

Date: June 23, 2009

Item No. 13
File No. 08056 &
09008

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Order Of Determination of Ray Hartz vs Police Department
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-
-
-
-
-
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Completed by: Frank Darby

Date: June 17, 2009

***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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**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

**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

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ORDER OF DETERMINATION
March 3, 2009

DATE THE DECISION ISSUED
February 24, 2009

ANONYMOUS (RAY HARTZ) v. SAN FRANCISCO POLICE COMMISSION (09008)

FACTS OF THE CASE

Anonymous person checked the City's website and looked for the Index of Records for the San Francisco Police Commission ("Commission"). The website did not have a listing for the Commission.

COMPLAINT FILED

On December 4, 2009, Anonymous person filed a Sunshine Ordinance Complaint against the Commission for failure to comply with Section 67.29 of the Ordinance.

HEARING ON THE COMPLAINT

On February 24, 2009, Complainant Anonymous appeared before the Task Force and presented his case. Complainant identified himself as Ray Hartz and requested that in this and future complaints he be identified by name. Respondent Agency was not present but had submitted a letter that said the Department was responsible for including and posting the Commission's Index of Records, that the Commission, therefore, should not separately be found in violation of the Ordinance, and that the Commission was working with the San Francisco Police Department and the City Administrator's Office to list its records in the Department's Index of Records and post that document on line.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds that the Commission failed to ensure that its records were included and posted in an Index of Records as required by Sec. 67.29. The Task Force also found a violation of Sec. 67.21 (e) for failure to appear.

ORDER OF DETERMINATION

DECISION AND ORDER OF DETERMINATION

An Order of Determination finding the Commission in violation of 67.29 for failure to ensure its records were included in an Index of Records posted online and 67.21(e) for failure to send a representative to the Task Force hearing was adopted by the Sunshine Ordinance Task Force on February 24, 2009, by the following vote: (Knee / Goldman)

Ayes: Knee Washburn, Knoebber, Johnson, Goldman, Williams, Craven

Excused: Cauthen, Chu

Absent: Chan

The enforcement of this Order of Determination is referred to the Education, Outreach and Training Committee to work with the appropriate entities to make sure the Commission's records (as well as other entities who are under the direction or control of the Commission) are listed in an Index of Records that is posted online.



Erica Craven, Vice Chair
Sunshine Ordinance Task Force

c: Ray Hartz, Complainant
Lt. Joe Reilly, Police Commission
Lt. Daniel J. Mahoney, Police Department
Ernie Llorente, Deputy City Attorney



rwhartzjr@sbcglobal.net

06/09/2009 01:46 PM

Please respond to
rwhartzjr@sbcglobal.net

To SOTF@sfgov.org

cc Barbara Boxer <senator@boxer.senate.gov>, David Chiu
<david.chiu@sfgov.org>, Frank Darby Jr
<SOTF@sfgov.org>, Dennis Herrera

bcc

Subject Orders of Determination #08056 and #09008

History:

↳ This message has been forwarded.

To the Chair and all members of the Sunshine Ordinance Task Force

The two Orders of Determination listed above were issued in January and March, 2009 respectively. These orders were NOT referred to the Compliance Committee as stated by SOTF rules and the SOTF committee areas of responsibility on the BOS website. Instead they were referred to the Education, Outreach and Training Committee.

As of this date, June 9th, 2009, neither order of determination has resulted in any action. Neither the San Francisco Police Department or the Police Commission has taken any corrective action to meet the requirements of the Sunshine Ordinance. It has been 6 months and 3 months, respectively and I need to know if the SOTF intends to take any action to enforce it's own findings.

Is it the intention of the SOTF, EOT Committee to simply hold these determinations without action? Will it be necessary for me to file complaints against the SFPD and the Police Commission, as well as the SOTF, with the Ethics Commission for failing to comply?

I have made several inquires regarding this matter. I have had no response.

Sincerely,
Ray W Hartz, Jr.



Ray Hartz Jr
<rwhartzjr@sbcglobal.net>
06/11/2009 06:43 PM

To Sue Cauthen <SCau1321@aol.com>
cc sotf@sfgov.org
bcc
Subject Inappropriate discussions and/or meetings held in violation of
Sunshine

Member Cauthen,

I have found it necessary to file a complaint regarding meetings you stated you had with Lt. Joe Reilly, of the San Francisco Police Commission.

