

Date: Jan. 13, 2010

Item No. 6  
File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Creation of guide on how to file a complaint
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Completed by: Chris Rustom

Date: Jan. 10, 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.

## San Francisco Sunshine Ordinance Task Force

### PUBLIC COMPLAINT PROCEDURE

Consistent with the language and spirit of the San Francisco Sunshine Ordinance (Ordinance) to provide the most open government possible (see City Administrative Code Section (§) 67.1), all inferences and evidence shall be viewed in the light most favorable to the petitioner.

Revised 4/26/2005, Revised as to form 5/22/2007, 3/25/2008 & 4/28/09

---

The Sunshine Ordinance Task Force (SOTF) has an obligation under San Francisco Administrative Code §§67.21 (e), 67.30(c) and 12L.1-10 to respond to public complaints.

#### A. Inquiries In Person or by Phone

It is the goal of the SOTF to help the public gain access to public records and meetings. The staff of the SOTF will therefore work with members of the public to help achieve such access in order to avoid the need for filing complaints with the SOTF.

1. The Administrator shall discuss the request with the member of the public and attempt, with the assistance of the City Attorney, to mediate the request.
2. If unable to facilitate access to a desired record or to a public meeting, the SOTF staff shall advise the members of the public of his/her right to file a petition with the Supervisor of Records (the City Attorney's Office) and to pursue the SOTF complaint process, and shall send the complainant a packet of information regarding the complaint process.

#### B. Filing a Complaint with the SOTF

1. A letter or complaint form may be submitted to the SOTF via mail, fax or electronic mail (email), or in person. If a complaint letter is received, the Administrator shall complete a complaint form and send a copy to the complainant for their review. The complaint form shall include a box to indicate if the complainant wants a public hearing before the Task Force or a pre-hearing conference before the Complaint Committee to focus the complaint or to otherwise assist the parties to the complaint. Once filed a copy of the complaint shall be sent to the Chairs of the full Task Force and Complaint Committee, and the SOTF Deputy City Attorney.
2. Upon filing a complaint, the complainant shall be given a condensed checklist of procedural requirements (i.e. complaint process, documentation deadlines, etc.). The responding City department/agency (respondent) shall be sent written notice of the complaint with a checklist of procedures, with a request to respond to the charges in the complaint within 5 business days. The Deputy City Attorney who advises City departments/agencies may assist the respondent in preparing a response to the complaint. (See Addendum)

3. Hearing Schedule:
  - (a) If the responding City department (respondent) does not contest jurisdiction or there is no request for a pre-hearing conference to focus the complaint or otherwise assist the parties to the complaint, a hearing will be scheduled with the Full Task Force.
  - (b) If the responding City department (respondent) contests jurisdiction or there is a request for a pre-hearing conference to focus the complaint or otherwise assist the parties to the complaint a hearing will be scheduled with the Complaint Committee prior to the hearing before the Full Task Force.
4. The Administrator shall advise the complainant and the affected department/agency of the date, time and location of the Complaint Committee and/or Full Task Force meetings at which the complaint will be discussed. The respondent shall have a knowledgeable representative and/or its custodian of records at the meeting. The Administrator shall inform both parties of the deadline to submit any supporting documentation. Both parties shall be held to the stated deadlines: five working days before the hearing.
5. The Administrator shall gather all relevant documents prior to the forthcoming hearing/s and shall send the documents to the members for their review. When the documents exceed 75 pages, the complaint will be forwarded without its full exhibits, with an indication that the full exhibits are on file with the Administrator.
6. Complaint Committee Hearings:
  - (a.) The SOTF Deputy City Attorney, shall provide a written opinion to the Complaint Committee as to whether the SOTF has jurisdiction over the complaint.
  - (b.) The Complaint Committee shall review a complaint where jurisdiction is contested or a pre-hearing conference is requested at its next meeting and recommend whether the SOTF has jurisdiction. The Committee shall also focus the issues for the complainant, respondent and SOTF, or otherwise assist the parties.
7. When the Complaint Committee recommends accepting jurisdiction, it shall do so at the next regular SOTF meeting unless this would result in a violation of the 45-day time limit for resolving complaints (mandated by §67.21); in such a case, a special meeting shall be called to hear the matter. The complainant may waive the 45-day rule or request a special hearing within the 45-day period.
8. Continuances:
  - (a) A complainant may waive the 45-day rule and if a request for continuance is submitted at least three business days in advance of the scheduled hearing it shall be granted. For requests submitted less than three business days in advance or for requests for subsequent continuances, the request shall be granted by a simple majority vote of the members present.
  - (b) If a respondent submits a request for continuance at least three business days in advance, upon agreement of the complainant the continuance shall be granted. If the complainant does not agree to the continuance, the

request for continuance is not made within three business days, or the respondent is requesting a subsequent continuance, such continuance shall be granted by a simple majority vote of the members present.  
(Adopted 5/22/07)

### **C. Public Hearing Procedure**

If jurisdiction is not contested or the Complaint Committee recommends jurisdiction, the complainant and respondent shall receive a written notice of the specific issues that shall be before the SOTF for a hearing, and they shall be advised to submit any evidence no later than 5 working days prior to the hearing.

