

Date: March 23, 2009

Item No. 14
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Administrators Report**
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Completed by: Chris Rustom

Date: March 18, 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: March 16, 2010

SUBJECT: Administrator's Report

1. Requests from community persons:

From February 17, 2010 through March 16, 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. 2009 Complaint Log.

3. 2010 Complaint Log

4. Orders of Determination:

- #09075_Bred Starr v City Attorney's Office
- #09079_Kenneth Kinnard v Human Rights Commission

5. Letter to Ethics Commission regarding enforcement regulations

6. Communications received

Complaints 2009

| Date Received | Complainant | Department/Respondent | Status |
|---------------|-----------------------------------|---|--|
| 1/5/2009 | Ray Hartz (09001) | City Attorney's Office (Matt Dorsey) | Complaint 2/10/09, Task Force 02/24/09, Contd, 03/24/09, Withdrawn 3/24/09 |
| 1/6/2009 | Michael Petrels (09002) | Public Health STD Unit | Task Force 1/27/09, No violation |
| 1/19/2009 | Rita O'Flynn (09003) | Dept of Technology | Task Force 02/24/09, continued, Complaint Committee 3/10/09, Task Force 3/24/09, Violated 67.21-1 and CPRA 6253.9, CAC 5/12/09, Contd 6/9/09, 7/14/09, No further action |
| 1/23/2009 | Ray Hartz (09004) | City Attorney, Matt Dorsey | Task Force 2/24/09, No action taken, petition for reconsideration denied 3/24/09. |
| 1/23/2009 | Steve Lawrence (09005) | Public Utilities Commission | Task Force 2/24/09; Withdrawn 2/9/09 |
| 1/26/2009 | Joshua Arce & Eric Brooks (09006) | Public Utilities Commission | Task Force 2/24/09, quorum loss, Task Force 3/24/09, violated 67.29-7, CAC 5/12/09, Task Force 5/26/09, EC referral failed |
| 1/30/2009 | David Larkin (09007) | Public Works | Complaint 03/10/09, Task Force 3/24/09, 4/28/09, Violated 67.29 and 67.21 (e), CAC 5/12/09, Task Force 5/26/09, Referred to EC |
| 2/4/2009 | Ray Hartz (09008) | Police Commission | Task Force 2/24/09, violated 67.29 & 67.21(e). EOT 4/9/09, SOTF 6/23/09, 8/25/2009, 9/22/2009, No further action, EOT to review every few months |
| 2/9/2009 | Charles Pitts (09009) | Health Dept | Complaint 03/10/09, Task Force 3/24/09, Violated 67.21 (e) |
| 2/20/2009 | Ray Hartz (09010) | Arts Commission | Task Force 3/24/09, EOT 4/9/09, No further action |
| 2/23/2009 | Ray Hartz (09011) | City Attorney's Office (Matt Dorsey) | Task Force 3/24/09, Withdrawn 3/24/09 |
| 2/23/2009 | Ray Hartz (09012) | Office of Citizen Complaints | Complaint 4/14/09, Withdrawn 3/24/09 |
| 2/27/2009 | Steve Lawrence (09013) | Public Utilities Commission | Task Force 3/24/09, 4/28/09, violated 67.21 (b), EOT 5/14/09, 6/11/09 |
| 3/18/2009 | Ahimsa Porter Sumchai (09014) | Board of Supervisors | Task Force 4/28/09, Contd 5/26/09, No violation |
| 3/18/2009 | Raymond Bank (09015) | SF HIV Health Services Planning Council | Complaint Committee 4/14/09, Task Force 4/28/09, violated 67.21 (b), EOT 5/14/09, 6/11/09, No further action |
| 3/23/2009 | Peter Green (09016) | Public Health | Task Force 4/28/09, Contd 5/26/09, No violation |
| 23-Mar | SORE (09017) | Public Utilities Commission | Task Force 4/28/09, violated 67.21 (b), EOT 5/14/09, No further action |
| 3/27/2009 | Anonymous Tenants (09018) | Dept of Bldg Inspection | Complaint Committee 4/14/09, Task Force 4/28/09, Violated 67.28 (d), CAC 5/12/09, Contd 7/14/09, Contd 8/11/09, no further action |
| 4/3/2009 | Christian Holmer (09019) | Board of Supervisors (COB & SOTF) | Task Force 5/26/09, Withdrawn |
| 4/7/2009 | Anonymous (09020) | MTA | Task Force 5/26/09, No violation |
| 4/23/2009 | SORE (09021) | Public Utilities Commission | Task Force 5/26/08, Violated 67.21 (b), CAC 6/9/09 |
| 5/13/2009 | Raymond Banks (09022) | SF HIV Health Services Planning Council | Task Force 5/26/08, No violation |
| 5/13/2009 | SORE (09023) | Public Utilities Commission | Task Force 5/26/08, No violation |

