

Date: Feb. 10, 2009

Item No. 5

File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Ethics Commission referrals
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Chris Rustom

Date: Feb. 5, 2009

***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.

We appreciate the responses to the Ethics Commission referrals from the Sunshine Ordinance Task Force, dated October 30, October 31 and November 5, 2008.

As an initial matter, we're disappointed that the Ethics Commission staff appears to have simply deferred to the conclusions of the City Attorney's office on a number of the underlying complaints, despite the Task Force's finding that the Respondents' actions violated the Sunshine Ordinance. (*See, e.g.*, Ethics Complaint No 14-080424 [Task Force held public records laws require production of all records, including actual calendars maintained by public officials with exempt information redacted, as Section 67.29-5 of Sunshine Ordinance sets out minimum, not maximum, requirements maintaining and disclosing calendars]).

We disagree with the Commission's wholesale deference to the City Attorney's office, and expected the Ethics Commission to undertake an independent legal analysis of the questions raised. Nonetheless, we also recognize that where a department relies on the advice of the City Attorney's office (even if the Task Force finds that such advice is misguided or without support in the law), it is unlikely that the Ethics Commission will find that action a "willful" failure to comply with the Sunshine Ordinance under Section 67.34.

We also expect that the dismissal of certain referrals by the Ethics Commission's staff may be due to an incomplete review of the Task Force and its committees' deliberations. (*See, e.g.*, Ethics Complaint No. 04-080204 referred to Ethics Commission in part because representative from Supervisor's office indicated that responsive e-mail records may have been deleted, and Supervisor's office did not follow through on Compliance & Amendments Committee's directive that Supervisor's office should work with DTIS to ascertain whether missing emails were deleted and/or could be retrieved from back up).

This problem was likely exacerbated because in the past the Task Force's Orders of Determination did not always identify with clarity which allegations of a complainant it was upholding, dismissing, or taking no action on. Likewise, the letters referring complaints to the Ethics Commission were often too general and did not focus in on the specific reasons for the referral.

In the future, the Task Force will attempt to provide a clearer and more detailed explanation of the grounds for its initial Orders of Determination and subsequent referral to the Ethics Commission.

Finally, we feel the need to respond in more depth to the response on Ethics Complaint No. 05-08024. The underlying Task Force referral followed an Order of Determination finding that the District Attorney impermissibly withheld a large number of documents without appropriate justification. On the referral, the staff of the Ethics Commission charges that the Task Force ignored evidence that release of records would create a security breach in the District Attorney's office and that the SOTF acted irresponsibly by ignoring the critical element of information presented to them. While we appreciate and share the Ethics Commission's desire to prevent breaches of security in the District

Attorney's office, we take strong exception to Mr. St. Croix's assertions that we ignored evidence and that we acted irresponsibly in reaching our conclusion in the matter.

A review of the tapes of the full Task Force meetings on [DATES] and the Compliance and Amendments meetings on [DATES] shows no such thing that we weighed all facts in evidence carefully and diligently, and reached our Order of Determination with all due consideration to those facts and to applicable law. **[RICK – please review the tapes to confirm the recollection that the DA failed to produce a whole category of records and failed to explain with specificity how production of any particular records created a genuine security risk; instead of justifying withholding on a document by document basis, the DA instead rested its wholesale failure to disclose numerous categories of documents on broad, general grounds which is insufficient under the local and state law.]** In sum, the Task Force acted responsibly given the information it was provided.

In closing, the Task Force appreciates that the Ethic's Commissions' staff personnel are expected to carry out many duties with limited resources. The Task Force will endeavor to alleviate some of that burden by providing more detail in its referrals to the Commission, etc.