

Date: April 28, 2009

Item No. 22

File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Administrator's Report
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Completed by: Chris Rustom

Date: April 24, 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.

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SUNSHINE ORDINANCE  
TASK FORCE



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**MEMORANDUM**

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**Date:** April 24, 2009  
**To:** Sunshine Ordinance Task Force  
**From:** Chris Rustom  
**Subject:** Administrator's Report.

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1. Requests from community persons:
  - From March 18, 2009, through April 21, 2009, the Task Force's office responded to approximately 455 calls/emails/office visits from individuals requesting information regarding the Sunshine Ordinance, or to mediate request for records.
2. 2009 Complaint Log
3. Communications Received Log
4. Orders of Determination
  - #09003 Rita O'Flynn v Department of Technology
  - #09006 Joshua Arce and Eric Brooks v SFPUC
  - #09009 Charles Pitts v Department of Health

## Complaints 2009

Date Received	Complainant	Department/Respondent	Status
1/5/2009	Ray Hartz (09001)	CAO, Matt Dorsey	Complaint 2/10/09, Task Force 02/24/09, Cont'd, 03/24/09, Withdrawn
1/6/2009	Michael Petrelis (09002)	Public Health STD Unit	Task Force 1/27/09, No violation
1/19/2009	Rita O'Flynn (09003)	Dept of Technology	Task Force 02/24/09, continued, Complaint Committee 3/10/09, Task Force 3/24/09, Violated 67.21-1 and CPRA 6253.9, CAC 5/12/09
1/23/2009	Ray Hartz (09004)	City Attorney, Matt Dorsey	Task Force 2/24/09, No violation motion failed. No further action, petitioned 3/24/09, rejected.
1/23/2009	Steve Lawrence (09005)	Public Utilities Commission	Task Force 2/24/09 withdrawn 2/9/09
1/26/2009	Joshua Arce & Brooks (09006)	Public Utilities Commission	Task Force 2/24/09, quorum loss, Task Force 3/24/09, violated 67.29-7, CAC 5/12/09
1/30/2009	David Larkin (09007)	Public Works	Complaint 03/10/09, Task Force 3/24/09, 4/28/09.
2/4/2009	Ray Hartz (09008)	Police Commission	Task Force 2/24/09, violated 67.29 & 67.21(e). Referred to EOT
2/9/2009	Charles Pitts (09009)	Health Dept	Complaint 03/10/09, Task Force 3/24/09, No violation, faulted for non-presence
2/20/2009	Ray Hartz (09010)	Arts Commission	Task Force 3/24/09, Referred to the EOT
2/23/2009	Ray Hartz (09011)	CAO, Matt Dorsey	Task Force 3/24/09, Withdrawn
2/23/2009	Ray Hartz (09012)	Office of Citizen Complaints	Complaint 4/14/09, Withdrawn
2/27/2009	Steve Lawrence (09013)	Public Utilities Commission	Task Force 3/24/09, 4/28/09
3/18/2009	Ahimsa Porter Sumchai (09014)	Board of Supervisors	Task Force 4/28/09
3/18/2009	Raymond Bank (09015)	SF HIV Health Services Planning Council	Complaint Committee 4/14/09, Task Force 4/28/09
3/23/2009	Peter Green (09016)	Public Health	Task Force 4/28/09
23-Mar	SORE (09017)	SFPUC	Task Force 4/28/09

## Complaints 2009

3/27/2009	Anonymous Tenants (09018)	Dept of Bldg Inspection	Complaint Committee 4/14/09, Task Force 4/28/09
4/3/2009	Christian Holmer (09019)	COB & SOTF	Task Force 5/28/09
4/7/2009	Anonymous (09020)	MTA	Task Force 5/28/09

