

Date: May 25, 2010

Item No. 8 & 9

File No. 10015

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Ellen Tsang against the Planning Department**
-
-
-
-
-
-
-
-
-
-

Completed by: Chris Rustom

Date: May 21, 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.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

April 20, 2010

ELLEN TSANG VS. PLANNING DEPARTMENT (PLANNING) (10015)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ellen Tsang alleges that the San Francisco Planning Department ("Planning") failed to provide documents and records responsive to her public records request of March 11, 2010. The 3/11/10 public records request sought documents referred to as having been submitted to the Planning Department in an internal email dated February 12, 2010, which pertained to a property located at 769 North Point, San Francisco, California.

COMPLAINANT FILES COMPLAINT:

On April 14, 2010, Ms. Ellen Tsang filed a complaint against Planning.

JURISDICTION

Planning is a charter department of the City; therefore this committee has jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

Section 67.21 deals with responses to a public records request and the format of requests and of responsive documents.

Section 67.25 the immediacy of response.

Section 67.26 deals with withholding of records.

Section 67.27 deals with written justification for withholding of records.

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

Section 6253 deals with time of response.

APPLICABLE CASE LAW:

none.

Memorandum

DATE: April 20, 2010
PAGE: 2
RE: Tsang v. Planning

ISSUES TO BE DETERMINED

Uncontested Facts: Complainant Ellen Tsang alleges that the San Francisco Planning Department ("Planning") failed to provide documents and records responsive to her public records request of March 11, 2010. Complainant further substantiates that the documents sought by her once existed by providing emails dating 2/13/09 and 6/20/08 from the architect for the project at 769 North Point to the Planning Department, in which the architect notes his delivery to Planning of those documents on the date of the emails.

She further notes that the Task Force administrator's 4/21/2010 email to Planning provided them 5 days in which to respond to the complaint. Finally, Complainant notes that as of May 18, 2010, Planning had neither provided to her the documents sought, nor responded to the Task Force complaint. It is unclear if Planning responded to the records request in some way other than by providing the documents requested.

Contested Facts: Planning has contested none of the facts.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did Planning respond in any way to the records request?
- If so, what was its response?
- If it responded, did it withhold any responsive records?
- If it withheld records, did it provide a written justification for such withholding?
- If it responded, did it provide responsive records in the format requested?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- If Planning responded, did it do so "as soon as possible and within ten days following receipt of a request for inspection" as required by Section 67.21(b) of the Sunshine Ordinance ?
- If Planning withheld records, did it keep such withholding to a minimum, as required by Section 67.26?
- If Planning withheld records, was a written justification provided for such withholding that complied with the requirements of Section 67.27?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

Memorandum

DATE: April 20, 2010
PAGE: 3
RE: Tsang v. Planning

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED SUGGESTED ANALYSIS

Under Section 67.21 of the Ordinance:

- Determine whether the Department timely responded to the request.

Under Section 67.26 of the Ordinance:

- Determine whether the Department withheld records and if so, whether the withholding complies with the requirement to keep withholding to a minimum.

Under Section 67.27 of the Ordinance:

- Determine whether the Department's asserted justifications, if any, for any responsive documents violate this provision requiring a written justification for withholding.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

...

Memorandum

DATE: April 20, 2010
PAGE: 4
RE: Tsang v. Planning

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**§ 6253.9.**

- (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an

Memorandum

DATE: April 20, 2010
PAGE: 5
RE: Tsang v. Planning

electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

- (1) The agency shall make the information available in any electronic format in which it holds the information.
- (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

Section 6254

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) 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.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.



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 PLANNING DEPARTMENT

Name of individual contacted at Department or Commission JONAS IONIN & ELIZABETH SKRONDAL

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section 67.21 (a, b, c, d, 1); 67.21-1 (a, b); 67.34
(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.

SEE ATTACHED STATEMENT OF FACTS AND EXH. - A (p1, 2, 3 & 4)

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 ELLEN TSANG Address _____

Telephone No. _____ E-Mail Address tsangt123@YAHOO.COM

Date 4/14/2010 _____ 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).

Statement of Facts

I requested 5 specific documents and Staff of Planning refused to release them to me.

I did go through the boxes of documents that Staff of Planning released to me but the documents requested were not in the boxes.

I requested Staff of Planning assist me in identifying the 5 specific documents requested but Staff of Planning refused.

The 5 documents requested are as following: (Exh. A p1, 2, 3 and 4)

1) Architect Robert Mittelstadt's final reversion stamped and signed set of revised drawings provided to Planner Jonas on 02/13/2009;

2) Architect Mittelstadt's two sheets of photos of the rear of the building provided to Planner Jonas on 02/13/2009

3) Architect Mittelstadt's "legal description of Lot 17 that gives the size and purpose of the easement " provided to Planner Jonas on 06/20/2008.

