Date: April 28, 2009

Item No. 4 & 5
File No. 09014

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

☒	Dr. Ahimsa Sumchai v Board of Supervisors
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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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CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ERNEST H. LLORENTE
Deputy City Attorney

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

MEMORANDUM

April 20, 2009

AHIMSA PORTER SUMCHAI v. SAN FRANCISCO BOARD OF SUPERVISORS (09014)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Complainant, Dr. Ahimsa Porter Sumchai alleges that the Board of Supervisors cancelled their regularly scheduled meeting for the week of March 9 -13, 2009 and that six members of the Board went to Washington D.C. to meet with Senator Dianne Feinstein and House Speaker Nancy Pelosi.

COMPLAINANT FILES COMPLAINT:

On March 18, 2009, Dr. Sumchai filed a complaint with the Task Force alleging that the Board conducted a policy body meeting while in Washington D.C. without providing public notice of the meeting and without providing an opportunity for Public Comment in violation of the Public Records Act, Brown Act and the Sunshine Ordinance.

THE RESPONDENT AGENCY STATES THE FOLLOWING:

On March 24, 2009, Frank Darby, the Records and Information Manager of the Office of the Clerk of the Board of Supervisors. Sent an e-mail to the Task Force and stated that the BOS did not contest the Task Force's jurisdiction over the issues raised by the complaint but that factually, the BOS did not violate the state Public Records Act, the Brown Act or the Sunshine

Memorandum

Ordinance since the members of the Board that were a majority of the Board went to Washington D.C. to attend a conference.

APPLICABLE STATUTORY SECTION:

1. Sunshine Ordinance, Section 67.3 which defines "Meeting" and discusses the allowed participation at national conference.
2. Sunshine Ordinance Section 67.5 which require policy bodies to have public meetings.
3. Sunshine Ordinance Section 67.6 which define the conduct of business, time and place for meetings.
4. The State Brown Act Section 54952.2 which deals with the definition of "Meeting" and discusses allowed participation in conferences.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

- The BOS cancelled it regular meeting for the week of March 9-13, 2009
- Six members of the BOS traveled to Washington D.C.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Whether a majority of the Board of Supervisors conducted a meeting while in Washington D.C.?
- Whether a majority of the BOS met together and discussed business within the jurisdiction of the BOS?
- Whether a majority of the BOS went to Washington D.C. to attend a conference?

Memorandum

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What was the reasons why the members of the BOS went to Washington D.C.?
- What did the members of the BOS do as a body while in Washington D.C.?
- Did the members of the BOS attend a conference?
- Was the attendance of the conference the only business conducted by the members of the BOS?

LEGAL ISSUES/LEGAL DETERMINATIONS;

- **Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three 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 ton 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 67.3 (b)(1) defines "Meeting" as follows:

> 1) A congregation of a majority of the members of a policy body at the same time and place.

Section 67.3(b)(4) (B) states the "Meeting" shall not include any of the following:

> B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter juridiction of the City.

Section 67.5 states that meetings to be open and public and that the Brown Act applies. It states:

> All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.) and of this article. In case of inconsistent requirements under the Brown Act and this article, the requirements which would result in greater or more expedited public access shall apply.

State Brown Act Section 54952.2 defines "Meeting" as follows:

> a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

State Brown Act Section 54952(c) states that nothing is this section shall impose the requirements of this capter upon ay of the following:

> 2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discuss of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow memgers of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2009 MAR 18 AM 9:21
BY

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: Board of Supervisors

Name of individual contacted at Department or Commission: Angela Calvillo - Clerk
David Chiu - President

☒ Alleged violation public records access
☒ Alleged violation of public meeting. Date of meeting: Week of March 9-13

Sunshine Ordinance Section: Public Records, Brown Act and Sunshine Violations
(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.

Six member majority of BOS including Supervisors Chiu, Chu, Mar, Campos, Duffy and Maxwell abruptly canceled scheduled meeting of BOS to travel to Washington, D.C. to meet with Federal Elected Officials Feinstein & Pelosi. No public notice, agenda or public comment opportunity.

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ yes ☐ no
Do you also want a pre-hearing conference before the Complaint Committee? ☐ yes ☐ no

(*Optional*)[1]
Name: Abimsa Porter Sumchai, M.D. Address: 236 West Portal #103, S.F. 94127

Telephone No. (415) 835-4763 E-Mail Address: asumchai@SFBayview.com
abimsa-sumchai@ucsf.edu

Date: 3/12/09

Signature

I request confidentiality of my personal information. ☐ yes ☒ no

[1] NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

"Dr. Ahimsa Sumchai"
<asumchai@live.com>
03/26/2009 01:43 PM

To Jon Lau <jon.lau@sfgov.org>, Board Supervisors <board_of_supervisors@ci.sf.ca.us>, Sophie Maxwell <sophie.maxwell@sfgov.org>, Sunshine Task Force
cc
bcc
Subject Response from office of Supervisor Sophie Maxwell

Please add to SOTF and Ethics Complaints

AHIMSA PORTER SUMCHAI, M.D.

