

Date: Feb. 9, 2010

Item No. 3

File No. 09069

## SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*

- Asian Law Caucus against the Mayor's Office**
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Completed by: Chris Rustom

Date: Feb. 4, 2010

**\*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.

**SUNSHINE ORDINANCE  
TASK FORCE**



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1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
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**ORDER OF DETERMINATION**  
December 21, 2009

**DATE THE DECISION ISSUED**  
December 1, 2009

*ASIAN LAW CAUCUS V. MAYOR'S OFFICE (09069)*

**FACTS OF THE CASE**

The Asian Law Caucus said that on Sept. 2, 2009, it submitted an Immediate Disclosure Request to the Mayor's Office for a copy of a City Attorney Office memo that was allegedly leaked to the San Francisco Chronicle newspaper and for copies of any communications the Mayor's Office had with the Chronicle regarding the issue. The Asian Law Caucus alleges that the Mayor's Office responded late to the first request and not at all to the second request.

**COMPLAINT FILED**

On October 13, 2009, the Asian Law Caucus filed a complaint with the Sunshine Ordinance Task Force.

**HEARING ON THE COMPLAINT**

On December 1, 2009, Asian Law Caucus staff attorney Angela Chan presented the organization's case to the Task Force. The Mayor's Office was not represented. There was also no one in the audience who spoke or presented facts or evidence on behalf of the respondent. Chair Richard Knee did note that Brian Purchia of the Mayor's Press Office was in the audience earlier, but left a note to say that he had to leave to respond to press requests.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Ms. Chan told the Task Force that the Mayor's Office responded late to her first request by sending her a link to the City Attorney's website where the memo in question had been posted. When Ms. Chan followed up on the status of the second request, she was told that the previous email completed the Mayor's Office's response. Ms. Chan sent another email, warning the Mayor's Office that if it did not respond, she would file a Sunshine complaint. The Mayor's Office has not responded and has not provided justification for withholding the documents relevant to her second request as provided by Sec. 67.27, she said. The Mayor's Office has a duty to maintain records of these communications under Sec. 67.29-7 (a) and these communications must be kept in accordance with Sec. 67.29-1, regardless of

**ORDER OF DETERMINATION**

the replacement, retirement or transfer of public officials, she said. The documents are public records covered by CPRA 6252 (e) and (g) and must be kept under Sec. 67.20 (b) of the Ordinance, she said. Ms. Chan argued that there was no privilege or exclusion for the documents and no attorney-client privilege existed because the Mayor's Office has released the document. She said Mayor Gavin Newsom needs to explain to the residents of San Francisco by whom, why and how the document was leaked.

**DECISION AND ORDER OF DETERMINATION**

The Task Force was troubled by the fact that the Mayor's Office representative left before the matter was called, because Task Force members needed to know the Mayor's position and response. After further debate the Task Force voted to continue the matter of whether documents had been impermissibly withheld by the Mayor's Office to its next meeting on January 5, 2010, to allow the Mayor's Office to respond to Ms. Chan's allegations.

However, the Task Force did find the Mayor's Office:

- in violation of Sec. 67.21 (e) for failure to appear, by the following vote ( Cauthen / Washburn )

Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee  
Excused: Johnson, Chu, Chan, Williams

- in violation of Sec. 67.27 for failure to provide justification for withholding, by the following vote ( Cauthen / Washburn )

Ayes: Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee  
Noes: Craven-Green  
Excused: Johnson, Chu, Chan, Williams

The motion to continue was by the following vote ( Knee / Craven-Green )

Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee  
Excused: Johnson, Chu, Chan, Williams



Richard Knee  
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney  
Asian Law Caucus, Complaint  
Mayor's Office, Respondent

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION**  
January 29, 2010

**DATE THE DECISION ISSUED**  
January 5, 2009

*ASIAN LAW CAUCUS V. MAYOR'S OFFICE (09069)*

**FACTS OF THE CASE**

The Asian Law Caucus said that on Sept. 2, 2009, it submitted an Immediate Disclosure Request to the Mayor's Office for a copy of a City Attorney Office memo that was leaked to the San Francisco Chronicle newspaper and for copies of any communications the Mayor's Office had with the Chronicle regarding the issue. The Asian Law Caucus alleges that the Mayor's Office responded late to the first request and ignored the second request.

