Date: July 27, 2010

Item No. 30
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- ☒ **Administrators Report**
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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.

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

MEMORANDUM

TO: Sunshine Ordinance Task Force

DATE: July 20, 2010

SUBJECT: Administrator's Report

1. Requests from community persons:

   From June 16, 2010, through July 20, 2010, the Task Force's office responded to approximately 350 calls/e-mails/office visits from persons requesting information regarding the Sunshine Ordinance, or to mediate request for records.

2. 2010 Complaint Log

3. Communications Received Log

4. Orders of Determination

   #10018_Svetlana Ptashnaya v. Dept. of Aging and Adult Services
   #10022_Suzanne Dumont v Recreation and Parks Dept.
   #10025_Ray Hartz V San Francisco Police Commission

Complaints 2010

Date Received	Complainant	Department/Respondent	Status
1/12/2010	Nick Pasquarello 10001	General Services Agency	Task Force 02/23/2010, No jurisdiction
1/22/2010	Nancy Cross 10002	Law Library	Task Force 02/23/2010, No jurisdiction
1/22/2010	Nancy Cross 10003	ECS Sanctuary	Task Force 02/23/2010, No violation
1/22/2010	Rita O'Flynn 10004	City Attorney's Office	Task Force 02/23/2010, Withdrawn
2/2/2010	Emil Lawrence 10005	MTA	Complaint 03/09/10, Task Force 3/23/2010, No violation
2/4/2010	Paula Datesh 10006	Arts Commission	Complaint 03/09/10, No jurisdiction
2/22/2010	Chris Daly 10007	Mayor's Office	Complaint 03/09/10, Task Force 3/23/2010, violated 67.21(b), 67.21(e), 67.25(b), Task Force 04/27/10, referred to EC and BOS
3/3/2010	Sandra Brotherton 10008	Dept. of Emergency Management	Complaint 04/27/10, Task Force 4/27/2010, No further action
3/10/2010	Majeid Crawford 10009	City Attorney's Office	Complaint 5/11/10, TF 5/25/2010, violated 67.26, 67.27, TF 6/22/10, referred to EC
3/26/2010	Paula Datesh 10010	Arts Commission	Complaint 5/11/10, TF 5/25/2010, TF 6/22/10, 07/27/2010
3/26/2010	Juan De Anda 10011	Public Health	Task Force 04/27/10, contd 05/25/10, tabled
3/29/2010	Ellen Tsang 10012	Planning Department	Task Force 04/27/10, violated 67.21(e), 67.25, TF 6/2210, no further action
4/5/2010	Nick Pasquarello 10013	Dept. of Technology	Task Force 05/25/10, violated 67.21(b), TF 6/22/10, CAC 8/10/10
4/9/2010	Michael Robinson 10014	Rent Board	Complaint 5/11/10, no jurisdiction
4/14/2010	Ellen Tsang 10015	Planning Department	Task Force 05/25/10, violated 67.21, 67.25, 67.26 and 67.27, TF 6/22/10, referred to EC
4/10/2010	Ray Hartz 10016	Rent Board	Complaint 5/11/10, TF 5/25/2010, violated 67.24©(1)(i) and (ii), TF 6/22/10, matter concluded
4/10/2010	Ray Hartz 10017	Rent Board	Complaint 5/11/10, TF 5/25/2010, No further action
5/18/2010	Svetlana Ptashnaya 10018	Aging and Adult Services	Complaint 6/8/2010, TF 6/22/10, violated 67.21(c), 67.21(e) 67.24(c)(7) & 67.27, CAC 07/13/2010, TF 7/27/2010
5/21/2010	Alvin Xex 10019	First 5 (San Francisco)	Complaint 6/22/10, Tabled
4/26/2010	Kenneth Kinnard 10020	Human Rights Commission	Complaint 5/11/10, no jurisdiction
4/28/2010	Anonymous 10021	Recreation and Parks Department	Task Force 5/25/10, withdrawn 5/24/10
5/3/2010	Suzanne Dumont 10022	Recreation and Parks Department	Complaint 6/8/2010, TF 6/22/10, violated 67.27, CAC 07/13/2010, Matter concluded
5/21/2010	Alvin Xex 10023	First 5 (San Francisco)	Complaint 07/13/10, Tabled