> Subject: public records request
> To: asumchai@live.com
> From: Jon.Lau@sfgov.org
> Date: Thu, 19 Mar 2009 17:27:31 -0700
>
>
> FAX on letterhead to follow:
>
>
> March 19, 2009
>
> Ahimsa Porter Sumchai, M.D.
>
>
>
> Dear Ms. Sumchai:
>
> I am writing in response to your public records request of March 19,
> 2009. The office of Supervisor Maxwell received your request via e-mail
> today.
>
> In your request you ask for documentation related to the recent
> CityTrip and American Public Transportation Association events held
> recently in Washington, D.C.
>
> Please be advised that we are hereby invoking an extension of not more
> than 24 days from March 19, 2009 to respond to your request pursuant to the
> California Public Records Act. Under the Public Records Act, the deadline
> can be extended for up to 24 days due to "the need to search for, collect
> and appropriately examine a voluminous amount of separate and distinct
> records which are demanded in a single request" and "the need for
> consultation, which shall be conducted with all practicable speed, with
> another agency having substantial interest in the determination of the
> request or among two or more components of the agency having substantial
> subject matter interest therein." (See Cal. Government Code 6253(c)(2) and

> (3).
>
>
> (See attached file: sunshine request sumchai.doc)
>
> _____
>
> Jonathan O. Lau
> Legislative Assistant,
> Office of Supervisor Sophie Maxwell
> City Hall
> 1 Dr. Carlton B. Goodlett Place, Room 244
> San Francisco, CA 94102-4689
>
> e.mail: jon.lau@sfgov.org
> ph: 415-554-7672
> fax: 415-554-7674

sunshine request sumchai.doc

"Dr. Ahimsa Sumchai"
<asumchai@live.com>

03/26/2009 01:44 PM

To Sunshine Task Force <sotf@sfgov.org>, Ethics Commission <ethics.commission@sfgov.org>, Catherine Argumedo <catherine.argumedo@sfgov.org>, John St.Croix

cc

bcc

Subject Was this approved by the BOS? gift letter to the City for DC trip

Please add to SOTF and Ethics Complaint

AHIMSA PORTER SUMCHAI, M.D.

> Subject: Re: Was this approved by the BOS? gift letter to the City for DC trip
> To: asumchai@live.com
> CC: angela.calvillo@sfgov.org; asumchai@sfbayview.com; asumchai@live.com; board_of_supervisors@ci.sf.ca.us; david.chiu@sfgov.org; ethics.commission@sfgov.org; rblack@sfchamber.com; sotf@sfgov.org
> From: David.Noyola@sfgov.org
> Date: Mon, 23 Mar 2009 14:52:57 -0700
>
> Dr. Sumchai,
> It is my understanding the Chamber initially intended to give the gift to
> the City, and ultimately decided to limit the gift to individual officers
> and city staff. These individual gifts from the Chamber foundation to each
> Supervisor will be reported on each's Form 700 at the next filing.
>
> Please let me know if you have any further questions.
>
> best,
> david
>
> David Noyola
> Office of Supervisor David Chiu
> City Hall, Room 264
> San Francisco, CA 94102
> tel. 415/554-7451 fax. 415/554-7454
>
>
>
> "Dr. Ahimsa
> Sumchai"
> <asumchai@live.co To
> m> David Noyola
> <david.noyola@sfgov.org>,
> 03/21/2009 03:05 <rblack@sfchamber.com>, David Chiu
> PM <david.chiu@sfgov.org>, Board

> Supervisors
> <board_of_supervisors@ci.sf.ca.us>,
> angela Calvillo
> <angela.calvillo@sfgov.org>,
> Sunshine Task Force
> <sotf@sfgov.org>,
> <ethics.commission@sfgov.org>, "Dr.
> Ahimsa Sumchai"
> <asumchai@live.com>,
> <asumchai@sfbayview.com>
> cc
>
> Subject
> Was this approved by the BOS? gift
> letter to the City for DC trip
>
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>
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>
>
> Can you please provide me with verification or documentation that the Board
> of Supervisors accepted this as a gift via legislative action?
>
>
> AHIMSA PORTER SUMCHAI, M.D.(Embedded image moved to file: pic23238.gif)
>
>
>
>
>
> > Subject: Fw: gift letter to the City for DC trip
> > To: asumchai@live.com
> > From: David.Noyola@sfgov.org
> > Date: Fri, 20 Mar 2009 11:40:03 -0700
> >
> >
> >
> >
> > David Noyola
> > Office of Supervisor David Chiu
> > City Hall, Room 264
> > San Francisco, CA 94102
> > tel. 415/554-7451 fax. 415/554-7454
> > ----- Forwarded by David Noyola/BOS/SFGOV on 03/20/2009 11:46 AM -----
> >
> > "Rob Black"
> > <rblack@SFChamber
> > .com> To
> > <david.noyola@sfgov.org>

> > 03/04/2009 10:30 cc
> > AM
> > Subject
> > gift letter to the City for DC trip
> >
> >
> >
> >
> >
> >
> >
> >
> >
> > David,
> >
> > Attached is a copy of the gift letter for the DC trip. I apologize this
> is
> > coming late but with all the additions in the last 24 hours, we had to
> > figure out the content.
> >
> > Hopefully we can get something introduced to be heard by the board to
> > accept the amount at the next meeting. I will bring you the original this
> > morning.
> >
> > Rob Black
> > Vice President, Public Policy
> > San Francisco Chamber of Commerce
> > 235 Montgomery St., 12th Floor
> > San Francisco, CA 94104-2803
> > 415-352-8844 Direct, 415-392-0485 Fax
> > rblack@sfchamber.com
> >
> > (See attached file: Gift Letter for DC trip.pdf)
>
> Internet Explorer 8 – Now Available. Faster, safer, easier. Download FREE
> now!

pic23238.gif