Complaints 2009

| | | | |
|-----------|----------------------------------|--|--|
| 5/15/2009 | Paul Weston (09024) | Human Services | Complaint 6/9/09, Task Force 6/23/09, violated 67.25 (a) |
| 5/15/2009 | Charles Plitts (09025) | Human Services | Task Force 6/23/09; 7/28/09, violated 67.25. No further action |
| 5/18/2009 | Hanna Leung & Lydia Fong (09026) | Human Services | Complaint 6/9/09, Task Force 6/23/09, 7/28/09, No further action |
| 5/18/2009 | Alvin Xex (09027) | Office of Economic and Workforce Development | Complaint 6/9/09, Task Force 6/23/09, violated 67.21 (b), EOT 7/9/09, No further action |
| 5/18/2009 | Alvin Xex (09028) | Dept. of Human Resources | Complaint 6/9/09, Task Force 6/23/09, No violation |
| 5/20/2009 | Paul Weston (09029) | Human Services (St Vincent de Paul Society) | Task Force 6/23/09, No violation |
| 6/8/2009 | Ann Grogan (09030) | Police Commission | Complaint 7/14/09; Task Force 7/28/2009, violated 67.6 (e) and 67.4, EOT, 9/10/09, 10/8/09, Tabled |
| 6/3/2009 | Kenneth Kinnard (09031) | Human Rights Commission | Complaint 7/14/09; Cont requested 8/11/09, TF 8/25/2009, violated 67.21, 67.25, CAC 9/8/2009, 10/13/09, No further action |
| 6/18/2009 | Dominic Maionchi (09032) | Park and Recreation | Task Force 7/28/09, violated 67.27, 67.24, CAC 9/8/2009, No further action |
| 6/23/2009 | Sue Cauthen (09033) | Library Commission | Task Force 7/28/09, violated 67.15 (a) and 67.34, EOT 9/10, CAC 10/13/09, Task Force 10/27/2009, Contd 12/01/2009, referred to EC |
| 6/23/2009 | Brian Tomina (09034) | Bldg Inspection | Complaint 7/14/09; Task Force 7/28/09, No violation. |
| 7/14/2009 | Dave Schneider (09035) | COB, BOS | Task Force 8/25/2009, violated 67.15 (a) & (e) No further action |
| 7/14/2009 | Brigid (09036) | Police Dept | Task Force 8/25/2009, violated 67.21 (a), 67.24 (d), 67.27, EOT 9/10/09, No further action |
| 7/14/2009 | Ging Louie (09037) | SFPUC | Task Force 8/25/2009, Withdrawn 8/14/09 |
| 7/17/2009 | Anmarie Mabbutt (09038) | Rec & Park | Complaint 8/11/2009, Task Force 8/25/2009, violated 67.21, CAC 9/8/2009, 10/13/2009, No further action |
| 7/20/2009 | Rita O'Flynn (09039) | Mayor's Office of Housing | Task Force 8/25/2009; 9/22/2009, violated 67.21, 67.29-7 (a), CAC 10/13/2009, contd 11/10/2009, 12/8/2009, Task Force 01/5/10, referred to EC and DA |
| 7/22/2009 | Hanna Leung & Lydia Fong (09040) | Human Services | Task Force 8/25/2009, 9/22/2009, Withdrawn |
| 7/28/2009 | Anria Mabbutt (09041) | Mayor's Office | Task Force 8/25/2009, Withdrawn 8/22/2009 |
| 8/11/2009 | Peter Warfield (09042) | Public Library | Task Force 8/25/2009, violated 67.21, CAC 9/8/09, Task Force 09/22/2009, CAC 10/13/2009, Task Force 10/27/09, referred to EC |
| 8/11/2009 | Peter Warfield (09043) | Library Commission | Task Force 8/25/2009, 9/22/2009, No further action |
| 8/11/2009 | Peter Warfield (09044) | Board of Appeals | Task Force 8/25/2009, violated 67.1 (g), 67.21, CAC 9/8/2009, 10/13/09, Task Force 10/27/2009, contd 12/01/2009, referred to EC |
| 8/11/2009 | Peter Warfield (09045) | Board of Appeals | Task Force 8/25/2009, No further action |
| 8/14/2009 | Randal Evans (09046) | Ella Hill Hutch Community Center | Task Force 9/22/2009, CAC 10/13/2009, 11/10/2009, Withdrawn |
| 8/14/2009 | Dominic Maionchi (09047) | Park and Recreation | Task Force 9/22/2009, withdrawn |
| 8/14/2009 | Brian Tomina (09048) | Bldg Inspection | Task Force 9/22/2009, withdrawn |