Complaints 2010

5/25/2010	Ray Hartz 10024	San Francisco Police Dept	Complaint TF 6/22/10 Contd 07/27/2010
5/25/2010	Ray Hartz 10025	San Francisco Police Commission	TF 6/22/10, violated 67.29 & 67.21(e), CAC 07/13/2010, 08/10/2010
5/25/2010	Ray Hartz 10026	City Attorney's Office	TF 6/22/10, Contd. 07/27/2010, 07/27/2010
6/1/2010	Barry Taranto 10027	MTA Board of Directors	Task Force 7/27/10
6/1/2010	Charles Pitts 10028	Local Homeless Coordinating Board	Task Force 7/27/10
6/1/2010	Charles Pitts 10029	Local Homeless Coordinating Board	Task Force 7/27/10
6/4/2010	Michael Wright 10030	SF Human Services Agency	Complaint 7/13/10, 07/27/2010
6/23/12010	Charles Pitts 10031	Local Homeless Coordinating Board	Task Force 7/27/10
6/23/2010	Mike Addario 10032	Human Rights Commission	Complaint 7/13/10, Closed 06/28/2010, False Claim
6/23/2010	Milindha Morahela 10033	Arts Commission	Complaint 7/13/10, Withdrawn 7/13/2010
6/28/2010	Nick Pasquariello 10034	Department of Technology	Complaint 7/13/10, 07/27/2010
7/2/2010	Nick Pasquariello 10035	Bay Area Video Coalition	Complaint 08/10/2010
7/1/2010	Tomas Picarello 10036	SRO Task Force	Complaint 08/10/2010
7/7/2010	Suzanne Dumont 10037	Recreation and Parks Department	Complaint 08/10/2010, Task Force 8/24/10

