

Date: January 6, 2009

Item No. 2

File No. 08051

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Paul Horcher v Planning Department**
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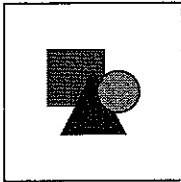
Completed by: Chris Rustom

Date: December 29, 2008

***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.



DENNIS J. HERRERA
City Mr.

ERNEST H. LLORENTE
Deputy City Mr.

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

December 17, 2008

*PAUL HORCHER, ESQ. v. SAN FRANCISCO CITY PLANNING DEPARTMENT
(08051)*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

In his letter dated February 14, 2008, Complainant David Waggoner stated the following:

On July 21, 2008, Complainant Paul V. Horcher ("Horcher"), an Attorney retained by Well-Care Acupuncture & Health Care, Inc. ("Well-Care") to represent Well-Care before the Board of Appeals, made a public records request for the City Planning files that involve Well-Care's appeal of City Planning's Notice of Violation issued by the Zoning Administrator.

On July 24, 2008, City Planning provided its files for Mr. Horcher's review. Mr. Horcher believed that the files that City Planning provided was incomplete and that documents may have been removed prior to their release to Mr. Horcher. On October 15, 2008, during the hearing on the appeal, City Planner Tina Tam told the Board of Appeals that City Planning continues to receive numerous complaints of illegal massage use at the business run by Well-Care. Mr. Horcher reviewed the files provided to him and did not find the complaints alluded to by City Planner Tam. During the hearing, City Planner Tam allegedly stated that there is a City Planning file for the appeal and a separate City Planning file for enforcement proceedings. The enforcement file was allegedly not provided to Mr. Horcher.

COMPLAINANT FILES COMPLAINT:

On November 3, 2008, Mr. Horcher filed a complaint against the City Planning Department alleging violation of section 67.24 of the Sunshine Ordinance

TESTIMONY OF THE COMPLAINT COMMITTEE HEARING:

On December 9, 2008, Mr. Horcher spoke before the Complaint Committee. Mr. Horcher said he asked to see all relevant documents related to an address on Geary Street in July. He was given access to the file but noticed that it was very thin. Also missing were the complaint. He noticed that because three years ago the same parties were involved in the same procedure over the same issues. False testimony was given, he said, and there weren't any

Memorandum

documentation in the file to support it. He said he went back to the Planning Department in November and found the file to be still lacking.

On December 9, 2008, Rachna Rachna of the Planning Department appeared before the Complaint Committee and stated that she is the enforcement planner in the case. She said Mr. Horcher came to the department on July 23, 2008 and was provided with the planning enforcement file as it existed at the time. The file did not have the complaints from the neighbors at the time but was placed in the file later and made available when Mr. Horcher returned on November 10, 2008. On the number of files, she said the second file did not exist at the time Mr. Horcher visited the department in July. That file contained documents Mr. Horcher had submitted in support of his appeal. She also said that the volume of the file had increased over a four-month period that started in July. She added that she and her department work with the public daily and there was no reason to hide a file's contents.

APPLICABLE STATUTORY SECTION;

1. California Constitution, Article I, Section 3 that states the general principals of public records and public meetings.
2. Sunshine Ordinance Section 67.1 that addresses Findings and Purpose.
3. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents including records in electronic format.
4. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
5. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals with justification for withholding.
6. California Public Records Act, Government Code Section 6253 deals with public records open to inspection, agency duties, and time limits.
7. California Public Records Act, Government Code Section 6255 deals with justification for withholding of records.
8. California Public Records Act, Government Code Section 6254 deals with certain records that are exempt from disclosure.

APPLICABLE CASE LAW:

none

Memorandum

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

- Mr. Horcher made a public records request for certain records that involved a certain property on Geary Street.
- That property was the subject on a City Planning Enforcement Action and Mr. Horcher was retained by the property owners to represent their interests at the City Planning hearing.
- Mr. Horcher received a City Planning file for review.
- At the City Planning Administrative hearing Mr. Horcher learned of additional documents and an additional file that was in the possession of City Planning.
- Mr. Horcher reviewed additional documents in November 10, 2008.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

Whether City Planning provided all files at the time of the first request?
Whether City Planning had a duty to advise Mr. Horcher of new documents being added to the file subsequent to the initial review.
Did City Planning provide all materials at the second review?

