

Date: Sept. 22, 2009

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force August 25, 2009**
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Chris Rustom

Date: Sept. 16, 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.

This page purposely left blank

Sunshine Ordinance Task Force



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7724
Fax No. 554-7854
TDD/TTY No. 544-5227

<http://www.sfgov.org/sunshine/>

**SUNSHINE ORDINANCE TASK FORCE
REGULAR MEETING
DRAFT MINUTES**

Tuesday, August 25, 2009
4:00 p.m., City Hall, Room 408

Task Force Members

Seat 1	Erica Craven-Green (Vice Chair)	Seat 8	Kristin Chu
Seat 2	Richard Knee (Chair)	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Nick Goldman
Seat 4	(Vacant)	Seat 11	Marjorie Ann Williams
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	Angela Calvillo
Seat 7	Doyle Johnson	Ex-officio	(Vacant)

Call to Order 4:00 P.M.

Roll Call Present: Knee, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams
Excused: Chan, Chu

Agenda Changes: Items 15 and 16 withdrawn; Items 18 and 19 heard after Item 4;
Item 31 heard after Item 6

Deputy City Attorney: Ernie Llorente
Clerk: Chris Rustom

1. Approval of minutes of July 28, 2009, regular meeting.
Motion to approve July 28, 2009, meeting minutes: (Goldman / Washburn)
Public Comment: None
On the motion:
Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams
Excused: Chan, Chu
2. Special recognition to Tanene A. Allison for her community service as a contributing ex-officio member.
Chair Knee announced that the recognition would be mailed to Tanene A.

Allison, who has moved permanently to the East Coast.

Public Comment: None

3. 08056 Hearing on the status of the January 6, 2009, Order of Determination of Anonymous against the SF Police Department.

Complainant Ray Hartz said the Index of Records is still not updated. He also said he recently visited two police stations as well as 850 Bryant to get a copy of a police procedure that already was in his possession. He said he spoke to 14 people who either did not want to give him the document or did not know if it existed. Their response, he said, showed that the Police Department officers are not willing to respond to requests for public documents. He said it has been a year since he filed the complaint and the experience shows that the department has not changed its ways of conducting the people's business. The Task Force's Order of Determination has not made an impact, he added.

Respondent Lt. Daniel Mahoney, who is the head of the Legal Division of the Police Department, said the Index of Records has been completed and has been forwarded to the City Administrator's Office in the format they wanted.

Member Craven-Green reminded the Task Force that Mr. Hartz's complaint about his latest experience with the police was a one-sided presentation and not related to the Order of Determination.

Motion to continue to regular September meeting. (Johnson / Cauthen)

Public Comment: None

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman

Noes: Williams

Excused: Chan, Chu

4. 09008 Hearing on the status of the February 24, 2009, Order of Determination of Anonymous against the SF Police Commission.

Complainant Ray Hartz said he felt that the police officer had handled himself incorrectly during a visit to the Police Department two years ago and wanted to know the department's directive on the issue. At the City Attorney's Office, he said, he was taken out in handcuffs because he refused a Sheriff's order to vacate the office. Chair Knee reminded the complainant that the matter before the Task Force was the Order of Determination and to limit his presentation to the matter. Mr. Hartz said the Index of Records is very valuable to a citizen who wants to know what police and commission documents were available and what to ask for. In his case, he said, he provided the name of the document and was denied it.

Respondent Lt. Daniel Mahoney, who is the head of the Legal Division of the Police Department, said the City Attorney's Office has advised the Police

Department that the Police Commission was under their jurisdiction. However, he said, the City Administrator's Office has a separate filing for the commission. The Police Commission's Index, he said, is included in the Police Department's Index, which has been sent to the City Administrator's Office.

Motion to continue to regular September meeting. (Cauthen / Goldman)

Public Comment: None

The respondent did not rebut. The complainant said the citizens of San Francisco and the Police Commission should have a clear understanding that if a citizen wants to see a public document they should not be thwarted in their effort. Once the Index is updated, he said he will go to various police stations and ask for documents listed in the Index. He said he will file a complaint every time he is denied a document listed on the Index.

