the August 17, 2011 and October 19, 2011 Visual Arts Committee meetings, in response to Complainant's request #2. Commission also explained that no cards for any of the other meetings requested were in existence.

As part of Commission's response, Commission redacted certain information from the speaker cards before providing them to Complainant. Complainant alleges that no explanation was given for the redactions when the documents were produced.

On or about December 20, 2011, Complainant visited the Arts Commission offices to inspect the speaker cards in person. Complainant alleges that during this inspection, it realized that certain information had been redacted. Complainant alleges that when it asked for the reason for the redaction, only then was it informed that the speaker cards contained confidential personal address information. Specifically, Commission informed Complainant at that time that to protect the privacy interests of those who spoke at the meetings, personal address information for the speakers was redacted. Commission further informed Complainant that if the address information listed was a business address, it was not redacted. Complainant alleges that no explanation for the redactions was provided at the time the original response was made.

In its reply to Complainant's complaint to the Task Force, Commission does not dispute that certain personal address information was redacted from the speaker cards before they were provided to Complainant. Commission argues that such redaction is necessary "to protect the individuals' right to privacy under California Constitution, Article 1, Section 1." Commission also states in its reply to the Task Force that it has revised the design of its speaker cards to remove the line for the speakers address, thereby avoiding the necessity of redaction of this information in the future.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What was the nature and extent of the search the Department conducted with regard to documents responsive to Complainant's December 15, 2011 request?
- Did Commission's email response on December 19, 2011 contain any assertion that certain information had been redacted from the speaker cards?
- Did Commission's email response on December 19, 2011 contain any justification for why certain information on the cards had been redacted?

LEGAL ISSUES/LEGAL DETERMINATIONS:

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: March 2, 2012
PAGE: 3
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

- If the Commission's email response on December 19, 2011 did not contain any assertion of or justification for the redaction of certain information from the speaker cards, did this omission constitute a violation of §67.27 of the Ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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



Sunshine Complaint
complaints

to:

sotf

01/13/2012 08:58 AM

Hide Details

From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Arts Commission

CONTACTED:

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:

DESCRIPTION:Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2- Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority.

HEARING:Yes

PRE-HEARING:No

DATE:1/13/2012

NAME:Library Users Association

ADDRESS:

CITY:

ZIP:

PHONE:753-2180

CONTACT_EMAIL:libraryusers2004@yahoo.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

TOM DECAIGNY
DIRECTOR OF
CULTURAL AFFAIRS

February 6, 2012

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

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
415.554.6000

Re: Sunshine Complaint #12001
Library Users Association v. Arts Commission

Dear Honorable Members of the Sunshine Task Force:

I am writing in response to complaint #12001, submitted on January 13, 2012 by Library Users Association, and received by our office on January 27, 2012.

The complaint says the following:

"Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2-Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority."

On December 15, 2011, Mr. Peter Warfield of Library Users Association submitted an e-mail request for the following:

1. Filled-out Speaker cards for the (a)Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).
2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."



CITY AND COUNTY OF
SAN FRANCISCO

On December 19, 2011, I replied to his request by e-mail with the explanation that there were no speaker cards responsive to his request number 1, and I supplied pdf copies of speaker cards for the following meetings in response to his request number 2:

full Commission September 12, 2011
full Commission November 16, 2011
Visual Arts Committee August 17, 2011
Visual Arts Committee October 19, 2011

I further explained that there were no cards for any of the other meetings he had requested. To protect the individuals' right to privacy under the California Constitution, Article I, Section 1, I blocked out any personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. I also advised Mr. Warfield that paper copies of the same documents were at our front desk for him to pick up at his convenience.

For your convenience, we are enclosing a copy of the e-mail messages referred to above.

Finally, please be advised that the Arts Commission has revised the design of its speaker cards to remove the line for the speaker's address.

Very truly yours,

Sharon Page Ritchie
Commission Secretary

spr

cc: Tom DeCaigny, Director of Cultural Affairs

Encl: E-mail from Library Users Association, December 15, 2011 and reply from Sharon Page Ritchie, San Francisco Arts Commission, December 19, 2011

Page_Ritchie, Sharon

From: Page_Ritchie, Sharon
Sent: Monday, December 19, 2011 11:37 AM
To: 'libraryusers2004@yahoo.com'; Beltran, JD
Cc: Krell, Rebekah
Subject: RE: Immediate Disclosure Request - Speaker Cards, additional dates
Attachments: September_12_2011_comment_cards.pdf; VAC Public Comment Cards Aug-Dec 2011.pdf; November_16_2011_comment_cards.pdf

In response to your request below, there are no speaker cards responsive to your request number 1 below.

In response to your request number 2 below, I am attaching copies of speaker cards for the following meetings:
full Commission September 12, 2011
full Commission November 16, 2011
Visual Arts Committee August 17, 2011
Visual Arts Committee October 19, 2011

There are no speaker cards for any of the other meetings you have requested.

Hard copies of these cards are waiting for you at the front desk of the Arts Commission office. You may pick them up at your convenience during regular business hours.

In response to your voicemail this morning, requesting times to listen to recordings of meetings (copies of which have been supplied to you), available times are today, Monday, December 19 from 2:30 to 3:30, or tomorrow, Tuesday, December 20 from 2:30 to 3:30. Please let me know when you expect to come in.

Please note that the Arts Commission offices will be closed during the entire week of December 26 and the City holiday of Monday, January 2, 2012.

Sharon Page Ritchie
Commission Secretary
San Francisco Arts Commission
415/252-2591

Website: <http://www.sfartscommission.org>
e-newsletter: <http://sfartscommission.org/newsletter>
Twitter: <http://www.twitter.com/SFAC>
Facebook: <http://www.facebook.com/sfartscommission>
YouTube: <http://www.youtube.com/ArtsCommission>
Flickr: <http://www.flickr.com/photos/sfac>

From: Library Users Association [mailto:libraryusers2004@yahoo.com]
Sent: Thursday, December 15, 2011 3:48 PM
To: Beltran, JD
Cc: Page_Ritchie, Sharon
Subject: Immediate Disclosure Request - Speaker Cards, additional dates

Dear Ms. Beltran:

A. Library Users Association would like to inspect, at your offices, the following:

1. Filled-out Speaker cards for the (a)Arts Commission meetings, and (b) Visual Arts Committee meetings of September,

October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.

If there are no speaker cards for a particular date, please provide a blank speaker card for that date.

Please provide these on a rolling basis, if necessary.

B. We would also like to receive these electronically as well.

Please note that a few of the speaker card copies recently supplied for December 5 and 12, 2011 are difficult or impossible to read, so we would like to see the originals of those, as well as the ones above, at a future visit to the department.

Thank you for your attention to this.

Sincerely,

Peter Warfield
Executive Director
Library Users Association
415/7 5 3 - 2 1 8 0