Complaints 2009

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|------------|--------------------------------------|--|--|
| 8/17/2009 | Randall Evans (09049) | Public Defender (MoMagic) African American Art and Culture Complex | Task Force 9/22/2009, withdrawn |
| 8/17/2009 | Randall Evans (09050) | | Task Force 9/22/2009, violated 67.21, CAC 10/13/2009, Tabled |
| 8/20/2009 | Marilyn Mollinedo (09051) | Zoological Society | Complaint Committee 10/13/2009, Task Force 10/27/2009, violated 67.21, CAC 11/10/2009 CAC 11/10/2009, 12/8/2009, no further action |
| 9/2/2009 | Charles Pitts (09052) | Shelter Monitoring Committee | Task Force 9/22/09, violated 67.15 (d), EOT 10/08/2009, No further action |
| 9/3/2009 | Lou Dillon (09053) | Recreation and Park | Task Force 9/22/09, Contd 10/27/2009, No violation |
| 9/8/2009 | Robert Garcia (09054) | Entertainment Commission | Complaint Committee 10/13/09, Withdrawn 10/13/2009 |
| 9/9/2009 | Peter Warfield (09055) | Public Library | Task Force 9/22/09, No further action |
| 9/9/2009 | Peter Warfield (09056) | Clerk of the Board | Task Force 9/22/09, violated 67.21 (a), 67.21 (g), Contd 10/27/2009, CAC 11/10/2009, No further action |
| 9/9/2009 | Peter Warfield (09057) | Clerk of the Board | Task Force 9/22/09, Contd 10/27/2009, 67.21 (a), 67.21 (b), CAC 11/10/2009, 12/8/2009, Task Force 01/5/10, referred to EC |
| 9/11/2009 | Anmarie Mabbutt (09058) | Clerk of the Board | Task Force 10/27/09, Withdrawn 10/23/09 |
| 9/11/2009 | Anmarie Mabbutt (09059) | Clerk of the Board | Task Force 10/27/09, Withdrawn 10/23/09 |
| 9/11/2009 | Anmarie Mabbutt (09060) | Clerk of the Board | Task Force 10/27/09, Withdrawn 10/23/09 |
| 9/22/2009 | Alvin Xex (09061) | Human Services Agency | Task Force 10/27/09, No violation |
| 10/2/2009 | Debra Benedict (09062) | Public Health | Task Force 10/27/09, No further action |
| 10/5/2009 | Alvin Xex (09063) | Human Services Agency | Task Force 10/27/09, Tabled |
| 10/6/2009 | Alvin Xex (09064) | Economic Opportunity Council of San Francisco | Task Force 10/27/09, No further action |
| 10/7/2009 | Charles Pitts (09065) | Local Homeless Coordinating Board | Task Force 11/24/2009, violated 67.7 (a) and 67.21 (e), No further action |
| 10/7/2009 | Emil Lawrence (09066) | Municipal Transportation Agency | Complaint 11/10/2009, no jurisdiction |
| 10/13/2009 | Library Users Association (09067) | Historic Preservation Commission | Task Force 11/24/2009, violated 67.16, 67.21 (e), referred to EOTC 12/10/09, 01/14/10, 02/11/10, Tabled |
| 10/14/2009 | Brent Plater (09068) | Recreation and Park | Task Force 11/24/2009, , Withdrawn 11/13/2009 |
| 10/14/2009 | Asian Law Caucus (09069) | Mayor's Office | Task Force 11/24/2009, violated 67.21 (e), 67.22, 67.21 (e), 67.27, Task Force 01/05/10, CAC 02/09/10, CAC 02/09/10, TF 03/23/2010 |
| 10/21/2009 | Anmarie Mabbutt (09070) | Recreation and Park | Task Force 11/24/2009, violated 67.14 (c), CAC 01/12/10, 02/09/20, 03/09/20/10, Withdrawn |

