

Date: May 26, 2009

Item No. 17
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: May 15, 2009

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

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**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
DRAFT MEETING MNUTES**

Tuesday, May 12, 2009
4:00 p.m., City Hall, Room 406

Committee Members: Richard Knee (Chair), Erica Craven-Green, Doyle Johnson

Call to Order: 4:00 p.m.

Roll Call: Present: Knee, Craven-Green, Johnson

Deputy City Attorney: Ernie Llorente

Clerk: Chris Rustom

Agenda Changes: Item 9 heard before Item 5

1. Approval of April 14, 2009, regularly scheduled meeting minutes

Motion to approve the April 14, 2009, minutes (Johnson / Craven-Green)

Public Comment: None

On the motion:

Ayes: Craven-Green, Johnson, Knee

2. 09003 Hearing on the status of the March 24, 2009, Order of Determination of Rita O'Flynn against the Department of Technology

Complainant Rita O'Flynn said she is looking for documents about her property and was not investigating HUD. She then gave a brief about her case.

Barry Fraiser of the Dept of Technology said the department did some research but was not able to come up with an estimate cost for searching the backup tapes for the emails. He also questioned who would pay for the recovery if the emails did not exist. He said the department is restating its position that the law does not require it to search archive tapes for emails deleted by departments according to their retention policies. The system is designed only for recovery in case of a disaster, he said.

Member Craven-Green said no specific exemption applies to backup data and that under CPRA § 6253.9 the requestor might be required to pay for the search and

retrieval of information. She said the only solution would be for Ms. O'Flynn to work with the department by narrowing her request to reduce the cost.

Motion to continue. Without objection

Public Comment: None

Chair Knee said the complainant needs to decide how much she was willing to pay for the information pursuant to CPRA § 6253.9.

3. 09006 Hearing on the status of the March 24, 2009, Order of Determination of Joshua Arce and Eric Brooks against the SFPUC.

Member Craven-Green was recused because her partner works for the SFPUC.

Complainant Joshua Arce said he, Eric Brooks and many Sunshine advocates and activists want to know the full extent of the records that were deleted. The issue, he said, was if there was willful failure on the part of the SFPUC. If so, he said, it would be equivalent to official misconduct under § 67.34. Based on comments made during the Task Force hearings in March willful failure applies to this case, he said. He also questioned the criteria in deleting from the in, out and deleted folders.

Respondent Tony Winnicker of the SFPUC said the Order of Determination was for the PUC to check backup tapes for deleted emails and produce them. He said he checked with the department's IT personnel and was told that the tapes are held for six months and not one year as he had mentioned during the Task Force hearing. He said SFPUC General Manager Ed Harrington in an email to Mr. Arce last year had mentioned that the tapes were kept for six months before they are overwritten. The email records from April and May of 2008 have been erased, he said. Also, he said, large departments and organizations that use Microsoft Outlook have to erase unwanted emails from all boxes for the program to run smoothly. He said the Task Force may not agree with the practice but the department has complied to the best of its ability.

Chair knee said he was troubled because § 67.29-7 calls for preserving all documents in a professional and businesslike manner. Mr Winnicker said all major documents are printed and preserved. Other exchanges are not. He said departments and agencies have set their own policies because of a lack of a city policy. The SFPUC, he said, is currently discussing guidelines regarding emails. Another topic being discussed within the department is the issue of increasing the time backup tapes are being retained, he said.

Chair Knee said the advice provided by the City Attorney in the Good Government Guide states that any email that is created or received in connection with the transaction of public business and which (1) the department retains as evidence of the department's activities, or (2) relates to the legal or financial rights of the City or of persons directly affected by the activities of the City, must be retained in accordance with the department's records retention schedule. Mr Winnecker said he believes the department follows the advice.

Chair Knee continued that the standard for determining if email is a record that must

be retained is identical to the standard that applies to any document. Govt. Code § 6252(e); Admin. Code § 67.20(b). If the e-mail must be retained, it should be printed out and the hard copy retained in the appropriate file unless the department can reliably retain and retrieve the e-mail in electronic format.

Mr Winneker did not rebut. Mr Arce said the matter should be forwarded to the Ethics Commission for enforcement. The issue behind the Sunshine request affected about 50,000 people in the area where the proposed power plant was to be built, he said. Everybody wanted information on the subject and was denied by the SFPUC. That, he said constitutes willful failure under § 67.34.

Chair Knee noted that neither the Sunshine Ordinance nor the CPRA cover the backup procedure.

Motion to refer case to the full Task Force with the recommendation that it be sent on to the Ethics Commission (Johnson / Knee)

Public Comment: None.

On the motion:

Ayes: Johnson, Knee

Recused: Craven-Green

4. 09007 Hearing on the status of the April 28, 2009, Order of Determination of David Larkin against the Department of Public Works

Complainant David Larkin said the records should be released and did not believe that the DPW should withhold a misconduct report. The DPW should have also checked with the City Attorney if the documents were disclosable or not, he said.

