

Date: January 8, 2008

Item No. 21
File No. 07057

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Jeff Ente vs. Supervisor 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.

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
August 28, 2007

September 6, 2007

Jeff Ente
Jeffente@att.net

The Honorable Supervisor Aaron Peskin
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: Complaint # 07057 filed by Jeff Ente against Supervisor Aaron Peskin for alleged incomplete production of documents.

Based on the information provided to the Task Force from complainant Jeff Ente and public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds that Supervisor Aaron Peskin violated Sections 67.21, 67.21e, 67.29-1, and 67.29-7 of the Sunshine Ordinance for failure to provide the requested records and failure to maintain records according to document retention schedules and in a professional and businesslike manner.

The Task Force is requesting that representatives from Supervisor Aaron Peskin's Office, the Department of Telecommunications and Information Services and the I.T. Manager for the Board of Supervisors to appear before the Compliance and Amendment Committee to speak on the issue on whether and how the Supervisor's email is backed-up, archived and/or retrievable.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 28, 2007 by the following vote: (Craven/Goldman)
Ayes: Craven, Knee, Cauthen, Chu, Pilpel, Wolfe, Chan, Goldman, Williams
Recused: Comstock

A handwritten signature in black ink, appearing to read "Erica Craven".

Erica Craven, Acting Chair
Sunshine Ordinance Task Force

cc: Chris Vein, Director of DTIS
Angela Calvillo, Clerk of the Board



"Jeff Ente"
<jeffente@att.net>
08/30/2007 02:27 PM

To <ernest.llorente@sfgov.o
cc "Julie Lehnhoff" <julielehnhoffzhu@yahoo.com>, "SOTF"
<sotf@sfgov.org>
bcc
Subject Re: DCA Jurisdictional: #07057_Jeff Ente v. Supervisor
Aaron Peskin

Mr. Llorente-

Thank you for your help on the SOTF complaint that I filed (#07057) that was heard by the full Task Force Tuesday evening.

I have some questions about the jurisdiction of the SOTF that I'd like to ask you about in person if you have perhaps 20 minutes some time over the next few days (but hopefully well in advance of the 9/12 Compliance Committee meeting). For several reasons I am wondering if it would be beneficial for me to amend my complaint or to file additional complaints so that the original can go forward without disruption. I have questions surrounding three main areas:

1) The issue has become complicated as the Task Force has charged Mr. Peskin with violations that I didn't include in my complaint (67.21-E)

2) I believe that the documents I am requesting have been in the possession of more than one Supervisor. For example Supervisor Dufty indicated in an email that he had read them.

3) I have information that I did not present to the Task Force because I am uncertain of its jurisdictional relevance and did not want to burden the SOTF unnecessarily due to my ignorance. I do feel that it is important information and would like your opinion as to it's relevance. I'm not asking for nor do I expect any confidentiality on this information.

So if you have a few minutes it would be great. I can get to City Hall at your convenience.

Thanks Mr. Llorente.

-Jeff Ente



"Jeff Ente"
<jeffente@att.net>
08/31/2007 02:10 PM

To "Ernest Llorente" <Ernest.Llorente@sfgov.org>
cc "SOTF" <sotf@sfgov.org>, "Frank Darby"
<Frank.Darby@sfgov.org>
bcc
Subject Re: DCA Jurisdictional: #07057_Jeff Ente v. Supervisor
Aaron Peskin

Ernie-

Understood; thanks. I was just hoping to streamline things a bit. Have a nice holiday.

-Jeff

----- Original Message -----

From: Ernest Llorente

To: jeffente@att.net

Cc: SOTF ; Frank Darby

Sent: Friday, August 31, 2007 9:45 AM

Subject: Re: DCA Jurisdictional: #07057_Jeff Ente v. Supervisor Aaron Peskin

Good morning Mr. Ente,

In answer to your questions, I first need to tell you that I am the attorney for the SOTF and I cannot give legal advice to parties to a complaint whether they be the citizen requester or the responding department. If you have other issues not covered by your first complaint, you may wish to speak to SOTF Administrator Frank Darby when he returns from vacation on Tuesday, September 4, 2007. He could properly advise you. Sorry that I cannot be of more assistance but ethical walls prohibit me from doing so.

