

Date: March 11, 2008

Item No. 2
File No. 08011

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: David Waggoner v Ethics Commission**
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

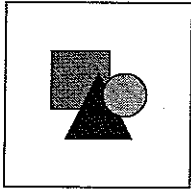
Completed by: Chris Rustom

Date: March 6, 2008

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

March 3, 2008

Sue Cauthen, Chair
Members of the Complaint Committee

Re: David Waggoner v. Ethics Commission (08011)

Dear Chair Cauthen and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of David Waggoner against the San Francisco Ethics Commission.

BACKGROUND

In his letter dated February 14, 2008, Complainant David Waggoner stated the following:

On November 29, 2007, David Waggoner filed an Immediate Disclosure Request with the San Francisco Ethics Commission Executive Director, John St. Croix. David Waggoner's request asked for several kinds of documents in his capacity as attorney for Tony Hall and David Waggoner specifically requested any and all documents related to the SFEC investigation of Ton Hall.

On November 30, 2007, Mr. St. Croix responded to the request and stated in a letter that the SFEC could not provide the records of the Hall investigation because the SFEC had not yet made a determination of probable cause. Mr. St. Croix also stated disclosure of information about a preliminary investigation constitutes official misconduct.

David Waggoner claims that Mr. St. Croix disclosed the existence of the Hall investigation to a reporter for the San Francisco Chronicle in August 2007. The SFEC made a probable cause determination on December 10, 2007 and the Chronicle newspaper issued an article published on December 14, 2007 which quoted Mr. Croix stating: "We believe [Tony Hall] used funds for purposes that were not legitimate and that were not for advancing his campaign and were more than likely personal in nature."

On December 14, 2007, the SFEC provided David Waggoner with some records relevant to the initial IDR but withheld other records. SFEC Chief Enforcement Officer Richard Mo stated in a letter dated December 14, 2007: "Ethics Commission Investigation and Enforcement Regulation XIII.B.1 provides '[a]fter a determination of probable cause, complaints, related documents and investigative files shall not be disclosed except as required by the California Public Records Act...' The California Public Records Act provides an exception for records pertaining to pending litigation, to which a public agency is a party. See Cal. Gov. Code

Letter to the Complaint Committee
Page 2
March 3, 2008

§6254(b). Because the Ethics Commission is a party to this matter, Staff cannot provide you with the requested records."

COMPLAINT

On February 20, 2008, Complainant David Waggoner filed a complaint against the Ethics Commission alleging that the Commission violated the Sunshine Ordinance for its failure to disclose the investigative records involving Tony Hall.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. The allegations are covered under 67.21 of the Ordinance. The Ethics Commission has the requested documents but asserts statutory exemptions from the City Charter, State Government, and Evidence Code Sections to justify withholding of certain information. The Task Force has jurisdiction over the complaint and the Task Force will have to determine whether the statutory exemptions cited by the Commission apply to the facts of this case.

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents.

San Francisco Charter Section C3.699-13 deals with Ethics Commission investigations.

California Government Code Section 6254 deals with exemptions of particular records.

In this case David Waggoner as attorney for Tony Hall filed an Immediate Disclosure Request for any and all records involving the investigation of Tony Hall. The Commission released some records but not others. The non-disclosure was based on cited statutory authority. The Task Force has jurisdiction over the complaint and the Task Force will have to determine whether the statutory exemptions cited by the Commission apply to the facts of this case.



<complaints@sfgov.org>
02/20/2008 03:27 PM

To <soft@sfgov.org>
cc
bcc
Subject Sunshine Complaint

Submitted on: 2/20/2008 3:27:38 PM

Department: Ethics Commission

Contacted: John St. Croix and Richard Mo

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated:

Description: Refusal to provide the requested records of the Hall investigation.

Hearing: Yes

Date: February 20, 2008

Name: David Waggoner

Address: 3937 17th Street

City: San Francisco

Zip: 94114

Phone: 415-305-7708

Email: dpwaggoner@gmail.com

Anonymous:

User Data

Client IP (REMOTE_ADDR) : 172.31.2.150
Client IP via Proxy (HTTP_X_FORWARDED_FOR) :

David Waggoner • Attorney at Law
3937 17th Street
San Francisco, CA 94114
T (415) 305-7708 / F (510) 540-0403
dpwaggoner@gmail.com

February 14, 2008

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

Letter of Complaint

Dear Sunshine Ordinance Task Force:

I am writing to file a formal complaint against San Francisco Ethics Commission ("SFEC") Executive Director, John St. Croix, and Chief Enforcement Officer, Richard Mo. The relevant facts are as follows:

On November 29, 2007, I filed a request for documents (attachment A) by letter to the SFEC Executive Director, John St. Croix. My request asked for several kinds of documents. I filed the request in connection with my representation of Tony Hall. I specifically requested any and all documents related to the SFEC investigation of Mr. Hall. Mr. St. Croix responded to my request in a letter dated November 30, 2007 (attachment B). St. Croix stated SFEC could not provide the records of the Hall investigation because the SFEC had not yet made a determination of probable cause. St. Croix also stated disclosure of information about a preliminary investigation constitutes official misconduct.

