

Date: April 21, 2011

Item No. 1  
File No. 09042

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Peter Warfield v SF Public Library**
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Completed by: Chris Rustom

Date: April 18, 2011

**\*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.



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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**Via Interoffice Mail**

April 6, 2011

Richard Knee, Chair  
Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

**RE: Ethics Complaint No. 05-100219**

Dear Mr. Knee:

The Sunshine Ordinance Task Force ("Task Force") referred Complaint No. 09042 (Ethics Complaint No. 05-100219), alleging that the Public Library, through its representative Sue Blackman, should be found in violation of Sunshine Ordinance section 67.21(e) for failure to send a representative to Task Force committee meetings. The referral was made under Sunshine Ordinance sections 67.30(c) and 67.34.

Pursuant to section VI.D of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings, staff's recommendation was submitted to the Ethics Commission for consideration to be calendared at the Regular Meeting of the San Francisco Ethics Commission on March 14, 2011. The matter was not calendared and staff's recommendation was thus accepted. After a careful reading and analysis of the requirements to attend Task Force hearings concerning a records request denial, the Ethics Commission has dismissed this matter for the reasons below.

The underlying complaint was filed with the Task Force on August 11, 2009, by Peter Warfield. He alleged that the Library refused to provide a copy of the Park Branch Library renovation plans, which he had previously viewed in person.

On August 25, 2009, the full Task Force held a hearing concerning the alleged records request denial, at which Ms. Blackman attended. The Task Force determined that Ms. Blackman violated section 67.21, and ordered the requested document be provided to Mr. Warfield. Two Compliance and Amendments Committee meetings were scheduled, the first on September 8, 2009, and the second on October 13, 2009. Ms. Blackman did not attend either meeting. On October 27, 2009, the full Task Force heard the matter again. Ms. Blackman attended the hearing and the Task Force held a vote and determined that the Library had complied with the Order of Determination and no violation was found. The Task Force then voted to find a violation of section 67.21(e) against the Library for failure to send a representative to Task Force hearings, based on Ms. Blackman's failure to attend the Compliance and Amendments Committee meetings, and to refer the matter to the Ethics Commission.

Section 67.21(e) provides the mechanism for a person to petition the Task Force for a determination on whether a requested record is public when a custodian of records does not comply with a public records request. Section 67.21(e) specifically states, "where requested by the petition," the Task Force may conduct a public hearing concerning the records denial. If a hearing is held, "[a]n 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."

The requirement to send an authorized representative to "any" hearing refers to the hearing in which the full Task Force is asked to make a determination on whether the record is public, and only if the full Task Force elects to hold the hearing when requested to do so by the petition. The Ethics Commission endeavored to find the authorization to mandate a City official's attendance at a Task Force sub-committee meeting through section 67.21(e); however, the enforcement of 67.21(e) appears to apply only to the full Task Force hearings concerning the records request denial specifically outlined within that section.

The text of section 67.21(e) suggests that a hearing on the matter with the full Task Force is determinative on whether a violation occurred regarding the document request, and it is this full Task Force hearing in which a public official is required to attend. At this hearing, the full Task Force makes its Order of Determination, which is then monitored for compliance by the Compliance and Amendments Committee.

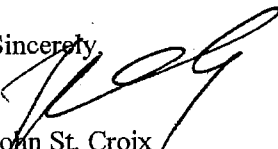
The Task Force By-Laws establish four sub-committees. (By-Laws, Article VI.) The purpose of the committees is to "advise the Task Force on its on-going functions." (By-Laws, Article VI, § 1.) The Compliance and Amendments Committee is one of the committees established in Article VI. Its function related to an Order is that it "shall monitor compliance with the Orders of Determination adopted by the Task Force." (By-Laws, Article VI, § 1(d).)

The By-Laws state that the Compliance and Amendments Committee monitors the Order and reviews whether there has been compliance with the Order. (Complaint Procedures, § F(1).) If there is no compliance with the Order, the Compliance and Amendments Committee may "recommend that the [Task Force] notify the District Attorney, the California Attorney General, the Board of Supervisors and/or the Ethics Commission, who may take measures they deem necessary to ensure compliance with the Ordinance." (Complaint Procedures, § F(2).) There is no language in the By-Laws requiring any authorized representatives to attend the Compliance and Amendments Committee meetings.

