

Date: Jan. 5, 2010

Item No. 6

File No. 09069

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Asian Law Caucus against Mayor's Office**
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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
December 21, 2009**

DATE THE DECISION ISSUED
December 1, 2009

ASIAN LAW CAUCUS V. MAYOR'S OFFICE (09069)

FACTS OF THE CASE

The Asian Law Caucus said that on Sept. 2, 2009, it submitted an Immediate Disclosure Request to the Mayor's Office for a copy of a City Attorney Office memo that was allegedly leaked to the San Francisco Chronicle newspaper and for copies of any communications the Mayor's Office had with the Chronicle regarding the issue. The Asian Law Caucus alleges that the Mayor's Office responded late to the first request and not at all to the second request.

COMPLAINT FILED

On October 13, 2009, the Asian Law Caucus filed a complaint with the Sunshine Ordinance Task Force.

HEARING ON THE COMPLAINT

On December 1, 2009, Asian Law Caucus staff attorney Angela Chan presented the organization's case to the Task Force. The Mayor's Office was not represented. There was also no one in the audience who spoke or presented facts or evidence on behalf of the respondent. Chair Richard Knee did note that Brian Purchia of the Mayor's Press Office was in the audience earlier, but left a note to say that he had to leave to respond to press requests.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Chan told the Task Force that the Mayor's Office responded late to her first request by sending her a link to the City Attorney's website where the memo in question had been posted. When Ms. Chan followed up on the status of the second request, she was told that the previous email completed the Mayor's Office's response. Ms. Chan sent another email, warning the Mayor's Office that if it did not respond, she would file a Sunshine complaint. The Mayor's Office has not responded and has not provided justification for withholding the documents relevant to her second request as provided by Sec. 67.27, she said. The Mayor's Office has a duty to maintain records of these communications under Sec. 67.29-7 (a) and these communications must be kept in accordance with Sec. 67.29-1, regardless of

ORDER OF DETERMINATION

the replacement, retirement or transfer of public officials, she said. The documents are public records covered by CPRA 6252 (e) and (g) and must be kept under Sec. 67.20 (b) of the Ordinance, she said. Ms. Chan argued that there was no privilege or exclusion for the documents and no attorney-client privilege existed because the Mayor's Office has released the document. She said Mayor Gavin Newsom needs to explain to the residents of San Francisco by whom, why and how the document was leaked.

DECISION AND ORDER OF DETERMINATION

The Task Force was troubled by the fact that the Mayor's Office representative left before the matter was called, because Task Force members needed to know the Mayor's position and response. After further debate the Task Force voted to continue the matter of whether documents had been impermissibly withheld by the Mayor's Office to its next meeting on January 5, 2010, to allow the Mayor's Office to respond to Ms. Chan's allegations.

However, the Task Force did find the Mayor's Office:

- in violation of Sec. 67.21 (e) for failure to appear, by the following vote (Cauthen / Washburn)

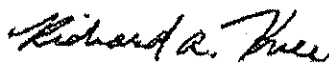
Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee
Excused: Johnson, Chu, Chan, Williams

- in violation of Sec. 67.27 for failure to provide justification for withholding, by the following vote (Cauthen / Washburn)

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

The motion to continue was by the following vote (Knee / Craven-Green)

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



Richard Knee
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Asian Law Caucus, Complaint
Mayor's Office, Respondent

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December 9, 2009

Honorable Gavin Newsom
Mayor of San Francisco
City Hall, Room 200
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

Dear Mayor Newsom:

As you might be aware, your office is the respondent in a complaint (File No. 09069) that the Asian Law Caucus (ALC) filed with the Sunshine Ordinance Task Force (SOTF) on October 13, 2009.

The complaint alleges violation of Section 67.25 of the Sunshine Ordinance, which establishes a time limit for responding to requests for immediate disclosure (IDR) of public records; that your office failed not only to respond in timely fashion but also to provide all of the documents requested.

The requested records included:

1. All documents that the Mayor's Office provided to the San Francisco Chronicle – including any reporter, staff, employee, representative or agent of the newspaper – relating to the City of Refuge Ordinance, undocumented youth, immigrant youth, or pending or introduced legislation on the confidentiality of juveniles' immigration status; and
2. All documents – including memoranda, letters, reports, data compilations and statistics – and communications relating to a City Attorney's memorandum regarding the City of Refuge Ordinance, undocumented youth, immigrant youth, or pending or introduced legislation on the confidentiality of juveniles' immigration status.

The request stated that unless another date was specified, it applied to documents prepared, transmitted or in effect on or after June 1, 2009.

The ALC states that it sent the request by fax and first-class mail to your Office and the City Attorney's Office on September 2, 2009; and that on the following day, your Office complied with the request for the second set of documents and refused to provide the first set.

The SOTF conducted a public hearing on this matter on December 1, 2009, but the person representing your office, Brian Purchia, left the meeting before the hearing began, telling the SOTF Clerk that he had to meet with the press. Unable to hear testimony from and to ask questions of Mr. Purchia, the SOTF continued the matter to its next meeting, January 5, 2010.

The SOTF will need a representative of your Office who is fully knowledgeable on this matter to attend that meeting and to be able to answer questions about the response to the IDR, in order to determine whether your Office fully complied with the IDR.

The SOTF wants to know specifically:

1. How did your Office produce the memorandum for the San Francisco Chronicle? That information would indicate whether there are IDR-responsive documents (e-mails, faxes, logs, etc.) that should have been provided to the ALC, or whether no additional documents exist (i.e., because it was hand-delivered).
2. If the memorandum was not hand-delivered, what steps did your Office take to search for IDR-responsive records (e-mails, faxes, logs, etc.)?

Additionally, please be reminded that your Office failed to follow SOTF guidelines that call for responding to the ALC's complaint in writing within five days after its being filed with the SOTF; the SOTF still awaits that written response.

Finally, the SOTF takes an extremely dim view of your Office's absence from the December 1, 2009, hearing. Mr. Purchia was or should have been fully aware of the approximate time during the meeting that the hearing would take place, and approximately how long the hearing would last. If he knew or suspected that he would not be able to stay for the hearing, he should have found an alternate to speak for your Office.

Accordingly, please be informed that failure by your Office to have at the January 5, 2010, hearing a representative who is knowledgeable on this matter could lead to a finding of willful failure to comply with Sunshine Ordinance Section 67.21(e), and that such a finding could be construed as official misconduct meriting referral of the matter to a City, County or State entity empowered to impose penalties. Thank you for your kind attention.

Sincerely,



Richard A. Knee
Sunshine Ordinance Task Force Chair

Cc: Asian Law Caucus
Brian Purchia, Mayor's Office