Ernie

Ernest H. Llorente
Deputy City Attorney
Tel: (415) 554-4236
Fax: (415) 437-4644



"Jeff Ente"
<jeffente@att.net>
09/09/2007 07:59 PM

To "SOTF" <sotf@sfgov.org>
cc
bcc
Subject Re: CAC Hearing Scheduled: #07057_Jeff Ente vs.
Supervisor Aaron Peskin

Greetings SOTF-

The switch from Wednesday to Monday creates something of a schedule hardship for me; I can leave work at 4PM that day and hopefully arrive in room 406 at about 4:20PM. I am #6 on the Agenda. But if I am not in the room when #6 is called I will be rushing there so perhaps the Committee would consider hearing item #7 until I arrive.

Sorry for the problem, my cell phone is 415-317-1872.
Thank You,
-Jeff Ente



"Jeff Ente" <jeffent@att.net>

09/10/2007 09:05 PM

To "SOTF" <sotf@sfgov.org>

cc "David Noyola" <David.Noyola@sfgov.org>, "Frank Darby" <Frank.Darby@sfgov.org>

bcc

Subject #07057_Jeff Ente vs. Supervisor Aaron Peskin- Retrieval of Deleted Emails

Task Force-

Thank you for your attention to complaint #07057. I wanted to offer some thoughts that I believe will assist the email retrieval process requested by the Compliance Committee concerning emails that Supervisor Peskin may have deleted that were relevant to my complaint.

1) Search terms. Member Craven suggested at one point that the system people search for the word 'parrot' on the email backup server from April 10-June 5. That's a good start but as someone who has spent a lot of time Googling the situation I can tell you that they should do a Boolean search for 'parrots' or 'parakeets' or 'sunflower seeds' or 'forage'. I think the false hits would be minimal with those terms.

2) If I understood Mr. Darby correctly the emails remain on the server until they are deleted and that merely reading an email does not remove it from the server. The email server is backed up nightly (anything less would be a horrific example of earthquake unpreparedness). This would suggest that an email would have had to have been delivered, read, deleted and the trash had to be emptied in one business day for there to be no record of the email.

3) Supervisor Peskin indicated in the June 5 Board meeting that all of the Supervisors had seen the emails so at least ten copies were likely forwarded through the system, increasing the likelihood that some record of them exists on the backup server.

Thank you again for your assistance on the matter and please contact me if I can assist in the process in any way.

-Jeff Ente



"Richard A. Knee"
<rak0408@earthlink.net>

10/04/2007 01:48 PM

Please respond to
rak0408@earthlink.net

To Aaron.Peskin@sfgov.org

cc David.Noyola@sfgov.org, Chris.Vein@sfgov.org,
SOTF@sfgov.org

bcc

Subject Request for retrieval of e-mails

Honorable Aaron Peskin
President
San Francisco Board of Supervisors

In re:
Order of Determination by the Sunshine Ordinance Task Force (SOTF), August
28, 2007
Complaint No. 07057, Jeff Ente vs. Supervisor Aaron Peskin

Dear President Peskin:

In the above-cited Order of Determination, the SOTF found that your office had violated Sections 67.21, 67.21(e), 67.29-1 and 67.29-7 of the Sunshine Ordinance by failing to produce e-mails that Mr. Ente had requested regarding the issue of feeding feral parrots. (The text of these sections of the Ordinance are available online at http://www.sfgov.org/site/sunshine_page.asp?id=31022 .)

At the subsequent meeting of the SOTF's Compliance and Amendments Committee (CAC), on September 10, 2007, Mr. Ente reported that his request remained unmet.

At both meetings, your staff aide David Noyola said the e-mails had been deleted from your system once Board and Mayoral action on the feeding issue was concluded.

The SOTF and the CAC have not opined on whether these deletions stemmed from a deliberate attempt to destroy or conceal public records and the data therein. Nonetheless, the e-mails in question are, in fact, public documents, to which public access must be provided under the Ordinance and the California Public Records Act.

Furthermore, as you might know, deleting electronic documents does not actually destroy them; rather, it stores them in what could be described as a trash file.

Accordingly, you are hereby requested to enlist the assistance of the Department of Telecommunication and Information Services in an effort to retrieve all the e-mails in question. It is suggested that keywords such as "parrot," "bird" and "feed" be used to expedite the process.

The CAC is scheduled to revisit the issue at its next regular meeting, October 10, 2007, and requests that a representative of your office who is knowledgeable on this matter be present. The meeting is to take place in City Hall Room 406, starting at 4 p.m. Thank you for your kind attention.