COMMUNICATIONS RECEIVED LOG

June 16, 2010, through July 20, 2010

	DATE	FROM	DESCRIPTION
1	6/16/2010	Richard Knee	Ethics Commission adopts sunshine policy draft directives
2	6/16/2010	SF Guardian Editorial	Mirkarimi want's PG&E's $46 million back
3	6/17/2010	Kimo Crossman	UNANIMOUS - Supreme court: Texts on government gear not private
4	6/17/2010	Rita August O'Flynn	Potential Fraud Involving the San Francisco Mayor's Office of Housing
5	6/17/2010	Rita August O'Flynn	FW: Potential Fraud Involving the San Francisco Mayor's Office of Housing
6	6/20/2010	Rita August O'Flynn	O'Flynn vs MOH: Additional file santitation/destruction of records
7	6/21/2010	Doug Comstock	City College to enact Public Records component
8	6/21/2010	Milton Marks	Re: City College to enact Public Records component
9	6/21/2010	Milton Marks	Re: City College to enact Public Records component
10	6/21/2010	Doug Comstock	Re: City College to enact Public Records component
11	6/21/2010	Doug Comstock	Re: City College to enact Public Records component
12	6/21/2010	Doug Comstock	Re: City College to enact Public Records component
13	6/21/2010	Rita August O'Flynn	O'Flynn vs MOH: MOH charging O'Flynn for documents
14	6/21/2010	Bay Guardian	The insanity of cutting pensions
15	6/21/2010	Bay Guardian	The insanity of cutting pensions
16	6/22/2010	pdatesh	Mike Addario
17	6/22/2010	Lori Mazzola	IMPORTANT BUILDING NEWS AND INFORMATION
18	6/22/2010	SF Guardian Editorial	Today at sfbg.com: What the "Defund ACORN Act" is really about
19	6/22/2010	Tenants 769NorthPoint	Re: CD for June 22, 2010 hearing
20	6/23/2010	mpetrelis	Pelosi aide: No gay forums; but gym classes galore
21	6/23/2010	SF Guardian Editorial	http://www.sfbg.com/2010/06/22/how-sf-can-get-50-million-
22	6/24/2010	Brian Smith	Re: Sunshine Complaint #10015, Ellen Tsang vs. Planning
23	6/24/2010	Brian Smith	Re: Planner Jonas Ionin's complaint vs. storage shed at 769 North Point Street
24	6/24/2010	Ellen Tsang	Fw: Re: Sunshine Complaint #10015, Ellen Tsang vs. Planning Department
25	6/24/2010	Ellen Tsang	Re: Sunshine Complaint #10015, Ellen Tsang vs. Planning Department
26	6/24/2010	Brian Smith	Re: Sunshine Complaint #10015, Ellen Tsang vs. Planning Department
27	6/24/2010	Brian Smith	Record Requests from MS Ellen Tsang
28	6/24/2010	Brian Smith	correspondence between Planning and Ms Tsang
29	6/24/2010	Rita August O'Flynn	O'Flynn vs MOH: Request for Immediate Disclosure
30	6/24/2010	Ellen Tsang	Re: Sunshine Complaint #10015, Ellen Tsang vs. Planning Department
31	6/24/2010	Ellen Tsang	Re: Planning Department's vs. storage shed at 769 North
32	6/25/2010	Rita August O'Flynn	RE: O'Flynn vs MOH: Additional file santitation/destruction of records
33	6/25/2010	Bruce Wolfe	Budget
34	6/25/2010	Brian Smith	769 Noth Point Immediate Record Request
35	6/27/2010	Ellen Tsang	Re: Planning Department's new complaint vs. 769 North Point storage shed
36	6/28/2010	Brian Smith	Re: Planning Department's new complaint vs. 769 North Point storage shed
37	6/28/2010	Milindha Morahela	Contract No. 95116 Reprographics & Materials -2008-Request for Information
38	6/28/2010	Rey Rosquites	Contract No. 95116 Reprographics & Materials -2008-Request for Information
39	6/28/2010	Selormey Dzikunu1	Contract No. 95116 Reprographics & Materials -2008-Request for Information
40	6/29/2010	Selormey Dzikunu1	Contract No. 95116 Reprographics & Materials -2008-Request for Information
41	6/29/2010	Selormey Dzikunu1	Contract No. 95116 Reprographics & Materials -2008-Request for Information
42	6/29/2010	Milindha Morahela	Contract No. 95116 Reprographics & Materials -2008-Request for Information
43	6/29/2010	Taraneh Moayed	Contract No. 95116 Reprographics & Materials -2008-Request for Information
44	6/29/2010	Milindha Morahela	Contract No. 95116 Reprographics & Materials -2008-Request for Information
45	6/29/2010	Milindha Morahela	Contract No. 95116 Reprographics & Materials -2008-Request for Information
46	6/29/2010	SF Guardian Editorial	Today at the Bay Guardian: No new taxes -- just fees on small business
47	6/29/2010	Taraneh Moayed	Contract No. 95116 Reprographics & Materials -2008-Request for Information
48	6/29/2010	Milindha Morahela	Contract No. 95116 Reprographics & Materials -2008-Request for Information
49	6/30/2010	Ellen Tsang	Fw: Re: Planner Jonas Ionin's complaint vs. storage shed at 769 North Point Street
50	6/30/2010	Ellen Tsang	Re: Sunshine Complaint #10015, Ellen Tsang vs. Planning Department
51	6/30/2010	SF Guardian Editorial	Today at the Bay Guardian: Stories highlight Newsom's hypocrisy
52	7/1/2010	Jonas Ionin	Re: Fw: Re: Planner Jonas Ionin's complaint vs. storage shed at 769 North Point Street
53	7/1/2010	Kimo Crossman	When will SF DT preserve Electronic Records? and WH in trouble on personal email use
54	7/1/2010	Lori Mazzola	REAL ESTATE DIVISION'S Civic Center Campus Chronicle NEWSLETTER-July/August 2010
55	7/1/2010	Ray Hartz Jr	Re: Fw: Re: Planner Jonas Ionin's complaint vs. storage shed at 769 North Point Street
56	7/1/2010	Jonas Ionin	Re: Sunshine Complaint #10015, Ellen Tsang vs. Planning Department
57	7/1/2010	Ellen Tsang	Re: Sunshine Complaint #10015, Ellen Tsang vs. Planning Department
58	7/1/2010	Ellen Tsang	Re: Planner Jonas Ionin's complaint vs. storage shed at 769 North Point Street
59	7/1/2010	Kimo Crossman	Re: Planner Jonas Ionin's complaint vs. storage shed at 769 North Point Street
60	7/1/2010	Ellen Tsang	Re: Sunshine Complaint #10015, Ellen Tsang vs. Planning Department
61	7/2/2010	Ellen Tsang	Re: Planner Ionin's calendar for that day that Planner Ionin visited 2642-44 Hyde St.
62	7/2/2010	Rita August O'Flynn	RE: O'Flynn vs MOH: Additional file santitation/destruction of records