However, Mr. St. Croix had already disclosed information about the investigation to a reporter for the San Francisco Chronicle in August 2007. In an August 31, 2007, article (attachment C), the reporter, Wyatt Buchanan, wrote: "But when asked whether the commission had decided to delay releasing information about the investigation into Hall's finances until after the November election, Executive Director St. Croix said that was 'a very plausible scenario.'" In making the comment, St. Croix illegally confirmed the existence of the investigation.

The SFEC made a probable cause determination on December 10, 2007. In a Chronicle article (attachment D) published on December 14, 2007, Mr. St. Croix, speaking in his official capacity, provided the following quote to reporter, Cecilia Vega: "We believe [Tony Hall] used funds for purposes that were not legitimate and that were not for advancing his campaign and were more than likely personal in nature." The Chronicle published a "clarification" (attachment E) the following day to indicate St. Croix was speaking "only of the conclusion reached by the commission staff members who

investigated the matter, not members of the commission's oversight panel who will render judgment in the case."

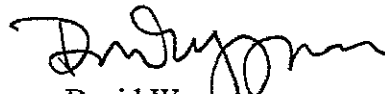
In any event, SFEC has provided me with some records relevant to my initial request. However, in a letter dated December 14, 2007 (attachment F), Chief Enforcement Officer Richard Mo, stated: "Ethics Commission Investigation and Enforcement Regulation XIII.B.1 provides that '[a]fter a determination of probable cause, complaints, related documents, and investigative files shall not be disclosed except as required by the California Public Records Act....' The California Public Records Act provides an exception for records pertaining to pending litigation, to which a public agency is a party. See Cal. Gov. Code s. 6254(b). Because the Ethics Commission is a party to this matter, staff cannot provide you with the requested records."

Thus, Mr. St. Croix illegally disclosed information about the investigation to a reporter. But when Mr. Hall's own counsel requested to view the evidence against him, SFEC staff rebuffed the request on the basis that a determination of probable cause had not been made. When the probable cause determination was made, SFEC staff concocted a new reason to deny access to the files. The second denial came with a sucker punch, as Mr. St. Croix elected to use his esteemed position to provide a highly prejudicial and inflammatory quote to the press. Apparently, Mr. St. Croix interpreted the public probable cause determination as a license to go after Mr. Hall in the press while still denying him basic due process rights.

In several instances over the past two years of the SFEC's belabored investigation of Mr. Hall, Mr. St. Croix and Mr. Mo have demonstrated bias, unethical behavior, and prejudicial conduct. The manner of the investigation suggests political motivation, personal aggrandizement, misuse of the enforcement process, waste of public assets, resources, and time, and a misapplication of the law to deny Mr. Hall his clear, unmistakable, and Constitutional right to know the accusers and evidence against him and to be able to mount a full and adequate defense.

I respectfully request an investigation into the refusal of Mr. St. Croix and Mr. Mo to provide the requested records of the Hall investigation. Thank you for your time and attention to this matter, and please contact me directly with any questions or concerns.

Sincerely,



David Waggoner
Attorney for Tony Hall

IMMEDIATE DISCLOSURE REQUEST

**David Waggoner
Attorney at Law
3937 17th Street
San Francisco, CA 94114
(415) 305-7708**

**FILED
07 NOV 29 PM 1:50
SAN FRANCISCO
ETHICS COMMISSION**

November 29, 2007

BY _____

John St. Croix, Executive Director
Ethics Commission City and County of San Francisco
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

Re: Ethics Complaint No. 24-050928

Dear Mr. St. Croix:

Peter Bagatelos and I are representing Tony Hall in the above referenced matter. Pursuant to the California Public Records Act, Government Code Section 6250, and the San Francisco Sunshine Ordinance, San Francisco Administrative Code Section 67.1, I hereby request immediate disclosure of the following records in their original format:

