

Date: August 24, 2010

Item No. 13 & 14
File No. 10031

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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

Date: August 19, 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.



DENNIS J. HERRERA
City Attorney

JANA CLARK
Deputy City Attorney

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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. Local Homeless Coordinating Board (10031)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Charles Pitts ("Complainant") alleges that on June 1, 2010 he was denied access to the Local Homeless Coordinating Board ("Board") meeting in violation of the Sunshine Ordinance.

COMPLAINANT FILES COMPLAINT:

On June 14, 2010, Complainant filed a Public Meeting Complaint against the Board for its alleged violations, 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 67.13 of the Ordinance governs prohibited barriers to attendance at public meetings.

APPLICABLE CASE LAW:

none

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RE: *Charles Pitts v. Local Homeless Coordinating Board (10031)*

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

On June 1, 2010, Complainant was for some period of time denied access to a meeting of the Board. The door to the meeting was locked and under the control of an attendant. Those wishing to enter were required to be buzzed into the meeting by the attendant.

B. Contested facts/ Facts in dispute:

Complainant alleges that the attendant would not allow him to enter the meeting, and that he got through the door only when a worker opened the door. He alleges that the worker then blocked his pathway into the meeting. He further alleges that a security person then said it was okay for him to enter the meeting and that, but for his following the worker in through the door, he would have missed the meeting. He does not allege what portion if any of the meeting he missed due to the delay in entering the meeting.

The Board responds that all non-staff entering Board meetings are required to check in with security guards, and that their staff acted appropriately in contacting the security guard who then directed the Complainant to the meeting. The Board alleges that the Complainant's entry into the meeting was delayed by a few seconds.

The Task Force must determine what facts are true.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What are the security measures employed by the Board with respect to public meetings?
- Are the security measures employed uniformly applied?
- Did the Board staff act in accordance with the adopted security measures?
- Did the door attendant see the Complainant trying to enter the meeting?
- If so, did the attendant refuse to buzz Complainant into the meeting?
- If she refused to allow the Complainant to enter the meeting, why did she refuse entry?
- Was the attendant's refusal to allow the Complainant to enter the meeting based on any security measures adopted by the Board?
- For how long was Complainant delayed in entering the meeting?
- Did the Complainant miss any of the Board meeting?
- Are other non-staff attendees required to be buzzed into the meetings?

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- Was the Complainant treated differently than other non-staff persons trying to enter the meeting?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- 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 whether any security measures employed by the Board violated the requirements of the Ordinance regarding public access to meetings. Determine if, in this instance, the application of any security measures employed violated the requirements of the Ordinance regarding public access to meetings. In addition, determine to what extent the SOTF may find a violation of the Ordinance if and when the denial of entry is corrected before the start of the meeting.

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:

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- (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 67.13 governs barriers to attendance:

(a)

No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

(b)

Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.

(c)

Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.

(d)

Each board and commission enumerated in the charter shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."

(e)

The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to

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enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter, review the provisions of this subsection

**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.

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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.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2010 JUN 14 PM 4:11

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 Local Homeless Coordinating Board

Name of individual contacted at Department or Commission _____

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting June 1, 2010

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.

see attached document

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 Pitts Address _____

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

Date _____ Signature [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).

I had to force my way into a meeting that the
"THE LOCAL HOMELESS BOARD " called public meeting

I went to 77 otis
To go into the meeting
Their was a buzz door
that the lady attendant
would not allow me through

when a worker opened the door
I went in
The worker obstructed my path way into the meeting

After a few seconds of the worker saying something
A security person said it was ok for me to inter

I think this is a violation of the letter and spirit of the sunshine ordnance

If I had not acted in this type of fashion would I have been
made to wait in the lobby till the meeting was over

if THE LOCAL HOMELESS COORDINATING BOARD
disagrees with this I would like to have them provide the video of the lobby area and
the area right behind the buzz door of time and date around meeting

