

File No. 11081

SOTF Item No. \_\_\_\_\_  
CAC Item No. 8

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

Sunshine Ordinance Task Force

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

Compliance and Amendments Committee

Date: May 15, 2012

**CAC/SOTF**

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

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Completed by: Andrea Ausberry Date May 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**  
December 5, 2011

**DATE THE DECISION ISSUED**  
November 29, 2011

*JASON GRANT GARZA v DEPARTMENT OF PUBLIC HEALTH (CASE NO.11081)*

**FACTS OF THE CASE**

Jason Grant Garza ("Complainant") alleges that the San Francisco Department of Public Health ("DPH") violated the Sunshine Ordinance by failing to provide documents responsive to his Immediate Disclosure Request dated October 4, 2011.

**COMPLAINT FILED**

On October 6, 2011, Mr. Garza filed his complaint against DPH.

**HEARING ON THE COMPLAINT**

On November 29, 2011, Complainant presented his case to the Task Force. Eileen Shields, DPH Public Information Officer, and Chona Peralta, DPH Compliance Manager, represented DPH.

Mr. Garza told the Task Force his case is about a request for documents, emails, correspondence, logs, and notes regarding denial of services at the Tom Waddell Health Center clinic on two occasions.

He said he made an Immediate Disclosure Request for the following from DPH:

- (1) A copy of his medical records from his visits to the clinic in June 2010 and August 2011;
- (2) A copy of his signed Health Insurance Portability and Accountability Act ("HIPPA") form releasing his clinic health care information from San Francisco General to the Haight Ashbury Free Clinic;
- (3) Documentation provided to state and federal regulatory agencies noticing an investigation and finding of a HIPPA violation against San Francisco General;
- (4) Information on how to file a complaint against clinic security staff, and
- (5) All notes and reports relating to the denials that the clinic sent to Chona Peralta to "create a false misleading representation."

Mr. Garza said he did not receive the requested information. He said he believes he is not

required to sign a HIPPA release form to receive copies of his own medical records because the HIPPA law was meant to allow an individual to control review of his own records by third parties rather than restrict an individual's access to his or her own records. In addition, he said, the Task Force concluded in previous cases that he was not required to sign the HIPPA release to receive his own records.

Eileen Shields, DPH Public Information Officer, told the Task Force the first three of five parts of the request are the same as those in a case that was previously heard where no Sunshine Ordinance violation was found. She said DPH requires the signature of the client to release medical records pursuant to HIPPA requirements. She said Mr. Garza refuses to sign the release.

Chona Peralta, DPH Compliance Manager, said DPH would release the medical records requested in part one when Mr. Garza signed a release pursuant to HIPPA requirements. She said she received emails from Mr. Garza regarding the denial of services at the clinic and then explained the situation to the medical director of the clinic. The medical director, she said, conducted an investigation and found that Mr. Garza was offered services. During the first clinic visit, she said, he was referred to a social worker to discuss applying for benefits. Ms. Peralta said when the social worker arrived, Mr. Garza had left. On the second occasion, Mr. Garza and his companion were escorted out of the clinic by security personnel for not complying with staff's request to stop videotaping in the clinic. Mr. Garza, she said, was offered a chance to speak to a social worker but he failed to attend the appointment.

On questioning, Ms. Shields said Mr. Garza was sent the signed HIPPA release form requested in part two on September 30. Mr. Garza said he had received a release form signed in 2006 but no release forms signed in 2010 and 2011. Ms. Shields admitted DPH has only the form from 2006.

Ms. Shields said the documents regarding the HIPPA notice of investigation and violation requested in part three were previously provided to Mr. Garza after the hearing in August. She said DPH did not respond to part four of the request asking for information on filing a complaint against clinic security personnel. She told the Task Force security was provided by the Sheriff's Department, and Mr. Garza would need to contact that department to file a complaint against a deputy. She said there were no documents responsive to part five of the request.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the statements of complainant and respondent and the email exchanges provided as supporting documentation, the Task Force concluded additional research was required regarding the interpretation of HIPPA release requirements to an individual's own medical records based on state and local open government laws. The Task Force was concerned about the medical provider's right to adequately document release of protected public information.

The Task Force further concluded that parts two and five of the request had been satisfied. Both parties agreed DPH released the 2006 HIPPA release form requested in part two, and

DPH admitted that form was the only one in its possession. Respondents stated no documents were responsive to part five of the request.

Based on respondents' own admissions, the Task Force found that DPH failed to provide the records and information requested in parts three and four. Although respondents claimed DPH previously provided Mr. Garza with the same documents requested in part three, the Task Force concluded DPH was required to provide the documents as requested under this new and separate request. In addition, DPH failed to direct Mr. Garza to the Sheriff's Department for information on filing a complaint against a deputy as requested in part five.