Thus, a violation of section 67.21(e) may not be found when a City official does not attend a sub-committee meeting of the Task Force. Although attendance at sub-committee meetings might be included in an order, the Sunshine Ordinance does not provide the mechanism to find a violation of 67.21(e) when a City official fails to attend the sub-committee meeting.

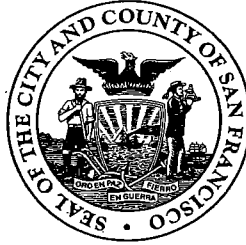
Because Ms. Blackman attended the hearing in which the determination was made on whether the record was public, and because section 67.21(e) makes no reference to sub-committee meetings of the Task Force, the Ethics Commission determined that no violation of law has occurred. Thus, this complaint has been dismissed.

Sincerely,

  
John St. Croix  
Executive Director

Cc: Peter Warfield

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION  
September 1, 2009**

**DATE THE DECISION ISSUED**  
August 25, 2009

*PETER WARFIELD V. PUBLIC LIBRARY (09042)*

**FACTS OF THE CASE**

Complainant Peter Warfield made a request for copies of Park Branch library renovation plans. Mr. Warfield was allowed to review documents, including the "50% Construction Documents," but denied further access and copies of the same when Mr. Warfield made an additional request.

**COMPLAINT FILED**

On August 11, 2009, Peter Warfield filed a complaint with the Sunshine Ordinance Task Force claiming that the Library Administration refused to provide copies of Park Branch library renovation plans, which he was given an opportunity to inspect and copies of which had been promised.

**HEARING ON THE COMPLAINT**

On August 25, 2009, Complainant Peter Warfield appeared before the Task Force and presented his claim. Respondent Agency was represented by Sue Blackman, Secretary of the Library Commission.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Ms. Blackman told the Task Force that the construction documents were made available for Mr. Warfield's initial review because the documents were in the Library's possession, but when Mr. Warfield asked for copies, the Library was informed by the Department of Public Works' attorney that the documents should not be disclosed to the public because they were draft plans and not yet public documents but would become available when finalized and the plans went out for bid. The Task Force was also told that the disclosure of the documents would undermine the City's competitive bidding process.

The Task Force initially noted that Sec 67.24 (a)(i) was passed to make it clear that, unlike state law, drafts documents should generally be produced to members of the public. If, however, the draft documents requested are not the type of documents the Department

normally retains, then in that narrow circumstance "recommendations" of the authors/reviewers may be redacted (for example, notes in margins) but the remainder of the draft documents must be released. However, there was no evidence in this case that "50% Construction Plans" that were shown to Mr. Warfield and circulated to various interested parties were either the type of draft not retained by the Department or that the plans contained "recommendations" and notes of the author subject to redaction. Therefore, there are no grounds on which the plans could be withheld as "drafts" under the Ordinance.

Moreover, when it comes to competitive bidding, under state law the items that are typically excluded from public production are the bid responses that are submitted by bidders, in order to prevent any party from gaining an unfair advantage in the negotiation process. That situation does not apply to draft development plans, which members of the public should have the opportunity to inspect before they are final and subject to bidding. Otherwise members of the public would not be able to review the design of projects until the plans were "final" and sent out to bid; too late for meaningful public input.

Finally, even if the plans were exemption from disclosure, by showing the plans to Mr. Warfield (and possibly by also circulating copies of the "50% Construction Documents" to various interested parties, including the Friends of the San Francisco Public Library), the Department waived any right they may have had to claim an exemption from disclosure.

#### DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.21 of the Sunshine Ordinance. The requested documents shall be produced to Mr. Warfield within 5 days of this Order of Determination and the agency shall appear before the Compliance and Amendments Committee on September 8, 2009.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 25, 2009, by the following vote: ( Craven-Green / Cauthen )

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



Richard Knee, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Peter Warfield, complainant  
Sue Blackman, respondent  
Rosa Sanchez, Deputy City Attorney