COMMUNICATIONS RECEIVED LOG  
 March 18, 2009, through April 21, 2009

	DATE	FROM	DESCRIPTION
1	14-Mar	Dr Ahimsa Sumchai	BOS trip to DC (11)
2	14-Mar	Kimo Crossman	Records preservation
3	14-Mar	Kimo Crossman	Google groups
4	17-Mar	Kimo Crossman	Violation of procedures (3)
5	18-Mar	Matt Dorsey	Lennar Corp (3)
6	17-Mar	Joe Lynn	Violation of procedures
7	18-Mar	Christian Holmer	Violation of procedures
8	19-Mar	Christian Holmer	Referring DA to AG (3)
9	19-Mar	Christian Holmer	Preserving records (2)
1	23-Mar	Anonymous Tenants	Matrix report (3)
11	23-Mar	David Noyola	Response to BOS trip
12	23-Mar	Christian Holmer	Mayor's Office calendars (5)
13	23-Mar	Christian Holmer	Press requests (3)
14	24-Mar	Rita O'Flynn	Sunset Neighborhood Association
15	24-Mar	Dr Ahimsa Sumchai	Bayview editorial
16	24-Mar	Cynthia Servetnick	55 Laguna (7)
17	25-Mar	Lulu Hwang	55 Laguna
18	25-Mar	Patnlisa	Strybing screams
19	26-Mar	Olive Gong	Budget
20	26-Mar	Patnlisa	HR875
21	26-Mar	Melissa Apuya	Richmond fest
22	26-Mar	Patnlisa	Info request
23	26-Mar	Rick Knee	SOTF & EC training
24	27-Mar	Kimo Crossman	DBI fee
25	27-Mar	Joe Lynn	DBI fee
26	27-Mar	Patnlisa	Lenna stocks
27	28-Mar	Mpetrelis	Jamaican consul
28	29-Mar	dc250	Juv Prob agenda
29	30-Mar	Christian Holmer	Govt transparency
30	31-Mar	Andrea Bruss	Lennar partnerships
31	3-Apr	CFAC	Open govt news
32	5-Apr	Christian Holmer	Budget meeting
33	5-Mar	Kimo Crossman	NYT editorial
34	5-Apr	Dr Ahimsa Sumchai	Lennar Corp (9)
35	6-Apr	Christian Holmer	SOTF complaint
36	6-Apr	Christian Holmer	C\Prop G calendar
37	6-Apr	Kimo Crossman	Matrix report
38	6-Apr	Patnlisa	Secret govt (2)
39	8-Apr	Kimo Crossman	MTA (4)
40	8-Apr	Joe Lynn	MTA
41	8-Apr	Islais Wharf	MTA (2)
42	9-Apr	Ann Garrison	MTA
43	9-Apr	Kimo Crossman	TARP/Hearst
44	9-Apr	Marc	TARP/Hearst
45	9-Apr	Kimo Crossman	Newsom video
46	9-Apr	Sue Cauthen	Library request (2)
47	9-Apr	flauto	Employee antics
48	10-Apr	Sup Mirkarimi	Newsletter
49	10-Apr	BOS	Letter to Public Works
50	10-Apr	Kimo Crossman	Agenda attachments
51	13-Apr	Eric Brooks	Solar Ordinance
52	13-Apr	Isaronelove	Capt. Chignel

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**ORDER OF DETERMINATION**  
April 1, 2009

**DATE THE DECISION ISSUED**  
March 24, 2009

*RITA O'FLYNN v DEPARTMENT OF TECHNOLOGY (09003)*

**FACTS OF THE CASE**

Complainant Rita O'Flynn has been investigating the federal Housing and Urban Development ("HUD") Lead Abatement Grant issued through the Mayor's Office of Housing. In 2008, Rita O'Flynn requested that she have the opportunity to review the entire HUD Lead Abatement files at the Mayor's Office of Housing. After she reviewed the files, she requested that the entire file be copied. Once she received the copies she realized that the provided records did not include the emails that she had reviewed. When she requested the email records she was advised that the emails records had been deleted since the Mayor's Office only keeps electronic records for two years. Rita O'Flynn also tried to get the email records of former supervisor Fiona Ma and the HUD office from the Board of Supervisors but learned that the electronic records had also been deleted after Supervisor Ma left the Board to join the State Assembly.

On November 14, 2008, Rita O'Flynn made an Immediate Disclosure Request ("IDR") with the Department of Technology for all emails during the past 5 years from or to:

1. Myrna Iton Melgar, Mayor's Office of Housing and Susan Suval.
2. Michael Palmer, Mayor's Office of Housing and Susan Suval.
3. Fiona Ma, San Francisco Supervisor and Myrna Iton Melgar, Mayor's Office of Housing.