### DECISION AND ORDER OF DETERMINATION

The Task Force finds that DPH violated Sunshine Ordinance Sections 67.25(a) for failure to respond to an Immediate Disclosure request in a timely manner and 67.27 for not providing justification for withholding the information by not responding to parts three and four of Complainant's public information request. The Task Force further finds that DPH violated Sunshine Ordinance Section 67.21(c) for failing to assist the requestor by not directing Complainant to the Sheriff's department for further assistance.

DPH shall release the records and information requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, December 13, at 4:00 p.m. in Room 406 at City Hall. The Committee will review compliance with this Order. In addition, the Committee will conduct research on HIPPA requirements to resolve ongoing issues related to part one of the request for medical records. An expert presentation may be conducted at the December 13, 2011 meeting or at a future meeting as agreed upon by the Committee.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011, by the following vote: (Johnson/Washburn)

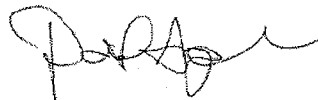
Ayes: Snyder, Knee, Washburn, Wolfe, West, Johnson

Excused: Costa

Absent: Cauthen, Manneh, Chan



Hope Johnson, Chair  
Sunshine Ordinance Task Force



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

cc: Jason Grant Garza, Complainant  
Eileen Shields, Respondent  
Chona Peralta, Respondent  
Jerry Threet, Deputy City Attorney

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

Mr. Garza,

The form to request release of your medical records is included in the attachments which you have received and included below.

You may complete the form entitled "Authorization to Disclose Health Information" and bring it with you to our meeting.


Please do let me know which of the times work for you to meet with us.

Joseph L. Pace, MD  
Director of Primary Care Homeless Services  
Community Oriented Primary Care  
San Francisco Department of Public Health

This message and any attachments are solely for the intended recipient and may contain confidential or privileged information. If you are not the intended recipient, any disclosure, copying, use or distribution of the information included in this message and any attachments is prohibited. If you have received this communication in error, please notify me by reply e-mail immediately and permanently delete this message and any attachments. Thank you.

(See attached file: HIPAAPrivacy-AuthorizationPol04200B3.pdf)(See attached file: Authorization to Disclose Health Information.pdf)(See attached file: cfr164.524.jpg)



Re: SOTF hearing reminder: #11081\_Jason Grant Garza v Public Health   
Eileen Shields to: SOTF

12/12/2011 02:18 PM

Dear SOTF:

The San Francisco Department of Public Health, Public Information Office, has completed both of the outstanding issues on this complaint as directed by the SOTF. Your office was cc'd on our response. I believe we have responded thoroughly to his inquiry on this matter.

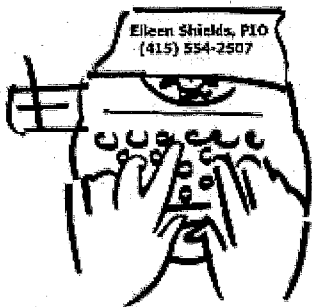
I will be attending a training session at San Francisco General Hospital on December 13th from 1 p.m. - 5 p.m. and will be unable to attend this hearing. I believe the SOTF has all of the information you need to ensure that we have followed up on our obligations to Mr. Garza.

Regarding the HIPAA issue, my understanding was that Mr. Wolfe was going to seek an expert from another agency to come and present testimony on this subject. Inasmuch as I did not see this item on the agenda, I am assuming it will not be addressed at this hearing. If this assumption is incorrect and the SOTF committee hears this item, I submit the following as the Department's statement.

The Sunshine Ordinance and Public Records Act are based on the principle that records in the possession of the government generally belong to the people. But not all records possessed by the government are public. Patient-protected health information is not a public record. Here, the government is a health provider--including a provider of care for those who have been diagnosed as mentally ill, HIV-positive or in need of substance use treatment--such treatment records clearly do not belong to the public.

The medical records of private and public medical providers are subject to laws on allowable access. Medical records and health information are protected by the Constitutional and statutory rights to privacy. Only the judiciary may determine the appropriate degree of access permissible under the specific facts presented. And the courts must apply the stringent requirements set forth in federal and state law and regulation. Specific state laws apply where a patient requests a copy of his file. The California Health and Safety Code Sections 123110 *et. seq.*, governs a patient's request for his or her medical records. *See also* 45 C.F.R. Section 164.524(b) and (c).

These California standards for responding to a patient's request for access are more strict than those in the Health Insurance Portability and Accountability Act (HIPAA) and therefore apply here. A patient's access to mental health treatment information may be limited under certain circumstances. But again, the courts decides the issue. In sum, patient medical information is not public. If an individual challenges the breadth of information released his or her recourse lies with the judicial system. Enforcement also lies within the exclusive jurisdiction of the courts.





