

Date: Dec. 9, 2008

Item No. 2
File No. 08051

SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
AGENDA PACKET CONTENTS LIST*

- Determination of jurisdiction and pre-hearing conference on**
- complaint filed by Paul Horcher against the Planning**
- Department for wrongful withholding of non-exempt file**
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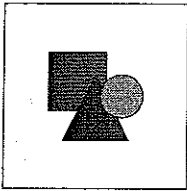
Completed by: Chris Rustom

Date: Nov. 21, 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

November 24, 2008

Nick Goldman, Chair
Members of the Complaint Committee

Re: Paul Horcher Esq. v. City Planning Department (08051)

Dear Chair Goldman 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 Paul V. Horcher, Esq. against the San Francisco City Planning Department.

BACKGROUND

On July 21, 2008, Complainant Paul V. Horcher, an attorney retained by Well-Care Acupuncture & Health Care, Inc. ("Well-Care") to represent Well-Care before the Board of Appeals, made a public records request for the City Planning files that involve Well-Care's appeal of City Planning's Notice of Violation issued by the Zoning Administrator.

On July 24, 2008, City Planning provided its files for Attorney Horcher's review. Attorney Horcher believed that the files that City Planning provided was incomplete and that documents may have been removed prior to their release to Attorney Horcher. On October 15, 2008, during the hearing on the appeal, City Planner Tina Tam told the Board of Appeals that City Planning continues to receive numerous complaints of illegal massage use at the business run by Well-Care. Attorney Horcher reviewed the files provided to him and did not find the complaints alluded to by City Planner Tam. During the hearing, City Planner Tam allegedly stated that there is a City Planning file for the appeal and a separate City Planning file for enforcement proceedings. The enforcement file was allegedly not provided to Attorney Horcher.

COMPLAINT

On November 3, 2008, Attorney Horcher filed a complaint against the City Planning Department alleging violation of section 67.24 of the Sunshine Ordinance

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 and 67.24) of the Ordinance.

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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.

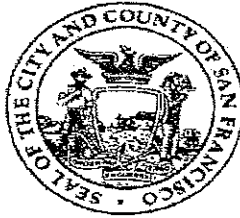
The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents and Section 67.24 covers documents that must be disclosed. CPRA Section 6253 generally covers Public Records Requests.

In this case, Attorney Horcher in preparation for an appeal that he was making before the Board of Appeals made a public records request with the City Planning Department for its files involving his client, Well-Care. Attorney Horcher claims that he learned at the Board of Appeals Hearing that City Planning maintained two separate files and that he did not get all the non-exempt documents that he requested. Attorney Horcher claims that City Planning violated section 67.24 by withholding documents. The Task Force has jurisdiction to hear this complaint based on the alleged violation of 67.21 and 67.24 of the Ordinance and to determine whether the City Planning Department violated the Ordinance and/or the Public Records Act.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2008 NOV -3 PM 2:54

BY Suo



SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>
SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission PLANNING

Name of individual contacted at Department or Commission RACHNA RACHNA and TINA TAM

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section 67.24 Wrongful withholding of non-exempt file.
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

PLEASE SEE ATTACHED.

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹ Name PAUL V. HORCHER, ESQ. Address 20955 Pathfinder 100, Diamond Bar CA 91765-4029
234 Van Ness, San Francisco CA 94102

Telephone No. (909) 861-5555
(415) 385-2992 E-Mail Address "pvh831@yahoo.com"

Date November 03, 2008

Paul V. Horcher
Signature

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Attachment to Sunshine Ordinance Complaint

I am the Attorney/Agent for WELL-CARE ACUPUNCTURE & HEALTH CARE, INC., Appellant in San Francisco Board of Appeals Case No. 08-100.

On 07-21-08, in preparation for the Hearing (then scheduled for 09-10-08), I e-mailed "Rachna" of the San Francisco Planning Dept. the letter attached hereto Exhibit "A."

The following day, Tuesday, 07-22-08, "Rachna" responded, indicating that she would "try to have the file ready" by the next day (her e-mail is attached hereto as Exhibit "B"). She did not advise me that any files or any part of the files would be withheld, were privileged, be limited or declared somehow exempt, etc.

