

ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

Sent via E-mail & Interoffice Mail

PAUL A. RENNE
VICE-CHAIRPERSON

August 8, 2014

BRETT ANDREWS
COMMISSIONER

John Rahaim, Director
San Francisco Planning Department

BEVERLY HAYON
COMMISSIONER

1650 Mission Street, #400
San Francisco, CA 94103

PETER KEANE
COMMISSIONER

RE: Ethics Complaint No. 02-140228

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Dear Director Rahaim:

On February 28, 2014, the Ethics Commission received a referral from the Sunshine Ordinance Task Force (*Sunshine Complaint No. 13024*) alleging that you violated sections 67.21(a) and 67.29-7 of the Sunshine Ordinance.

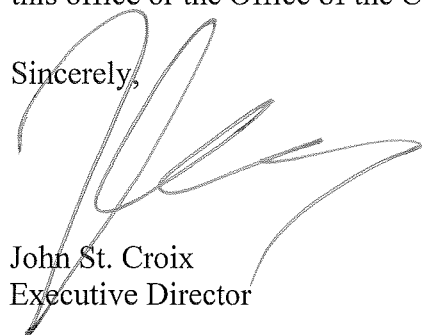
On July 28, 2014, the Ethics Commission held a public hearing pursuant to Chapter Three of the Ethics Commission's Regulations for Handling Violations of the Sunshine Ordinance ("Regulations"). During the hearing, the Commission found that you committed a non-willful violation of section 67.21(a) of the Sunshine Ordinance because you did not permit a public record to be inspected and examined without unreasonable delay. The Commission found that there was not sufficient evidence to support a finding that there was a violation of section 67.29-7 of the Sunshine Ordinance.

The Commission also directed staff to issue this warning letter, prepare the attached order, and notify the Planning Commission of this violation, pursuant to Chapter Three, section III.C of the Regulations. I have posted the Commission's finding that you violated the Sunshine Ordinance on the Commission's website.

In notifying you of this violation, the Commission instructs you to cease and desist from failing to permit public records to be inspected and examined without unreasonable delay. The Commission also urges you and Planning Department staff to comply with the requirements of the California Public Records Act, Brown Act, and the Sunshine Ordinance.

If you have any questions regarding those requirements, you may wish to seek advice either from this office or the Office of the City Attorney.

Sincerely,

A handwritten signature in black ink, appearing to read "John St. Croix". The signature is fluid and cursive, with a large initial "J" and "S".

John St. Croix
Executive Director

Encl.

Cc (e-mail): Mica Ringel, Complainant
Planning Commission
Victor Young, Administrator, Sunshine Ordinance Task Force

1 JOHN ST. CROIX
Executive Director
2 SAN FRANCISCO ETHICS COMMISSION
25 Van Ness Avenue, Suite 220
3 San Francisco, CA 94102
415-252-3100

5 BEFORE THE SAN FRANCISCO
6 ETHICS COMMISSION

7 In the Matter of) Ethics Complaint No. 02-140228
8)
9 John Rahaim, Director,)
10 Planning Department) **DECISION & ORDER**
11 Respondent.)
12)
13)
14)
15)
16)

17 This is the written decision and order of the San Francisco Ethics Commission
18 (“Commission”) in this matter, which is required pursuant to Sections III.B.3 and III.C.2 of Chapter
19 Three of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance
20 (“Regulations”).

21 **INTRODUCTION**

22 This matter concerns a referral from the Sunshine Ordinance Task Force finding that
23 Respondent John Rahaim, who is the Director of the Planning Department, willfully violated
24 Chapter 67 of the San Francisco Administrative Code (“Sunshine Ordinance”) sections 67.21(a)
25 and 67.29-7.

On July 28, 2014, the Commission held a public hearing, at which complainant Mica Ringel
represented himself and Jonas Ionin, Secretary to the Planning Commission, appeared on behalf of
Mr. Rahaim. The Commission received oral and documentary evidence at the hearing.

FACTUAL FINDINGS

1. In 2013, Mr. Ringel made a series of requests to staff of the Planning Department for
public records related to a proposed development at 480 Potrero Avenue. The Planning Department

1 staff members contacted by Mr. Ringel included Ben Fu, Don Lewis, and Lulu Hwang
2 (“Department Staff”).

3 2. Department Staff produced certain public records to Mr. Ringel over 10 days
4 following receipt of his request for those records.

5 3. Mr. Rahaim was not directly responsible for responding to Mr. Ringel’s requests for
6 public records. However, the Department Staff who failed to timely produce records in response to
7 Mr. Ringel’s requests were supervised by Mr. Rahaim’s own direct report.

8 LEGAL CONCLUSIONS

9 1. For the Commission to find a willful violation of the Ordinance, it must conclude
10 that, based upon a preponderance of the evidence, a respondent acted or failed to act with the
11 knowledge of such at or failure to act was a violation of the Sunshine Ordinance. (Regulations, Ch.
12 One, § II.U; and Ch. Three, § III.B.2.)

13 2. Sunshine Ordinance section 67.21(a) states that a custodian of a public record shall,
14 without unreasonable delay, permit a public record or any segregable portion of a record) to be
15 inspected and examined by any person and copied.

16 3. Sunshine Ordinance section 67.21(b) further explains that a custodian of a public
17 record must comply with a request for inspection or copy of a public record within ten days
18 following receipt of the request, although some exceptions apply.

19 4. Sunshine Ordinance section 67.29-7(a) states that “[t]he Mayor and all Department
20 Heads shall maintain and preserve in a professional and businesslike manner all documents and
21 correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports
22 and proposals and shall disclose all such records in accordance with this ordinance.”

23 5. The production of certain public records to Mr. Ringel over 10 days following
24 receipt of his request for those records constituted an unreasonable delay and thus is a violation of
25 Sunshine Ordinance section 67.21(a).

6. By virtue of the nature of his supervisory role over Department Staff in this
instance, Mr. Rahaim was responsible for the Planning Department’s response to the records
request and thus Mr. Rahaim violated Sunshine Ordinance section 67.21(a).

7. There is not sufficient evidence to indicate that Mr. Rahaim knew that Department
staff was failing to produce records without unreasonable delay and thus Mr. Rahaim’s violation of
Sunshine Ordinance section 67.21(a) was non-willful.

1 8. There is not sufficient evidence to support a finding that there was a violation of
2 Sunshine Ordinance section 67.29-7.

3 **ORDER**

4 1. Mr. Rahaim is ordered to cease and desist from failing to permit Mr. Ringel to
5 inspect and examine public records without unreasonable delay.

6 2. Commission Executive Director John St. Croix is ordered to post on the
7 Commission's website the Commission's finding that Mr. Rahaim violated the Sunshine Ordinance.

8 3. Executive Director St. Croix is also ordered to issue a warning letter to Mr. Rahaim
9 and to inform Director Rahaim's appointing authority of the violation.

10 The foregoing is hereby accepted as the final decision and order of the San Francisco Ethics
11 Commission, effective upon execution below by the Vice-Chairperson.

12 IT IS SO ORDERED.

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14 Dated: Aug 8, 2014

15 Paul A. Renne
16 PAUL A. RENNE, VICE-CHAIRPERSON
17 SAN FRANCISCO ETHICS COMMISSION
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