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams

Excused: Chan Chu

5. 09031 Determination of jurisdiction on the complaint filed by Kenneth Kinnard against the Human Rights Commission for allegedly withholding information.

Motion to find jurisdiction: (Goldman / Cauthen)

Public Comment: None

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams

Excused: Chan, Chu

6. 09031 Hearing on the complaint filed by Kenneth Kinnard against the Human Rights Commission for allegedly withholding information.

The complainant, Kenneth Kinnard, was not present. There was nobody in the audience to present facts and evidence in support of the complainant.

Respondent Melinda Kanios, Manager of the Certification Unit at the Human Rights Commission, said she doesn't have a case.

On Member Craven-Green's questioning, Ms. Kanios said her office received the March 4, 2009, IDR and was only able to respond on April 7, 2009, because Mr. Kinnard was unclear in his request and clarification was needed. Ms. Kanios also said an application consists of three pages but depending on the size of the business and the number of employees, a document could contain 20 to 100 pages.

On further questioning, Ms. Kanios said she only provided a data log sheet

because the application was in storage and not onsite.

Member Cauthen explained to Ms. Kanios the requirements of the Ordinance pertaining to this matter.

Public Comment: Ray Hartz wanted to know why the matter was not continued because it does so when the City is not present. The Task Force needs to hear from the complainant more so because nobody knows what was requested and what was provided.

The respondent did not provide a rebuttal.

Motion to find violation of Sec 67.21 for failure to produce documents in a timely fashion and Sec 67.25 for failure to respond to the IDR (Craven-Green / Goldman)

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams

Excused: Chan, Chu

The matter is forwarded to the Compliance and Amendments Committee to discuss with Ms. Kanios the status of retrieval of the documents from storage.

7. 09035 Determination of jurisdiction on the complaint filed by Dave Schneider against the Clerk of the Board and Supervisor Chris Daly for allegedly denying public comment at a public hearing.

Motion to find jurisdiction: (Goldman / Cauthen)

Public Comment: None

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams, Knee

Excused: Chan, Chu

8. 09035 Hearing on the complaint filed by Dave Schneider against the Clerk of the Board and Supervisor Chris Daly for allegedly denying public comment at a public hearing.

Complainant Dave Schneider said the supervisors on the Board of Supervisors' Rules Committee should have voted on whether or not to withdraw the proposed Charter legislation and that public comment should have been provided because the item was already calendared and the public notified.

Respondent Linda Wong, Clerk of the Rules Committee, read the Clerk of the Board's response to the complaint which stated that the supervisor followed procedure as stated in the Board of Supervisors' Rules of Order.

DCA Ernie Llorente, in response to Member Knoebber's query, said the Sunshine Ordinance clearly states that there has to be public comment before action is taken on an item. The question is, he said, does the action to take the item off the agenda warrant public comment.

Member Craven-Green said she does not know any case law that addresses the issue but there was one California case that said there is no requirement for public comment on when an item is added. She also said when the clerk of the Task Force earlier said Items 15 and 16 had withdrawn, there was no discussion on whether the item needed to be withdrawn. And, when an item is continued, it is at the Chair's discretion on whether or not to have public comment. Since there was no case law, she said that as long as it was announced at the beginning of the agenda, which is a requirement of the Ordinance, she did not see a need for public comment.

Chair Knee said the public can comment on a withdrawn item at the public comment session. However, he noted that the board's committees do not have public comment sessions.

Member Washburn wanted to know what the law was on general public comment and whether certain bodies are exempt.

Member Craven-Green said state law is silent on the issue but the intent to require general public comment is coded in Sec 67.15 (a).

Member Cauthen said if a person wanted to comment on a topic, permission should be granted in the spirit of Sunshine. She said she would recommend departments to allow for general public comment on their agendas.

Member Williams agreed. She said the public has the right to speak at any public meeting if it was provided at the committee level.

Motion to find violation of Sec 67.15 (a) and (e) for failure to provide general public comment and allow members of the public to comment on agenda changes (Knoebber / Williams)

Member Cauthen also said the Order of Determination should mention that the Supervisors provide general public comment at committee meetings in its recommendations to the Board.