On Thursday, 07-24-08, I was finally allowed access to the purported entire file. I have reviewed Planning Department files before and was surprised how thin this file was. I noted this in an e-mail dated 09-10-08 to the Asst. City Attorney assigned to the Board, Catherine Barnes.

The file looked incomplete and appeared to have been "stripped" or "sanitized" to be as of little use as possible to me.

My suspicions that the Planning Department had not given me the complete file were confirmed when at the appeal hearing on 10-15-08, Senior Planner IV Tina Tam, appearing for Zoning Administrator, Lawrence Badiner, admitted the following to the Board:

"The file I have on my desk is just for the appeal. There's a separate complaint file that's with the enforcement planner."

This admission reveals that there were at least two files, and I was not allowed to review "all of the relevant Planning files" (emphasis added) contrary to the intent of my request to see all of the relevant files and the Sunshine Ordinance.

This apparent wrongful withholding severely prejudiced my preparation for the appeal in that I was unable to confirm or challenge the unsworn assertions of fact made by Senior Planner IV Tina Tam at the hearing.



4726 Geary Blvd./Complaint No. 6771 - Request for
Opportunity to Review and Copy Planning File
Monday, July 21, 2008 3:53 PM
From: "Paul Horcher" <pvh831@yahoo.com>
To: Rachna.Rachna@sfgov.org

Dear Rachna:

Confirming my message left this afternoon on your voice mail, I represent Well-Care Acupuncture & Health Center, Inc. the real party in interest in regard to the Z.A.'s Notice of Violation dated March 19, 2008 re the subject property. The Notice of Violation has been appealed by my client (Appeal No. 08-100) to the San Francisco Board of Appeals and the opening brief is due on August 14, 2008.

Please advise me when all of the relevant Planning files(s) may be examined and photocopied.

Time is of the essence. Thank you
PAUL V HORCHER
Attorney at Law
20955 Pathfinder Rd., Suite 100
Diamond Bar CA 91765-4029
Tel: (909) 861-5555 & (415) 385-2992
Fax: (866) 496-7489



**Re: 4726 Geary Blvd./Complaint No. 6771 -
Request for Opportunity to Review and Copy
Planning File**

Tuesday, July 22, 2008 8:11 AM

From: "Rachna Rachna" Rachna.Rachna@sfgov.org>

To: "Paul Horcher" <pvh831@yahoo.com>

I will try to have the file ready by tomorrow and
leave it at the front desk .

Thanks,

Rachna
Code Enforcement Planner
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103
Phone 415-5756806
Fax 415-5586409
Web <http://www.sfgov.org/planning>



Paul Horcher
<pvh831@yahoo.com>
11/14/2008 04:03 PM

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

History: This message has been forwarded.

Dear Chris Rustom:

Lulu Wang, the Planning Department Sunshine request coordinator, provided me with approximately three times more documents than "Rachna" provided me on July 24, 2008 - a major improvement.

However, there were apparently no files provided that corroborate Senior Planner Tina Tam's Oct. 15, 2008 representations (raw transcripts) to the Board of Appeals that:

"This Department continues to receive numerous complaints regarding the illegal massage use and these complaints are from nearby residents of the neighborhood"

"Mr. Horcher said he's not aware of any complaints. We have a lot of complaints"

"There are many resident complaints"

"On a more recent site visit, this past last month, September 12, 2008, planning staff was also told there was no doctor on duty."

I will withdraw my SOTF complaint once the Planning Department either admits that these statements were false or provides a complete file that verifies them as true.

Thank you for your courtesy and professional handling of this complaint.

Paul V Horcher

PAUL V HORCHER
Attorney at Law

20955 Pathfinder Rd., Suite 100
Diamond Bar CA 91765-4029
Tel: (909) 861-5555 & (415) 385-2992
Fax: (866) 496-7489

--- On Fri, 11/14/08, SOTF <sotf@sfgov.org> wrote:

From: SOTF <sotf@sfgov.org>
Subject: Sunshine Complaint
To: pvh831@yahoo.com
Date: Friday, November 14, 2008, 2:06 PM

Mr Paul Horcher,

Lulu Wang, the Sunshine request coordinator at the Planning Department, said you visited the office on Nov. 10, 2008, and reviewed the documents. If you are satisfied, our office needs a withdrawal letter from you to close the file. If you are not satisfied, you may continue with the complaint and we will schedule a hearing.

Asst. Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307