

Date: January 8, 2008

Item No. 11
File No. 07069

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Ray Hartz v. Supervisor Aaron Peskin**
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Completed by: Frank Darby

Date: January 2, 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.



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MEMORANDUM

October 15, 2007

RAY HARTZ v. SUPERVISOR AARON PESKIN'S OFFICE (07069)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Ray Hartz went to the Office of Supervisor Aaron Peskin at City Hall to seek assistance in identifying obtaining public information from the San Francisco Police Department. Ray Hartz claimed that the aides to Supervisor Peskin refused to listen to his request, refused to help him, and refused his request to speak to Supervisor Peskin.

COMPLAINANT FILES COMPLAINT:

On September 17th, Ray Hartz filed a complaint alleging that the Supervisor Peskin's Office violated sections 67.21 by failing to assist complainant in his request for San Francisco Police records.

THE RESPONDENT AGENCY STATES THE FOLLOWING:

On October 1, 2007, David Noyola, Legislative Aide to Supervisor Peskin wrote a letter responding to the Complaint. In his letter David Noyola stated that Supervisor Peskin personally spoke with Ray Hartz and put him in contact with a Deputy Chief of Police. Ray Hartz came to the office at a later date and wanted to see Supervisor Peskin. He met with the Supervisor but did not say what he wanted from the office but only that he was filing a Sunshine Ordinance Complaint.

COMPLAINANT RESPONDS

On October 9, 2007, Ray Hartz appeared before the Complaints Committee and stated that he did not get the information he requested from Supervisor Peskin's Office.

RESPONDENT AGENCY RESPONDS

On October 9, 2007, Rose Chung appeared before the Complaints Committee and reiterated what David Noyola stated in his letter of October 9, 2007.

APPLICABLE STATUTORY SECTION;

Memorandum

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 providing assistance to requesters of public records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

- Ray Hartz went to the Office of Supervisor Peskin and wanted to see Supervisor Peskin.
- Supervisor Peskin spoke with Ray Hartz over the phone and put him in contact with the Deputy Chief in order to facilitate Ray Hartz's request for police records.
- Ray Hartz returned to the Supervisor's Office and spoke to Supervisor Peskin.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Whether Ray Hartz requested assistance in obtaining records from the San Francisco Police Department.
- Whether Ray Hartz requested assistance in obtaining certain SFPD documents as SFPD policy and procedure, and field directives.

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?

Memorandum

- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**

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 PROVIDES FOR OPENNESS IN GOVERNMENT.**

Article I Section 3 provides:

- 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 protected 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:

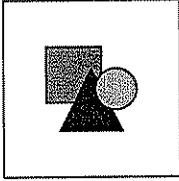
- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what 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.
- ...
- i.) The San Francisco City Attorney's Office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for an city employee or any person having custody of any public record for purposed of denying access to the public.



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October 1, 2007

Sue Cauthen, Chair
Members of the Complaint Committee

Re: Ray Hartz v. San Francisco Supervisor Aaron Peskin's Office (07069)

Dear Chair Cauthen 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 Ray Hartz against the San Francisco Supervisor Peskin's Office ("Supervisor Peskin's Office").

BACKGROUND

Ray Hartz went to the Office of Supervisor Aaron Peskin at City Hall to seek assistance in identifying obtaining public information from the San Francisco Police Department. Ray Hartz claimed that the aides to Supervisor Peskin refused to listen to his request, refused to help him, and refused his request to speak to the office supervisor.

COMPLAINT

Complainant filed a complaint against the Supervisor Peskin's Office alleging violations 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 Section 67.21 of the Ordinance. Section 67.21(c) generally covers requests for assistance and Section 67.22 covers release of oral public information.

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 covers the process for obtaining public records. Section 67.21(c) covers requests for assistance

Letter to the Complaint Committee

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October 1, 2007

in locating a public record. Section 67.22 provides for the procedure for providing oral public information.

In this case, Ray Hartz alleges that when he requested assistance in requesting public records at the office of Supervisor Peskin, he was refused assistance. The Task Force has jurisdiction over the allegations of this complaint and will have to determine if Supervisor Peskin's Office violated the Ordinance.



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 BOARD OF SUPERVISORS - AARON PESKIN

Name of individual contacted at Department or Commission DAVID NOYOLA

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting VARIOUS 8/23/07 - 9/17/07

Sunshine Ordinance Section ADMIN CODE 67.21
(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.

SEE ATTACHED

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

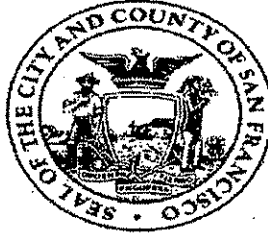
(Optional)¹
Complainant Name RAY W. HAERTZ, JR Address ?

Telephone No. (...)-... E-Mail ?

Date 9-17-07 Signature Ray W. Hartz

CONFIDENTIALITY SPECIFICALLY REQUESTED

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE IS SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. 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).



