

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
May 18, 2012 (Revised)**

DATE THE DECISION ISSUED

February 28, 2012

WILLIAM CLARK v ARTS COMMISSION (CASE NO. 11008)

FACTS OF THE CASE

Complainant William Clark alleged that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by failing to adequately and timely respond to his February 4, 2011 public records request for the audio recording of the Street Artists Program Committee's regularly scheduled meeting held on January 12, 2011.

COMPLAINT FILED

On February 28, 2011, William Clark filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that the SFAC violated Section 67.21(b) of the Sunshine Ordinance by failing to adequately and timely respond to his public records request for the audio recording of the January 12, 2011 Street Artists Program Committee meeting.

HEARING ON THE COMPLAINT

On February 28, 2012, William Clark appeared before the Task Force and presented his complaint. Julio Mattos, part-time contract clerk for the SFAC, appeared on behalf of the SFAC and presented its response.

Mr. Clark's complaint was first heard by the Task Force on March 22, 2011 and April 26, 2011. The Task Force reconsidered the complaint on February 28, 2012 on the recommendation of the Task Force's Compliance and Amendments Committee.

On February 4, 2011, Mr. Clark submitted a public records request to Howard Lazar, SFAC Street Artists Program Director, for a copy of the audio recording of the regular meeting of the Street Artists Program Committee held on January 12, 2011. Mr. Clark had not received a copy of the requested recording by February 28, 2011, and filed a complaint with the Task Force.

On March 9, 2011, Mr. Lazar sent an email to Mr. Clark with an electronic copy of the requested audio recording attached, and also mailed him three compact disks of the recording. After listening to both versions of the produced recording, Mr. Clark requested to inspect the original audio cassette tape recording because the electronic versions were too poor quality to hear some portions of the meeting.

On March 15, 2011, the SFAC allowed Mr. Clark to listen to the original audio cassette tape recording of the meeting. Mr. Clark alleged that a portion of the meeting was not included on this recording. He stated that a verbal argument between his brother, Robert Clark, and former SFAC Director of Cultural Affairs Luis Cancel occurred during public comment at the meeting, and this was missing from the audio recording. He alleged that either the audio cassette tape that was provided by the SFAC was not the original recording or that the recording had been altered to remove the section containing the argument. He requested the Task Force forward the matter to the District Attorney for investigation.

Mr. Clark stated that the verbal exchange that he alleged was not included on the audio recording of the meeting was also not included in the written minutes of the meeting.

Mr. Lazar responded in writing to Mr. Clark's complaint on March 10, 2011. Mr. Lazar acknowledged the delay in responding to Mr. Clark's public records request, and explained he was unable to timely respond because he was out of the office for two weeks due to illness.

On November 8, 2011, Mr. Lazar appeared before the Task Force's Compliance and Amendments Committee. He admitted that the section containing the verbal argument was missing from the audio recording of the January 12, 2011 Street Artists Program Committee meeting as alleged by Mr. Clark. He stated that the meeting had been recorded on audio cassette tape using a tape recorder, and that the cassette tapes produced to Mr. Clark on March 15, 2011 were the original tapes.

Mr. Lazar further stated that he had not deliberately removed that section from the audio recording or tampered with the cassette tapes in any way. He further stated that he had no explanation for why the section was not included on the audio recordings, and that the tape recording equipment had not malfunctioned during the meeting.

At the Task Force reconsideration hearing on February 28, 2012, Mr. Mattos appeared for the SFAC and stated that he did not know the procedure for audio recording SFAC's committee meetings or reproducing those recordings. He further stated he was unaware if the missing dialogue had been subsequently included in the written minutes of the meeting.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented and Mr. Lazar's own admission, the Task Force found that a verbal exchange between Mr. Clark's brother and Mr. Cancel occurred during public comment at the Street Artists Program Committee's regular meeting held on January 12, 2011 and was not included in the audio recording or written minutes of the meeting.

The Task Force further found that the audio recording of the meeting is a public record subject to inspection that "shall not be erased or destroyed" pursuant to Sunshine Ordinance Section 67.14(b).

The Task Force additionally found that Sunshine Ordinance Section 67.16 requires that written minutes of meetings of the SFAC and its standing committees include "a brief summary of each person's statement during the public comment period for each agenda item."

In addition, the Task Force found that Mr. Lazar's failure to acknowledge that a section of the audio recording was missing and failure to include a summary of the missing verbal exchange in the written meeting minutes for eight months after Mr. Clark brought the matter to his attention constitutes willful failure to comply with the Sunshine Ordinance.

DECISION AND ORDER OF DETERMINATION

Pursuant to Sunshine Ordinance Section 67.34, the Task Force finds Howard Lazar in violation of Sunshine Ordinance Sections 67.14(b) for willful failure to provide Mr. Clark with the audio recording of the January 12, 2011 Street Artists Program Committee that is not erased or destroyed, 67.16 for willful failure to include the known missing verbal exchange in the written meeting minutes, and 67.21(e) for willful failure to send a knowledgeable representative to the hearings on Mr. Clark's complaint.


Mr. Lazar shall consult with Mr. Clark to include in the written minutes of the January 12, 2011 Street Artists Program Committee meeting a summary of the verbal exchange missing from the audio recording of the meeting, shall mark audio recordings of the meeting to indicate the section is missing and refer listeners to the minutes, and shall appear before the Compliance and Amendments Committee on Tuesday, June 19, 2012 at 4:00 p.m. in Room 406 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on February 28, 2012, by the following vote: (Chair Johnson / Knee)

Ayes: 6 - Snyder, Knee, Manneh, Costa, West, Johnson

Absent: 1 - Cauthen, Chan

Excused: 2 - Washburn, Wolfe



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: William Clark, Complainant
Howard Lazar, Street Artists Program Director, Arts Commission, Respondent
Tom DeCaigny, Director of Cultural Affairs, Arts Commission, Respondent
Jerry Threet, Deputy City Attorney