You stated at the SOTF/EOT meeting today, June 11th, 2009 that there was not a quorum, so no discussions of the SOTF Letters of Determination #08056 and #09008 were held, yet the approved minutes of the **April** meeting indicated that DCA Llorente briefed the EOT on the efforts being made to comply. You then went on to say, at today's meeting that discussions with Lt. Joe Reilly indicated he was moving forward, but, needed authorization from the Chief of Police to go any further. This despite the fact that the approved minutes do not indicate that Lt. Reilly was even at the EOT meeting in April. So, was the discussion held outside the meeting, in violation of Sunshine?

I can't seem to get a straight story on this from you....

I know you don't think that I'm a "nice man." That does not relieve you from your responsibility to act in accordance with the law. You were determined at today's meeting to simply push these Determinations further down the road....would you at least be honest and share how long you are going to use your authority as Chair of EOT to (as you put it in your email to DCA Llorente) "Bring Out Your Dead: SOTF "Burying" Their Own Orders of Determination?"

Could you please tell me the section of Sunshine that gives you the authority to hold "informal" discussions with parties to complaints, without the public?

You seem to be determined that I must be "nice" even though you have made every effort to handle this without consideration of the fact that I, as the complainant, should have been notified of your actions/discussions and the apparent agreement(s) you seem to have made with Lt. Reilly to give an open-ended period of time to comply to both the San Francisco Police Department and the Police Commission.

Ray Hartz, Jr.



rwhartzjr@sbcglobal.net

06/12/2009 11:46 AM

Please respond to
rwhartzjr@sbcglobal.net

To SOTF <sotf@sfgov.org>

cc Sue Cauthen <SCau1321@aol.com>, David Chiu
<david.chiu@sfgov.org>, Frank Darby Jr
<SOTF@sfgov.org>, Matt Dorsey <matt.dorsey@sfgov.org>,
bcc

Subject Re: Complaints against Chair Chu and Vice-Chair
Craven-Green

**Please see that the following is added to the
materials available to all members of SOTF
for the next meeting**

June 12th, 2009

To Chairman Chu and all members of the SOTF

I would assume that the "counsel" listed in your response is DCA Llorente.

This would be the same DCA Llorente who, according to the minutes of EOT for March 12, 2009:

"5. Next Steps: Task Force referrals of SFPD and SFPC postings of Index of Records DCA Llorente gave a briefing on the two complaints. Chair Cauthen said Lt. Mahoney came before the committee in February and said that the Index was being given top priority. Members suggested he be invited again to give a progress report in April."

So, the person giving the Task Force advice on this matter is apparently having discussions with SFPD and SFPC outside the regularly scheduled meetings to get the information necessary to give the EOT a briefing.

And Chair Cauthen referenced Lt. Mahoney appearing before the EOT in February to give an update on the Letters of Determination. So, despite there being no quorum, discussions were still held.

As the complainant in both matters, I object in the strongest terms, to the fact that several meetings have been held and I was not notified or given the information needed to attend, hear testimony and comment. Further, when inquiring about these "informal gatherings" I was told that a quorum was not present and no discussions were held. This information is, by your own records, false. By continuing without a quorum, it is my position that Chair Cauthen gave tacit approval for the SFPD and SFPC to continue as they were, ergo **action was taken**. Silence gives consent! I would ask the SOTF to site a section of the Sunshine Ordinance or your own bylaws

that allows discussions on agendized items to continue with a lack of a quorum.

It seems rather disingenuous to call a meeting and then, lacking a quorum, simply continue with agendized items and have the very "discussions" regarding matters listed on the agenda. Allowing Lt. Reilly to brief the EOT, without the opportunity for public comment, is essentially letting the SFPD and SFPC do what the Chair of EOT feels is appropriate. It would seem, also, that all Chair Cauthen feels is needed is a briefing for herself, disregarding the other members of EOT who may later be asked to take action on the matters under discussion.

Is it any wonder that I "lost my cool" in the July 11th meeting of EOT, when Chair Cauthen simply decided to ignore my request to return these complaints to Compliance and Amendments and decide to schedule yet another discussion of these matters before EOT in July? Chair Cauthen seems to feel that she has the dictatorial powers to run EOT in whatever manner she feels is appropriate without any concern given to doing so in a fair manner.

One thing I have noticed in Chair Cauthens comments at both EOT and full meetings of the SOTF, is her propensity to site examples of her own problems with City agencies in obtaining public records and making public comment. She seems, from my perspective, to feel that it is permissible to use her position with the Task Force and EOT to push for action on items which concern her. She doesn't seem to see any problem with raising her own issues as a member of SOTF rather than filing her own complaints and handling the matters in the same way that members of the public must. She then treats my hard fought for Letters of Determination as matters she can deal with as she sees fit, without giving me the benefit of attending and/or commenting on how they are being handled.

