

Date: March 11, 2010

Item No. 2

File No. 09057

SUNSHINE ORDINANCE TASK FORCE

Education, Outreach and Training Committee

AGENDA PACKET CONTENTS LIST*

Peter Warfield v Clerk of the Board

Completed by: Chris Rustom

Date: March 8, 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



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
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January 19, 2010

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

In re: Sunshine Ordinance Task Force File No. 09057, Peter Warfield vs. Clerk of the Board of Supervisors

Dear Ms. Calvillo:

Please be informed that the Sunshine Ordinance Task Force voted on January 5, 2010, to find that your Office had willfully violated the Sunshine Ordinance by failing to comply fully with an Order of Determination issued on November 3, 2009, pursuant to the above-cited complaint; and that the Task Force has referred said matter to the Ethics Commission for enforcement action.

The Order of Determination included a finding that your Office had violated Sunshine Ordinance 67.21(b) by making impermissible redactions when providing certain records to Mr. Warfield; specifically, your Office had deleted contact information on individuals serving on the Library Citizens Advisory Committee (LCAC), when providing a copy of the LCAC's roster to Mr. Warfield, and had provided no written legal justification for said deletion. Section 67.21(b):

"A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten

days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.”

Following the issuance of the Order of Determination, your Office reviewed its policy on redacting personal information and revised that policy on November 10, 2009, to declare that your Office would:

- “Liberally provide for the public’s access to information, documents and records;”
- Not redact “personal information contained in general communications submitted to the Board of Supervisors/Clerk of the Board’s Office;” and
- Redact home street address numbers, home telephone numbers, home fax numbers and home email addresses from Board/Commission/Task Force applications, including attachments and/or supporting documentation.

While noting that the new policy is an improvement over the previous policy, the Task Force has consistently held that all personal contact information except a home phone number is publicly disclosable unless the person providing the information requests a specific redaction(s) or the person believes that disclosure of the information would put him/her at risk of retaliatory harm, such as in a case of whistle-blowing.

At the Task Force’s January 5, 2010 meeting, your Office’s representative, Madeleine Licavoli, said that under the new policy, Mr. Warfield could see the LCAC’s membership list without redactions, because the policy allows a member of a public body to obtain an unredacted list of the members of that body. Mr. Warfield said this did not satisfy him because members of the general public would not get the unredacted list. The Task Force agreed with his position in finding your Office in willful violation.

Also when hearing Mr. Warfield’s case, the Task Force heard from Kimo Crossman during public comment that in Florida, persons communicating with government agencies are informed that any and all personal information they provide is disclosable public information; thus, it is up to the individuals to withhold information that they want to keep confidential. The Task Force believes this is a best practice that your Office – indeed, all City/County entities – would do well to adopt.

The Task Force encourages you to revisit once more the policy at issue; toward that end, the Task Force’s Education, Outreach and Training Committee will schedule a hearing to which your Office will be requested to send a knowledgeable representative. Please do

not hesitate to contact the Task Force with any concerns or questions; please direct any communications through Task Force Clerk Chris Rustom, (415) 554-7724, SOTF@sfgov.org.

Thank you for your kind attention.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Knee". The signature is written in a cursive style with a large initial 'R'.

Richard A. Knee
Sunshine Ordinance Task Force Chair

Cc: Sue Cauthen, Education, Outreach and Training Committee Chair; Jerry Threet, Deputy City Attorney; Erica Craven-Green, Sunshine Ordinance Task Force Vice-Chair; Peter Warfield

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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 (09057)

FACTS OF THE CASE

Complainant Peter Warfield alleges that he requested information from the Clerk of the Board of Supervisors (the "Clerk") concerning the current membership of the Library Citizen Advisory Committee ("LCAC"). He further alleges that the Deputy Clerk requested that he return in about three hours to allow the clerk's office time to redact documents responsive to the request, causing a delay in his ability to review the remainder of the file. Mr. Warfield alleges that he then requested only the two-page current membership roster, which was promptly provided with redaction of contact information of the LCAC members, without explanation of the justification for withholding that 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. Respondent agency was represented by Rick Caldera, Legislative Deputy Director in the Clerk's Office.

Mr. Warfield reiterated that contact information for members of boards and committees should be public. He told the members that individuals have plenty of time to decide on what kind of information they would like to give out and withhold, and disputed the notion that identity theft (which happens on a large scale involving spammers and rarely as the result of targeting a specific individual) does not defeat public access. Mr. Warfield noted that it was hard to definitively determine where information had been redacted from the document produced because of the use of correction tape to redact

left large blank spaces and that there was no information on why the redaction had occurred.

Mr. Caldera agreed that a line should have been drawn or other marking used on redacted documents to identify where information was redacted. He also noted that the clerk's office was reviewing their policy for redaction of personal information but that the staff was working under the old rules until a new policy is implemented.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force ruled that the contact information for individuals serving on government boards and committees should be publicly accessible. That members of the public need a way to be able to personally contact elected and appointed members of boards and committees who are making and implementing policy for the City. The Task Force also noted that individuals can take steps to protect their privacy while also making themselves accessible to members of the public by, for example, setting up an email account (through Gmail, for example) or a PO Box that would be used for all City business.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.21 (a) 67.21 (b) for failure to provide records for inspection or review on a timely basis and for making impermissible redactions. The Clerk's Office is directed to produced unredacted copies of the documents Mr. Warfield requested within 5 calendar days of this Order of Determination and to 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: (Knee / Johnson)
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, complaint
Rick Caldera, respondent