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS;

none

LEGAL ISSUES/LEGAL DETERMINATIONS;

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

Memorandum

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THAT THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

Memorandum**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004
ARTICLE I, SECTION 3**

§3 Openness in Government

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
 - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Memorandum
ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN
FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE)
UNLESS OTHERWISE SPECIFIED

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Memorandum

Section 67.21 addresses general requests for public documents.

This section provides:

- a.) Every person having custody of any public record or public information, as defined herein, ... shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- b.) A custodian of a public record shall as soon as possible and within **ten days** (emphasis added) 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.
- c.) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.
- ...
- k.) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.
- l.) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

Memorandum

Section 67.26 provides:

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

Section 67.27 provides:

Any withholding of information shall be justified in writing, as follows:

- a.) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- b.) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- c.) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- d.) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

Section 6253 provides.

- a.) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.
- b.) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records,

Memorandum

shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

c.) Each agency, upon a request for a copy of records, shall within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefore....

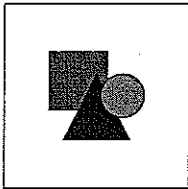
Section 6254(b) provides for certain records that are exempt from disclosure:

Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) until the pending litigation or claim has been finally adjudicated or otherwise settled.

Section 6255 provides:

a.) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

b.) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

November 24, 2008

Nick Goldman, Chair
Members of the Complaint Committee

Re: Paul Horcher Esq. v. City Planning Department (08051)

Dear Chair Goldman and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Paul V. Horcher, Esq. against the San Francisco City Planning Department.

BACKGROUND

On July 21, 2008, Complainant Paul V. Horcher, an attorney retained by Well-Care Acupuncture & Health Care, Inc. ("Well-Care") to represent Well-Care before the Board of Appeals, made a public records request for the City Planning files that involve Well-Care's appeal of City Planning's Notice of Violation issued by the Zoning Administrator.

On July 24, 2008, City Planning provided its files for Attorney Horcher's review. Attorney Horcher believed that the files that City Planning provided was incomplete and that documents may have been removed prior to their release to Attorney Horcher. On October 15, 2008, during the hearing on the appeal, City Planner Tina Tam told the Board of Appeals that City Planning continues to receive numerous complaints of illegal massage use at the business run by Well-Care. Attorney Horcher reviewed the files provided to him and did not find the complaints alluded to by City Planner Tam. During the hearing, City Planner Tam allegedly stated that there is a City Planning file for the appeal and a separate City Planning file for enforcement proceedings. The enforcement file was allegedly not provided to Attorney Horcher.

COMPLAINT

On November 3, 2008, Attorney Horcher filed a complaint against the City Planning Department alleging violation of section 67.24 of the Sunshine Ordinance

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. The allegations are covered under (67.21 and 67.24) of the Ordinance.

Letter to the Complaint Committee
Page 2
November 24, 2008

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents and Section 67.24 covers documents that must be disclosed. CPRA Section 6253 generally covers Public Records Requests.

In this case, Attorney Horcher in preparation for an appeal that he was making before the Board of Appeals made a public records request with the City Planning Department for its files involving his client, Well-Care. Attorney Horcher claims that he learned at the Board of Appeals Hearing that City Planning maintained two separate files and that he did not get all the non-exempt documents that he requested. Attorney Horcher claims that City Planning violated section 67.24 by withholding documents. The Task Force has jurisdiction to hear this complaint based on the alleged violation of 67.21 and 67.24 of the Ordinance and to determine whether the City Planning Department violated the Ordinance and/or the Public Records Act.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2008 NOV -3 PM 2:54

BY SAC



SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission PLANNING

Name of individual contacted at Department or Commission RACHNA RACHNA and TINA TAM

Alleged violation public records access

Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section 67.24 Wrongful withholding of non-exempt file.

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

PLEASE SEE ATTACHED.

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no

Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹

91765-402

Name PAUL V. HORCHER, ESQ.

20955 Pathfinder 100, Diamond Bar C

Address 234 Van Ness, San Francisco CA 9410

Telephone No. (909) 861-5555
(415) 385-2992

E-Mail Address "pvh831@yahoo.com"

Date November 03, 2008

Signature

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Attachment to Sunshine Ordinance Complaint

I am the Attorney/Agent for WELL-CARE ACUPUNCTURE & HEALTH CARE, INC., Appellant in San Francisco Board of Appeals Case No. 08-100.