It is my feeling that the Chair and Vice-Chair of SOTF need to take responsibility for enforcing some discipline in the operations of the Task Force. Simply apologizing, after the fact, does not deal with the issue that actions are being taken that are grossly unfair. Simply using the excuse that you can't hear a complaint against yourselves for failing to fairly handle matters before you is evading any responsibility you have to follow Sunshine in your own handling of matters before the Task Force.

Quis custodiet ipsos custodes?

Virgil

I would hope that, at the next SOTF meeting later this month, that this matter be agendized. I would appreciate a full discussion of my concerns, rather than what usually happens: I have to raise issues during Public Comment, without the SOTF having any discussion of the matter. Or, what happened at the EOT meeting on July 11th, which was an email to me on July 10th, stating that the matter would be "brought up" by Chair Cauthen at that meeting the very next day.

Sincerely,

Ray Hartz Jr.

--- On Fri, 6/12/09, SOTF <sotf@sfgov.org> wrote:

From: SOTF <sotf@sfgov.org>
Subject: Complaints against Chair Chu and Vice-Chair Craven-Green
To: rwhartzjr@sbcglobal.net
Date: Friday, June 12, 2009, 9:50 AM

Mr. Ray Hartz,

On advice from counsel, the Task Force can not adjudicate itself or its members. You are urged to file a complaint with the Ethics Commission, the Board of Supervisors or through a Court of Law.

However, the Task Force will be discussing the status of the Orders of Determination in your cases against the Police Department and the Police Commission at the June 23, 2009, meeting.

Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
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Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307



rwartzjr@sbcglobal.net

06/14/2009 03:00 PM

Please respond to
rwartzjr@sbcglobal.net

To Sue Cauthen <SCau1321@aol.com>

cc sotf@sfgov.org, Kimo Crossman <kimo@webnetic.net>

bcc

Subject Clearly established bias by EOT Chair Cauthen

**TO CHAIR CAUTHEN AND ALL MEMBERS OF THE FULL SUNSHINE
ORDINANCE TASK FORCE for the meeting on June 23rd, 2009**

Chair Cauthen,

Not once, but twice, you failed to have a quorum at Education, Outreach and Training Committee meetings (in both February and April, 2009). Then, instead of adjourning, you allowed testimony, disguised (**but formalized in the minutes**) as an "Informal Gathering" on both occasions **ONLY** about matters that I had brought before the SOTF. In February it was Lt. Reilly for the Police Commission and in April both Sharon Page-Ritchie of the Arts Commission and Lt. Daniel Mahoney of the San Francisco Police Department.

In the March meeting of EOT, you again allowed testimony, this time by DCA Llorente. Apparently he has been having discussions with *others* about "handling" these complaints, including unknown persons at the Police Commission, the Police Department, and apparently DCA Molly Stump at the City Attorneys Office. This would be the same Molly Stump that acts to defend the Police Department and Police Commission against the interests of the citizens of San Francisco.

Not once did you feel any obligation to notify me of the matters to be discussed. You seem to have no problem inviting the representatives of the City Agencies, but, feel no obligation whatsoever to me as the complainant.

Then in the June meeting of EOT, I received less than 24 hours notice that you would be discussing my concerns the following day. Then after my testimony, you completely ignored my requests that the complaints be returned to the jurisdiction of The Compliance and Amendments Committee, OR, returned to the full Task Force. It was your unilateral decision that the matter would simply be continued to the next EOT meeting.

On three separate occasions (February, March and April) you have made absolutely no effort to even attempt a fair and public hearing. Items were agendized in deceptive ways, matters sent to your committee for action were discussed without a quorum, and false statements entered into official public records without the public being able to hear or question those statements.

As, Chair and Vice-Chair, members Chu and Craven have been supportive of the EOT getting these referrals, even though the SOTF by-laws clearly stated: The Compliance and Amendments Committee shall monitor compliance with the Orders of Determination issued by the Task Force. This by-law was not changed until April, 2009, **months after both of my Orders of**

Determination were issued.

With the unfair and clearly biased manner in which you have handled these complaints, it seems obvious to me why the Chair and Vice-Chair wanted them in your hands!

I object, in the strongest terms, to your continued handling of these matters. You have shown a clear inability to do so in a fair manner.

Sincerley,

Ray W Hartz, Jr.

