

Date: July 27, 2010

Item No. 16, 17

File No. 10028

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Charles Pitts v Local Homeless Coordinating Board**
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Completed by: Chris Rustom

Date: July 22, 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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**MEMORANDUM
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force
FROM: Jana Clark
Deputy City Attorney
DATE: July 22, 2010
RE: Charles Pitts v. Trent Rhorer, Local Homeless Coordinating Board (10028)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Charles Pitts ("Complainant") alleges that the Local Homeless Coordinating Board ("Board") and its Executive Director Trent Rhorer violated the Sunshine Ordinance by violating the Sunshine Ordinance Task Force's order that his email address be added to the Board's email notification list. He further alleges that Rhorer and the Board violated the order because as of June 1, 2010, he had not received any documents pertaining to Board meetings.

COMPLAINANT FILES COMPLAINT:

On June 1, 2010, Complainant filed a Public Records Access Complaint against the Board for the alleged violation, without specifying the sections of law that had been violated.

JURISDICTION:

The Board is a nine member policy body appointed by the Mayor, the Board of Supervisors, and the Controller. Its bylaws indicate that it will operate in accordance with the Sunshine Ordinance. Therefore, the Sunshine Ordinance Task Force has jurisdiction over the complaint and, indeed, the Board does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

Section 67.5 of the Ordinance governs public access to meetings of policy bodies.
Section 67.7 governs agenda requirements for regular meetings of policy bodies.

APPLICABLE CASE LAW:

none

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ISSUES TO BE DETERMINED:**FACTUAL ISSUES:****A. Uncontested Facts:**

On October 27, 2009, pursuant to a prior complaint, Complainant appeared before the Commission alleging that the Board had violated meeting agenda requirements for failing to post a meeting agenda online. The Commission found that the Board had violated Section 67.7(a) and ordered that Complainant's email address be added to the Board's email notification list. Complainant alleges that he has not yet received any emails regarding Board meetings. He attaches to his complaint a list of email addresses that do not appear to include his email address. The Board has not responded to the current complaint.

B. Contested facts/ Facts in dispute:

None

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Is the email list that is attached to the complaint the list used to notify interested parties of the Board's meeting agendas?
- Is Complainant's email address on that list?
- Has the Board attempted to notify Complainant of the Board meetings and/or agendas by including him on their email notification list?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- If the Board failed to comply with the Task Force's order to include Complainant, in the email notification list, were sections of the Sunshine Ordinance, Brown Act, and/or California Constitution Article I, Section three violated ?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

SUGGESTED ANALYSIS:

Determine if the Board failed to include the Complainant on its email notification list. If so, determine if this failure constitutes a new and independent violation of the Ordinance.

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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**

Section 67.3 of the Administrative Code (Sunshine Ordinance) defines policy bodies as follows:

(d) policy bodies:

- (3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;
- (4) Any advisory board, commission, committee or body, created by the initiative of a policy body.

Section 67.5 of the Sunshine Ordinance governs public access to policy body meetings:

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.

Section 67.7 governs agenda requirements of regular meetings of policy bodies:

- (a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for

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discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b)

A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c)

The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d)

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e)

Notwithstanding Subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1)

Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2)

Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3)

The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f)

Each board and commission enumerated in the Charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

(g)

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Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

**KNOW YOUR RIGHTS UNDER
THE SUNSHINE ORDINANCE**

(Chapter 67 of the
San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION

**ON YOUR RIGHTS UNDER THE SUNSHINE
ORDINANCE OR TO REPORT A VIOLATION
OF THE ORDINANCE, CONTACT THE
SUNSHINE ORDINANCE TASK FORCE.**

(h)

Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

Section 67.7-1 governs Public Notice Requirements:

(a)

Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

(b)

The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.

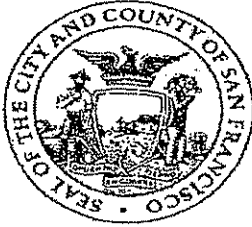
**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004
PROVIDES FOR OPENNESS IN GOVERNMENT.**

Article I Section 3 provides:

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- 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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2010 JUN -1 PM 3:54

BY AK

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 ment RHOSE DHS/Local Homeless
Coordination Board

Name of individual contacted at Department or Commission _____

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

Sunshine Ordinance Section _____
(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.

Violation of motion passed by the SOTF see attached
copy of Local Homeless Coordination Board Staff for HSA/
DHS HAS NO SENT ANY DOCUMENTS TO ME REGARDING ANY
meetings

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 Charles DHS Address _____

Telephone No. _____ E-Mail Address [REDACTED]@YAHOO.COM

Date _____

I request confidentiality of my personal information. yes no Signature _____

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).

Excused: Williams

Motion passes

5. 09065 Hearing on complaint filed by Charles Pitts against the Local Homeless Coordinating Board for allegedly not meeting agenda requirements.