4) "A cartoon of my(Architect Mittelstadt's) Plot Plan with the dimensions you requested" provided to Planner Jonas on 06/20/2008 by Architect Mittelstadt.

5) "A cartoon of my Second Floor Plan with dimensions of the balcony" provided to Planner Jonas on 06/20/2008 by Architect Mittelstadt.

I also asked Planner Jonas for public information but he did not provide.

I did ask for an appointment to meet with him for the public information but he did not want to meet.

Public information requested as following: (Exh. p1)

- 1) Is it Planning Dept's policy to retain at least one set of the final approved plans with architect's original signature and official stamp in Planning Dept.s' file?
- 2) Is it Planning Dept's policy to accept final revision plans without architect's signature and his official stamps and present these plans to planning commission for hearing?
- 3) The name of Commission Secretary.

Re: public information and records requested, re: 2642-44 Hyde Street

Thursday, March 11, 2010 7:05 AM

From:

This sender is DomainKeys verified

"Ellen Tsang" <tsangt123@yahoo.com>

Add sender to Contacts

To:

"Jonas Ionin" <Jonas.Ionin@sfgov.org>

Cc:

tsangt123@yahoo.com

Planner Jonas:

Public information request:

- 1) Is it Planning Dept's policy to retain at least one set of the final approved plans with architect's original signature and official stamp in Planning Dept.s' file?
- 2) Is it Planning Dept's policy to accept final revision plans without architect's signature and his official stamps and present these plans to planning commission for hearing?
- 3) The name of Commission Secretary.

Please assist me in identifying the documents requested because they were not released to me. I list these documents again as following:

- 4) Architect Mittelstadt's final reversion stamped and signed set of revised drawings provided to you on 02/13/2009; (all the files of other properties that we have reviewed have at least one set of final approved plans with wet signatures and stamps in each file, 2642-44 Hyde should be no exception.)
- 5) Architect Mittelstadt's two sheets of photos of the rear of the building provided to you on 02/13/2009
- 6) Architect Mittelstadt's "legal description of Lot 17 that gives the size and purpose of the easement "provided to you on 06/20/2008.
- 7) "A cartoon of my Plot Plan with the dimensions you requested" provided to you on 06/20/2008 by Architect Mittelstadt.
- 8) "A cartoon of my Second Floor Plan with dimensions of the balcony" provided to you on 06/20/2008 by Architect Mittelstadt.

Thank you.

EXH. - A (PI)

Re: Specific documents requested re: 2642-44 Hyde Street

Friday, April 2, 2010 11:47 AM

From:

This sender is DomainKeys verified

"Ellen Tsang" <tsangt123@yahoo.com>

Add sender to Contacts

To:

Elizabeth.Skrondal@sfgov.org

Cc:

"Susan L Wong" <Susan.L.Wong@sfgov.org>, "Jonas Ionin" <Jonas.Ionin@sfgov.org>, "Kimo Crossman" <kimo@webnetic.net>, tsangt123@yahoo.com

Dear Ms. Skrondal:

This morning I emailed my response to you (see below). Now Planning Dept. decided to put you in the position to respond to my documents requested, I therefore provide the list of specific documents requested to you as following:

(This list was provided to Planner Jonas and other staff of Planning Dept. previously)

1) Architect Robert Mittelstadt's final reversion stamped and signed set of revised drawings provided to Planner Jonas on 02/13/2009;

2) Architect Mittelstadt's two sheets of photos of the rear of the building provided to Planner Jonas on 02/13/2009

3) Architect Mittelstadt's "legal description of Lot 17 that gives the size and purpose of the easement " provided to Planner Jonas on 06/20/2008.

4) "A cartoon of my(Architect Mittelstadt's) Plot Plan with the dimensions you requested" provided to Planner Jonas on 06/20/2008 by Architect Mittelstadt.

5) "A cartoon of my Second Floor Plan with dimensions of the balcony" provided to Planner Jonas on 06/20/2008 by Architect Mittelstadt.

Please identify these specific documents and email these documents to me.

Thank you.

Ellen Tsang

Below is my email to you this morning (April 2, 2010)

Dear Ms. Skrondal:

EXH. - A (P2)

Thank you for your email and this is the first email that I received from you. I have requested for specific documents and requested these specific documents to be emailed to me. Unfortunately, Planning Dept. and staff at Planning Dept. failed to provide.

You should note that I did not ask for a box of documents nor box of "file". Please comply with the law (see below) by **identifying the specific documents and email them to me** as I requested.

Thank you.

Ellen Tsang

Below is some relevant Sunshine Laws:

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS;

(c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public

EXH. - A (P3)

records easily accessible over public networks such as the Internet.