On November 14, 2008, Ron Vinson, the Director of Media responded to the IDR and requested an extension under Section 67.25(b) of the Ordinance until November 25, 2008. On November 25, 2008, Ron Vinson emailed Rita O'Flynn to explain that there was difficulty in finding the records and would need more time.

On January 14, 2009, Ron Vinson emailed Rita O'Flynn and advised her that the email records that she was seeking had been deleted during the course of materials management and consistent with the Mayor's Office records retention policy. Ron Vinson stated that if records are deleted during the Mayor's Office periodic clearing of records pursuant to a stated records retention schedule, neither the Sunshine Ordinance nor the State Public Records Act requires the City to search backup tapes to retrieve such messages.

## **COMPLAINT FILED**

On January 19, 2009, Rita O'Flynn filed a complaint against the Department of Technology Office alleging violations of Sections 67.21 and 67.29-7 of the Sunshine Ordinance.

## **HEARING ON THE COMPLAINT**

On March 24, 2009, Complainant Rita O'Flynn appeared before the Task Force and presented her claim. Respondent Agency was represented by Ron Vinson, who presented the Department of Technology's defense.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the testimony and evidence presented the Task Force questioned whether the Mayor's Office of Housing should have deleted the emails after they were produced because they were responsive to an existing Sunshine request at that time. The issue had similarities to document preservation requirements that arise when a claim is made or during litigation. However, as the Mayor's Office was not a party to the complaint, the Task Force could not take any action against the Mayor's Office.

With respect to the respondent Department of Technology, however, the Task Force found that computer backup tapes are public records under both the Sunshine Ordinance and California Public Records Act. How those public records should be searched, and the cost of retrieval, however, is governed by Section 6253.9 of the California Public Records Act which allows a requestor of electronic records to be charged a fee for extraction of electronic data.

## **DECISION AND ORDER OF DETERMINATION**

The Task Force finds that computer backup tapes are public records under the Sunshine Ordinance and the Public Records Act. The Department of Technology violated Section 67.21-1 of the Sunshine Ordinance for failure to utilize computer technology in order to reduce the cost of public records management and Section 6253.9 of the California Public Records Act for failure to respond to Ms. O'Flynn's request with an estimation of the cost to extract the records at a minimum.

The matter is referred to the Compliance and Amendments Committee to determine how the parties will proceed.



This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 24, 2009, by the following vote: (Craven / Goldman)  
Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Williams, Chu



Kristin Murphy Chu, Chair  
Sunshine Ordinance Task Force

c: Rosa Sanchez, Deputy City Attorney  
Ernie Llorente, Deputy City Attorney  
Rita O'Flynn, complainant  
Ron Vinson, respondent

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**ORDER OF DETERMINATION**

April 17, 2009

**DATE THE DECISION ISSUED**

March 24, 2009

*JOSHUA ARCE AND ERIC BROOKS V PUC (09006)*

**FACTS OF THE CASE**

Complainants represent environmental and social justice organizations that have spent the past several years seeking closure of the Potrero Power Plant in Southeast San Francisco without the construction of new power plants to replace it. Complainant Joshua Arce represents the Brightline Defense Project and Complainant Eric Brooks represents the San Francisco Green Party, Sustainability Working Group.

On May 14, 2008, Joshua Arce as Executive Director/Staff Attorney for the Brightline Defense Project made a Public Records Request for all communications between the San Francisco Public Utilities Commission ("SFPUC") staff and the California System Operator ("Cal-ISO") state regulatory body during the period of March 1, 2008 through May 13, 2008. To this request, the SFPUC provided 8 e-mails.

Joshua Arce and Eric Brooks believed that there should be more e-mails since what was provided alluded to other communications that were ongoing between the SFPUC and Cal-ISO. From May 16 through June 11, 2008, complainants communicated with the SFPUC in their effort to obtain other e-mails that the Complainants believed were being withheld by the SFPUC. The SFPUC responded that they did not have any further records.

The Complainants made an identical Public Records Request with Cal-ISO and received 20 e-mails.