Sunshine Complaints: #11081 and #11070 and accommodations 

Eileen Shields to: SOTF

11/16/2011 02:54 PM

Cc: Barbara.Garcia, Chona Peralta, Joseph.Pace

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History: This message has been replied to and forwarded.

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Dear Sunshine Task Force:

I note with interest Mr. Jason Grant Garza's most recent complaint against the Department of Public Health. I refer you to complaints 11081 and 11070.

If you read through Mr. Garza's complaints, you will note that they are identical, except for the dates of his submitting the complaints. The only difference I can surmise is his inclusion of Dr. Joseph Pace in the complaint.

Complaint 11070 has already been scheduled and staff already attended a hearing on October 25th. The item was continued and has yet to be heard.

Since October 25th, Mr. Garza's activity and behavior towards individuals in this department has escalated from telephone harassment to personal visitations and demands (e.g., he called 911 on 11/14 asking that the Police arrest DPH staff), we are asking for the following accommodations:

1. That the SOTF combine complaints 11081 and 11070 into a single agenda item
2. That the SOTF provide security to any DPH staff that must attend these meetings that are scheduled until 11 p.m. Please contact me for details.
3. That the SOTF provide DPH staff with remote audio capability to monitor the hearings so that we can remain in our offices until the item is ready for hearing

Finally, it is the position of this Department, that we have provided Mr. Garza with all of the documents he has requested, including his medical records that are not subject to Sunshine but have made available to him and are ready for pick up. The records still await his attention.



10/6/2011 - NEW IDR HEARING REQUEST re: DPH, TW, and PACE

Jason Grant Garza

to:

sotf@sfgov.org, hopeannette@earthlink.net, Joseph.PAce@sfdph.org,  
Barbara.Garcia@sfdph.org, jasongrantgarza@yahoo.com

10/06/2011 07:54 AM

Cc:

"Donald.White@oig.hhs.gov", Kathleen.Sebelius,  
"Kathleen.Billingsley@cdph.ca.gov", "DDooley@chhs.ca.gov",  
"opi.net.post@ssa.gov"

Hide Details

From: Jason Grant Garza <jasongrantgarza@yahoo.com> Sort List...

To: "sotf@sfgov.org" <sotf@sfgov.org>, "hopeannette@earthlink.net"  
<hopeannette@earthlink.net>, "Joseph.PAce@sfdph.org"  
<Joseph.PAce@sfdph.org>, "Barbara.Garcia@sfdph.org"  
<Barbara.Garcia@sfdph.org>, "jasongrantgarza@yahoo.com"  
<jasongrantgarza@yahoo.com>

Cc: "Donald.White@oig.hhs.gov" <Donald.White@oig.hhs.gov>,  
Kathleen.Sebelius@hhs.gov, "Kathleen.Billingsley@cdph.ca.gov"  
<Kathleen.Billingsley@cdph.ca.gov>, "DDooley@chhs.ca.gov"  
<DDooley@chhs.ca.gov>, "opi.net.post@ssa.gov" <opi.net.post@ssa.gov>

Please respond to Jason Grant Garza <jasongrantgarza@yahoo.com>

10/6/2011 8 am PST Thursday

To the Sunshine Task Force and Whom It May Concern:

Please process my this as a sunshine complaint for NOT complying with my IMMEDIATE DISCLOSURE REQUEST. Send me IMMEDIATELY the date of the hearing (SUNSHINE TASK FORCE) that this will be scheduled for. Also IMMEDIATELY let me know if there are any more "HOOPS" that I must jump through in order to have this process move forward ASAP.

Please know that this documentation serves as notice for the requested hearing having meet the requirements of notification as denoted in the ordinance. Therefore there should NOT be any delay in scheduling and if there is please notify me ASAP.



Thou I walk thru the VALLEY of SHADOWS,

Jason Grant Garza  
jasongrantgarza@yahoo.com

P.S. I still HAVE NOT got CONFIRMATION of scheduling of the IDR by MINISTRY of SUNSHINE that was sent in regarding the Haight Ashbury ... nor have I gotten any resolution of any of the matters or issues that I wrote to SOTF's chair such as ADA representation, delivery of emails, etc. Nor has my request for ADA Coordinator or HELP been filled. Thank you for allowing me the opportunity to document this should the need arise for "REASONABLE" men to evaluate.

P.P.S Please respond ASAP and HAVE a NICE DAY and GOD BLESS.

Here is the attached email requesting the IDR sent 10/04/2011 ..

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10/04/2011 8 am PST Tuesday

My Dear Doctor Joseph Pace and ALL CONCERNED:

Nice try again ... HOW MANY TIMES WILL YOU CONTINUE TO INJURE ME ??? I believe that the record is reflective of NOT only this fact but the fact that I still have not gotten what I am legally entitled to and requested.