Motion advising Chair Knee write to the Clerk of the Board, the President of the Board of Supervisors and the chairs of the various sub-committees and express the Task Force's concern over the lack of general public comment at Board of Supervisors committee meetings,. (Cauthen / Williams)

Public comment: Peter Warfield said the Ethics Commission allows for general public comment on items on and off the agenda. The Library also does the same for items under its purview, he said. He added that the public should be allowed to present their views on an agenda item. Ray Hartz said the public should be given the opportunity to speak, regardless.

Rick Calderia, Legislative Deputy Director for the Board of Supervisors, said the current discussion, which is general public comment, was not on the agenda. The issue before the Task Force was whether or not public comment was taken. He said there is a general public comment session at Board meetings. There are rules and procedures that the supervisors follow, he said, in reference to public testimony and on when and where it happens.

On the first motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams, Knee

Excused: Chan, Chu

On the second motion:

Public Comment: None

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Williams, Knee

Noes: Goldman

Excused: Chan, Chu

9. 09036 Determination of jurisdiction on the complaint filed by Bridgid against the Police Department for allegedly withholding public information.

Motion to find jurisdiction: (Goldman /)

Public Comment: None

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams, Knee

Excused: Chan, Chu

10. 09036 Hearing on complaint filed by Bridgid against the Police Department for allegedly withholding public information.

Bridgid Lee Brady said she is a law student at the Golden Gate School of Law and took part in a clinic in which she represented a client in an eviction case. She said she went to the Hall of Justice to request a copy of a related incident report. The woman at the window said she needed written permission from one of the parties involved in the incident. She obtained the written permission but she said she was under the impression that the document and similar reports are available to the public for viewing. She acknowledged that there were exceptions but nothing was relevant to her case which involved an alleged altercation between two adult males and there were no pending charged because there were no arrests.

Respondent Lori Widner of Police Legal said the department has insufficient facts to resolve the issue and without knowing what is being requested, there is no blanket answer as to whether the report should have been released.

Public Comment: Ray Hartz said a failure to communicate was at the bottom of this matter. The department should have requested an extension to review the document and then release it if applicable. He said one can never find someone in the department who can answer a question and if one presses the issue they get angry. This is another example, he added, of the department's record keepers not knowing the procedures.

In rebuttal, Lt. Mahoney said he has given the complainant his contact information and has received additional details about the case and is planning to provide the complainant with the document the next day. Ms. Widner said the department was responsive to inquiries and follows the law. People need to provide contact information, she added. Ms. Brady said she provided all that was asked of her at Window #1 in Rm 475 at the Hall of Justice and presumed the woman saw the document and decided not to release it. She also said she appreciated Lt. Mahoney's offer to get the report the next day. The reason she filed the complaint, she added, was perhaps her experience was the result of the department's basic standard operating procedure.

Member Cauthern said the Hall of Justice is not where one wants to spend time but the department has improved under Lt. Mahoney's leadership.

Member Williams said she agreed with Member Cauthern and added that the bottom line was that simple straight-forward communications was needed.

Motion to find violation of 67.21(a) for withholding public information, Sec. 67.24 (d) for not releasing discloseable law enforcement information and Sec 67.27 for not providing justification for withholding. (Goldman / Washburn)

Member Washburn said this case reveals the need for frontline staffers to understand the Ordinance.

Public Comment: None

On the motion:

Ayes: Craven-Green, Cauthern, Washburn, Knoebber, Johnson, Goldman, Williams, Knee

Excused: Chan, Chu

The matter was referred to the Compliance and Amendments Committee.

11. 09038 Determination of jurisdiction on the complaint filed by Anmarie Mabbutt against the Department of Recreation and Park for allegedly violating Sections 67.21 and 67.25 of the Sunshine Ordinance.

Motion to find jurisdiction: (Goldman / Williams)

Public Comment: None

On the motion:

Ayes: Craven-Green, Cauthern, Washburn, Knoebber, Johnson, Goldman,

Williams, Knee
Excused: Chan, Chu

12. 09038 Hearing on the complaint filed by Anmarie Mabbutt against the Department of Recreation and Park for allegedly violating Sections 67.21 and 67.25 of the Sunshine Ordinance.