Complaints 2009

| | | | |
|------------|------------------------------|---|--|
| 10/21/2009 | Anmarie Mabbutt (09071) | Recreation and Park | Task Force 11/24/2009, No violation |
| 10/23/2009 | Anmarie Mabbutt (09072) | Clerk of the Board | Task Force 11/24/2009, 01/05/10, No violation |
| 10/23/2009 | Anmarie Mabbutt (09073) | Clerk of the Board | Task Force 11/24/2009, 01/05/10, No violation |
| 10/27/2009 | Kimo Crossman (09074) | Ethics Commission | Task Force 11/24/2009, 01/05/10, Withdrawn, 12/31/09 |
| 10/29/2009 | Bred Starr (09075) | City Attorney's Office, Jack Song | Task Force 12/8/2009, 01/05/10, 1/26/10, CAC 03/09/10, TF 03/23/2010 |
| 11/2/2009 | Anmarie Mabbutt (09076) | Mayor's Office | Task Force 11/24/2009, violated 67.25 (a), EOTC 01/12/10, 02/11/10, Tabled |
| 11/6/2009 | Raymond Banks (09077) | Public Health | Complaint Committee 12/8/2009, Task Force 01/05/2010, violated 67.4, EOTC 02/11/10, CAC 03/09/10, Tabled |
| 12/16/2009 | Anonymous Tenants (09078) | Planning Department | Task Force 01/05/2010, violated 67.21 (b) (e) (1), 67.26, CAC 02/09/10, No further action |
| 12/16/2009 | Kenneth Kimnard (09079) | Human Rights Commission | Task Force 01/05/2010, Tabled, TF 01/05/26, CAC 03/09/10, No further action |
| 12/17/2009 | Alvin Xex 09080 | Human Services Agency | Task Force 01/05/2010, Tabled |
| 12/17/2009 | Alvin Xex 09081 | Economic Opportunity Council of San Francisco | Task Force 01/05/2010, Tabled |
| 12/17/2009 | Raymond Banks 09082 | Public Health | Task Force 01/05/2010, violated 67.21 b e 67.25 and CPRA 6253.1 (a) 1 2 3, CAC 02/09/10, 03/09/2010, No further action |
| 12/17/2009 | Ellen Tsang 09083 | Building Inspection | Task Force 01/05/2010, violated 67.25, 67.21 (1), CAC 02/09/10, No further action |
| 12/17/2009 | Chris Daly 09084 | Mayor's Office | Task Force 01/05/2010, Tabled |
| 12/17/2009 | Mike Addario 09085 | Arts Commission | Task Force 01/05/2010, violated 67.25, CAC 02/09/10, EOTC 03/11/2010, No further action |
| 12/29/2009 | Karl Beale 09086 | Planning Department | Complaint Committee 02/09/2010, Withdrawn |

