

Date: April 27, 2010

Item No. 4

File No. 09057

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

Peter Warfield v Clerk of the Board

Completed by: Chris Rustom

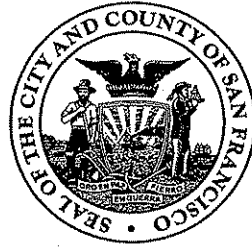
Date: April 22

***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
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TDD/TTY No. (415) 554-5227

February 16, 2010

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco CA 94102

Referral of Sunshine Ordinance Complaint #09057, Peter Warfield v. Clerk of the Board of Supervisors

This is a referral from the November 3, 2009, Order of Determination from the Sunshine Ordinance Task Force against the Clerk of the Board, through its representative Legislative Deputy Director Rick Caldeira, for failure to comply with the Order of Determination in that it did not provide unredacted contact information about members of City and County commissions, boards, task forces and other office holders. The referral is made pursuant to Sunshine Ordinance section 67.30(c).

Background

On September 9, 2009, Peter Warfield filed a complaint with the Sunshine Ordinance Task Force alleging that the Clerk's Office did not provide him prompt access to a file that contained contact information on members of the Library Citizen Advisory Commission, and instead asked him to return after three hours, when he was allowed to view documents from the file with redactions. He also claimed that legal justification for the redactions was not provided. Mr. Warfield noted that on prior occasions, he was allowed to see and receive copies of similar documents without redaction.

Task Force Hearing and Order of Determination

The matter was scheduled to be first heard on September 22, 2009, but was continued to October 27, 2009. At the latter meeting the Task Force noted that in the past it has consistently found that, in absence of a specific request for privacy or fear of retaliation, contact information in government files including home and email addresses is generally public information. The Task Force also noted that when a person volunteers to serve in the public domain, he or she may need to give up certain privacy rights that a private citizen may enjoy in order to allow members of the public to effectively communicate with the official. Therefore, if a person serving on a government body provides contact information to the City,

that information should be disclosed to members of the public. Individuals who choose to serve on policy-making bodies or passive bodies, however, can protect their privacy if they wish by opening a Google email account and/or a Post Office Box to use for City business to avoid releasing his or her home contact information.

Based on the foregoing, the Task Force found the Clerk's Office in violation of Section(s) 67.21 (a) and 67.21 (b) for failure to provide records for inspection or review on a timely basis and for making impermissible redactions. The Clerk's Office was directed to produce unredacted copies of the documents that Mr. Warfield requested within five calendar days of the issue date of the Order of Determination and to appear before the Compliance and Amendments Committee on November 10, 2009, to discuss compliance with the Order of Determination.

Hearings at the Compliance and Amendments Committee

A hearing on the status of the Clerk's Office compliance with the Order of Determination was held on November 10, 2009. Madeline Licavoli, Deputy Clerk with the Clerk's Office, informed the body that the Clerk was revisiting the policy and had decided that the home address, home telephone and home fax numbers, home email, Social Security number and date of birth on applications and rosters for boards and commissions would be redacted before documents would be released. The home address would not be redacted if specific residency is required to be appointed to a specific seat on a board or commission. The Clerk's Office noted that information provided on Form 700s will not be redacted. The matter was continued to the Compliance and Amendments Committee on December 8, 2009, because members wanted to see the new policy.

On December 8, 2009, Ms. Licavoli attended the hearing and said the Clerk's new policy was in effect but that because Mr. Warfield was a member of the Library CAC, he would be given unredacted access only to the LCAC roster. However, he would not have unredacted access to other boards and commission rosters. The Committee did not take issue with the redaction of personal, non-contact information (*e.g.*, social security numbers, DOBs) but stated its position again that members of the public should be able to contact directly people serving on government boards and commissions by having access to the same mailing and email addresses that the City uses to communicate with them and encouraged the City to either set up email accounts for individuals appointed to boards and commissions (*i.e.*, non-government employees) and/or encourage those who did not want their home email and/or home mailing addresses to be released to the public to set up specific email or mailing addresses that would be used for their City business. Recognizing, that this issue was an important one that has repeatedly arisen at the Task Force, members recommended that the matter be sent to the next full Task Force meeting for failure to comply with the Order of Determination.

Referral by Task Force

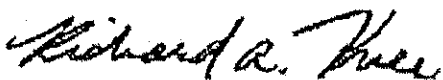
At the Task Force meeting on January 5, 2010. Ms. Licavoli said the Clerk had reviewed and revised the policy and no further changes were planned. Members of the public could contact the commission, board and task force members and office holders through their respective clerks or secretaries, she said. Mr. Warfield reiterated that this case was about denial of access to information and urged the Task Force to refer it to the appropriate authority for enforcement. The matter was originally referred to the Education, Outreach and Training Committee, but the motion was amended and referred the matter to the Ethics Commission for the Clerk's Office's failure to comply with the Order of Determination and their continued failure to provide contact information for members of board and commissions to members of the public.

This request and referral are made under Section 67.30(c) of the Sunshine Ordinance whereby the Task Force shall make referrals to a municipal office with enforcement power under this Ordinance whenever it concludes that any person has violated any provision of this Ordinance.

Supporting Materials

The enclosed CD contains material in reference to this referral including (1) the November 3, 2009, Task Force Order of Determination, (2) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, (3) the minutes from the Task Force meetings on September 22, 2009, October 10, 2009, January 5, 2010, and the minutes from the Compliance and Amendments Committee meetings on November 10, 2009, and December 8, 2009.