June 1, 2010

SAN FRANCISCO LOCAL HOMELESS COORDINATING BOARD

Funding Committee AGENDA

Tuesday, June 1, 2010
2:00pm-4:00pm
77 Otis St. First Floor

- I. Introduction
- II. Minutes from April 23, 2010 Meeting
- III. McKinney Vento Application 2010
 - A) Renewal Project Review- Tool
- IV. Quarterly Goals- LHCB
 - A) Update from Full LHCB Meeting
 - B) Transitional Housing Analysis Update
 - C) Next Steps for Quarterly Goals
- V. 2010-2011 Local Budget Process
 - A) Where things stand
- VI. Other Updates
- VII. Adjournment

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

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 (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at: Sunshine Ordinance Task Force, Donna Hall, Clerk, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724, Fax: (415) 554-7854. E-Mail: Donna.Hall@sfgov.org. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force (listed above), the San Francisco Public Library, and on the City's web site at: www.sfgov.org.

TRANSLATION SERVICES

Interpreters for languages other than English are available on request. Sign language interpreters are also available on request. For either accommodation, contact (415) 252-3136 at least two business days before a meeting.

LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by San Francisco Lobbyist Ordinance [SF Admin Code Section 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, No. 701, SF 94102, (415) 554-9510, FAX (415) 703-0121 and web site <http://www.sfgov.org/ethics/>.


Alison
Schlageter/DHS/CCSF@CC
SF

07/07/2010 03:13 PM

To SOTF/SOTF/SFGOV@SFGOV

cc

bcc

Subject Re: Sunshine Complaint Received:#10031_Charles Pitts v
Local Homeless Coordinating Board 

Apologies for the delay in this response.

This email is in response to Complaint #10031 Charles Pitts v Local Homeless Coordinating Board. Consistent with Human Services Agency Security Policy, all non-staff entering 77 Otis, (and all non-staff entering all Human Services locations) must check in with the department's Security Guards. Human Services Staff acted appropriately in contacting the security guard who directed Mr. Pitts to the meeting. Mr. Pitts, in his own words, was delayed a few seconds, prior to entering the meeting. Human Services staff did not violate the Sunshine Ordinance.

Ali Schlageter
SF Local Homeless Coordinating Board Policy Analyst
Ten Year Implementation Council, Staff
Phone: 1-415-557-6451
Email: Alison.Schlageter@sfgov.org



Richard Knee
<rak0408@earthlink.net>

07/24/2010 05:28 PM

To SOTF <soft@sfgov.org>, SOTF_Wolfe Bruce
<SOTF@BruceWolfe.net>, SOTF_Cauthen Sue
<scau1321@aol.com>, SOTF_Chan Hanley
cc SFCityAtty_Clark Jana <Jana.Clark@sfgov.org>,
SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>

bcc

Subject [Fwd: Re: Meeting-site sign-ins]

Task Force colleagues,

The e-mail exchange below between Terry Francke and me might be relevant to Case #10031, Charles Pitts vs. Local Homeless Coordinating Board, which is on the agenda for this Tuesday's meeting. Mr. Francke is general counsel of Californians Aware, a sunshine education and advocacy organization.

Chris, please print copies of this message for distribution to Task Force members, the complainant, the respondent and public attendees at this Tuesday's meeting.

Rick

----- Original Message -----

Subject: Re: Meeting-site sign-ins

Date: Thu, 20 May 2010 13:51:35 -0700

From: Terry Francke <terry@calaware.org>

To: Richard Knee <rak0408@earthlink.net>

References: <4BF5855E.6020402@earthlink.net>

On May 20, 2010, at 11:54 AM, Richard Knee wrote:

>

> Maybe you can help me with a Sunshine Ordinance/Brown Act question.

>

> A San Francisco policy body called the Committee on Information Technology (COIT) holds many of its meetings in a building where the

> city leases space from a private-sector owner.

>

> 1. May the building management require COIT meeting attendees to

> sign in as "visitors" at the building entrance?

Yes. The building management is not a public agency governed by sunshine laws.

>
> 2. The room where COIT meets is accessible only through the
> reception area for the city Department of Technology offices,
which
> are in that leased space. May the department require COIT
meeting
> attendees to sign in at the reception desk?

*No. The department is a public agency governed by sunshine
laws.*

>
> Thanks,
> Rick

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.437 / Virus Database: 271.1.1/2885 - Release Date: 05/20/10
06:26:00

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