

Date: Jan. 5, 2010

Item No. 4
File No. 09039

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- O'Flynn against Mayor's Office of Housing
-
-
-
-
-
-
-
-
-
-

Completed by: Chris Rustom

Date: Dec. 30, 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

October 6, 2009

DATE THE DECISION ISSUED

September 22, 2009

RITA O'FLYNN v. MAYOR'S OFFICE OF HOUSING (09039)

FACTS OF THE CASE

Complainant Rita O'Flynn has been communicating with and submitting record requests to the Mayor's Office of Housing (MOH) regarding, among other issues, a federal Housing and Urban Development (HUD) Department Lead Abatement Grant for lead abatement at a property owned by Ms. O'Flynn and administered by MOH. In March 2008, Ms. O'Flynn requested the opportunity to review the entire HUD Lead Abatement files with respect to her property at the MOH. After she reviewed the files, she requested that they be copied in their entirety. Upon receiving the copies, she realized that the provided records did not include emails regarding 1672/1674 Great Highway that she had reviewed in person, including an email from a tenant at Ms. O'Flynn's property to the MOH. Ms. O'Flynn then submitted a specific request for all email records regarding the lead abatement grant and her property, and she was told that the email records had been deleted since MOH keeps electronic records for only two years. Ms. O'Flynn also alleged that on September 11, 2009, MOH produced a February 2007 email between two employees of the MOH (Mr. Michael Palmer and Ms. Myrna Melgar-Iton) regarding 1672/1674 Great Highway that Ms. O'Flynn claimed was not produced in response to her original request, and should have been produced from Ms. Melgar-Iton's emails at MOH had those emails not been deleted. Mr. Oliver Hack of the MOH indicated that the Palmer/Melgar-Iton email was found as a result of a subsequent search of Mr. Palmer's email and he produced it because he wasn't sure if Ms. O'Flynn had already received it.

COMPLAINT FILED

On July 20, 2009, Complainant Rita O'Flynn filed a complaint against MOH for its deletion of the email records while the records were the subject of a Sunshine Ordinance Request for Records.

HEARING ON THE COMPLAINT

On August 25, 2009, complainant Rita O'Flynn appeared before the Sunshine Ordinance Task Force and Oliver Hack of the Mayor's Office of Housing appeared for the agency. Ms. O'Flynn presented her case that the MOH had failed to produce copies of responsive emails that she had reviewed and requested copies, and then had impermissibly deleted the original emails. Mr. Hack responded that there was no evidence that any responsive emails had in fact been deleted and not produced to Ms. O'Flynn. The Task Force found that, on the record before it, there was insufficient evidence indicating that the MOH had, in fact,

ORDER OF DETERMINATION

failed to produce copies of the emails and then deleted the originals. In light of the lack of evidence, the Task Force continued the matter for a month to allow Ms. O'Flynn to provide evidence to the Task Force substantiating her position.

On September 22, 2009, Ms. O'Flynn and Mr. Hack appeared before the Task Force again. Ms. O'Flynn's amended submission to the Task Force included specific allegations identifying emails within the MOH that were responsive to her request and should have been produced originally, but were not, including the email between Ms. Melgar-Iton and Ms. O'Flynn's tenant and the email between Mr. Palmer and Ms. Melgar-Iton about Ms. O'Flynn's property. Mr. Hack from the MOH did not respond or address Ms. O'Flynn's specific evidence, but reasserted that the MOH had produced all responsive emails from Ms. Melgar-Iton and other members of the MOH staff and that any deleted emails were properly deleted after two years in accordance with the MOH records retention schedule. Mr. Hack also noted that he produced the February 2007 email between Ms. Melgar-Iton and Mr. Palmer from Mr. Palmer's email as a result from a subsequent search for responsive emails regarding her property.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that Ms. O'Flynn had sufficient evidence to support the claim that responsive emails had not been produced and/or were improperly deleted by the MOH and that the MOH did not adequately rebut Ms. O'Flynn's evidence, including explaining why the February 2007 email was found in Mr. Palmer's active email but not Ms. Melgar-Iton's active email. The Task Force also noted that according to the Mayor's Office's record retention policy all correspondence regarding grants and contracts administered by the Mayor's Office should be kept for four years at a minimum. While the lead abatement work at 1672/74 Great Highway may have been completed in 2005, the O'Flynn's were still obligated to comply with various grant requirements, as shown by the February 2007 draft letter from the MOH, records regarding that property and the grant, should not have been deleted in 2009 under the applicable records retention policy. ..

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Mayor's Office of Housing violated Sunshine Ordinance Sections 67.21 for failure to produce requested records and 67.29-7(a) for failure to maintain records as required by the Administrative Code and Mayor's Office's retention policy. The MOH is directed to ask the Department of Technology to restore Ms. Melgar-Iton's emails that fall within the time frames Ms. O'Flynn requested during her original request. This Order is limited to Ms. Melgar-Iton's emails, as the evidence provided indicated that Ms. Melgar-Iton's emails were not produced and subsequently deleted (as opposed to other members of the MOH as to whom no showing had been made that emails have been improperly deleted). The cost to restore and review Ms. Melgar-Iton's records for responsive emails is to be borne by the MOH. The agency shall appear before the Compliance and Amendments Committee on October 13, 2009, to discuss compliance.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on September 22, 2009, by the following vote: (Craven-Green / Goldman)

ORDER OF DETERMINATION

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



Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Rita O'Flynn, complainant,
Oliver Hack, respondent

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

November 12, 2009

Douglas Shoemaker
Oliver Hack
Mayor's Office of Housing

Re: Compliance with Order of Determination 09039 *Rita O'Flynn v. Mayor's Office of Housing*

Mr. Shoemaker and Mr. Hack:

I write to follow up on the September 22, 2009 Order of Determination referenced above.

The Compliance and Amendments Committee of the Sunshine Ordinance Task Force held a hearing on the status of the compliance with the O'Flynn Order of Determination on November 10, 2009. Ms. O'Flynn was present to update us on her view of the MOH's compliance. Unfortunately, no one from the MOH was present to respond. As such, we only heard one side of the story and have unanswered questions about the MOH's compliance efforts.

For example, the Committee wanted to know:

1. On what date did MOH ask the Department of Technology to provide backups and/or restore Ms. Melgar-Iton's email pursuant to the Task Force's Order of Determination?
2. What, specifically, did the MOH ask the Department of Technology to provide and how was that request communicated (phone, email, letter, etc.)
3. When did the Department of Technology comply with the MOH's request and what did the Department of Technology provide to the MOH (e.g., emails backed up on specific dates on CD or other medium, for which specific dates).
4. How did the MOH restore the emails to search them (i.e., by specific date or otherwise), and
5. Whether or not the MOH withheld any emails from production and, if so, how many and on what grounds (e.g., attorney client privilege).

As it stands now, without this missing information, the Compliance and Amendments Committee cannot determine whether there was compliance with the O'Flynn Order of Determination. In light of that fact, the Compliance and Amendments Committee continued this item to our next meeting on December 8, 2009.

In conclusion, your office may well be in full compliance with the Order of Determination, but by failing to send a representative to the November 10, 2009, meeting, we were not able to conclude this item.

We expect to hear from a knowledgeable representative at our next meeting and, hopefully, conclude this item or, if we find there has not been substantial compliance, send this matter back to the full Task Force for potential referral to the Ethics Commission or another appropriate body.

Sincerely

A handwritten signature in black ink, appearing to read 'E. Craven-Green', written in a cursive style.

Erica L. Craven-Green
Chair, Compliance and Amendments Committee

cc: Rita O'Flynn