If you need any further information, including audio recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator at (415) 554-7724.



Richard Knee, Chair
Sunshine Ordinance Task Force

cc: Peter Warfield, complainant
Madeline Licavoli, respondent
Rick Caldeira, respondent
Jerry Threet, Deputy City Attorney

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

November 3, 2009

DATE THE DECISION ISSUED

October 27, 2009

PETER WARFIELD v. CLERK OF THE BOARD OF SUPERVISORS (09057)

FACTS OF THE CASE

Complainant Peter Warfield alleges that he requested information from the Clerk of the Board of Supervisors (the "Clerk") concerning the current membership of the Library Citizen Advisory Committee ("LCAC"). He further alleges that the Deputy Clerk requested that he return in about three hours to allow the clerk's office time to redact documents responsive to the request, causing a delay in his ability to review the remainder of the file. Mr. Warfield alleges that he then requested only the two-page current membership roster, which was promptly provided with redaction of contact information of the LCAC members, without explanation of the justification for withholding that information.

COMPLAINT FILED

On September 9, 2009, Mr. Warfield filed a Complaint against the Clerk for alleged violations of Sections 67.21(a) & (b), 67.26, and 67.27 of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On October 27, 2009, Complainant Peter Warfield appeared before the Task Force and presented his claim. Respondent agency was represented by Rick Caldera, Legislative Deputy Director in the Clerk's Office.

Mr. Warfield reiterated that contact information for members of boards and committees should be public. He told the members that individuals have plenty of time to decide on what kind of information they would like to give out and withhold, and disputed the notion that identity theft (which happens on a large scale involving spammers and rarely as the result of targeting a specific individual) does not defeat public access. Mr. Warfield noted that it was hard to definitively determine where information had been redacted from the document produced because of the use of correction tape to redact

left large blank spaces and that there was no information on why the redaction had occurred.

Mr. Caldera agreed that a line should have been drawn or other marking used on redacted documents to identify where information was redacted. He also noted that the clerk's office was reviewing their policy for redaction of personal information but that the staff was working under the old rules until a new policy is implemented.

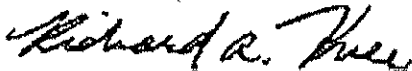
FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force ruled that the contact information for individuals serving on government boards and committees should be publicly accessible. That members of the public need a way to be able to personally contact elected and appointed members of boards and committees who are making and implementing policy for the City. The Task Force also noted that individuals can take steps to protect their privacy while also making themselves accessible to members of the public by, for example, setting up an email account (through Gmail, for example) or a PO Box that would be used for all City business.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.21 (a) 67.21 (b) for failure to provide records for inspection or review on a timely basis and for making impermissible redactions. The Clerk's Office is directed to produced unredacted copies of the documents Mr. Warfield requested within 5 calendar days of this Order of Determination and to appear before the Compliance and Amendments Committee on November 10, 2009, to discuss compliance with this Order of Determination

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 27, 2009, by the following vote: (Knee / Johnson)
Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Knee
Excused: Manneh, Goldman, Williams



Richard A. Knee, Chair, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Peter Warfield, complaint
Rick Caldera, respondent



Madeleine
Licavoli/BOS/SFGOV
12/04/2009 09:08 AM

To SOTF/SOTF/SFGOV@SFGOV
cc Angela Calvillo/BOS/SFGOV@SFGOV, Rick
Caldeira/BOS/SFGOV@SFGOV
bcc

Subject File 09057 - Peter Warfield v. Clerk of the Board of
Supervisors

Chris,

File 09057 was heard at the Sunshine Ordinance Task Force's Compliance and Amendments Committee on November 10, 2009. The matter was continued to December 8, 2009. At the meeting on November 10, the Committee members indicated they would like an opportunity to review the revised redaction policy prior to the meeting on December 8.

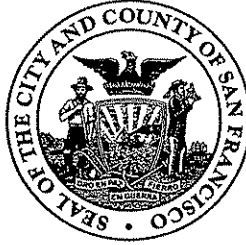
Attached is a copy of the revised redaction policy for distribution to the Committee.

Thanks.

Madeleine Licavoli, CMC
Deputy Director II
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
415 554 7722
415 554 5163 (fax)
madeleine.licavoli@sfgov.org

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BOARD of SUPERVISORS



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MEMORANDUM

Date: November 10, 2009
To: Clerk of the Board Staff
Assessment Appeals Board
Office of the Legislative Analyst
Sunshine Ordinance Task Force
Youth Commission
From: Angela Calvillo, Clerk of the Board
Subject: Redaction Policy - Revised

The redaction policy established effective May 23, 2008, has been revised as of November 10, 2009, as follows:

REDACTION POLICY: PERSONAL INFORMATION

The Office of the Clerk of the Board, pursuant to §2.108 of the Charter, shall liberally provide for the public's access to information, documents and records.

Personal information contained in general communications submitted to the Board of Supervisors/Clerk of the Board's Office is subject to disclosure and **will not be redacted**.

It shall be the policy of the Clerk's of the Board's Office and its agencies **to redact** the following information:

Board/Commission/Committee/Task Force Applications (including any attachments and/or supporting documentation):

- Home street address numbers
- Home telephone numbers
- Home fax numbers
- Home email addresses