

Date: May 5, 2010

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

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Completed by: Chris Rustom

Date: May 2, 2010

***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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DRAFT 2

May 6, 2011

San Francisco Ethics Commission
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Jamiene Studley, Esq., Vice Chairperson
Beverly Hayon
Dorothy S. Liu, Esq.
Charles L. Ward
25 Van Ness Avenue, Suite 220
San Francisco, California 94102

In re: Sunshine Ordinance Task Force vs. Public Library (Ethics Commission Complaint #05-100219).

Dear Commissioners:

In the matter of the above-cited complaint, the Sunshine Ordinance Task Force is deeply troubled over the Ethics Commission staff's reversal of the Task Force's finding that Public Library representative Sue Blackman violated Sunshine Ordinance Section 67.21(e) by failing to appear at two meetings of the Task Force's Compliance and Amendments Committee to discuss a complaint (Task Force Case #09042) brought by Peter Warfield.

We believe the reasons that the Commission's Executive Director, John St. Croix, cited, in an April 6, 2011, memorandum to the Task Force, for the overturn of the Task Force's finding, were specious and, in fact, that certain statements in said memorandum constitute an overreach of the Commission staff's authority.

Mr. St. Croix wrote:

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 subcommittee 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 Task Force believes that Mr. St. Croix erred in that interpretation of Section 67.21(e); the work of Task Force subcommittees is part and parcel of the work of the Task Force. By Mr. St. Croix’s logic, a proceeding conducted by one or two members of the Ethics Commission would not carry the same legal weight and requirements as would a proceeding conducted by the full Commission.

Mr. St. Croix further wrote:

(The Compliance and Amendments Committee’s) function related to an Order is that it “shall monitor compliance with the Orders of Determination adopted by the Task Force.” ...

There is no language in the (Compliance and Amendment Committee’s) By-Laws requiring any authorized representative to attend the Compliance and Amendments Committee meetings.”

We argue that it is the Sunshine Ordinance, not the by-laws of the Task Force and its subcommittees, that governs in this matter. The by-laws of the Task Force and its subcommittees are internal documents – guidelines of conduct and procedure for those entities, and their officers and members – nothing more. They are not intended to set forth requirements or proscriptions for members of the public, including interested parties in cases that come before the Task Force and its subcommittees.

And we believe that in setting themselves up as arbiters of whether by-law provisions or omissions somehow excuse City officials or employees from complying with any section of the Sunshine Ordinance, Ethics Commission staff members are seriously overstepping their authority and are setting an ill-conceived precedent that serves only to encourage City personnel to sidestep the Ordinance.

Knowing that each of you has a busy schedule with family and professional commitments as well as your service on the Commission, we encourage you nonetheless to attend our meetings as time and resources permit. You will see that the Task Force gives careful

attention to due process when complaints come before us. Hearings conducted by the Task Force and its subcommittees provide ample opportunity for parties-in-interest to make their case and for members of the public to weigh in. Furthermore, we have a Deputy City Attorney assigned to provide us with substantive and procedural guidance, and an attorney specializing in sunshine law holds a voting seat on the Task Force.

The Task Force recalls, and perhaps you will, that stalling by the Ethics Commission staff in providing requested public records request to citizen Allen Grossman recently cost City taxpayers a five-figure sum in court and attorney fees. When Commission staff personnel are themselves resistant to sunshine-law compliance, it raises serious questions as to whether they should participate in determining the outcomes of sunshine-related matters that come before you.

For all of the aforesaid reasons, the Task Force strongly urges that the Ethics Commission (1) review, at the Commission level, the Task Force's complaint against the Public Library to the Commission, and (2) make it standard practice and policy henceforth to review, at the Commission level, all such referrals that come before you. Thank you for your kind attention.

Sincerely,

Richard A. Knee
Sunshine Ordinance Task Force Chair