

Date: September 27, 2011

Item No. 5
File No. 11049

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- George Wooding v Recreation and Parks Department**
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Completed by: Chris Rustom

Date: Sept. 22, 2011

***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**



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ORDER OF DETERMINATION
August 8, 2011

DATE THE DECISION ISSUED
July 26, 2011

GEORGE WOODING v RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)

FACTS OF THE CASE

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

COMPLAINT FILED

On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

HEARING ON THE COMPLAINT

On July 26, 2011, Mr. Wooding presented his case to the Task Force. Olive Gong represented Rec and Park as its Custodian of Records.

Mr. Wooding testified he was a panelist on a May 11, 2011 Commonwealth Club forum about Golden Gate Park. He said he contacted Rec and Park on June 3rd and asked for any correspondence related to the forum, including correspondence between Rec and Park employees Sarah Ballard, Phil Ginsburg, Elton Pon, Staci White, Mark Buell, President of the Recreation and Park Commission, and Commonwealth Club representatives. He said Ms. Gong responded on June 8th that staff had searched and found no responsive records. He said he contacted Ms. Gong the next day and asked her to clarify her response. He said Ms. Gong emailed him the same day with the same response. If there were none, he said, Ms. Gong should have directed him to other members of the staff who might have the documents. On June 10th, he asked Ms. Gong for the names of the staff she had contacted and the process Rec and Park uses to determine the presence or absence of responsive records. Ms. Gong, he said, has not responded to this request.

He said the supporting documents he has provided to the Task Force shows Ms. Ballard, as Rec and Park's Director of Policy and Public Affairs, sent an email from her City email account to Commonwealth Club Member Ross Lawley. On April 20th, he said, Ms. Ballard again sent an email from the same account to Commonwealth Club Member Kerry Curtis in

an attempt to discredit the forum's panelists and try to influence the content of the panel discussion. On April 25th, he said, Mr. Buell alleged in an email that the forum's panelists were biased. On April 26th, an email from a Commonwealth Club member was sent to Mr. Ginsberg's private email account, suggesting that Mr. Ginsburg may have additional information about the May 11th forum. Another email was from Susan Hirsch who claimed that the forum's panelists were only representatives of people who oppose change. These five emails, he said, suggest there should be more documents that are not being produced. He asked the Task Force to order Rec and Park to search its email accounts for additional documentation.

Ms. Gong testified she asked staff if they had any documents in response to Mr. Wooding's request and they all came back negative. Those are the only records she has on the subject, she said. Mr. Wooding, she said, was made known of the outcome by email. She said Mr. Wooding's July 19th letter to the Task Force claiming that he had copies of emails to support his claim were those that were deleted under Category 4 of Rec and Park's Record Retention and Destruction policy. Category 4 says: "Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the Commonwealth Club.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Mark Buell of the Recreation and Park Commission and Phil Ginsburg, Sarah Ballard, and Olive Gong of the Recreation and Park Department violated Sunshine Ordinance Sections 67.25 for failure to respond to the Immediate Disclosure Request before the end of the next business day, 67.26 for not keeping withholding to a minimum, 67.27 for failure to justify the withholding of records, and 67.21(c) for not assisting the requestor.

The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13th, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe)
Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

Excused: Knee,
Absent: Snyder, Chan, Knoebber



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: George Wooding, Complainant
Mark Buell, Respondent
Phil Ginsburg, Respondent
Sarah Ballard, Respondent
Olive Gong, Respondent
Jerry Threet, Deputy City Attorney



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

8/18/2011

Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

Re: Complaint #11049 George Wooding v Recreation and Park Department

Dear Mr. Rustom,

This letter is in response to the Order of Determination, dated August 8, 2011 for Complaint #11049, filed by George Wooding against the Recreation and Park Department.

The Order of Determination included a request to release records, however, we do not have any records in response to the request.

If I can be of further assistance to the Task Force, please do not hesitate to contact me.

Sincerely,


Olive Gong
Custodian of Records, SFRPD