

Date: April 27, 2010

Item No. 5

File No. 09069

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- 09057 Asian Law Caucus v Mayor's Office
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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**



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ORDER OF DETERMINATION
January 29, 2009

DATE THE DECISION ISSUED
January 5, 2009

ASIAN LAW CAUCUS V. MAYOR'S OFFICE (09069)

FACTS OF THE CASE

The Asian Law Caucus alleged that on Sept. 2, 2009, it submitted an Immediate Disclosure Request to the Mayor's Office for a copy of a City Attorney Office memo that was leaked to the San Francisco Chronicle newspaper and for copies of any communication the Mayor's Office had with the Chronicle regarding the issue. The Asian Law Caucus alleges that the Mayor's Office responded late to the first request and ignored the second request.

COMPLAINT FILED

On October 13, 2009, the Asian Law Caucus filed a complaint with the Sunshine Ordinance Task Force.

HEARING ON THE COMPLAINT

On December 1, 2009, Asian Law Caucus staff attorney Angela Chan presented the organization's case to the Task Force. The Mayor's Office was not represented. There was no one in the audience who spoke or presented facts or evidence on behalf of the respondent. Task Force chair Richard Knee reported that Brian Purchia of the Mayor's Press Office was in the audience earlier, but left a note saying he had to leave to respond to press requests. That action concerned members who wanted to query the Mayor's Office regarding the complaint.

Ms. Chan told the Task Force on December 1, 2009, that the Mayor's Office responded late to her first request by sending her a link to the City Attorney's website, where the memo in question had been posted. When Ms. Chan followed up on the status of the second request, she was told that the previous email completed the Mayor's Office's response. Ms. Chan sent another email, warning the Mayor's Office that if it did not respond, she would file a Sunshine complaint. The Mayor's Office has not responded and has not provided justification for withholding the documents relevant to her second request as required by Sec. 67.27, she said. The Mayor's Office has a duty to maintain records of these communications under Sec. 67.29-7 (a) and these communications must be kept in accordance with Sec. 67.29-1, regardless of the replacement, retirement or transfer of public officials, she said. The documents are public records covered by California Public Records Act Sections 6252 (e) and (g), and must be kept under Sec. 67.20 (b) of the

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Ordinance, she said. Ms. Chan argued that there was no privilege or exclusion for the documents and no attorney-client privilege existed because the Mayor's Office has released the document. She said Mayor Gavin Newsom needs to explain to the residents of San Francisco by whom, why and how the document was leaked.

The Task Force voted and found the Mayor's Office in violation of section 67.21(e) for failure to send a representative to the meeting. The Task Force also voted and found the Mayor's Office in violation of Sec. 67.27 for failing to explain a basis for withholding documents. The remaining issue – whether there were documents evidencing how the memo at issue was leaked that were improperly withheld by the Mayor's Office – was continued to the January 5, 2010, meeting. Chair Knee also sent a letter to the Mayor's Office December 9, 2009, explaining the need to send a representative to the January 5, 2010, meeting to describe whether and how the office complied with the request. The matter was heard again on January 5, 2010. No response had been received by the Mayor's Office and no one, again, was present to represent the Mayor's Office. Ms. Chan said that she has not received any information nor been contacted by the Mayor's Office since she last testified. She said the actions of the Mayor's Office are in violation of Sec. 67.34 for willful failure and should be deemed official misconduct. She also said she had not received a response to the letter that Chair Knee had written to the Mayor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that in addition to the violations found in the Order of Determination following the December 1, 2009, meeting (violation of Sec. 67.21 (e) for failure to appear and violation of Sec. 67.27 for failure to provide justification for withholding), on January 5, 2010, the Task Force found the Mayor's Office: in violation of sections 67.21(e) and 67.34 for willful failure to appear before the Task Force.

DECISION AND ORDER OF DETERMINATION

The Mayor's Office is to provide any withheld documents within five days and ordered to appear before the Compliance and Amendments Committee February 9, 2010, (Goldman / Knoebber)

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



Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Asian Law Caucus, Complaint
Mayor's Office, Respondent

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COMPLAINT FILED

On October 13, 2009, the Asian Law Caucus filed a complaint with the Sunshine Ordinance Task Force.

HEARING ON THE COMPLAINT

On December 1, 2009, Asian Law Caucus staff attorney Angela Chan presented the organization's case to the Task Force. The Mayor's Office was not represented. There was also no one in the audience who spoke or presented facts or evidence on behalf of the respondent. Task Force chair Richard Knee reported that Brian Purchia of the Mayor's Press Office was in the audience earlier, but left a note saying he had to leave to respond to press requests. That action concerned members who wanted to query the Mayor's Office regarding the complaint. The Task Force continued the matter to the January 5, 2010, meeting, to which the Mayor's Office failed to send a representative.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Chan told the Task Force on December 1, 2009, that the Mayor's Office responded late to her first request by sending her a link to the City Attorney's website, where the memo in question had been posted. When Ms. Chan followed up on the status of the second request, she was told that the previous email completed the Mayor's Office's response. Ms. Chan sent another email, warning the Mayor's Office that if it did not respond, she would file a Sunshine complaint. The Mayor's Office has not responded and has not provided justification for withholding the documents relevant to her second request as required by Sec. 67.27, she said. The Mayor's Office has a duty to maintain records of these

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communications under Sec. 67.29-7 (a) and these communications must be kept in accordance with Sec. 67.29-1, regardless of the replacement, retirement or transfer of public officials, she said. The documents are public records covered by California Public Records Act Sections 6252 (e) and (g), and must be kept under Sec. 67.20 (b) of the Ordinance, she said.

Ms. Chan argued that there was no privilege or exclusion for the documents and no attorney-client privilege existed because the Mayor's Office has released the document. She said Mayor Gavin Newsom needs to explain to the residents of San Francisco by whom, why and how the document was leaked. Ms. Chan said on January 5, 2010, that she has not received any information nor been contacted by the Mayor's Office since she last testified. She said the actions of the Mayor's Office are in violation of Sec. 67.34 for willful failure and should be deemed official misconduct. She also said she had not received a response to the letter that Chair Knee had written to the Mayor's Office.

DECISION AND ORDER OF DETERMINATION

After further debate on December 1, 2009, the Task Force found the Mayor's Office:

- in violation of Sec. 67.21 (e) for failure to appear, by the following vote (Cauthen / Washburn)

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

- in violation of Sec. 67.27 for failure to provide justification for withholding, by the following vote (Cauthen / Washburn)

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

The motion to continue was by the following vote (Knee / Craven-Green)

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

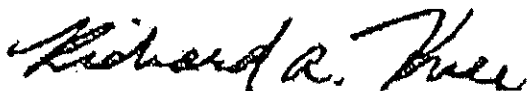
On January 5, 2010, the Task Force found the Mayor's Office:

- in violation of Sec. 67.34 for willful failure to comply and Sec. 67.21 (e) for failing to appear.

The Mayor's Office is directed to provide the afore-cited copies of correspondence between the Mayor's Office and the San Francisco Chronicle within five business days after receiving this Order of Determination, and is ordered to appear before the Compliance and Amendments Committee February 9, 2010. (Goldman / Knoebber)

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- Ayes: Manneh, Washburn, Knoebber, Chu, Chan, Goldman, Williams, Knee



Richard A. Knee
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Asian Law Caucus, Complaint
Mayor's Office, Respondent