

Date: October 13, 2009

Item No. 6

File No. 09044

## SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*

- Peter Warfield against the Board of Appeals**
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Completed by: Chris Rustom

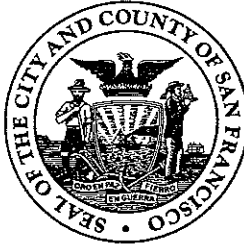
Date: Oct. 7, 2009

**\*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.

**SUNSHINE ORDINANCE  
TASK FORCE**



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION**  
September 1, 2009

**DATE THE DECISION ISSUED**  
August 25, 2009

*PETER WARFIELD V. BOARD OF APPEALS (09044)*

**FACTS OF THE CASE**

Peter Warfield requested to review a Board of Appeals file and requested copies of a portion of the same. Initially he was allowed to fully inspect the file and make notes. Mr. Warfield also requested copies of certain portions of that file. The copies were available the next day, without redactions. Mr. Warfield requested to rereview the same file. That second time, however, he was instructed by staff that he could not write down any names, addresses or emails. Mr. Warfield was also supervised by a staff member as he reviewed the file, in order to enforce the limitations imposed on Mr. Warfield's review of the Board of Appeals files. Mr. Warfield alleges that there should be no limits on copying name and contact information from the files. Mr. Warfield also alleged that no legal justification for the restriction/redaction of personal contact information was provided in a written communication. Finally, Mr. Warfield alleges that his ability to inspect the documents was interfered with by the orally stated rules imposed by the Board of Appeals and sharp questioning as he made notes from the supervising Board employee.

**COMPLAINT FILED**

On August 11, 2009, Peter Warfield filed a complaint with the Sunshine Ordinance Task Force.

**HEARING ON THE COMPLAINT**

On August 25, 2009, Complainant Peter Warfield appeared before the Task Force and presented his claim. Respondent Agency was represented by Cynthia Goldstein, Director of the Board of Appeals.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Mr. Warfield told the Task Force that on July 30, 2009, he went to the Board of Appeals and dropped off a letter in support of an appeal filed by Ingar Horton against the Library which is seeking to demolish the Ortega branch. He was allowed to review the file he requested and requested a few copies of support and opposition letters. The copies were provided the next day without redaction. On August 3, 2009, he was orally informed by staff that contact information and names of individuals were being redacted. There was no

**ORDER OF DETERMINATION**

written procedures as the requirement was announced at a staff meeting. On August 5, 2009, Mr. Warfield was allowed to review the same file but under the watchful eye of an employee.

The Board of Appeals explained that Mr. Warfield came to the office to inspect the file, just a few hours before a Board of Appeals hearing on August 5, 2009, and rather than asking him to come back another day the department accommodated his request to review the file but imposed the new rules regarding the restriction on copying and redaction of personal contact information contained in the file. No justification for the restriction/redaction was made available to Mr. Warfield because when he arrived, staff was preparing for the meeting. The Task Force was told that the names of people testifying before the Board are exempt from disclosure under public meeting laws. The address and home were redacted to protect the privacy rights of the public.

The Task Force noted that it has consistently ruled that -- unless a member of the public requests anonymity, is a whistleblower, or someone who could otherwise face retribution if his/her name and contact information were known -- the name and contact information for members of the public submitting public testimony is a matter of public record and should be released upon request. There was no reason provided why that ruling would not apply to the facts in this Complaint.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the agency violated Section(s) 67.1 (g) and 67.21 of the Sunshine Ordinance by restricting Mr. Warfield's ability to note the names and contact information for individuals and entities who submitted public testimony to the Board of Appeals and/or for redacting the same from public records. To the extent any information has been withheld from Mr. Warfield, that Board is directed to release the same within 5 days of this Order of Determination. The Board is also directed to appear before the Compliance and Amendments Committee on September 8, 2009 to discuss compliance with this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 25, 2009, by the following vote: ( Cauthen / Goldman )

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



Richard Knee, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Peter Warfield, complainant  
Cynthia Goldstein, respondent  
Rosa Sanchez, Deputy City Attorney



SOTF/SOTF/SFGOV  
09/11/2009 03:03 PM

To Cynthia Goldstein/BOA/SFGOV@SFGOV  
cc libraryusers2004@yahoo.com, Kristin@Chu.com,  
rak0408@earthlink.net, amwashburn@comcast.net,  
doylegenie@yahoo.com  
bcc

Subject Fw: Order of Determination Against Board of Appeals

Ms. Cynthia Goldstein,

I am forwarding you an email that the Sunshine Ordinance Task Force's Compliance and Amendments Committee Chair Erica Crave-Green sent to this office.