On 07-21-08, in preparation for the Hearing (then scheduled for 09-10-08), I e-mailed "Rachna" of the San Francisco Planning Dept. the letter attached hereto Exhibit "A."

The following day, Tuesday, 07-22-08, "Rachna" responded, indicating that she would "try to have the file ready" by the next day (her e-mail is attached hereto as Exhibit "B"). She did not advise me that any files or any part of the files would be withheld, were privileged, be limited or declared somehow exempt, etc.

On Thursday, 07-24-08, I was finally allowed access to the purported entire file. I have reviewed Planning Department files before and was surprised how thin this file was. I noted this in an e-mail dated 09-10-08 to the Asst. City Attorney assigned to the Board, Catherine Barnes.

The file looked incomplete and appeared to have been "stripped" or "sanitized" to be as of little use as possible to me.

My suspicions that the Planning Department had not given me the complete file were confirmed when at the appeal hearing on 10-15-08, Senior Planner IV Tina Tam, appearing for Zoning Administrator, Lawrence Badiner, admitted the following to the Board:

"The file I have on my desk is just for the appeal. There's a separate complaint file that's with the enforcement planner."

This admission reveals that there were at least two files, and I was not allowed to review "all of the relevant Planning files" (emphasis added) contrary to the intent of my request to see all of the relevant files and the Sunshine Ordinance.

This apparent wrongful withholding severely prejudiced my preparation for the appeal in that I was unable to confirm or challenge the unsworn assertions of fact made by Senior Planner IV Tina Tam at the hearing.



4726 Geary Blvd./Complaint No. 6771 - Request for
Opportunity to Review and Copy Planning File

Monday, July 21, 2008 3:53 PM

From: "Paul Horcher" <pvh831@yahoo.com>

To: Rachna.Rachna@sfgov.org

Dear Rachna:

Confirming my message left this afternoon on your voice mail, I represent Well-Care Acupuncture & Health Center, Inc. the real party in interest in regard to the Z.A.'s Notice of Violation dated March 19, 2008 re the subject property. The Notice of Violation has been appealed by my client (Appeal No. 08-100) to the San Francisco Board of Appeals and the opening brief is due on August 14, 2008.

Please advise me when all of the relevant Planning files(s) may be examined and photocopied.

Time is of the essence. Thank you

PAUL V HORCHER

Attorney at Law

20955 Pathfinder Rd., Suite 100

Diamond Bar CA 91765-4029

Tel: (909) 861-5555 & (415) 385-2992

Fax: (866) 496-7489



**Re: 4726 Geary Blvd./Complaint No. 6771 -
Request for Opportunity to Review and Copy
Planning File**

Tuesday, July 22, 2008 8:11 AM

From: "Rachna Rachna" Rachna.Rachna@sfgov.org>

To: "Paul Horcher" <pvh831@yahoo.com>

I will try to have the file ready by tomorrow and
leave it at the front desk .

Thanks,

Rachna
Code Enforcement Planner
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103
Phone 415-5756806
Fax 415-5586409
Web <http://www.sfgov.org/planning>



Paul Horcher
<pvh831@yahoo.com>
11/14/2008 04:03 PM

To SOTF <sotf@sfgov.org>
cc
bcc
Subject Sunshine Complaint

History:  This message has been forwarded.

Dear Chris Rustom:

Lulu Wang, the Planning Department Sunshine request coordinator, provided me with approximately three times more documents than "Rachna" provided me on July 24, 2008 - a major improvement.

However, there were apparently no files provided that corroborate Senior Planner Tina Tam's Oct. 15, 2008 representations (raw transcripts) to the Board of Appeals that:

"This Department continues to receive numerous complaints regarding the illegal massage use and these complaints are from nearby residents of the neighborhood"

"Mr. Horcher said he's not aware of any complaints. We have a lot of complaints"

"There are many resident complaints"

"On a more recent site visit, this past last month, September 12, 2008, planning staff was also told there was no doctor on duty."

I will withdraw my SOTF compliant once the Planning Department either admits that these statements were false or provides a complete file that verifies them as true.

Thank you for your courtesy and professional handling of this complaint.