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, Noviolation |
| 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 |
| 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 |
| 3/3/2010 | Sandra Brotherton 10008 | Dept. of Emergency Management | Complaint 03/13/10 |
| 3/10/2010 | Majeid Crawford 10009 | City Attorney's Office | Complaint 03/13/10 |

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
February 25, 2010

DATE THE DECISION ISSUED
January 26, 2010

BRED STARR v. CITY ATTORNEY'S OFFICE (09075)

FACTS OF THE CASE

Complainant, Bred Starr, alleges that her Sunshine request for documents from the City Attorney's Office (CAO) and the Municipal Transportation Authority (MTA) related to Mary Ellen O'Brien from the Department of Parking and Traffic and Geraldine Rosen Parks in August 2009 was ignored. She also alleges that her telephone and in-person requests were acknowledged and then ignored, and was advised there would not be full disclosure.

COMPLAINT FILED

On October 16, 2009, Bred Starr filed a Sunshine Ordinance Complaint against the CAO and the MTA for unspecified violations of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On January 26, 2010, Complainant Bred Starr presented her claim before the Task Force. Virginia Dario Elizondo of the City Attorney's Office presented the Respondent's defense.

Ms. Starr told the Task Force that she had asked for documents regarding the investigation of Mary Ellen O'Brien of the Department of Parking and Traffic in 2004. The investigation, she said, was done on behalf of the City and not on behalf of the taxpayers and that made access to documents difficult. She wanted to know why Ms. O'Brien is still a City employee and what was said during the investigation. She said she received only four pages about the case from the CAO whereas a news article in the San Francisco *Chronicle* referred to a 16-page investigative memo about the matter.

Ms. Elizondo said the Sunshine request was for an internal investigative memo drafted by the CAO for its client, the MTA, which apparently had been leaked to the press. She stated further that the memo was confidential under state law because it was protected by both the attorney work product doctrine and the attorney-client privilege. In addition, two disciplinary letters sent to the subject of the investigation which were responsive to the request were

ORDER OF DETERMINATION

provided to the complainant by the CAO, she said. Just because a document or portions of it are leaked to the press does not make it a public document, she added, as the confidentiality may be waived only by a City official with authority to make such a waiver.

Ms. Elizondo further noted that, in the absence of evidence that an authorized public official waived the privileges, the CAO still had an ethical and legal duty to maintain the privilege under state law. Therefore, the CAO could not release the documents. Ms. Elizondo further noted that the Sunshine Ordinance contains specific exemptions to disclosure for documents covered under these two privileges.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force noted that there is no case law exactly on point on this issue – whether or not records regarding an investigation into employee misconduct conducted by a city attorney are totally protected from release by the attorney-client privilege and/or work product doctrine. The Task Force did note that under existing California law, records of investigations into alleged employee misconduct must be released unless the allegations of misconduct are not substantial in nature. See, .e.g., *Bakersfield City School Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041.

The Task Force also noted that where an investigation is primarily factual, the attorney-client privilege may not apply to records of the investigation, at least the portions of the records discussing the facts of the investigation. Finally, while the City in this case did release the two disciplinary letters that were issued to the employee in question, it may not always be the case that disciplinary letters are produced at the conclusion of an investigation into employee misconduct. Indeed, in cases where the City Attorney conducts the factual investigation into employee misconduct and no discipline is imposed, the only record of the investigation may well be the investigatory memorandum. In that scenario, under the City Attorney's position, *no* records regarding the alleged employee misconduct would be produced and the public would be left in the dark about serious, if unsustainable, allegations of public employee misconduct.