Chris Rustom  
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  
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[http://www.sfgov.org/site/sunshine\\_form.asp?id=34307](http://www.sfgov.org/site/sunshine_form.asp?id=34307)

----- Forwarded by SOTF/SOTF/SFGOV on 09/11/2009 02:58 PM -----



Erica Craven-Green  
<ecravengreen@gmail.com>  
09/10/2009 10:51 AM

To SOTF <soft@sfgov.org>, Richard Knee  
<rak0408@earthlink.net>  
cc Erica Craven-Green <ecravengreen@gmail.com>  
Subject Order of Determination Against Board of Appeals

Ms. Goldstein,

I am writing to follow up on the Sunshine Ordinance Task Force's Order of Determination against the Board of Appeals and your September 8, 2009 letter to the Compliance and Amendments Committee.

While we are pleased to see that the Board of Appeals has reversed part of its prior policy and will no longer redact names or home addresses from correspondence submitted to the Board of Appeals prior to their public review or release, there are still a number of issues that need to be addressed before the Task Force can find the Board in compliance with its Order of Determination.

In particular, we need to confirm that all identifying and contact information for businesses and organizations will be released, as well as the identifying and contact information for individuals who submit correspondence on behalf of businesses or organizations. As you know, the identities and contact information for organizations and businesses were redacted from many of the copies requested by Mr. Warfield. This issue is not addressed in your letter, but we expect that the Board will produce this information as businesses and organizations do not have a cognizable privacy interest in their identity or any of their contact information.

In addition, there is the issue of the Board's redaction of the home phone number and "personal" email address of, we assume, individuals who submit correspondence on their own behalf, and not on behalf of businesses or organizations. This is an issue of ongoing concern and members of the Compliance and Amendments Committee request your presence at their next meeting, on October 13, 2009, to discuss this issue and explain the Task Force's prior determinations as to the appropriate release or redaction of phone numbers and email addresses.

Finally, per the Order of Determination requiring release within 5 days, we expect that the Board has or will immediately provide Mr. Warfield with new copies of the documents he requested where, in compliance with the Board's new policy, names and addresses are not redacted.

We look forward to seeing you on October 13, 2009.

Regards,

Erica Craven-Green  
Chair, Compliance and Amendments Committee

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Law Offices of Erica L. Craven-Green  
P.O. Box 460367  
San Francisco, CA 94146-0367  
[ecravengreen@gmail.com](mailto:ecravengreen@gmail.com)



Gavin Newsom  
Mayor

Cynthia G. Goldstein  
Executive Director

September 15, 2009

Erica Craven-Green  
Chair, Compliance and Amendments Committee  
Sunshine Ordinance Task Force  
c/o Chris Rustom, Office of the Clerk, Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2009 SEP 15 PM 1:04  
BY                      *pe*

Re: Complaint #09044 Order of Determination

Dear Ms. Craven-Green:

Thank you for your email message dated September 10, 2009 regarding the Board of Appeals' response to the Order of Determination in Complaint #09044.

Please be assured that it has been and will continue to be the practice of the Board of Appeals to disclose "all identifying and contact information" for businesses and organizations. It was not the intent of this office to redact any such business or organizational contact information and to the extent this may have happened, it was inadvertent.

With respect to the separate issue of the redaction of home telephone numbers and personal email addresses, while I appreciate the invitation to discuss this further with members of the Compliance and Amendments Committee, I do not believe my doing so will contribute to the resolution of this matter. As explained in my letter to the Committee dated September 8, 2009:

In light of the unique relevance of an individual's residence in the context of building, planning, and other land use-related permits, the Board has concluded that disclosure of home addresses in communications pertaining to such permits that are in the public review file serves a significant public interest that outweighs the privacy interests of the individuals in this information. Accordingly, the Board will comply with the order to disclose home addresses, as well as the names. The Board will continue, however, to redact home phone numbers and personal email addresses from correspondence to the Board before making the documents public because this information does not play a role in the Board's decision making process or assist citizens in monitoring government.  
(emphasis added)

In the context of building, planning, and other land use-related permits before the Board of Appeals, we intend to continue to draw this distinction between home addresses on the one hand (which shall be disclosed), and home phone numbers and personal email addresses on the other (which shall remain protected), for the reasons outlined above. It is my understanding that the City Attorney's Office has advised City departments to redact home telephone numbers and personal email addresses in order to protect individuals' privacy rights, and we intend to adhere to that practice.



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Erica Craven-Green  
Chair, Compliance and Amendments Committee  
Sunshine Ordinance Task Force  
c/o Chris Rustom, Office of the Clerk, Board of Supervisors  
September 15, 2009  
Page 2.

Regarding Mr. Warfield's request for documents, my office has reached out to Mr. Warfield to let him know that we are prepared to provide him with copies of letters from members of the public that do not have names and addresses redacted. We are awaiting his reply in order to know how best to proceed in delivering them to him.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia G. Goldstein", with a horizontal line extending to the right from the end of the signature.

Cynthia G. Goldstein  
Executive Director