Therefore, I am submitting this:

IMMEDIATE DISCLOSURE REQUEST

To Whom It May Concern:

Please be sure to forward this to the Custodian of Records, department head or who ever is in charge for compliance per the regulations for correct process.

On August 31, 2011 I went to Tom Waddell seeking medical care (urgent and primary care) and did NOT receive it. Please note for the record that I also went to Tom Waddell in June 2010 and did NOT receive service either as the record indicates.

Therefore:

Pursuant to all relevant provisions of the California Government Codes

(Ralph M. Brown Act et al.) and the San Francisco Sunshine Ordinance, California Records Act, and the Federal FOIA Act - I would like to request a copy of the following:

All documents, emails, correspondence, logs, notes of conversation, notes of phone calls regarding: (1) a copy of my medical records for both August 2011 and June 2010 from Tom Waddell regarding these incidents;(2) A copy of my signed HIPPA release for my Tom Waddell healthcare information to have been released thru SF General (under DPH) to HAFCI for which SF General (DPH) was found in violation by California Department of Public Health - Licensing and Certification Complaint # CA00265297 or an ADMISSION of the lawbreaking activity; (3) Per the MOU between the DPH and Health Clinics (Patient Information and Privacy Agreement) and HIPPA requirements ... please send me the documentation provided to the regulatory agencies on the state and federal level over NOTIFICATION of the HIPPA VIOLATION as required by the HIPPA law and all internal machinations (processes) required under the MOU such as notification to the Dph Data Governance Committee, etc as outlined in the MOU; (4) Information on Complaint Process for Security (Williams) as priorly requested; and (5) ALL the notes/reports etc by TOM WADDELL regarding the two denials that was supplied to Chona Peralta to create a false misleading representation in which I was sent a "RISK MANAGEMENT" response.

This request includes all paperwork sent, received, emailed or any other form of transmittal to all involved. This request includes all paperwork sent, received, emailed or any other form of transmittal from all involved. This request also includes all internal documentation generated by this sunshine request matter also. (From inception to present date) ... for example any documentation, notes, logs, tapes, emails, etc from any individual to any other individual regarding any matter concerning this matter, its handling, deposition, etc.

Please realize that per the sunshine regulations ... you must be helpful in resolving and getting me what I specifically request. You MUST work with the requester to clearly provide what is required.

Sincerely,

Jason Grant Garza  
1369 B. Hayes Street  
San Francisco, CA 94117  
jasongrantgarza@yahoo.com

email cc:

Kathleen Sebelius - Secretary of Health & Human Services  
Donald White - Office of Inspector General

Moving on:

Thank you for sending me a COPY of your department's (DPH) Authorization to Disclose Health Information Form # 5779301 (Rec 09/07) which specifically state under:

"MY DPH RIGHTS : I understand that authorizing the disclose of this health information is voluntary. I may refuse to sign this authorization. I may revoke this authorization at any time."

I goes on to give even an expiration date ....

THANK YOU ... THANK YOU ... THANK YOU ...

From the bottom of my heart ....

Please now send me the signed HIPPA RELEASE that is sought in the IDR, or my signed "Authorization to Disclose Health Information," or as the IDR states (see below) an ADMISSION.

Please be sure that if you can NOT fill this sunshine request you forward to the correct person for IMMEDIATE action.

I wonder what OIG, HHS, CMS, and Social Security would think of all the GAMES especially with my NOTIFICATION over my disability, ADA issues, diagnosis and your CONSTANT "RISK MANAGEMENT" as opposed to MEDICALLY REQUIRED HELP.

Thou I walk thru the VALLEY of SHADOWS,

Jason Grant Garza  
jasongrantgarza@yahoo.com

P.S. I am still REQUESTING ALL OTHER ITEMS AS PRIOR PAPERWORK INDICATES ... when will I receive the PROGRAMMATIC ACCESS per ADA, when will I get the ADA help requested, when will I get the ADVOCACY ... just thought I'd ask the question should the time come when "REASONABLE" men will evaluate this.

P.P.S. Have a NICE DAY and GOD BLESS.

----- Forwarded Message -----

From: Joseph Pace <Joseph.Pace@sfdph.org>

To: Jason Grant Garza <jasongrantgarza@yahoo.com>

Cc: Eileen Shields <Eileen.Shields@sfdph.org>; Barbara Garcia <Barbara.Garcia@sfdph.org>

Sent: Monday, October 3, 2011 8:10 PM

Subject: Re: 10/3/2011 - Response to Shields Authorization to Disclose - Fw: 10/2 - Ms.

Shields ... EXPLANATION, ADA HELP, INTERPRETER and HOW MUCH LONGER FOR REQUESTED ITEMS ?