Complainant Anmarie Mabbutt said she has submitted numerous Immediate Disclosure Requests to which some have been responded to, some have been ignored and has received some with partial responses. There are no laws, she said, that restrict the number of requests a person can make. The department, she said, has not said that the documents she wants are confidential. It has simply slowed down their response to a trickle, she claimed. She then listed several documents that she wanted released first. She also claimed that the released documents tend to show that numerous Rec and Park employees secretly and selectively offered permits at 62 percent less than what was required by the Park Code. That cost the City and Country more than \$100,000 during the summer of 2009, she claimed.

Respondent Olive Gong, Custodian of Records for the Department of Recreation and Park, said in the last two months she has received 124 requests and 81 emails from the complainant. The department has responded diligently and has sent the complainant 88 emails, 147 email documents and 337 hardcopy documents, she said. All of the complainant's requests for documents are labeled Immediate Disclosure Request and require extensive staff time, she said. The department, she added, has asked the complainant to prioritize her requests so that staff can also take care of requests from other members of the public. Complicating the process, she said, is the complainant who reprioritizes her request several times over.

Member Cauthen asked the complainant to work with the department because a lot of documents have been asked for and a lot of documents have been provided. She added that there has to be some give and take when the request becomes voluminous.

Public Comment: Ray Hartz said so far the department has not made any effort to work with the complainant. The give and take should be on the City's side and not on the complainant's side, he said. Andrea O'Leary said she is a veteran park advocate and that the department always comes up with an excuse even though a request is made multiple times. She said she does not like to quote the Ordinance to get a document but sometimes it is the only recourse.

At Member Craven-Green's and Chair Knee's request, Ms. Gong said she will treat the next list that Ms. Mabbutt puts together as a priority.

Member Craven-Green suggested Ms. Mabbutt identify the 15 items and email it to Ms Gong, send the Task Force a copy and then have both parties appear before the Compliance and Amendments Committee on Sept 8 to see what progress was made.

Motion to find violation of 67.21 (Johnson / Goldman)

In rebuttal, Ms. Gong said the department has worked hard on the complainant's requests and come tomorrow, there is going to be another priority list again. When would it end, she wondered, when the complainant is never satisfied? Ms. Mabbutt said the Task Force would see that the department violated Sec 67.25 (d) if it reviewed her exhibits closely.

On the motion:

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

Noes: Cauthen

Excused: Chan, Chu

Both parties to appear before the Compliance and Amendments Committee on Sept 8.

13. 09039 Determination of jurisdiction on the complaint filed by Rita O'Flynn against the Mayor's Office of Housing for allegedly deleting email records which were the subject of a Sunshine Ordinance Request for Records.

Motion to find jurisdiction: (Johnson / Knoebber)

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams, Knee

Excused: Chan, Chu

14. 09039 Hearing on the complaint filed by Rita O'Flynn against the Mayor's Office of Housing for allegedly deleting email records which were the subject of a Sunshine Ordinance Request for Records.

Complainant Rita O'Flynn said her property at 1672/1674 Great Highway was the subject of a HUD sponsored lead abatement program that was managed by the Mayor's Office of Housing. On completion of the project, she said she requested to see the entire file for her property and did so at the Mayor's Office of Housing. She then asked for a copy of the file and was told that Myrna Melgar would like to speak to her. She refused and left with the file and found that email copies that she saw in the original file were missing. She made another request and was told that the emails had been deleted according to department policy. She asked the Department of Technology for the backup tapes in November and in early December was told to pick up the CD. Her husband went to get the CD but was told that they were not available. She then filed a complaint with the Task Force and at a CAC meeting was told that there was a cost involved. She also discovered that the Mayor of Housing had also requested similar information and it was in their possession.

Oliver Hack, Chief Operations Officer for the Mayor's Office of Housing, said the department deems that it has been fully responsive to the emails. He said the office does not know what emails Ms. O'Flynn is referring to. The file, he

said, still exists and nobody has removed any document from it.