63	7/2/2010	Jonas Ionin	Re: Planner Ionin's calendar for that day that Planner Ionin visited 2642-44 Hyde St.
64	7/2/2010	joshua williamson	Re: Sunshine ordinance violations and request for answers per : sunshine ordinance sec 67.21
65	7/6/2010	SF Guardian Editorial	Today at sfbg.com: Oakland and SF bracing for reaction to verdict in Mehserle case
66	7/7/2010	Ray Hartz Jr	Re: Order of Determination: #10025_Ray Hartz v Police Commission
67	7/7/2010	Ellen Tsang	Re: Public record requested: Permit #200411028353, 2642-44 Hyde Street
68	7/7/2010	Rita August O'Flynn	Potential Fraud Involving the San Francisco Mayor's Office of Housing & HUD
69	7/7/2010	SF Guardian Editorial	Today at the Bay Guardian: Some good news for Jerry Brown
70	7/8/2010	William Strawn	Re: FollowUp Response,Public record requested: Permit #200411028353, 2642-44 Hyde Street
71	7/9/2010	Ellen Tsang	Re: Public record requested: Permit #200411028353, 2642-44 Hyde Street
72	7/9/2010	Rey Rosquites	RE: Contract No. 95116 Reprographics & Materials -2008-Request for Informatio
73	7/9/2010	John Rizzo	Re: SPECIAL SOTF MEETING JUNE 20
74	7/9/2010	Mary Gin Starkweather	Contract No. 95116 Reprographics & Materials -2008-Request for Information
75	7/9/2010	Rey Rosquites	Contract No. 95116 Reprographics & Materials -2008-Request for Information
76	7/9/2010	Mary Gin Starkweather	Contract No. 95116 Reprographics & Materials -2008-Request for Information
77	7/9/2010	Taraneh Moayed	Contract No. 95116 Reprographics & Materials -2008-Request for Information
78	7/9/2010	Selormey Dzikunu1	Contract No. 95116 Reprographics & Materials -2008-Request for Information
79	7/9/2010	SF Guardian Editorial	Today at the Bay Guardian: Video of the Oakland protests
80	7/12/2010	Kimo Crossman	When will SF DT preserve Electronic Records? and WH in trouble on personal email use
81	7/13/2010	SF Guardian Editorial	Today at sfbg.com: Supervisors vote today on Candlestick-Shipyard EIR appeal
82	7/14/2010	Jason Grant Garza	FW: Your sunshine matters ("PROVE IT" RESPONSE by JASON GRANT GARZA)
83	7/14/2010	SF Guardian Editorial	Newsom's good MTA appointment doesn't redeem his misdeeds
84	7/14/2010	Rita August O'Flynn	RE: O'Flynn vs MOH: Additional file santitation/destruction of records
85	7/15/2010	Rita August O'Flynn	RE: On-Site Review-Sunshine Ordiance Request for Disclosure
86	7/15/2010	Rita August O'Flynn	RE: On-Site Review-Sunshine Ordiance Request for Disclosure
87	7/16/2010	mpetrelis	N.Y. Times: S.F. AIDS funds go abroad; Goosby's Pangaea role omitted
88	7/16/2010	SF Guardian Editorial	Adachi and the real politics of pension reform
89	7/19/2010	SF Guardian Editorial	Meg wants to stop paying taxes

