

Date: June 22, 2010

Item No. 19 & 20
File No. 10024

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Ray Hartz against the Police Department**
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Completed by: Chris Rustom

Date: June 17, 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.



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City Attorney

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MEMORANDUM

June 15, 2010

RAY HARTZ v. SAN FRANCISCO POLICE DEPARTMENT (10024)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz alleges that the San Francisco Police Department ("SFPD") has failed to comply with the requirements of Administrative Code § 67.29 by failing to provide the City Administrator with an index of records for SFPD records for placement on the City's website. He further alleges that this violation took place after the Task Force previously found them in violation for the same failure in Order of Determination #08056.

COMPLAINANT FILES COMPLAINT:

On May 25, 2010, Mr. Hartz filed a complaint against SFPD.

JURISDICTION

SFPD is a department of the City; therefore this committee has jurisdiction to determine whether there was a violation.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

Section 67.29 of the Sunshine Ordinance which deals with the establishment by the City Departments of an Index of Records.

APPLICABLE CASE LAW:

none.

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ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that, at the time of his complaint, SFPD failed to comply with the requirements of Administrative Code § 67.29 by failing to provide the City Administrator with an index of records for SFPD records for placement on the City's website. Mr. Hartz fails to allege facts sufficient to determine how he came to this conclusion. He further alleges that this violation took place after the Task Force previously found SFPD in violation for the same failure in Order of Determination #08056.

SFPD admits that there was no index of records for their department on the City's website at the time of the complaint.

Contested Facts: SFPD further alleges that it had fulfilled its duty under § 67.29 by providing an index of records to the City Administrator and that it had no responsibility for the failure to post that index on the City's website.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does the City Administrator agree with the facts alleged by SFPD in its response?
- Does Mr. Hartz dispute the facts alleged by SFPD in its response?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- If the facts alleged by SFPD are true, was it in violation of § 67.29?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

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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.

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**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.

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(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.

Section 67.29 of Ordinance provides:

The City and County shall prepare a public records index that identifies the types of information and documents maintained by the City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City

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Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's World Wide Website and made available at public libraries within the City and County of San Francisco.



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 SAN FRANCISCO POLICE DEPARTMENT

Name of individual contacted at Department or Commission N/A

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting N/A

Sunshine Ordinance Section 67.29 INDEX TO RECORDS
 (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.

SFPD HAS FAILED, EVEN AFTER A PRIOR DETERMINATION (#08056), TO COMPLY WITH THE REQUIREMENTS OF 67.29.

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 RAY W HARTZ, JR Address 839 LEAVENWORTH ST #304

Telephone No. (415) 345-9144 E-Mail Address RWAARTZ@SBCGLGAL.NET

Date 5/25/10 Ray W Hartz
 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).

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
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ORDER OF DETERMINATION

January 26, 2009

DATE THE DECISION ISSUED

January 6, 2009

ANONYMOUS v. SFPD (08056)

FACTS OF THE CASE

Anonymous person checked the City's website and looked for the index of records for the San Francisco Police Department ("SFPD"). The website did not have a listing for the SFPD.

COMPLAINT FILED

On December 4, 2008, Anonymous filed a Sunshine Ordinance Complaint against the SFPD for failure to comply with Section 67.29 of the Ordinance.

HEARING ON THE COMPLAINT

On January 6, 2009, Anonymous appeared before the Task Force and presented his case. Respondent Agency was represented by Sgt. Jack Hart.

The issue in the case is whether the Department violated Sec. 67.29 of the Ordinance requiring the City and County to prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, and elected officers.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds that the Department violated 67.29 by failing to provide the City Administrator with an Index of Records for the Police Department's records. The Task Force notes that the Police Department has, since the Complaint was filed, provided a partial Index of Records to the City Administrator and is working to finalize the Index in order to comply with 67.29.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Sec. 67.29 of the Sunshine Ordinance. The

ORDER OF DETERMINATION

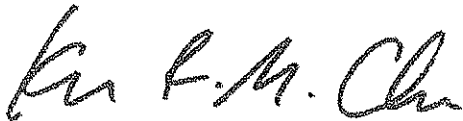
matter was referred to the Education, Outreach and Training Committee and placed at the chair's discretion.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 6, 2009, by the following vote: (Knee / Goldman)

Ayes: Craven, Knee Cauthen, Washburn, Knoebber, Johnson, Chu, Goldman

Recused: Chan

Excused: Williams



Kristin Murphy Chu, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Anonymous
Sgt. Jack Hart



GAVIN NEWSOM
MAYOR

POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO

THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103-4603



GEORGE GASCÓN
CHIEF OF POLICE

June 02, 2010

Sunshine Ordinance Task Force
ATTN: Chris Rustom
1 Dr. Carlton B. Goodlett Place
City Hall—Room 244
San Francisco, CA 94102-4689

RE: SOTF Complaint # 10024 and # 10025

Dear Mr. Rustom,

This is written to acknowledge receipt of and to respond to the complaints made against the SF Police Department and the SF Police Commission by Mr. Ray Hartz who has alleged violations of Administrative Code §67.29 (Sunshine Ordinance). This allegation had been previously adjudicated in September of 2009 (refer to SOTF Complaint # 08056 and 09008, respectively).

Initially, Mr. Hartz (through his pseudonym "Anonymous") had complained about a lack of a listing of both the Police Department's and Police Commission's "Index of Records" on the CCSF website. This oversight was acknowledged by both the Department and the Commission. Furthermore, both Indexes were placed on the CCSF website (by DTIS through the City Administrator's Office) in September of 2009.

Upon receiving these new complaints, I checked the CCSF website and found that the Index had been inadvertently removed. Upon contacting both the City Administrator (Ms. Jill Lerner) and DTIS (Mr. Richard Isen), they immediately placed it back on the website. There was no explanation as to why it had been removed.

As of this date, I have checked the CCSF website and found the listing—see attached link
<http://mission.sfgov.org/cgi-bin/sunindex/getData.cgi?docColor=deptonly&dept=police&Submit=GO>

In that the alleged violation was in no way the responsibility or the culpability of the San Francisco Police Department and/or the San Francisco Police Commission, I respectfully request that our appearance on June 22, 2010 be waived and that no further action be taken - especially since the alleged violation has been corrected.

If there are any issues or concerns, please feel free to contact me at (415) 553-1168 or Lieutenant Joseph Reilly at (415) 553-1667.

MORRIS TABAK
Assistant Chief of Police

Daniel J. Mahoney

Lieutenant Daniel J. Mahoney
Office of Chief of Staff

Cc: Lt. J. Reilly
Lt. S. Silverman