Mr. Hack told Member Goldman that the Mayor's Office of Housing has never requested the Department of Technology to reconstruct its emails.

Chair Knee wanted to know if the emails were deleted before or after the request for copies were made. Mr. Hack said he did not know, but Ms. OFlynn said the emails were deleted after the request was made.

Member Craven-Green said it would be helpful to know what Ms Melgar got from DTIS and if has been searched for correspondence Ms. O'Flynn is looking for.

Public Comment: Ray Hartz said Ms Melgar should be asked to produce the documents if she in fact requested and received the CD containing the emails. He said Ms. Melgar should be the person appearing before the Task Force.

Member Craven-Green said she does not have enough information from the Mayor's Office of Housing to reach a conclusion. She wanted to continue the matter to the next regular meeting and request Ms. Melgar's presence.

In rebuttal, Mr. Hack said he will look again and will ask everyone to keep digging and hopefully resolve this at the next meeting. Ms O'Flynn said the emails were very important to her. She also said she had no faith in the Mayor's Office of Housing in its ability to review the records, to redact and to release them.

Motion to continue so that the complainant can provide all of the original requests showing the dates those requests were made and that a person with knowledge from the Mayor's Office of Housing can answer when the various emails would have been deleted and whether or not Ms Melgar or anyone else in the Mayor's Office of Housing have in their hands DT provided backup copies of emails which may be able to be searched to provide the responsive documents to the extent they exist. (Craven-Green / Johnson)

Without objection

15. 09041 Determination of jurisdiction on the complaint filed by Anmarie Mabbutt against the Mayor's Office for allegedly not providing meaningful and accurate information in the agendas.

Withdrawn

16. 09041 Hearing on the complaint filed by Anmarie Mabbutt against the Mayor's Office for allegedly not providing meaningful and accurate information in the agendas.

Withdrawn

17. 09042 Determination of jurisdiction on the complaint filed by Peter Warfield against the Public Library for allegedly refusing to provide copies of a branch library's renovation plans.

Motion to find jurisdiction: (Goldman / Cauthen)

Public Comment: None

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams, Knee

Excused: Chan, Chu

18. 09042 Hearing on the complaint filed by Peter Warfield against the Public Library for allegedly refusing to provide copies of a branch library's renovation plans.

Complainant Peter Warfield said he made a request for copies of the Park branch library renovation documents. Mr. Warfield said he reviewed the plan but was denied access and copies when made the request later.

Respondent Sue Blackman, Secretary of the Library Commission, said the construction documents were made available to Mr. Warfield because the documents were in the Library's possession. When Mr. Warfield asked for copies, the Library was informed by the Department of Public Works' attorney that the documents were not yet public documents but would become available when it went out for bid.

Member Craven-Green said 67.24 (a)(i) was passed to make it clear that unlike State law, drafts should be produced. However, the recommendations scribbled on the margins can be withheld. When it comes to competitive bidding, the items that are withheld are submission packets. Once an RFP goes out bidders communicate with the City which is looking for the best deal. That communication is protected, she said, until the bid is awarded. It does not apply to the drafts the City is sending out.

Public Comment: Ray Hartz said once the Library puts the plans out for bidding it would be too late for the public to participate. Mr. Warfield needs the chance to review the plans so that he can make the appropriate comments at meetings when the item is discussed.

In rebuttal, Ms Blackman said disclosure of the documents would undermine the City's bidding process. Mr. Warfield said while he was being denied the copies of the documents another set was being set to the Friends of the Library on Grove Street.

Motion to find violation of Sec. 67.21 for failure to produce copies of public records.(Craven-Green / Cauthen)

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman,

Williams, Knee
Excused: Chan, Chu

The matter was sent to the Compliance and Amendments Committee.

19. 09043 Determination of jurisdiction on the complaint filed by Peter Warfield against the Library Commission for allegedly denying public comment.

Complainant Peter Warfield said he wanted to withdraw or postpone his complaint till next month because he was not consulted on the reason or reasons for taking the matter out of order.