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 BOARD OF SUPERVISORS, AARON PESKIN

Name of individual contacted at Department or Commission ROSE GUNG

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting VARIOUS 8/23/07-9/17/07

Sunshine Ordinance Section ADMIN CODE 67.21
 (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.

SEE ATTACHED

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

(Optional)¹
 Complainant Name RAY W. HARTZ JR Address _____

Telephone No. _____ E-M _____

Date 9/17/07 _____

 Signature Ray W. Hartz Jr

CONFIDENTIALITY SPECIFICALLY REQUESTED

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE IS SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. 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).

2. ASSISTANCE TO REQUESTER

The Sunshine Ordinance requires City employees to assist members of the public in identifying the existence, form and nature of records or information maintained by, available to, or in the custody of the City. Admin. Code § 67.21(c). The Public Records Act requires the department to assist members of the public to identify records and information that are responsive to the request or purpose of the request, if stated; describe the physical location and information technology in which the requested records exist; and provide suggestions for overcoming any practical basis for denying access to the records or information sought. These requirements are deemed satisfied if the department is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records. Govt. Code §§ 6253.1(a) and (b).

An individual may request that a department provide information regarding the existence, quantity, form, and nature of records relating to a particular subject. The department must provide the individual with a written statement describing the records within seven days after receiving the request. Admin. Code § 67.21(c).

If a requester has addressed a request to the wrong department, or if the department that received the request has no responsive records, the recipient of the request should assist the requester in directing the request to other departments likely to have the records being sought. Admin. Code § 67.21(c). We recommend that a department that has responsive records and is aware that another department has additional records on the same subject, refer the requester to such other department. If most of the information in a requested record is exempt from disclosure, the department must provide the requester with information about records that exist that are similar to or contain some of the information the requester seeks. Admin. Code § 67.27(d); *see also* Admin. Code § 67.25(c).

The City's general duty to assist the requester does not entitle a department to require the requester to state the reason for making the request or the use to which the record will be put. Departments should not routinely make such inquiries. In some instances, particularly where the scope of the request is very broad or unclear, it may be appropriate to ask about requestor's objectives where the inquiry would enable the department to identify the records and satisfy the request. Admin. Code § 67.25(c).

3. TIMELY RESPONSE

Both the Public Records Act and the Sunshine Ordinance require the City to respond to a record request promptly.

a. STANDARD REQUESTS

Unless the requestor makes an "Immediate Disclosure Request" (see directly below), a department must respond to a request to inspect or copy records within 10 calendar days. But in "unusual circumstances," an agency may have up to 14 additional calendar days to respond. The head of the agency or designee must inform the requester in writing of the extension within the initial 10-day period. The notice must set forth the rea-



AARON PESKIN
佩斯金·市参事主席

October 1, 2007

Doug Comstock, Chair
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Dear Chair Comstock,

My colleague Rose Chung and I are both in receipt of the Sunshine Ordinance Complaint filed by Mr. Ray Hartz against our office. Unfortunately, because the regularly scheduled Board of Supervisors Meeting on October 2nd conflicts with the hearing on that complaint at the Task Force's Compliance & Amendments Committee, neither of us will be able to attend.

Our office is confident that we have complied with both the letter and spirit of the Sunshine Ordinance in our dealings with Mr. Hartz. In order to inform your discussions on the complaint, my colleague and I thought it would be helpful to offer the Committee some background on our office's interactions with Mr. Hartz.

Mr. Hartz contacted our office several times during the Board's summer recess asking for an appointment with Supervisor Peskin, specifying only that he wanted to talk about city departments not responding to his Sunshine Ordinance complaints. Upon returning from recess, Supervisor Peskin personally called Mr. Hartz and they spoke on the phone for several minutes. Because Mr. Hartz expressed frustration over his interactions with the Police Department, Supervisor Peskin put Mr. Hartz in contact a Deputy Chief of Police. We later confirmed that Mr. Hartz followed up on that suggestion, and that the Deputy Chief took his call.

Mr. Hartz later came to our office asking again to see the Supervisor. Mr. Hartz told my colleague and me that he would sit in our office every day for two weeks until he was allowed to see the Supervisor. Supervisor Peskin then met with Mr. Hartz, at which time Mr. Hartz refused to say what he wanted from our office, but would only say that he was filing a Sunshine Ordinance Complaint.

The complaint before the committee claims our office did not help direct Mr. Hartz to find the information he was seeking. It is important to note that Mr. Hartz

never once asked our office for help finding any specific piece of information or record. Supervisor Peskin went out of his way to try to help Mr. Hartz and put him in contact with a high-level Police Department official.

We regret we are unavailable to appear before the Committee in person, but we hope this letter is helpful in the Committee's deliberations.

Please do not hesitate to contact our office for further information regarding this complaint.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Noyola', with a stylized flourish at the end.

David Noyola
Legislative Aide