#### **Documentation**

For a document to be considered, it must be received at least 5 working days before the hearing (Tuesday before the actual meeting). At the hearing before the Task Force, should the complainant submit additional documentation that has not been submitted to all parties, he or she shall be given the following options:

- (1) Proceed with the hearing without SOTF consideration of the additional documentation;
- (2) Waive his/her right to a hearing within 45 days and ask for the hearing to be continued; but
- (3) If the additional documentation raises a new issue, the complainant may
  - proceed with the hearing and file a new complaint on the additional issue(s), or
  - withdraw and amend the complaint to include the new issue(s).

### **D. Hearing and Findings of the Task Force**

1. Prior to the meeting, the SOTF Deputy City Attorney shall prepare an instructional letter to assist the SOTF in understanding the issues. All members of the SOTF are responsible for being familiar with the complaint issues prior to the meeting.
2. The SOTF shall conduct the public hearing with the complainant and respondent present.
3. After hearing all testimony, the SOTF shall vote on an Order of Determination or other directives written by the Chair of behalf of the Task Force stating whether the record is public and/or whether the open meeting laws were obeyed.
4. After the SOTF determines a course of action, the complainant and respondent shall be notified in writing.

**E. Reconsideration of Task Force Findings**

1. Within 10 days of receipt of the Order of Determination, either the complainant or respondent may petition the SOTF for a reconsideration only if information exists that was not available at the time of the hearing and the petitioning party must present an offer of proof as to the new information.
2. The Task Force shall consider the petition at its next scheduled meeting. If a petition for reconsideration is granted, a new hearing on the complaint shall be scheduled at the next SOTF meeting. (Approved by Task Force 10/26/04)

**F. Department to Comply with Determination of the SOTF**

1. The Administrator shall send the Order of Determination to the complainant and the respondent and request a written response within 5 days of the receipt of the Order and as necessary request a written response, which shall be monitored by the SOTF Compliance and Amendments Committee and/or any committee recommended by the Chair. If a public records violation is found, the custodian of records shall be ordered to provide the record to the complainant within 5 days after the issuance of the Order of Determination. The Compliance and Amendments Committee shall review whether there has been compliance with the Order of Determination.
2. If there is a failure to comply, the Compliance and Amendments Committee may recommend that the SOTF notify the District Attorney, the California Attorney General, the Board of Supervisors and/or the Ethics Commission, who may take measures they deem necessary to ensure compliance with the Ordinance. A copy of the Order of Determination shall be included with such notification.
3. If appropriate, the respondent and complainant shall be sent a notice that the District Attorney, California Attorney General, Board of Supervisors and Ethics Commission have been contacted, and of the complainant's independent right to pursue the issue in court.

**G. Documentation and Information Regarding Individual Complaints:**

1. The Administrator shall keep a file of all documents and a log of all petitions filed with the SOTF, including the date of each petition, the department/agency against which it was made, the nature of the complaint and its status. This shall be in compliance with its records and retention schedule.
2. Copies of all correspondence relating to a complaint shall be sent to all parties.

## Addendum

### Complaint Process

1. You may fill out a complaint form online or access a form at [sfgov.org/site/sunshine](http://sfgov.org/site/sunshine), or you may send your own letter filing a formal complaint. File the complaint with the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Pl., Room 244, San Francisco, CA 94102-4689; or you may send it by fax to (415) 554-7854 or email to [sotf@sfgov.org](mailto:sotf@sfgov.org).
2. After you file a complaint, the Complaint Committee of the Sunshine Ordinance Task Force (SOTF) shall, if jurisdiction is contested and/or a request for a pre-hearing conference is received, review it to determine if the SOTF has jurisdiction and to focus on the relevant issues in the case.
  - Jurisdiction is defined as the authority to address a given issue(s), as specified in the Sunshine Ordinance.
3. If the Complaint Committee finds no jurisdiction over the violations alleged in the complaint, the complainant is notified of the decision and the complainant may request reconsideration before the SOTF at its next scheduled meeting. Should the SOTF find jurisdiction, a full hearing on the merits will be scheduled.
4. If the Complaint Committee finds the SOTF has jurisdiction, the complainant, respondent and SOTF members are notified of the decision.
5. The complaint is then scheduled for a hearing at the next meeting of the SOTF, which has the final say on the jurisdiction issue.
6. If additional information is to be submitted by the complainant or respondent, it must be submitted to the Administrator at least five working days before the scheduled hearing before the Task Force.

If either party submits additional material after the deadline, they will be informed that

  - a. The Task Force may proceed without considering the new material.
  - b. The complainant may waive the 45-day time limit and continue the hearing to the next Task Force meeting.
  - c. The complainant may withdraw the complaint and file a new complaint.
  - d. The complainant may proceed to hearing with their current complaint and file a new complaint and use the new information to support the freestanding separate complaint.
7. After the public hearing, the Task Force may make an Order of Determination regarding the complaint.
8. For further information, contact the Sunshine Ordinance Task Force Administrator, at (415) 554-7724.