Motion for continuance to next regular meeting in September (Goldman / Washburn)

Public Comment: Ray Hartz said when Chair Knee made the announcement he was not surprised that Mr. Warfield was not in the audience because his complaints were way down the list. What surprised him was the Chair did not ask the parties if the matter could be brought forward. Sue Blackman, Library Commission Secretary and Custodian of Records, said Commissioner Gomez was in the audience but had to leave at a certain time because a board was considering her continued employment. She also said the matter could be heard at any time because the Task Force's agenda was not time-restricted. Ms. Gomez said the Library Commission and Task Force meets at the same time and date and that was why she was not able to attend the last meeting. Delaying it would create the same difficulty, she said. She would agree to the postponement if Mr. Warfield was not prepared, she added.

On the motion:

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

20. 09043 Hearing on the complaint filed by Peter Warfield against the Library Commission for allegedly denying public comment.

Continued to next regular meeting in September.

21. 09044 Determination of jurisdiction on the complaint filed by Peter Warfield against the Board of Appeals for allegedly redacting information and not providing justification.

Motion to find jurisdiction: (Goldman / Knee)

Public Comment: None

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams, Knee
Excused: Chan, Chu

22. 09044 Hearing on the complaint filed by Peter Warfield against the Board of Appeals for allegedly redacting information and not providing justification.

Complainant Peter Warfield said on July 30, 2009, he went to the Board of Appeals and dropped off a letter in support of an appeal filed by Ingar Horton against the Library which is seeking to demolish the Ortega branch. He said he also reviewed the file and requested a few copies of support and opposition letters. The copies were provided the next day without redaction, he said. On August 3, 2009, he was orally informed by staff that contact information and names of individuals were being redacted. There was no written procedure as the requirement was announced at a staff meeting. On August 5, 2009, he was allowed to review the same file but under the supervision of an employee.

Respondent Cynthia Goldstein, Director of the Board of Appeals, said Mr. Warfield came to the office just a few hours before the hearing on August 5 and rather than asking him to come back another day the department accommodated his request to review the file. No justification for the redaction was made available to Mr. Warfield because when he arrived, staff was preparing for the meeting. The names of people testifying before the Board are exempt from disclosure under public meeting laws, she said. The address and home are redacted to protect the privacy rights of the public, she added.

Ms. Goldstein informed the Task Force that supporters and opponents of the demolition had not requested anonymity.

Chair Knee told Ms. Goldstein that the Task Force has consistently found that unless anonymity was requested, personal information is not to be redacted.

Public Comment: Ray Hartz said he recently went to the Rent Stabilization Board to look at a petition. Except from having his driver's license being held hostage, he was able to view the file without any hassle. All offices should have the same rules, he said.

In rebuttal, Ms. Goldstein said staff was asked to sit by Mr. Warfield because the policy was new and staff did not have time to do the redactions. She added that Mr. Warfield may have felt pressured because time was running out and it was about time for staff to leave the office with the file. Mr. Warfield said the documents should not have been redacted unless anonymity was requested or submitted without a name and address. However, he said, he was more interested in letters sent by organizations such as the San Francisco Architectural Heritage and the Preservation Consortium. They are not interested in secrecy but in fact would be delighted to get as much publicity as they could get, he said.

Chair Knee said the redaction in this instance was improper because, under Sunshine and State laws, once a member of the public is allowed to see an unredacted document, that record in its entirety becomes a public document.

Motion to find violation of Sec 67.1(g) and 67.21 (Cauthen / Goldman)

On the motion:

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams, Knee

Excused: Chan, Chu

23. 09045 Determination of jurisdiction on the complaint filed by Peter Warfield against the Board of Appeals for allegedly withholding information.

Motion to find jurisdiction: (Goldman / Cauthen)

Complainant Peter Warfield said there is a clear case for jurisdiction. The case concerns refusal to provide oral information.

Respondent Cynthia Goldstein said the oral communication Mr. Warfield is talking about is the name or names of attorneys who advise her. That is not a complaint under the Sunshine Ordinance, she said.

Public Comment: Ray Hartz said Sunshine covers advice given to a City agency or department but it does not say he or she cannot be identified. Disclosing the name would not compromise the discussion or advice given by that person, he said.