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ORDER OF DETERMINATION
July 6, 2010,

DATE THE DECISION ISSUED
June 22, 2010

SVETLANA PTASHNAYA v. DEPT. OF ADULT AND AGING SERVICES (10018)

FACTS OF THE CASE

Complainant Svetlana Ptashnaya alleges that the Department of Aging and Adult Services ("DAAS") failed to respond adequately to her February 11, 2010, Public Records Request to Julie Peck, Program Manager for Adult Protective Services ("APS"), for the results of APS's investigation into Ms. Ptashnaya's complaint against APS employee Ethelbert Ogbuehi.

COMPLAINT FILED

On May 19, 2010, Ms. Ptashnaya filed a complaint against DAAS.

HEARING ON THE COMPLAINT

On June 22, 2010, Ms. Ptashnaya presented her claim before the Task Force. The respondent agency was not represented and no one in the audience spoke or presented facts and evidence in support of the respondent.

Ms. Ptashnaya told the Task Force that she complained to Ms. Peck about an encounter she had with Mr. Ogbuehi on February 10, 2010, and requested that his actions toward her be investigated and the findings be released to her. She said that on March 5, 2010, APS Program Supervisor Cindy E. Rasmussen responded by saying that an investigation was done but because all APS investigations were considered confidential, the results would not be released. She promised Ms. Ptashnaya that the matter had been fully investigated and that appropriate steps had been taken. Ms. Ptashnaya also said she contacted Department of Human Services Agency Director Trent Rhorer, and his Executive Director E. Anne Hinton responded by stating that state law prevented the release of the result of any APS investigation.

It was noted during the hearing that DHSA had opined to the Task Force that it did not have jurisdiction over the matter and that the requested information was protected from disclosure under the State of California's Welfare and Institutions Code, Sections 15630 and 10850.

ORDER OF DETERMINATION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that the agency violated the Ordinance. The Task Force agreed with the department that state law covered information related to the department and its clients, but Ms. Ptashnaya's request was on a distinctly separate issue, the alleged misconduct of a public agency employee. Her request, it said, was for information related to an employee's disciplinary hearing, and documents related to it should have been released pursuant to requirements of the Ordinance. The Task Force also said the department could redact parts of the document or documents if they contained confidential information related to any welfare case. Task Force members were also disappointed that the department violated the Ordinance by not sending a representative to the hearing to state and defend its position.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.21(c), 67.21(e), 67.24(c)(7) and 67.27 of the Sunshine Ordinance for not assisting the requestor, for not sending a knowledgeable representative to the hearing, for not releasing documents related to employee misconduct and for not providing justification for withholding information. The agency shall release the requested records within five business days of the issuance of this Order and shall send a representative knowledgeable in this matter to appear before the Compliance and Amendments Committee on July 13, 2010.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 22, 2010, by the following vote: (Wolfe / Goldman)
Ayes: Snyder, Cauthen, Washburn, Knoebber, Goldman, Wolfe, Chan, Johnson, Williams, Knee
Excused: Manneh