1. Any and all documents, paper or electronic, without limitation, relating to Ethics Complaint No. 24-050928;
2. Any complaints, anonymous or otherwise, redacted if necessary, relating to Ethics Complaint No. 24-050928;
3. All documents regarding the Commission's policy regarding surplus funds;
4. All records of Commission fines or penalties for violation of California Government Code section 84211;
5. All records of Commission fines or penalties for violation of California Government Code section 89510;
6. All records of Commission fines or penalties for violation of California Government Code section 89512;
7. All records of Commission fines or penalties for violation of California Government Code section 89516(d);
8. All records of Commission fines or penalties for violation of San Francisco Campaign and Governmental Conduct Code section 1.106;
9. All records of Commission fines or penalties for violation of San Francisco Campaign and Governmental Conduct Code section 1.122;
10. All records of Commission fines or penalties for violation of San Francisco Campaign and Governmental Conduct Code section 1.122(b)(ii);
11. All records of Commission fines or penalties for violation of San Francisco Campaign and Governmental Conduct Code section 1.170(f).

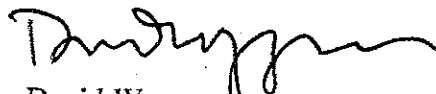
ATTACHMENT A

IMMEDIATE DISCLOSURE REQUEST

Please call me at (415) 305-7708 when the records are ready for review. It is unnecessary to copy any documents on my behalf, as I would like to review the documents first. It would be helpful if the documents can be made available in the order of the list above.

Thank you for your attention to and consideration of this request. Please contact me directly with any questions or concerns.

Respectfully,



David Waggoner
Attorney for Tony Hall



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

ATTACHMENT B

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

November 30, 2007

David Waggoner
3937 17th Street
San Francisco, California 94114

Re: Immediate Disclosure Request

Dear Mr. Waggoner:

This letter is in response to your immediate disclosure request of November 29, 2007. The responses are pursuant to the numerical order of the specific documents requested.

- 1) Pursuant to San Francisco Charter Section C3.699-13(a), disclosure of information about a preliminary investigation, prior to a determination of probable cause, except as necessary to conduct the investigation, constitutes official misconduct. The Commission has not yet made a determination of probable cause and the disclosure of these records is not necessary to conduct this investigation. Thus, staff cannot provide you with the requested records.
- 2) Redacted copies of documents responsive to this request will be available for your review on Friday, November 30, 2007, at the Commission office.
- 3) Documents regarding the Commission's policy regarding surplus funds will be available for your review at on Friday, November 30, 2007, at the Commission office. The latest version of the Campaign Finance Reform Ordinance is available on the Commission's website at www.sfgov.org/ethics.
- 4-11) Pursuant to Government Code section 6253(c) and San Francisco Administrative Code section 67.25(b), records responsive to these eight categories are voluminous and staff hereby invokes the fourteen calendar day extension. Pursuant to S.F. Administrative Code section 67.25(d), staff will make these records available on a rolling basis and will so notify you.

If you have any questions, please call me at (415) 252-3100.

Sincerely,

John St. Croix
Executive Director

SFGate.com

Tony Hall quits race for S.F. mayor, calling Newsom too entrenched

Wyatt Buchanan, Chronicle Staff Writer

Friday, August 31, 2007



Tony Hall - the best-known candidate challenging San Francisco Mayor Gavin Newsom for reelection - is pulling out of the race, citing a lack of opposition in the city to a second term for the mayor.

Hall, a former San Francisco supervisor, made that announcement on ABC 7 Thursday, two days after he qualified to receive \$50,000 in public funds for the race. Hall said he could not generate support among big-name donors.

"It's become apparent to me that there's not enough people willing to stand up and hold this mayor and his tremendous spin machine accountable for the ills that affect this city," Hall said.

When Hall filed for public funding earlier this week, by raising \$27,000 so far, he indicated that he did have some support, however.

Hall told The Chronicle that raising the cash was not easy and that he didn't know how much he could ultimately raise, "but it's clear that our support shows that this isn't just a campaign of nobodies."

The bulk of his fundraising occurred shortly before Tuesday's deadline, Hall said.

While Hall was a long shot to defeat Newsom, his exit cuts the field of challengers to 13. One of those challengers, Quintin Mecke, has picked up the endorsements of Supervisor Chris Daly and transit advocate and BART board member Tom Radulovich.

Mecke, who is the director of a city-funded public safety group that is active on homelessness, did not qualify for public campaign money. Other candidates include Chicken John Rinaldi - who was the only person beside Hall to attempt to qualify for public funds - and physician Ahimsa Sumchai.