Sincerely,
Richard Knee
Chair
Sunshine Ordinance Task Force Compliance and Amendments Committee

Cc: David Noyola, Aide to President Peskin; Chris Vein, General Manager, Department of Telecommunication and Information Services; Frank Darby, Board of Supervisors Information Technology Manager

SUNSHINE ORDINANCE
TASK FORCE



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November 19, 2007

Honorable Aaron Peskin, President
San Francisco Board of Supervisors
C/O Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

In re: Sunshine Ordinance Task Force Complaint #07057, Jeff Ente vs. Supervisor Aaron Peskin

Dear President Peskin:

In the above-cited proceeding, the Sunshine Ordinance Task Force issued an Order of Determination on August 28, 2007, that your office had violated Sections 67.21, 67.21(e), 67.29-1 and 67.29-7 of the Ordinance by failing to produce e-mails that Jeff Ente had requested regarding the issue of feeding feral parrots. (The text of these Ordinance provisions are available online at http://www.sfgov.org/site/sunshine_page.asp?id=31022.)

At subsequent meetings of the Task Force's Compliance and Amendments Committee, on September 10 and November 14, 2007, Mr. Ente reported that his request remained unmet.

Your staff aide David Noyola has told the Task Force and the Committee that the e-mails were deleted from your system once the Board and Mayor Gavin Newsom had concluded action on the feeding issue.

However, as I mentioned in an e-mail to you on October 4, 2007: (1) deleting electronic documents does not actually destroy them; rather, it stores them in a "trash" file; and (2) the e-mails in question are public documents to which public access must be provided under the Ordinance and the California Public Records Act.

Supervisor Aaron Peskin
November 19, 2007
Page 2 of 2

Accordingly, I reiterate the request made in my October 4 e-mail that your office enlist the assistance of the Department of Telecommunications and Information Services in an effort to retrieve all the e-mails in question. It is suggested that keywords such as "parrot," "bird" and "feed" be used to expedite the process. It is further requested that your office inform the Committee by the start of its next regular meeting on your progress in retrieving said e-mails. That meeting is scheduled Wednesday, December 12, 2007, at 4 p.m. in City Hall Room 406. It is also requested that, per Section 67.21(e) of the Ordinance, you or a representative from your office who is knowledgeable in this matter appear at that meeting.

Please be informed that failure by your office to meet any of these requests shall result in referral of the matter back to the full Task Force, very likely with the Committee's recommendation that your office be found in willful failure to comply with the aforementioned sections of the Ordinance and that the Task Force request intercession in the matter by the City Ethics Commission, the District Attorney and/or the California Attorney General.

Should you or your representative have any questions, please contact me through the office of Task Force Administrator Frank Darby, phone (415) 554-7724, e-mail SOTF@sfgov.org. Thank you for your kind attention.

Sincerely,



Richard Knee, Chair
Compliance and Amendments Committee
Sunshine Ordinance Task Force

Attachment

Date: Thu, 04 Oct 2007 13:48:15 -0700
From: "Richard A. Knee" <rak0408@earthlink.net>
To: Aaron.Peskin@sfgov.org
Subject: Request for retrieval of e-mails
Reply-To: rak0408@earthlink.net
Cc: David.Noyola@sfgov.org, Chris.Vein@sfgov.org, SOTF@sfgov.org

Honorable Aaron Peskin
President
San Francisco Board of Supervisors

In re:
Order of Determination by the Sunshine Ordinance Task Force (SOTF), August 28, 2007
Complaint No. 07057, Jeff Ente vs. Supervisor Aaron Peskin

Dear President Peskin:

In the above-cited Order of Determination, the SOTF found that your office had violated Sections 67.21, 67.21(e), 67.29-1 and 67.29-7 of the Sunshine Ordinance by failing to produce e-mails that Mr. Ente had requested regarding the issue of feeding feral parrots. (The text of these sections of the Ordinance are available online at http://www.sfgov.org/site/sunshine_page.asp?id=31022 .)

At the subsequent meeting of the SOTF's Compliance and Amendments Committee (CAC), on September 10, 2007, Mr. Ente reported that his request remained unmet.

At both meetings, your staff aide David Noyola said the e-mails had been deleted from your system once Board and Mayoral action on the feeding issue was concluded.