Richard A. Knee

Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Jana Clark, Deputy City Attorney
Svetlana Ptashnaya, Complaint
Trent Rhorer, Respondent
E. Anne Hinton, Respondent
Julie Peck, Respondent
Cindy E. Rasmussen, Respondent

SUNSHINE ORDINANCE
TASK FORCE

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ORDER OF DETERMINATION
July 6, 2010

DATE THE DECISION ISSUED
June 22, 2010

SUZANNE DUMONT v RECREATION AND PARKS DEPT. (10022)

FACTS OF THE CASE

Complainant Suzanne Dumont alleges that the Recreation and Parks Department (the "Department") failed to respond adequately to her Public Records Request for the names of persons on the selection panel for the Stow Lake Boathouse Concession RFQ. The department responds that the information sought by the complainant may not be disclosed under the Ordinance until after the selection is made during the competitive bidding process.

COMPLAINT FILED

On May 3, 2010, Ms. Dumont filed a complaint with the Task Force alleging a violation.

HEARING ON THE COMPLAINT

On June 22, 2010, Complainant Ms. Dumont presented her case before the Task Force. Respondent agency was represented by Nick Kinsey of the Recreation and Parks Department.

Ms. Dumont told the Task Force that she twice sought from the Department the names of panelists evaluating the Stow Lake Boathouse Concession RFQ and in both cases she was turned down. She said her first request was made to Mr. Kinsey, Property Manager for the Department. The second request was made to Olive Gong, the Department's Custodian of Records. Both of them, she said, responded by saying that on the advice of the City Attorney's Office, the names would be released only at the end of the selection process. Ms. Dumont pointed out that Section 67.24(e) makes specific reference only to RFPs, and not RFQs. She also said the Department has previously revealed the names of other panelists prior to selection, and she thus did not understand the need for secrecy in this instance.

Mr. Kinsey said the City Attorney's Office had advised the Department that Section 67.24(e)(1) prohibits it from releasing the names until after the selection process ends. That message, he said, was conveyed to Ms. Dumont. He said he received the same advice

ORDER OF DETERMINATION

when the second request from Ms. Dumont came in. The City needs to protect the integrity of the selection process from attempts by competitors to influence it, he said.

Member Snyder said the second part of Section 67.24(e)(1) does not prohibit the release of information. Its plain language, he said, would seem to *allow* a department to release the information at any stage of the process, but a department *must* release it at the end.

DCA Jerry Threet stated that, while Section 67.24(e)(1) may not prohibit the release of the names of the selection panel, it clearly allows the Department to withhold such information until after the selection process is completed. DCA Threet added that the Administrative Code may contain a prohibition on the release of this information, but he has not had an opportunity to review that code.

Member Snyder added that it was the duty of the Department to cite the authority if other laws were applicable and in this case, because it did not, the department violated Section 67.27.

Member Cauthen said the complainant has included numerous examples of panelist names being made known to the public and suggested that the Department should release the names of the panel for the Stow Lake Boathouse Concession RFQ ,even if it is not required to do so.

In closing, Mr. Kinsey said he believed the department made the correct determination based on advice provided by the City Attorney's Office.

Ms. Dumont said the department has numerous times claimed it was withholding the information because of the need to protect the integrity of the process. She said she is not a competitor and was not asking for fiduciary information. Her main interest, she said, was in who was on the panel because panelists are paid very well with taxpayers' money. Another reason was that her group has been excluded in the process and wanted to participate, she said.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that the agency violated the Ordinance.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section 67.27 of the Sunshine Ordinance by failing to cite the specific statutory authority for withholding the information. The Respondent shall, within five days of the issuance of this Order, provide the Complainant with written justification for withholding the requested information, citing the specific provision(s) in statutory and/or case law exempting the information from disclosure. The Respondent is also instructed to send a representative knowledgeable in this matter to appear before the Compliance and Amendments Committee on July 13, 2010.