**COMPLAINT FILED**

On January 26, 2009, Joshua Arce and Eric Brooks filed a complaint against the SFPUC for its alleged failure to disclose e-mails under Section 67.21 and/or its willful failure to maintain and preserve correspondence and records under Section 67.29-7.

The complainants further allege that the willful failure to maintain correspondence was official misconduct as defined in Section 67.34.

## HEARING ON THE COMPLAINT

On March 24, 2009, complainant Joshua Arce and co-complainant Eric Brooks appeared before the Task Force and presented their claims. Respondent Agency was represented by Tony Winnicker, the Agency's director of communications.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds that even though staff at the SFPUC have authorization to delete emails that they deem not important, the task should have been undertaken judiciously and from the viewpoint of the public. The Task Force also found that the department did not err on the side of openness and it failed to seek the City Attorney's advice on the issue.

## DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section 67.29-7 of the Sunshine Ordinance for not maintaining and preserving in a professional and businesslike manner all documents and correspondence. The agency shall review their backup tapes for additional records and appear before the Compliance and Amendments Committee on May 12, 2009.

Further, the Task Force requests that the PUC search for additional email records in their email backup files and provide them to the complainants as soon as possible.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 24, 2009, by the following vote: ( Goldman / Johnson )

Ayes: Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Chu

Recused: Craven, Williams

The enforcement of this Order of Determination is referred to the Compliance and Amendments Committee to work with the PUC to provide all additional emails produced during the period in question.



Kristin Murphy Chu, Chair  
Sunshine Ordinance Task Force

c: Rosa Sanchez, Deputy City Attorney  
Ernie Llorente, Deputy City Attorney  
Joshua Arce, complainant  
Eric Brooks, complainant  
Tony Winnicker, respondent

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**ORDER OF DETERMINATION**  
April 1, 2009

**DATE THE DECISION ISSUED**  
March 24, 2009

*CHARLES PITTS V HEALTH DEPARTMENT (09009)*

**FACTS OF THE CASE**

On February 5, 2009, Complainant Charles Pitts made an Immediate Disclosure Request under Section 67.25 of the Sunshine Ordinance. Charles Pitts requested information regarding "Why Quintin Mecke of the Shelter Monitoring Committee can hold on to his chair position after his term expired."

On February 6, 2009, under the letterhead of Mitchell H. Katz, M.D., Director of Health, a note was issued that stated the following: "According to Ordinance 283.04 Section 20.305(b) and Ordinance 150.07 Section 20.305(b) Officer elections, unless there is a vacancy, occur in the even-numbered calendar years. Mr. Mecke was voted in as chair, in January of 2008 and that the term will not end until January 2010, unless Mr. Mecke leaves the Committee."

**COMPLAINT FILED**

On February 9, 2009, Charles Pitts filed a complaint against the DPH alleging violations of the Sunshine Ordinance. Specifically, Charles Pitts stated that DPH did not provide all of the information requested, that DPH did not identify the author of the note, that there may be an Ethics violation and that the information provided was incorrect.

**HEARING ON THE COMPLAINT**

On March 24, 2009, Complainant Charles Pitts appeared before the Task Force and presented his claim. Respondent Agency was not represented at the hearing, instead PIO Eileen Shields sent a letter to the Task Force stating that the department did not dispute jurisdiction and explaining the Department's position that all information requested had been provided to Mr. Pitts.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force found that the department provided Mr. Pitts all the information that was requested and, in fact, went beyond what was necessary and created a new document to answer Mr. Pitts' question.

## DECISION AND ORDER OF DETERMINATION

While the department did not violate the Sunshine Ordinance in responding to Mr. Pitts' request and the Task Force commends the department for going beyond what was required and creating a document to answer Mr. Pitts' question, the department was found in violation of Section 67.21 (e) of the Sunshine Ordinance for not sending an authorized representative to the hearing.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 24, 2009, by the following vote: (Cauthen / Goldman )

Ayes: Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Williams, Chu  
Noes: Craven



Kristin Murphy Chu, Chair  
Sunshine Ordinance Task Force

c: Rosa Sanchez, Deputy City Attorney  
Ernie Llorente, Deputy City Attorney  
Charles Pitts, complainant  
Eileen Shields, respondent