**COMPLAINT FILED**

On October 13, 2009, the Asian Law Caucus filed a complaint with the Sunshine Ordinance Task Force.

**HEARING ON THE COMPLAINT**

On December 1, 2009, Asian Law Caucus staff attorney Angela Chan presented the organization's case to the Task Force. The Mayor's Office was not represented. There was also no one in the audience who spoke or presented facts or evidence on behalf of the respondent. Task Force chair Richard Knee reported that Brian Purchia of the Mayor's Press Office was in the audience earlier, but left a note saying he had to leave to respond to press requests. That action concerned members who wanted to query the Mayor's Office regarding the complaint. The Task Force continued the matter to the January 5, 2010, meeting, to which the Mayor's Office failed to send a representative.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Ms. Chan told the Task Force on December 1, 2009, that the Mayor's Office responded late to her first request by sending her a link to the City Attorney's website, where the memo in question had been posted. When Ms. Chan followed up on the status of the second request, she was told that the previous email completed the Mayor's Office's response. Ms. Chan sent another email, warning the Mayor's Office that if it did not respond, she would file a Sunshine complaint. The Mayor's Office has not responded and has not provided justification for withholding the documents relevant to her second request as required by Sec. 67.27, she said. The Mayor's Office has a duty to maintain records of these

**ORDER OF DETERMINATION**

communications under Sec. 67.29-7 (a) and these communications must be kept in accordance with Sec. 67.29-1, regardless of the replacement, retirement or transfer of public officials, she said. The documents are public records covered by California Public Records Act Sections 6252 (e) and (g), and must be kept under Sec. 67.20 (b) of the Ordinance, she said.

Ms. Chan argued that there was no privilege or exclusion for the documents and no attorney-client privilege existed because the Mayor's Office has released the document. She said Mayor Gavin Newsom needs to explain to the residents of San Francisco by whom, why and how the document was leaked. Ms. Chan said on January 5, 2010, that she has not received any information nor been contacted by the Mayor's Office since she last testified. She said the actions of the Mayor's Office are in violation of Sec. 67.34 for willful failure and should be deemed official misconduct. She also said she had not received a response to the letter that Chair Knee had written to the Mayor's Office.

**DECISION AND ORDER OF DETERMINATION**

After further debate on December 1, 2009, the Task Force found the Mayor's Office:

- in violation of Sec. 67.21 (e) for failure to appear, by the following vote ( Cauthen / Washburn )

Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee  
Excused: Johnson, Chu, Chan, Williams

- in violation of Sec. 67.27 for failure to provide justification for withholding, by the following vote ( Cauthen / Washburn )

Ayes: Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee  
Noes: Craven-Green  
Excused: Johnson, Chu, Chan, Williams

The motion to continue was by the following vote ( Knee / Craven-Green )

- Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee  
Excused: Johnson, Chu, Chan, Williams

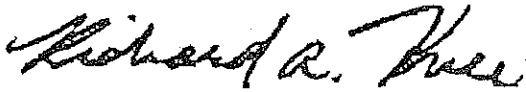
On January 5, 2010, the Task Force found the Mayor's Office:

- in violation of Sec. 67.34 for willful failure to comply and Sec. 67.21 ( e ) for failing to appear.

The Mayor's Office is directed to provide the afore-cited copies of correspondence between the Mayor's Office and the San Francisco Chronicle within five business days after receiving this Order of Determination, and is ordered to appear before the Compliance and Amendments Committee February 9, 2010. ( Goldman / Knoebber )

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- Ayes: Manneh, Washburn, Knoebber, Chu, Chan, Goldman, Williams, Knee



Richard A. Knee  
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney  
Asian Law Caucus, Complaint  
Mayor's Office, Respondent