Based on the testimony and evidence presented the Task Force finds that the factual background in the investigatory memorandum is critical for the public to see and understand, especially now that the investigation is complete, but that justifiable redactions may be made if any particular allegations were found to be insubstantial.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.21 and 67.24 for failure to produce responsive documents, specifically the 16-page memorandum regarding the employee's misconduct. The Respondent shall release the records requested within five business days of the issuance of this Order of Determination and appear before the Compliance and Amendments Committee on March 9, 2010.

ORDER OF DETERMINATION

The motion was adopted by the Sunshine Ordinance Task Force on January 26, 2010, by the following vote: (Craven-Green / Washburn)

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

The Task Force also found the agency in violation of Sec(s) 67.21 (b) for untimely response and 67.25 for failure to provide documents in a timely fashion (Cauthen / Williams)

Ayes: Cauthen, Manneh, Washburn, Johnson, Goldman, Williams

Noes: Craven-Green



Richard A. Knee, Chair
Sunshine Ordinance Task Force

- c: Jerry Threet, Deputy City Attorney
- Bred Starr, complaint
- Virginia Dario Elizondo, respondent

SUNSHINE ORDINANCE
TASK FORCE



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ORDER OF DETERMINATION
February 17, 2010

DATE THE DECISION ISSUED
January 26, 2010

KENNETH KINNARD v. HUMAN RIGHTS COMMISSION (09079)

FACTS OF THE CASE

Complainant Kenneth Kinnard alleged that on October 26, 2009, he sent an Immediate Disclosure Request (IDR) to the Human Rights Commission (HRC) requesting all documents related to a report mentioned in the January 13, 2005, draft minutes of the HRC, which stated that P&K Trucking "was no longer operating as a trucker, but rather providing brokering services for large contracts." Mr. Kinnard further alleged that HRC had not responded to his request.

COMPLAINT FILED

On November 5, 2009, Mr. Kinnard filed a complaint with the Task Force alleging a violation of Sunshine Ordinance Section 67.25.

HEARING ON THE COMPLAINT

On January 26, 2010, Complainant Kenneth Kinnard presented his case before the Task Force. Respondent Agency was represented by Melinda Kanios of the Human Rights Commission.

Mr. Kinnard told the Task Force that he wanted the HRC to show him proof regarding the allegations made about P&K Trucking in the January 13, 2005, HRC meeting, but had been told by HRC that no such documents existed. He asked the HRC to remove the allegations mentioned in minutes to which the HRC said a motion was needed to change the minutes. He said he made another Immediate Disclosure Request on January 6, 2010, to the HRC regarding another allegation and has not received a response.

Ms. Kanios said Mr. Kinnard has made several requests through the years and the department has always been responsive. She said his requests for documents have been duplicative and that was why she believed that all the information requested by Mr. Kinnard had been produced. She said she could not produce information that she did not have. Ms. Kanios also explained that the comments made in the January 2005 HRC meeting came as the result of an "arbitration" conducted by Harry Epstein and it was possible that Mr. Epstein might still have copies of the underlying documents, even if HRC did not.

ORDER OF DETERMINATION**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

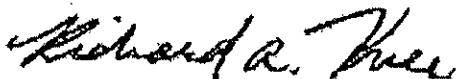
Upon questioning, Ms. Kanios admitted that she had failed to respond to the IDR in a timely fashion. It also became clear that Ms. Kanios had looked for documents responsive to Mr. Kinnard's request in only one location, but that there were other potential locations where responsive documents might exist. Ms. Kanios committed to looking in each of the other locations where responsive documents might exist. The Task Force also noted that while duplicative Sunshine Requests must be responded to, HRC could avoid expending more time on searching for information in response to duplicative requests by keeping a file of documents produced to Mr. Kinnard's past requests.