Other candidates include a homeless taxi driver, a nudist and the owner of a sex club.

With Hall out, "Who does that leave? The Chicken Johns of the world?" said Richard DeLeon, a San Francisco State University political science professor emeritus.

Newsom "is basically running unopposed."

ATTACHMENT C

Newsom's campaign manager, Eric Jaye, said Hall's exit will affect the campaign, though probably not the outcome of the election.

"He was one of the last candidates left that wasn't named after a barnyard animal," Jaye said. The mayor is meeting nearly every day with voters to hear their concerns, Jaye said, and Newsom will participate in debates with the other candidates.

Hall leaves the mayor's race amid reports that the city Ethics Commission has completed an investigation into allegations that the former supervisor misused thousands of dollars in contributions to his 2004 re-election campaign.

But Marc O'Hara, Hall's campaign manager, said the commission complaint was not a factor in Hall's decision to drop out of the race.

"The violations he's accused of are completely pedestrian," O'Hara said. Hall offered to settle with the commission for an undisclosed sum but they wouldn't accept it, he said.

Some of the questionable spending reportedly includes "thank-you" dinners at pricey restaurants across the state and lawyer fees to negotiate the terms for a \$160,000-per-year city job at Treasure Island.

As is their policy, officials at the commission would neither confirm nor deny Wednesday that an investigation had been launched into allegations that Hall had misused thousands of dollars of contributions to his 2004 re-election campaign.

But when asked whether the commission had decided to delay releasing information about the investigation into Hall's finances until after the November election, Executive Director John St. Croix said that was "a very plausible scenario."

Hall has yet to officially pull his name from November's ballot. To do so, he must submit the request in writing to the city's Department of Elections by 5 p.m. today, the deadline for removal.

Chronicle staff writers Andy Ross and John Wildermuth contributed to this report. E-mail Wyatt Buchanan at wbuchanan@sfgate.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/08/31/BAC6RSP5H.DTL>

This article appeared on page **B - 1** of the San Francisco Chronicle

SFGate.com

Tony Hall monitor: Former S.F. supervisor to face ethics hearing

Cecilia M. Vega, Chronicle Staff Writer

Friday, December 14, 2007



Maybe it was the name of the store - The Old Red Garter - that ultimately was the red flag for the investigator looking into allegations that former San Francisco Supervisor Tony Hall illegally spent thousands of dollars in campaign funds from his 2004 re-election bid.

On a campaign finance report at the time, Hall declared that he spent \$320 in office supplies at the store. The Old Red Garter, according to its Web site, is located in Virginia City, Nev., and sells "authentic western wear for work or play."

This week, the San Francisco Ethics Commission determined there is probable cause to believe Hall violated a series of campaign finance laws while he ran for re-election in the supervisorial district that includes upscale Twin Peaks and St. Francis Wood and after he dropped out of the race.

During a closed-door meeting on Monday, the board responsible for enforcing local elections laws voted to move ahead with a hearing on the case in the coming months. If Hall is found guilty of the six charges, he could be forced to pay as much as \$240,000 in fines.

"We believe he used funds for purposes that were not legitimate and that were not for advancing his campaign and were more than likely personal in nature," Ethics Commission Executive Director John St. Croix said.

Hall vehemently denied the allegations Thursday, saying the charges are the result of the ethics officials misinterpreting elections laws and a political vendetta by Mayor Gavin Newsom.

"It's just a set-up," said Hall, whose open disdain for Newsom stems in part from the fact that the mayor coaxed him off the Board of Supervisors in 2004 by offering him a job running Treasure Island and then had him fired 15 months later. "It's a complete fabrication to politically embarrass me."

St. Croix said he is not legally allowed to discuss the details of charges against Hall.

But an announcement issued by the commission after its meeting Monday outlined the charges, which include the alleged misuse of thousands of dollars in campaign funds, in some instances to pay for expenses that were not related to his re-election bid.

ATTACHMENT D

Hall calls the Old Red Garter purchase "totally innocent" and says he mistakenly used the wrong credit card - one that belonged to his campaign - to buy purses for his daughters.

Once he realized the mistake, he said, he reimbursed his campaign fundraising committee. He said he thinks he issued that reimbursement check in 2006.

Hall also allegedly used campaign funds to take supporters out for at least 16 meals after he pulled out of his re-election bid to take the Treasure Island job.

Some of those meals took place at some of the region's swankier restaurants, such as the Ritz-Carlton in Half Moon Bay, where Hall racked up a \$662 tab, campaign records show.

