

Date: Feb. 24, 2009

Item No. 12
File No. 09008

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Anonymous v Police Commission**
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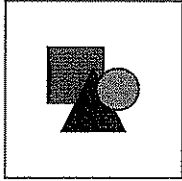
Completed by: Chris Rustom

Date: Feb. 19, 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.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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

MEMORANDUM

February 17, 2009

*ANONYMOUS PERSON v. SAN FRANCISCO POLICE DEPARTMENT
COMMISSION (09008)*

**PLEASE NOTE THAT THE COMPLAINT RELATES TO SAME
ISSUES AND THE SAME GOVERNMENTAL ENTITY THAT
WAS DECIDED IN CASE (08056). BOTH THE POLICE
DEPARTMENT AND THE POLICE COMMISSION HAVE THE
JOINT RESPONSIBILITY TO ISSUE THE INDEX OF
RECORDS**

**BOTH THE INSTRUCTIONAL MEMORANDUM AND THE
ORDER OF DETERMINATION ARE ATTACHED TO THIS
DOCUMENT**

December 22, 2008

ANONYMOUS PERSON v. SAN FRANCISCO POLICE DEPARTMENT(08056)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Anonymous person checked the City's website and looked for the index of records for the San Francisco Police Department ("SFPD"). The website did not have a listing for the SFPD.

COMPLAINANT FILES COMPLAINT:

Memorandum

On December 4, 2008, Anonymous person filed a Sunshine Ordinance Complaint against the SFPD for failure to comply with Section 67.29 of the Ordinance.

THE RESPONDENT AGENCY STATES THE FOLLOWING:

The Custodian of Records for the SFPD has contacted Chris Rustom of the SOTF office and stated that his department is working with the City Administrator's Office to get an index to records on-line.

APPLICABLE STATUTORY SECTION:

Section 67.29 of the Sunshine Ordinance which deals with the establishment by the City Departments of an Index of Records.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

- The Sunshine Ordinance requires City Departments to establish and maintain an Index to Records.
- Anonymous person checked the City's website and learned that the SFPD does not have an Index to Records.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Whether the SFPD is establishing an Index to Records?
- Whether the SFPD has violated Section 67.29 of the Ordinance?

Memorandum

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS;

LEGAL ISSUES/LEGAL DETERMINATIONS;

- Was section 67.29 of the Sunshine Ordinance violated?
- 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 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.

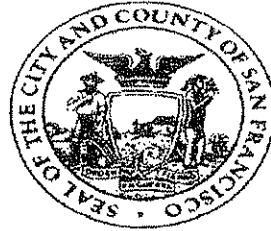
Memorandum

Section 67.29 of Ordinance provides:

The City and County shall prepare a public records index that identifies the types of information and documents maintained by the City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's World Wide Website and made available at public libraries within the City and County of San Francisco.

Memorandum

Memorandum



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 SAN FRANCISCO POLICE COMMISSION

Name of individual contacted at Department or Commission THERESA SPARKS, PRESIDENT

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting N/A

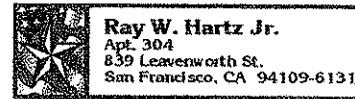
Sunshine Ordinance Section 67.29 - INDEX TO RECORDS
 (If known, please cite specific provision(s) being violated)

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

SFPD POLICE COMMISSION HAS MADE NO EFFORT TO COMPLY WITH SECTION 67.29. THE CUSTODIAN OF RECORDS CONFIRMS THAT THE COMMISSION HAS NEVER BEEN IN COMPLIANCE WITH THE REQUIREMENTS OF THE LAW IN ANY RESPECT. THIS CAN ALSO BE CONFIRMED BY VISITING THE CCSF - INDEX OF RECORDS.

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. (415) 345-9144 E-Mail Address RWAARTZJR@SACGLOBAL

Date 2/3/09 Ray W Hartz Jr Signature

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 MEAN OF CONTACT WITH THE SOTF (PHONE NUMBER, FAX NUMBER, OR E-MAIL ADDRESS).

Daniel J
Mahoney/SFPD/SFGOV
02/12/2009 05:48 PM

To soft@sfgov.org
cc Jerry Tidwell/SFPD/SFGOV@SFGOV, Joseph
Reilly/SFPD/SFGOV@SFGOV, Maureen
Conefrey/SFPD/SFGOV@SFGOV, Molly
bcc
Subject Sunshine Complaint # 09008

Mr. Rustom,

This is being written in follow-up to our conversation at City Hall on Feb 12 regarding the latest Sunshine Complaint by Mr. Hartz in regard to the Police Commission not having an Index of Records listed on the City's website.

After conferring with the Police Commission Secretary (Lieutenant Joseph Reilly) and also with Deputy City Attorney Molly Stump, it was concluded that the Police Commission is not a separate entity unto themselves but part of the San Francisco Police Department. Any failure in listing their index of records has been investigated and ruled upon by the entire Sunshine Ordinance Task Force under Case# 08056.

The Police Department is currently undertaking action to correct that violation and the records of the Police Commission will be included.

However, the Police Commission also oversees a different entity--the Office of Citizen Complaints. It is my understanding that the OCC does not have their records listed as required in Admin Code section 67.29. Since OCC is a separate entity, their records will NOT be part of the Police Department's and should be handled as a separate matter.

Therefore, based on the final ruling under SOTF Case# 08056, it is my recommendation that no hearing needs to take place on February 24 and thus, there will not be anyone in attendance representing the Police Commission for the matter outlined in SOTF Case# 09008.

Please feel free to contact me with any questions/concerns.

Cordially,

Lt. Daniel J. Mahoney
Legal Division
(415) 553-7929
San Francisco Police Department

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Daniel J Mahoney