In rebuttal, Ms. Goldstein said Sunshine Ordinance requires disclosure of some written information that is provided by an attorney to a department. That is not the subject of this complaint, she said. This complaint is about the name or names of attorneys who advise her and that is not disclosable because it is privileged and confidential, she added. Mr. Warfield said he wanted to know if the attorney was from the City or staff attorney. The attorney-client privilege does not apply to anything having to do with advice on Sunshine, he said.

On the motion:

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

Excused: Craven-Green, Chan, Chu

24. 09045 Hearing on the complaint filed by Peter Warfield against the Board of Appeals for allegedly withholding information.

Complainant Peter Warfield said he was startled and surprised when Board of Appeals staff told him that the rules had changed. He said Ms Goldstein called him the next day after he had left word that he would like to discuss the issue with her. He said he was not able to ascertain what had prompted the change and the reason he was trying was because Library issues are very political and explosive. He was told that she made the decision after entertaining legal opinion. When he asked her if it was the staff attorney or City attorney, he was told that it was irrelevant.

Respondent Cynthia Goldstein, Director of the Board of Appeals, said there are a lot of attorneys that work at the department but there isn't a staff attorney position. She said she considers the information provided to her to be privileged and confidential under State law and Mr. Warfield is not entitled to it.

She understood the Sunshine requires departments to disclose certain written advice from counsel regarding public record requests but she did not believe oral advice needs to be disclosed in particular with respect to oral public information as defined in Sec 67.22. She said she did not believe the naming of an attorney providing advice has any bearing on the operations, plans, policies and positions of a department.

Member Johnson wanted to know that if he were to solicit legal advice from DCA Llorente was he prevented from passing on the DCA's name to a third party?

DCA Llorente said what he provides to the Task Force is public and nothing is confidential. Also, he said, what attorneys provide to departments regarding a Sunshine issue is a public record.

Motion to find no violation (Goldman / Knoebber)

Public Comment: Ray Hartz said the person who advised Ms Goldstein gave her erroneous information and because of it the public needs to know the name of the attorney.

On the motion:

Ayes: Knoebber, Goldman, Williams

Noes: Cauthen, Washburn, Johnson, Knee

Excused: Craven-Green, Chan, Chu

Motion fails

Motion to find violation of 67.24(b)(1 iii)(Washburn / Johnson)

Ayes Cauthen, Washburn, Johnson, Williams, Knee

Noes: Knoebber, Goldman

Excused: Craven-Green, Chan, Chu

Motion fails

No further action

25. Use of vendors or third parties to respond to public record requests (Brian Smith, Planning Department)

Brian Smith was not present.

26. Approval of "Know Your Rights" brochure

Public Comment: None

Ayes Cauthen, Washburn, Johnson, Williams, Knee

Noes: Knoebber, Goldman

Excused: Craven-Green, Chan, Chu

27. Report: Complaint Committee meeting of August 11, 2009 (Nick Goldman)
Committee Chair Nick Goldman made the report.
28. Report: Compliance and Amendments Committee: meeting of August 11, 2009. (Erica Craven-Green)
Member Knee, on behalf of Compliance and Amendments Committee Chair Erica Craven-Green, made the report.
29. Report: Education, Outreach and Training Committee meeting of August 13, 2009. (Sue Cauthen)
Education, Outreach and Training Committee Chair made the report.
30. Administrator's Report.
Mr. Rustom made the report.
31. Public comment for items not listed on the agenda. Public comment shall be held at 5:00 p.m., or as soon thereafter as possible.
Ray Hartz wanted to know why Items 5 & 6 were referred to the Compliance and Amendments Committee when he had repeatedly requested that Items 3 & 4 be treated the same way but was sent to the Education, Outreach and Training Committee. Peter Warfield said the Task Force and its administration have a problem following its own procedures. James Chafee said the Library Commission has started a "public comment fund" where members put a donation towards the "friends" whenever they hear something that is against the commission.
32. Announcements, comments, questions, and future agenda items from the Task Force.

Adjournment:

The meeting was adjourned at 9:30 p.m.
This meeting has been audio recorded and is on file in the Office of the Sunshine Ordinance Task Force