Local ethics officials say state law allows surplus campaign funds to be spent on victory or thank-you parties within a few weeks of the election.

"There were campaign-related purchased meals, thank-you dinners, which according to state law is legal," Hall said.

However, Hall continued to use campaign money to pay for meals after he dropped out of the race.

His campaign filings for the time also show that he used campaign funds on numerous occasions to pay for gas and automobile-related costs, which according to the Ethics Commission was a violation of the state's elections law governing travel expenses.

Hall now concedes he did a poor job of keeping gas logs and would regularly use campaign funds to fill up volunteers' gas tanks.

According to the Ethics Commission, Hall allegedly also misused campaign funds to repay a \$12,000 personal loan and then misreported that loan as staff salary in his campaign filings.

Earlier this year, Hall was the biggest political name to declare a candidacy for mayor to challenge Newsom for re-election. But he dropped out of the race before the November vote, a move he attributed in part to difficulty he was having raising campaign money.

Hall said the allegations against him are "totally false" and were being fueled by Newsom, a charge a spokesman for the mayor denied on Thursday.

"It looks like Tony Hall is in some serious hot water and concocting crazy conspiracy theories isn't going to get him out of it," Newsom spokesman Nathan Ballard said. "Let's be serious. This is a guy who wants us to believe that the Red Garter sells office supplies."

E-mail Cecilia M. Vega at cvega@sfchronicle.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/12/14/BAKUTTNRF.DTL>

This article appeared on page **B - 1** of the San Francisco Chronicle

SFGate.com

CORRECTIONS

Saturday, December 15, 2007

Clarification: A story Friday about a campaign finance case against former San Francisco Supervisor Tony Hall contained a quotation from Ethics Commission Executive Director John St. Croix that warrants clarification. When St. Croix said, "We believe he (Hall) used funds for purposes that were not legitimate and that were not for advancing his campaign and were more than likely personal in nature," he was speaking only of the conclusion reached by the commission staff members who investigated the matter, not members of the commission's oversight panel who will render judgment in the case.

-- A review of the movie "I Am Legend" Friday in Datebook included the wrong rating. The film has an MPAA rating of PG-13 "for intense sequences of sci-fi action and violence."

-- A headline in Friday's nation and world digest mischaracterized Garry Kasparov's campaign for the Russian presidency. Kasparov dropped his bid to succeed Vladimir Putin, who is barred from seeking another term.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/12/15/MNU0TULOR.DTL>

This article appeared on page **A - 2** of the San Francisco Chronicle

ATTACHMENT E



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

December 14, 2007

David Waggoner
3937 17th Street
San Francisco, California 94114

Re: Immediate Disclosure Request

Dear Mr. Waggoner:

Pursuant to your immediate disclosure request of November 29, 2007 and the Ethics Commission's response of November 30, 2007, staff has located documents responsive to your request. These documents are available for your review. Please contact me to arrange a time to review these documents. The following responses correspond to the categories of documents listed in your request.


- 1) Ethics Commission Investigation and Enforcement Regulation XIII.B.1 provides that "[a]fter a determination of probable cause, complaints, related documents, and investigative files shall not be disclosed except as required by the California Public Records Act. . . . The California Public Records Act provides an exception for records pertaining to pending litigation, to which a public agency is a party. See Cal. Gov. Code § 6254(b). Because the Ethics Commission is a party to this matter, staff cannot provide you with the requested records.
- 2) Copies of documents responsive to this request were made available for your review on December 3, 2007.
- 3) Copies of documents responsive to this request were made available for your review on December 3, 007.
- 4) After an exhaustive search of Commission records, staff review determined that there are no responsive documents.
- 5) After an exhaustive search of Commission records, staff review determined that there are no responsive documents.
- 6) After an exhaustive search of Commission records, staff review determined that there are no responsive documents.
- 7) After an exhaustive search of Commission records, staff review determined that there are no responsive documents.

ATTACHMENT D

- 8) Pursuant to your December 13 telephone conversation with the Commission's Fines Collection Officer, it is our understanding that you do not want the documents regarding fines for violations of S.F. C&GCC section 1.106, as they would include copies of every fine letter ever sent by the Commission. With regards to records of penalties for violations of section 1.106, copies of responsive documents are available for your review.
- 9) Documents responsive to this request are available for your review in electronic format.
- 10) Documents responsive to this request are available for your review in electronic format.
- 11) Documents responsive to this request are available for your review in electronic format.

If you have any questions, please call me at (415) 252-3100.

Sincerely,



Richard Mo
Chief Enforcement Officer