ORDER OF DETERMINATION

This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 22, 2010, by the following vote: (Snyder / Goldman)
Ayes: Snyder, Cauthen, Washburn, Knoebber, Goldman, Wolfe Chan, Johnson, Williams, Knee
Excused: Manneh

Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Jana Clark, Deputy City Attorney
Suzanne Dumont, Complainant
Nick Kinsey, Respondent
Olive Gong, Respondent

SUNSHINE ORDINANCE
TASK FORCE

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ORDER OF DETERMINATION
July 6, 2010 (Revised)

DATE THE DECISION ISSUED
June 22, 2010

RAY HARTZ v SAN FRANCISCO POLICE COMMISSION (10025)

FACTS OF THE CASE

Complainant Ray Hartz alleges that the San Francisco Police Commission ("Commission") has failed to comply with the requirements of Administrative Code Section 67.29, dealing with the Index of Records. He further alleges that this violation took place after the Task Force previously found the Commission in violation for the same failure in Order of Determination #09008.

COMPLAINT FILED

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

HEARING ON THE COMPLAINT

On June 22, 2010, Mr. Hartz presented his claim before the Task Force. The respondent Commission was not represented and no one in the audience presented facts and evidence in support of the respondent. However, the Commission did respond to the complaint through a letter to the Task Force that was made a part of the record.

Mr. Hartz told the Task Force that when a person is in charge of something, that person has the responsibility of carrying out the task properly. The same applies when the task is delegated to someone else. If that happens, he said, that person needs to follow up and see if the task is being undertaken properly. The Commission, he said, has delegated the Police Department to take care of the index issue and has been let down miserably.

The Commission's letter responded that, although the Index of Records had disappeared from the Internet, the Commission was not responsible for its absence. Rather, the Commission had provided the Index of Records to the City Administrator, as required by the Ordinance, and it was thereafter available on the Internet. Unfortunately, the City Administrator said, for unknown reasons, the Index of Records was taken off the Internet. Once the Complainant alerted the Commission to the omission, the Commission contacted the City Administrator and made sure the Index of Records was restored to the Internet. Mr. Hartz told the Task Force that his complaint was not about the absence from the Internet of an Index of Records for the Commission, but rather about the inadequacy of the Index of Records that was placed there by the Commission. All the Police Department has done for

ORDER OF DETERMINATION

the Commission is to put up a list that is not meaningful, he said. The Commission is responsible for ensuring that the Department follows the law and it needs to let the Department know that it has to do what it is supposed to do, he said. He also said the Commission has added responsibility because it has civilian oversight over the Department.

Member Wolfe noted that the department in its correspondence to the Task Force acknowledges responsibility for noticing the Index and not for its disappearance. He also added that Mr. Hartz is suggesting that the content and required detail were not in compliance, as was found in the previous case.

In closing, Mr. Hartz said his claim was simply that the Commission had violated Section 67.29 by not doing what it was supposed to do. He said he did not feel he had to provide a detailed complaint and that the department assumed what the complaint was about. The Commission, he said, did not show good faith in trying to resolve the issue but instead penned a letter that said the matter was taken care of and decided not to show up.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that the agency violated the Ordinance.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Commission violated Sections 67.29 and 67.21(e) of the Sunshine Ordinance by not having a complete Index of Records and by not sending a knowledgeable representative to the Task Force hearing. The Commission shall send a representative knowledgeable in this matter to appear before the Compliance and Amendments Committee on July 13, 2010. The Commission's representative shall be prepared to demonstrate to the Committee that the Commission's Index of Records enables members of the public to learn the types of information and documents maintained by and for the Commission, per Ordinance Section 67.29.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 22, 2010, by the following vote: (Wolfe / Goldman)
Ayes: Snyder, Cauthen, Washburn, Knoebber, Goldman, Wolfe, Chan, Johnson, Williams, Knee

Richard A. Knee

Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Jana Clark, Deputy City Attorney
Ray Hartz, Complainant
Lt. Joe Reilly, Respondent

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