Respondent Frank Lee of the Department of Public Works said he was disappointed by the way the case was handled on April 28, 2009, by the full Task Force and not by its decision made on the same day. He said in the name of open government, if the complainant can request a continuance, the respondent should also be given the same opportunity. He said the department gets more than one Sunshine request a day and he has been handling the department's public records requests for more than a year and has never had a problem. Because this was the first time he called DCA Llorente, who he found to be reluctant to give him advice but referred him to the department's own DCA. He said he is perplexed over the whole situation.

Member Craven-Green said the complainant gets only one chance because he or she has to take unpaid time off to come to the hearing whereas for the respondent is a paid city employee who is required to appear at city hearings. She also explained the procedures and added that Mr. Llorente has an ethical screen that he has to maintain.

Member Craven-Green said proper procedure was followed but improvements can always be made. However, the issue at hand was whether or not the department was going to release the records.

Mr Lee said he would like to discuss the matter with the department's DCA.

After further discussions, a motion was made.

Motion to continue matter to the next CAC meeting. (Craven-Green / Johnson)

The respondent did not rebut. Mr Larkin, the complainant, said this matter has been going on since November 2008, and the number of emails to him from the department indicated that the City Attorney's Office has been involved from the beginning and that no additional time be provided.

Public comment: None.

Chair Knee said he was against continuing the matter and as the complainant indicated the department has had a lot of time to consult with the City Attorney's Office.

The maker of the first motion withdraws after second withdraws first.

Motion to refer case to the full Task Force with the recommendation that it be sent on to the Ethics Commission with a finding of willful failure to comply with the Order of Determination. (Knee / Johnson)

Member Craven-Green said if the department releases the documents before the next Task Force meeting on May 26, 2009, it could moot the motion for referral to the Ethics Commission because the Order of Determination would have been complied with.

On the motion:

Ayes: Craven-Green, Johnson, Knee

5. 09018 Hearing on the status of the April 28, 2009, Order of Determination of Anonymous Tenants against the Department of Building Inspection

Complaint Anonymous Tenants said the department has not complied with the Order of Determination because nothing has been provided.

Respondent William Strawn said the Department of Building Inspection has consulted with Matrix Consulting for the backup data on the cost analysis as specified in Sec. 67.28 (d). The department is also gathering information internally to meet the section's requirements. Fee justification documents would be ready for posting by July 1, 2009, and it would another month or so to get the rest of the data.

Motion to continue matter to the July 14, 2009, Compliance and Amendments hearing and to see if it is posted and complies with Sec. 67.28 (d) (Craven-Green/ Johnson)

No rebuttals were offered.

Public Comment: None

On the motion:

Ayes: Craven-Green, Johnson, Knee

6. Developing recommendations for the proposed electronic document retention policy of the Sunshine Ordinance Task Force.

Chair Knee reported that he had a very productive meeting with Board of Supervisors' Records and Retention Manager Frank Darby. He said Mr. Darby is working with the Department of Technology to determine the technology aspect of the topic. A lot of items on the SOTF's Retention and Destruction schedule are online or in the process of being done, he added.

Member Craven-Green said she was interested to know a department's email capacity, the backup process and the search and retrieval process in the Lotus Notes and how it would be in the new system that the city adopts.

Member said the committee should also look at the way how nearby cities manage their electronic records.

Chair Knee asked each committee member to create a list of what he or she would like to see as a minimum standard. He also invited Mr. Darby and Ron Vinson of the Dept of Technology to next month's meeting.

Public Comment: None

Item continued: Without objection

7. Continued discussion on the proposed amendments and annotations to the Sunshine Ordinance

Member said she is still working on the document and would have it ready for the next regularly scheduled meeting.

Public Comment: None

Item continued: Without objection

8. Administrator's Report. (discussion only) (attachment)

Mr. Rustom made the report.

Public comment: None

9. Public Comment on items not listed on the agenda to be taken at 5:00 p.m. or as soon thereafter as possible. (no action) (no attachment)

Public Comment: Jeff Ente said he attended the Ethics Commission on Monday because he was concerned about the willful failure requirement by the commission's Executive Director John St. Croix. during the April 24, 2009, SOTF-EC meeting. He said the EC investigator's line of questioning him regarding his complaint against Supervisor Peskin was not directed at trying to find willful failure. He said Mr. St. Croix did not respond to his offer for additional information that was not presented during the SOTF hearings. He added that an EC investigator Paul Solis had told him over the phone that they were not going to talk to him because the complaint was

filed by the Task Force. That was why he told the EC on Monday that they needed to revisit the 14 cases in with no violation of willful failure was found by the EC.

Public Comment reopened after Item 5.

Motion to open Public Comment. Without objection

Anonymous female said she had communication problems with the Task Force in the past but that has improved and all documents from the Task Force to her are being sent timely.

10. Announcements, questions, and future agenda items from Committee members.
(discussion only) (no attachment)

Adjournment

The meeting adjourned at 5:50 p.m.

This meeting has been audio recorded and is on file in the office of the Sunshine Ordinance Task Force