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

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.
(Added by Proposition G, 11/2/99)

EXH. - A (p4)



Ellen Tsang
<tsangt123@yahoo.com>
05/18/2010 03:58 PM

To SOTF <sotf@sfgov.org>
cc kimo <kimo@webnetic.net>, Ray Hartz Jr
<rwhartzjr@sbcglobal.net>, tenants769np@yahoo.com,
tsangt123@yahoo.com

bcc

Subject Re: SOTF complaint #10015, Ellen Tsang vs. Planning
Department

Dear Mr. Rustom:

Please distribute my support documents to the commissioners. Thank you.

Dear Commissioners:

On April 21, 2010 Mr. Rustom of Sunshine Commission emailed my complaint and support documents to Director of Planning and staff of Planning Department: Linda Avery, Brian Smith, Jonas Ionin, Elizabeth Skronda and notified each of them that: "The Departments is required to submit a response to the charges to the Task Force within five business days of receipt o f this notice."

Planning Dept. failed to submit a response.

Planning did not contest Jurisdiction.

Planning Dept. possesses the five (5) specific documents requested. (see attachments)

These document are very crucial to me because I filed opposition to this illegal (built without a permit) construction at 2642-44 Hyde Street with the Board Of Appeals (case #10-043) and need these documents to prepare for my briefings. My first brief is due on or before June 03, 2010.

Planning Dept.'s business practice has been: Ignore and violate the Sunshine Ordinances intentionally. Such practice wastes many hours of staff's time and tax payers money.

Please order Planning Dept. to comply with the Sunshine law and release the documents requested.

Thank you.

Ellen Tsang



Planning Dept. possesses documents requested #1 and #2 P1.jpeg



Planning Dept. possesses documents requested #1 and #2 P2.jpeg



Planning Dept. possesses documents requested #3 and #4 and #5.jpeg



Fw: 2642-44 Hyde Street

Friday, October 9, 2009 2:54 PM

From: "Lulu Hwang" <Lulu.Hwang@sfgov.org>

To: "Tenants 769NorthPoint" <tenants769np@yahoo.com>

----- Forwarded by Lulu Hwang/CTYPLN/SFGOV on 10/09/2009 02:54 PM -----

Robert
Mittelstadt
<rmatrmarch@yahoo.com>

To
Jonas Ionin <Jonas.Ionin@sfgov.org>

cc

~~02/13/2009 04:08~~
PM

Subject
Re: 2642-44 Hyde Street

Jonas Ionin:

Today I delivered two stamped and signed sets of the revised drawings describing this application for a permit to allow a balcony to project into the rearyard. This iteration reflects the dimensions contained in the Variance

Decision, a 12 foot balcony width (exact in this case) set back "approximately 5 feet from each side property line"

(not quite 5', since the property is only 21'-6" wide). I also hand delivered to the Planning receptionist one envelope containing two sheets of photos of the rear of the building. ←

As for the rear (East) Elevation, I discovered that a trash bin on the ground floor had not been included in the previous drawing iterations. This is now shown on the East Elevation. Also, the size of the window adjacent to the sliding glass door on the second floor has been corrected. Also, the number of muntins in the fixed window sash adjacent to the door on the ground floor has been corrected. Beyond these, I could find no other causes for impugning the "accuracy of the rear elevations" and will welcome any relevant advice to the contrary, since my intention has never been to mislead or to tamper with the facts of this case.

I really hope this iteration does the trick. But, because this application has been subjected to extraordinary

delays,
in the interest of expediency I am requesting that if a conference between you and any neighbor who questions the validity of this application is scheduled, that I be notified and invited to attend.

Thank you, and please let me know if you have additional questions and/or when you'll need anything more from me.

Bob Mittelstadt

Robert Mittelstadt Architect
rm@rmarch.net
tel 415-397-6895
fax 415-397-6880

Robert
Mittelstadt

<rmarmarch@yahoo.com> To
Jonas.Ionin@sfgov.org
cc
06/20/2008 02:53
PM Subject
2642-44 Hyde St.

Jonas:

I'm sending to you via fax four sheets:

1. Assessor's map of Block 50 showing Lot 17 with a double line on the north boundary and no evidence of an easement, although the total lot depth contains the 3 ft width of the easement.

→ 2. Legal description of Lot 17 that gives the size and purpose of the easement.

→ 3. A cartoon of my Plot Plan with the dimensions you requested.

→ 4. A cartoon of my Second Floor Plan with dimensions of the balcony.
Please let me know what you think, and whether the drawings as amended will work.

Thanks,

Bob

Robert Mittelstadt Architect

rm@rmarch.net

tel 415-397-6895

fax 415-397-6880