The SOTF and the CAC have not opined on whether these deletions stemmed from a deliberate attempt to destroy or conceal public records and the data therein. Nonetheless, the e-mails in question are, in fact, public documents, to which public access must be provided under the Ordinance and the California Public Records Act.

Furthermore, as you might know, deleting electronic documents does not actually destroy them; rather, it stores them in what could be described as a trash file.

Accordingly, you are hereby requested to enlist the assistance of the Department of Telecommunication and Information Services in an effort to retrieve all the e-mails in question. It is suggested that keywords such as "parrot," "bird" and "feed" be used to expedite the process.


The CAC is scheduled to revisit the issue at its next regular meeting, October 10, 2007, and requests that a representative of your office who is knowledgeable on this matter be present. The meeting is to take place in City Hall Room 406, starting at 4 p.m. Thank you for your kind attention.

Sincerely,
Richard Knee
Chair
Sunshine Ordinance Task Force Compliance and Amendments Committee

Cc: David Noyola, Aide to President Peskin; Chris Vein, General Manager, Department of Telecommunication and Information Services; Frank Darby, Board of Supervisors Information Technology Manager

<http://www.sfgov.org/sunshine/>

David Noyola/BOS/SFGOV
11/19/2007 12:06 PM

To SOTF/SOTF/SFGOV@SFGOV
cc aaron.peskin@sfgov.org, Rose
Chung/BOS/SFGOV@SFGOV
bcc
Subject Re: SOTF LTR re: #07057_Jeff Ente vs. Supervisor Aaron
Peskin 

The attached letter says I claimed the emails were deleted in testimony before the SOTF. If my memory serves me, I believe I said that we searched for the emails and could not find them, and that the Supervisor gets rid of emails about issues that have already been addressed at the Board in order to manage his inbox size.

David Noyola
Office of Supervisor Aaron Peskin
City Hall, Room 256
San Francisco, CA 94102
t. 415.554.7451
f. 415.554.7454
SOTF/SOTF/SFGOV

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January 2, 2007

Honorable Aaron Peskin, President
San Francisco Board of Supervisors
C/O Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

In re: Sunshine Ordinance Task Force Complaint #07057, Jeff Ente vs. Supervisor Aaron Peskin

Dear President Peskin:

Please be informed that the Sunshine Ordinance Task Force Compliance and Amendments Committee has sent the above-cited matter back to the full Task Force, which will consider referring the matter to the City Ethics Commission, the District Attorney and/or the State Attorney General for investigation and possible disciplinary action.

The Committee's action, taken at its regular meeting on December 12, 2007, stemmed from the failure of your office to comply with the Task Force's Order of Determination of August 28, 2007, which declared a finding of violations of Sections 67.21, 67.21(e), 67.29-1 and 67.29-7 of the Sunshine Ordinance. (The text of these Ordinance provisions are available online at http://www.sfgov.org/site/sunshine_page.asp?id=31022.)

Please recall that (1) the Order of Determination resulted from the failure of your office to satisfy Jeff Ente's request for copies of e-mails sent or received by your office regarding a proposal to ban feeding of feral parrots; and (2) following issuance of the Order of Determination, the Committee asked you to enlist the assistance of the City Department of Telecommunications and Information Services (DTIS) in an effort to retrieve those e-mails, which, according to your staff aide David Noyola, had been deleted from your system once the Board of Supervisors and Mayor Gavin Newsom had concluded action on the proposed ban.

The Task Force is due to take the matter up at a special meeting on Tuesday, January 8, 2008, and is interested in knowing (a) what measure(s) the DTIS took toward retrieving

Supervisor Aaron Peskin, President
January 2, 2008
Page 2 of 2

the deleted e-mails; (b) whether these measures were successful; and (c) if these measures were successful, have copies of the e-mails been provided to Jeff Ente.

I believe the meeting is to take place in City Hall Room 408, starting at 4 p.m. However, it is advisable to watch for the agenda to make sure. You and/or a representative of your office who is knowledgeable about this matter are requested to attend the meeting, per Sunshine Ordinance Section 67.21(e), which states in part: "[T]he Sunshine (Ordinance) Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested."

Should you or your representative have any questions, please contact me through the office of Task Force Administrator Frank Darby, phone (415) 554-7724, e-mail SOTF@sfgov.org. Thank you for your kind attention. With best wishes for the New Year, I remain,

Sincerely,



Richard Knee, Chair
Compliance and Amendments Committee
Sunshine Ordinance Task Force

Enclosure