Based on the testimony and evidence presented the Task Force asked Ms. Kanios to work with Mr. Kinnard to see if the documentation supporting the claim that P&K Trucking "was no longer operating as a trucker, but rather providing brokering services for large contracts" was stored elsewhere and also to seek out the arbitrator of the case to see what documents he might still have.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.25 for failure to comply with an Immediate Disclosure Request and 67.21 for failure to provide responsive documents. The Task Force recognizes and appreciates the HRC's commitment to continue to work with Mr. Kinnard to get him the documents as soon as possible. The HRC is to provide a status report to the Compliance and Amendments Committee on March 9, 2010.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 26, 2010, by the following vote: (Craven-Green / Goldman)
Ayes: Cauthen, Manneh, Washburn, Johnson, Chan, Goldman, Williams, Craven-Green



Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Kenneth Kinnard, complainant
Melinda Kanios, respondent

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TASK FORCE



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MEMORANDUM

Date: February 24, 2010

To: John St. Croix, Executive Director, Ethics Commission
Members, Ethics Commission
Members, Sunshine Ordinance Task Force

From: Richard Knee, Chair, Sunshine Ordinance Task Force
Erica L. Craven-Green, Vice-Chair, Sunshine Ordinance Task Force

Subject: Regulations regarding Ethics Commission enforcement of the Sunshine Ordinance

The Task Force appreciates the opportunity to comment on the Ethics Commission's detailed proposed regulations for enforcement of the Sunshine Ordinance.

The proposed regulations were discussed at numerous Task Force meetings, and members of the Task Force as well members of the public submitted verbal and written comments.

At the Task Force's February 23, 2010, meeting, the matter was discussed for a final time and the comments of the Task Force are as follows:

1. Sunshine Task Force Referrals Should be Treated as Formal Complaints, but Also Given Deferential Treatment

The Task Force is pleased at the proposal that its complaints should be treated, at a minimum, as formal complaints under the Commission's regulations. However, the Task Force has concerns about the circumstances that would allow the Executive Director to dismiss complaints administratively.

As an initial matter, some members of the Task Force feel that the Ethics Commission should not reinvestigate Task Force complaints, but should defer wholly to the Task Force's findings and pursue enforcement proceedings only. Some members of the public who have long been interested in Sunshine-related issues share that view.

Other Task Force and public members believe that the Commission may have authority to conduct its own investigation but believe – at a minimum – that all findings made by the Task Force should be given deferential treatment and reviewed only to determine that the Task Force’s decision rested on “substantial evidence.” “Substantial evidence” review would recognize and respect the time and energy that the Task Force spends on reviewing complaints, and would encourage departments to appear and present their best case before the Task Force in the first instance, instead of relying on an opportunity to reargue (or argue in the first instance) in front of the Commission.

More generally, all members specifically felt that if a referral is made to the Ethics Commission for failure to comply with an Order of Determination (willful or not) or willful failure to comply with the Ordinance, those findings should constitute “probable cause” under the Ethics Commission’s regulations and the complaints should proceed to adjudication.

At an absolute minimum, the Task Force requests that written determinations as to why the Executive Director administratively dismissed referrals should be made part of the public record in both Ethics Commission and Task Force hearings.

2. The Ethics Commission Should Consider All Violations; Intentional, Unintentional, Willful and Non-Willful Violations

Another fundamental disagreement is over the jurisdiction of the Ethics Commission to hear referrals regarding non-willful violations of the Ordinance, with willful being defined by the Ethic Commission’s proposed regulations as “knowledge that the act is a violation of the law.”

The Task Force is adamant that the Ethics Commission has the authority and indeed responsibility to consider complaints based on allegations of violations that are not willful under Section 67.34 of the Ordinance.

Specifically, Section 67.30(c) of the Ordinance provides that: “The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provision of this ordinance or the Acts.” The Task Force has consistently held that this provision grants and mandates that the Ethics Commission consider referrals based on non-willful violations.

Please let us know whether we can provide any additional information on the Task Force’s concerns. Thank you for your kind attention and, again, for your willingness and patience to give the Task Force a voice in your considerations.