Paul V Horcher

PAUL V HORCHER
Attorney at Law

20955 Pathfinder Rd., Suite 100
Diamond Bar CA 91765-4029
Tel: (909) 861-5555 & (415) 385-2992
Fax: (866) 496-7489

--- On Fri, 11/14/08, SOTF <sotf@sfgov.org> wrote:

From: SOTF <sotf@sfgov.org>
Subject: Sunshine Complaint
To: pvh831@yahoo.com
Date: Friday, November 14, 2008, 2:06 PM

Mr Paul Horcher,

Lulu Wang, the Sunshine request coordinator at the Planning Department, said you visited the office on Nov. 10, 2008, and reviewed the documents. If you are satisfied, our office needs a withdrawal letter from you to close the file. If you are not satisfied, you may continue with the complaint and we will schedule a hearing.

Asst. Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307




Tina Tam/CTYPLN/SFGOV

12/04/2008 11:51 AM

To SOTF/SOTF/SFGOV@SFGOV
pvh831@yahoo.com, Rachna
cc Rachna/CTYPLN/SFGOV@SFGOV,
SOTF/SOTF/SFGOV@SFGOV, Larry

bcc

Subject Re: Planning Submittal - DCA Jurisdictional Letter:
#08051_Paul Horcher v Planning Dept. 

Chris,

Here is the Department's memo on 4726 Geary Blvd. Please let me know if you have any questions.



Memo to SOTF - 4726 Geary Blvd.pdf

Tina B. Tam
Senior Planner
San Francisco Planning Department

415-558-6325 (phone)
415-558-6409 (fax)



SAN FRANCISCO PLANNING DEPARTMENT

Memo to SOTF HEARING DATE: DECEMBER 9, 2008

Date: December 4, 2008
Site Address: 4726 GEARY BLVD.
Block/Lot: 1443/020
Staff Contact: Rachna (415) 575-6806 and Tina Tam (415) 558-6325
Re: Alleged Violation of Public Records Access

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

BACKGROUND

On July 21, 2008 Mr. Paul Horcher made a request to Rachna of planning staff to review the file in regards to the appeal of a Notice of Violation issued by the Zoning Administrator for a business known as Well-Care Acupuncture & Health Center, located at the above referenced property. On July 23, 2008, not on July 24, 2008 as alleged by Mr. Horcher in his complaint to SOTF, Mr. Horcher reviewed the planning files.

PRIOR ACTION

On October 15, 2008, the Board of Appeals held a public hearing on the appeal of the Notice of Violation. At the hearing, Mr. Horcher stated that there are no complaints on the subject business and that the planning file for this case is very thin. Tina Tam, the representative of the Zoning Administrator stated for the record that there are complaints for this business and that the file she had with her is simply the appeal file and that there is a separate file for the enforcement case.

ISSUE NO. 1: NUMBER OF FILES

Mr. Horcher alleges that he was given only one file by Rachna whereas there were two files as indicated by Tina Tam at the hearing.

Indeed, there are two files – one file for the enforcement case and one for the appeal filed by Mr. Horcher. All of the relevant planning information for the subject business is in the enforcement case file and that is the file that Mr. Horcher reviewed on July 23, 2008. In July, no appeal file existed. In other words, the appeal file was created after Mr. Horcher's visit to the Planning Department in July but before the appeal hearing was held.

ISSUE NO. 2: COMPLAINT LOG

Mr. Horcher alleges that the file he reviewed in July did not have the complaints as indicated by Ms. Tam at the Board of Appeals Hearing.

Indeed, there are complaints and such information is kept in an electronic phone log on the computer and not always in the physical file. The planning files are updated periodically when an action is about to be taken. In July, the Department acknowledges that the computer records that contained the phone

logs were inadvertently left out of the enforcement case file. However, it is important to note that Mr. Horcher reviewed the file in July, nearly 4 months prior to the hearing on the case. Mr. Horcher did not request to see the file again after his initial review in July until after the hearing.

ISSUE NO. 3: THE THICKNESS OF FILE IN JULY

Mr. Horcher alleges that the file he reviewed in July appeared be thin and striped as compared to the file he reviewed in November which had more documents.

In July, the enforcement file was presented to Mr. Horcher as it existed at that time. Since then, additional research and materials were added to the case file as well as the appeal file. This information is again subsequent to Mr. Horcher's first visit. After July 23rd and prior to the hearing on October 15th, Mr. Horcher did not contact the Planning Department to check if there was any additional information in regards to the case.

However, both files the updated enforcement file as well as the appeal file, were made available to Mr. Horcher when he came into the Department on November 10, 2008.