Complainant Charles Pitts said the Local Homeless Coordinating Board held a meeting and did not post the agenda online as required. He said he was following a housing report that had gone to the Board of Supervisors and was now back with the Coordinating Board. It seemed, he said, that the Coordinating Board wants to hide the issue from the public. He added that public comment was not permitted when the report first came before the Coordinating Board in October. Because of it he filed a complaint and the Task Force found the Coordinating Board in violation of the Sunshine Ordinance. He also added that Ali Schlageter, the Coordinating Board's policy analyst, did not notify him and other activists about the meeting.

Nobody in the audience spoke for or on behalf of the Coordinating Board. Ms. Schlageter, through a hand-written note passed on to Mr. Rustom earlier in the evening, said she could not stay because of a social commitment.

Member Carven-Green said the respondent in her initial response had said a technical failure prevented the agency from posting the agenda on its website. She noted that nobody had disputed the Library posting.

Motion to find violation of 67.7 (a) and have Charles Pitts' email address added to the agency's email notification list. (Craven-Green / Cauthen)

Member Knee wanted to add Sec. 67.21 (e) to the motion because he believed the respondent's reason for leaving was not valid and was a willful act.

The maker of the motion disagreed.

Member Cauthen withdrew because she wanted to find violation of Sec. 67.21 (e) as well.

Motion to find violation of Sections. 67.7 (a) and 67.21 (e), as well as have the agency add Charles Pitts' email address to the agency's agenda notification list. (Cauthen / Goldman)

Public Comment: Kimo Crossman said technical violation does not exist in the Ordinance. It was either a violation or it isn't. He added that the Ordinance, especially Sec. 67.3 (d) (v), gives preference to services regarding the homeless. And through it, he said, the actions of the Coordination Board were willful. Peter Warfield said finding a technical violation is akin to insulting the complainant and the Ordinance. He wanted to know if there was any evidence that further explained the technical difficulty faced by the Coordinating Board. Unfortunately, he said, the respondent could not be questioned.

In conclusion, Mr. Pitts said the respondent did not provide any document or contact email recipients about the system failure. He said the Coordinating Board has its meeting schedule created at the beginning of the year and that it was a fact that Ms. Schlageter did not want to keep the community informed.

Motion to separate Sec. 67.7 (a) for failure to post the agenda electronically and Sec. 67.21 (e) for failure to appear (Knee/) Without objection.

On the first motion:

Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Johnson, Chu, Chan, Goldman

Noes: Knee

Excused: Johnson, Chan Williams

Motion passes.

On the second motion:

Ayes: Cauthen, Manneh, Washburn, Goldman, Knee

Noes: Craven-Green, Knoebber, Chu

Excused: Johnson, Chan Williams

Motion fails

No further action

6. 09067 Determination of jurisdiction on complaint filed by the Library Users Association against the Historic Preservation Commission for allegedly not providing summaries of public comment in the meeting minutes.

Motion to find jurisdiction: (Goldman / Knoebber)

Public Comment: None

On the motion:

Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Chu, Goldman, Knee

Excused: Johnson, Chan, Williams

Motion passes

7. 09067 Hearing on complaint filed by the Library Users Association against the Historic Preservation Commission for allegedly not providing summaries of public comment in the meeting minutes.

Complainant Peter Warfield, Executive Director of the Library Users Association read from his complaint dated Oct. 13, 2009, as well as his supporting document dated Nov. 24, 2009.

The Historic Preservation Commission was not represented. Mr. Rustom said Linda Avery, Secretary to the Planning and Historic Preservation Commissions


Alison
Schlageter/DHS/CCSF@CC
SF

06/09/2010 12:06 PM

To SOTF/SOTF/SFGOV@SFGOV

cc

bcc

Subject Re: Sunshine Complaint Received: 10028_Charles Pitts vs
Trent Phorer & Local Homeless Coordinating Board 

RE: Complaint 10028

All LHCB meeting notices are posting on our online website and sent to the public library.
Also attached is the LHCB listserve Mr.Pitts email address is included in this list.



LHCBListserve.xls

Ali Schlageter
SF Local Homeless Coordinating Board Policy Analyst
Ten Year Implementation Council, Staff
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Email: Alison.Schlageter@sfgov.org
SOTF/SOTF/SFGOV@SFGOV

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ggilman@chp-sf.org
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gubbio@sbcglobal.net
gwendolynwestbrook@yahoo.com,
hannahmp9@hotmail.com
homelessvillage@yahoogroups.com
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kcunz@cccyo.org
Kdwhittle@aol.com
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kmccave@hamiltonfamilycenter.org
kreggio@ecs-sf.org
kthompson@compass-sf.org
lbenedith@svdp-sf.org
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