

Date: Nov. 10, 2009

Item No. 6  
File No. 09056

**SUNSHINE ORDINANCE TASK FORCE**  
**Compliance and Amendments Committee**  
**AGENDA PACKET CONTENTS LIST\***

- Peter Warfield v Clerk of the Board**
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Completed by: Chris Rustom

Date: Nov. 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.

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION**  
November 3, 2009

DATE THE DECISION ISSUED  
October 27, 2009

*PETER WARFIELD v. CLERK OF THE BOARD OF SUPERVISORS (09056)*

**FACTS OF THE CASE**

Complainant Peter Warfield alleges that he requested information from the Clerk of the Board of Supervisors (the "Clerk") concerning support and opposition letters related to legislation being considered by the Board of Supervisors ("BOS"). He further alleges that the Deputy Clerk provided documents responsive to the request, but that information regarding the sender of the correspondence (e.g., home addresses, email addresses, phone numbers), had been redacted. He further alleges that the Clerk failed to provide written justification for withholding this information.

**COMPLAINT FILED**

On September 9, 2009, Mr. Warfield filed a Complaint against the Clerk for alleged violations of Sections 67.21(a) & (b), 67.26 and 67.27 of the Sunshine Ordinance.

**HEARING ON THE COMPLAINT**

On October 27, 2009, Complainant Peter Warfield appeared before the Task Force and presented his claim. Rick Caldera, Legislative Deputy Director in the Clerk's Office presented the agency's defense.

Mr. Warfield said the law permits redaction of only certain types of information, which are specified in the Brown Act, the California Public Records Act and the Sunshine Ordinance. The law does not allow the redaction of personal contact information, he said.

Mr. Caldera, said staff has been redacting according to the Clerk's policy, which was under review, and that an update is expected within the next month. He said the reason

for the current policy was that personal information has a privacy dimension and citizens should not have to give up their privacy to serve or contact the government.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force noted that it has consistently ruled that -- unless a member of the public requests anonymity, is a whistleblower or could otherwise face retribution if his/her name and contact information were known -- the names and contact information for members of the public submitting public testimony are a matter of public record and should be released upon request.

For example, in the Task Force's March 31, 2008 Order of Determination in the KIMO CROSSMAN v. SOTF ADMINISTRATOR (08013) complaint, the Task Force held that the Task Force Administrator was not justified in redacting personal email addresses from correspondence submitted to the Sunshine Ordinance Task Force. Specifically, the Task Force ruled as follows:

Based on prior Orders of Determination where the Task Force found that e-mail addresses are, in the absence of particular circumstances showing that the submitter has a need for confidentiality (*i.e.*, a whistleblower, anonymous request) e-mail addresses are generally not exempt from disclosure under the Sunshine Ordinance. See, *e.g.* 07008 ordering release of e-mail addresses; see also *Holman v. Superior Court*, 31 Med. Law Reporter 1993, 2003 Cal. App. Unpub. Lexis 6512 (2003) (unpublished) (ordering release of email addresses contained in government records); *cf.* Cal. Govt. Code § 6254.3 (specifically exempting only home address and telephone numbers of state employees from disclosure under CPRA).

The Task Force finds the case law regarding protection of privacy cited by the Administrator to be factually inapposite and that there is, generally and except for limited factual circumstances indicated above, no reasonable expectation of privacy in e-mail addresses contained in governmental records.

In this case, there is no credible indication that individuals submitting letters in support of or in opposition to legislation -- who include in their submittals their personal contact information and who do not request confidentiality -- have a reasonable expectation that their contact information will remain private and not be seen by members of the legislative body or members of the public.

## DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Clerk of the Board of Supervisors violated Section(s) 67.21 (a) and 67.21 (g) for failure to produce public information and not explaining the

reason for its refusal. That violation restricted Mr. Warfield's ability to note the names and contact information for individuals and entities who submitted public testimony to the Clerk. The Clerk's Office is directed to produce unredacted copies of the records requested by Mr. Warfield within 5 calendar days of this Order of Determination, and appear before the Compliance and Amendments Committee on November 10, 2009, to discuss compliance with this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 27, 2009, by the following vote: ( Washburn / Cauthen )  
Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Knee  
Excused: Manneh, Goldman, Williams



Richard A. Knee, Chair, Chair  
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney  
Peter Warfield, Complainant  
Rick Caldera, Respondent