COMMUNICATIONS RECEIVED LOG

Feb 17, 2010, through Mar 16, 2010

| | DATE | FROM | DESCRIPTION | |
|----|---------|------------------|--------------------------|----|
| 1 | 2/16/10 | Melvyn Banks | DPH IDR | 2 |
| 2 | 2/18/10 | Christian Holmer | 2/13 2/19 calendars | 2 |
| 3 | 2/18/10 | SF Guardian | Today at the Bay | 16 |
| 4 | 2/19/10 | Eileen Shields | DPH IDR | |
| 5 | 2/19/10 | mpetrelis | Various topics | 9 |
| 6 | 2/19/10 | Anmarie Mabbutt | New list | 3 |
| 7 | 2/10/10 | Kimo Crossman | Lock/Unlock PDFs | |
| 8 | 2/24/10 | Kimo Crossman | Digital preservation | |
| 9 | 2/24/10 | Melinda Kanios | Info request | |
| 10 | 2/24/10 | RVPSF | Union Square lights | |
| 11 | 2/24/10 | Kimo Crossman | Ethics lawsuit | |
| 12 | 2/25/10 | Christian Holmer | 2/20 2/26 calendars | |
| 13 | 2/26/10 | pdateh | Arts Commission IDR | 13 |
| 14 | 2/26/10 | Rita O'Flynn | Housing complaint | 3 |
| 15 | 2/26/10 | Kimo Crossman | Retention application | |
| 16 | 2/28/10 | Anmarie Mabbutt | APBP application | |
| 17 | 3/1/10 | Loma Dune | Court reporter complaint | |
| 18 | 3/2/10 | Kimo Crossman | SOTF/Ethics broadcast | |
| 19 | 3/2/10 | Rita O'Flynn | Tenderloin contract | |
| 20 | 3/3/10 | Kimo Crossman | SOR IDR | |
| 21 | 3/3/10 | Rita O'Flynn | DA IDR | |
| 22 | 3/4/10 | Christian Holmer | 2/27 3/5 calendar | |
| 23 | 3/4/10 | Ann Grogan | Patrol Special Study | |
| 24 | 3/4/10 | Kym Craven | Patrol Special Study | |
| 25 | 3/5/10 | Anmarie Mabbutt | City Fields IDR | |
| 26 | 3/5/10 | Paul Henderson | IDR response | |
| 27 | 3/7/10 | Anmarie Mabbutt | Conservatory IDR | |
| 28 | 3/8/10 | Kimo Crossman | BAR number | |
| 29 | 3/9/10 | Matt Dorsey | BAR number | |
| 30 | 3/9/10 | Kimo Crossman | Text msg IDR | |
| 31 | 3/9/10 | Jerry Threet | DCA presence | |
| 32 | 3/9/10 | Lori Mazzola | Newsletter | |
| 33 | 3/9/10 | Joyce Book | BYOBW hearing | |
| 34 | 3/10/10 | pdateh | Writings | |
| 35 | 3/10/10 | Cindy Shamban | BYOBW hearing | |
| 36 | 3/10/10 | dc250 | Juvi agenda | 2 |
| 37 | 3/10/10 | CFAC | Open govt news | |
| 38 | 3/10/10 | Mirkarimi | D% newsletter | |
| 39 | 3/11/10 | Christian Holmer | 3/6 3/12 calendar | |
| 40 | 3/11/10 | City Hall | Quake drill | |
| 41 | 3/12/10 | Anjali Asrani | Ordinances | |
| 42 | 3/12/10 | Kimo Crossman | Contract access | |
| 43 | 3/15/10 | Rita O'Flynn | Ethics appointment | 2 |
| 44 | 3/15/10 | Linda Wong | Point of Order | |
| 45 | 3/15/10 | Kimo Crossman | Digital decay | |
| 46 | 3/16/10 | Kimo Crossman | Text msg ban | |
| 47 | 3/17/10 | Richard Rothman | Request for info | |

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