

Date: May 24, 2011

Item No. 11 & 12
File No. 11032

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Tomas Picarello against the Clerk of the Board of Supervisors**
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Completed by: Chris Rustom

Date: May 20, 2011

***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.



DENNIS J. HERRERA
City Attorney

JANA CLARK
Deputy City Attorney

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**MEMORANDUM
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Task Force
FROM: Jana Clark
Deputy City Attorney
DATE: May 19, 2011
RE: *Complaint No. 11032, Picarello v. Clerk of the Board of Supervisors*

Complaint

On April 14, 2010, Complainant Thomas Picarello ("Complainant") filed a complaint against the Clerk of the Board of Supervisors ("Clerk") alleging violations of the Sunshine Ordinance for failure to provide to the public timely and accurate minutes regarding the various Sunshine Task Force committees.

JURISDICTION:

The Office of the Clerk of the Board of Supervisors is a government office that forms a part of the legislative branch of the City and County of San Francisco, and, therefore, this committee has jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

Section 67.16 governs public access to minutes.

Section 67.21 governs the process for gaining access to public records.

Section 67.22 governs the release of oral public information.

Section 6250 et seq. of the Cal. Gov't Code

Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED:

FACTUAL ISSUES:

Contested/Uncontested Facts:

On April 14, 2011, Complainant alleged that the Clerk violated sections 67.16 and 67.34 of the Ordinance by willfully denying the public timely and accurate minutes regarding various Sunshine Task Force committees, specifying the March 2011 meeting "and continuing." On

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April 29, 2011, Respondent notified the Task Force that timely and accurate minutes of the Sunshine Task Force, and all of its subcommittees, are provided to the public as required by sections 67.16 and 67.34. Respondent noted further that all minutes of the Task Force and its subcommittees include the time of the meeting, the presence or absence of members, any agenda changes, recusals, and the reason for any recusals, the identity of complainants and respondents, the maker and sponsor of any motion, the votes of any member, the name, when available, of individuals making public comment, and a brief description of that public comment, and meeting times, including when a meeting ended, and the reason, if any. Respondent alleged that it met every obligation imposed by section 67.16, and that there was no willful failure to comply with the Ordinance as prohibited by section 67.34.

In a related request, on April 27, 2011, Complainant contacted the Administrator of this Task Force, Chris Rustom, and made an immediate disclosure request for any and all communications between Task Force members or staff, and the Clerk's office, for matters pertaining to problems in filing timely and/or accurate minutes for the Task Force for the prior twelve (12) month. On April 28, 2011, Mr. Rustom requested a ten (10) day extension of time to respond to the request due to its "voluminous nature".

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

Does Complainant dispute the facts presented by Respondent, and if so, are there specific facts that contradict Respondent's assertions?

LEGAL ISSUES/LEGAL DETERMINATIONS:

Were sections of the Sunshine Ordinance, Brown Act, and/or California Constitution Article I, Section three violated?

SUGGESTED ANALYSIS:

Determine whether Respondent has provided timely and accurate minutes in compliance with section 67.16. If it is found that Respondent has not provided timely and accurate minutes in compliance with section 67.16, does any failure to do so constitute a willful failure to discharge the duties imposed by section 67.16.

CONCLUSION:

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

APPLICABLE STATUTES

SEC. 67.16. MINUTES.

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size.

SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

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**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 to 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.



<complaints@sfgov.org>
04/14/2011 10:35 AM

To <sof@sfgov.org>
cc
bcc
Subject Sunshine Complaint

History: This message has been forwarded.

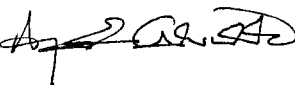
To:sof@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Clerk of the Board of Supervisors
CONTACTED:Angela Calvillo
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:Yes
MEETING_DATE:March 2011 and continuing
SECTIONS_VIOLATED:67.16, 67.34
DESCRIPTION:Clerk of the Board has willfully denied the public, timely and accurate minutes, regarding the various Sunshine Task Force committees.
HEARING:Yes
PRE-HEARING:No
DATE:4-14-11
NAME:Tomas Picarello
ADDRESS:
CITY:
ZIP:
PHONE:
CONTACT_EMAIL:t_picarello@yahoo.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No

BOARD of SUPERVISORS



City Hall
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San Francisco 94102-4689
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TDD/TTY No. 544-5227

MEMORANDUM

DATE: April 29, 2011
TO: Sunshine Ordinance Task Force
FROM: Angela Calvillo, Clerk of the Board 
SUBJECT: Sunshine Ordinance Complaint, #11032 - Tomas Picarello v COB

Thank you for your March 26, 2011, e-mail notifying us of Sunshine Complaint #11032.

From my understanding, the complaint filed by Mr. Tomas Picarello indicated that the Clerk of the Board has willfully denied the public timely and accurate minutes regarding the various Sunshine Task Force committees, violating Sections 67.16 and 67.34.

In response to this complaint I would like to reassure the Members that minutes of the Sunshine Task Force, and all of its sub-committees, are available to the public in a timely manner. In addition, minutes for the Sunshine Task Force, and all of its sub-committees, are in compliance with Administrative Code Sections 67.16 and 67.34.

Specifically, Section 67.16 mandates that 'the clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.'

We meet each and every aspect of Section 67.16. Specifically, the minutes of all Sunshine Ordinance Task Force, and all of its sub-committee meetings show the time the meeting was called to order, Task Force Members who were present or absent, and agenda changes, if any. The minutes also show if a Member was recused from a particular item, the reason why, and how members voted on the recusal. The minutes also identify the complainant and the respondent, the maker and sponsor of a motion if one is presented, and how Members voted. The minutes also include, whenever possible, the names of individuals who provided public comment and a brief description of what was conveyed. The minutes also reflect whether a

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member of the public spoke on various topics. Finally, the minutes indicate the time the meeting ended and the reason why, if any, other than no more business.

Specifically, Section 67.34 mandates that 'the willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.'

Again, we meet each and every aspect of Section 67.16, thereby there is no willful failure pursuant to Section 67.34.

I would be interested in receiving specifics from the complainant to justify his complaint. As always, I thank you again for the opportunity to provide additional information to resolve this matter.