

Date: October 27, 2009

Item No. 3  
File No. 09042

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Peter Warfield v Public Library**
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Completed by: Chris Rustom

Date: Oct. 21, 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.

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**SUNSHINE ORDINANCE  
TASK FORCE**



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
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**ORDER OF DETERMINATION**  
September 1, 2009

**DATE THE DECISION ISSUED**  
August 25, 2009

*PETER WARFIELD V. PUBLIC LIBRARY (09042)*

**FACTS OF THE CASE**

Complainant Peter Warfield made a request for copies of Park Branch library renovation plans. Mr. Warfield was allowed to review documents, including the "50% Construction Documents," but denied further access and copies of the same when Mr. Warfield made an additional request.

**COMPLAINT FILED**

On August 11, 2009, Peter Warfield filed a complaint with the Sunshine Ordinance Task Force claiming that the Library Administration refused to provide copies of Park Branch library renovation plans, which he was given an opportunity to inspect and copies of which had been promised.

**HEARING ON THE COMPLAINT**

On August 25, 2009, Complainant Peter Warfield appeared before the Task Force and presented his claim. Respondent Agency was represented by Sue Blackman, Secretary of the Library Commission.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Ms. Blackman told the Task Force that the construction documents were made available for Mr. Warfield's initial review because the documents were in the Library's possession, but when Mr. Warfield asked for copies, the Library was informed by the Department of Public Works' attorney that the documents should not be disclosed to the public because they were draft plans and not yet public documents but would become available when finalized and the plans went out for bid. The Task Force was also told that the disclosure of the documents would undermine the City's competitive bidding process.

The Task Force initially noted that Sec 67.24 (a)(i) was passed to make it clear that, unlike state law, drafts documents should generally be produced to members of the public. If, however, the draft documents requested are not the type of documents the Department

normally retains, then in that narrow circumstance "recommendations" of the authors/reviewers may be redacted (for example, notes in margins) but the remainder of the draft documents must be released. However, there was no evidence in this case that "50% Construction Plans" that were shown to Mr. Warfield and circulated to various interested parties were either the type of draft not retained by the Department or that the plans contained "recommendations" and notes of the author subject to redaction. Therefore, there are no grounds on which the plans could be withheld as "drafts" under the Ordinance.

Moreover, when it comes to competitive bidding, under state law the items that are typically excluded from public production are the bid responses that are submitted by bidders, in order to prevent any party from gaining an unfair advantage in the negotiation process. That situation does not apply to draft development plans, which members of the public should have the opportunity to inspect before they are final and subject to bidding. Otherwise members of the public would not be able to review the design of projects until the plans were "final" and sent out to bid; too late for meaningful public input.

Finally, even if the plans were exemption from disclosure, by showing the plans to Mr. Warfield (and possibly by also circulating copies of the "50% Construction Documents" to various interested parties, including the Friends of the San Francisco Public Library), the Department waived any right they may have had to claim an exemption from disclosure.

#### DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.21 of the Sunshine Ordinance. The requested documents shall be produced to Mr. Warfield within 5 days of this Order of Determination and the agency shall appear before the Compliance and Amendments Committee on September 8, 2009.

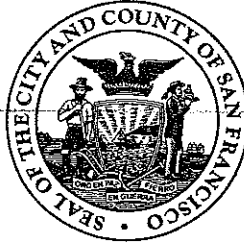
This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 25, 2009, by the following vote: ( Craven-Green / Cauthen )  
Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams, Knee  
Excused: Chan, Chu



Richard Knee, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Peter Warfield, complainant  
Sue Blackman, respondent  
Rosa Sanchez, Deputy City Attorney

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October 21, 2009

Sue Blackman  
Secretary, Library Commission  
San Francisco Public Library  
100 Larkin Street  
San Francisco, CA 94102  
415.557.4233

Ms. Blackman,

On September 8 and October 13, 2009, the Sunshine Ordinance Task Force's Compliance and Amendments Committee held two hearings to discuss the Library's compliance with the Task Force's September 1, 2009, Order of Determination requiring the Library to produce the "50% Construction Documents" sought by Peter Warfield for inspection and copying.

Unfortunately, the Library did not attend either hearing. However, Mr. Warfield did.

At the October 13, 2009, hearing, Mr. Warfield informed the Committee that he was not allowed to inspect the original "50% Construction Plans" and was not provided a full size set of copies of the same because, as he was informed, the Library did not retain the full-sized original plans.

This was the first the Task Force had learned about the potential destruction of the original "50% Construction Plans."

The Committee was concerned because original construction plans often have notes and comments (in margins, handwritten, in different colors that might not show up on photocopies, etc.) that are important for the public to be able to inspect.

Further, while Mr. Warfield was provided a reduced (8.5 x 11) size copy of the plans, those are insufficient for public review. For example, true scale can only be ascertained by reviewing full size plans as scale is compromised when reduced photocopies are made.

Mr. Warfield confirmed to members of the Committee that if a full-size copy of the plans were available, he would be willing to pay the copying costs. Additionally, the Committee expressed concern over how all full-size copies could have been destroyed,

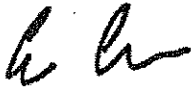
~~particularly when electronic copies of the specs (as well as drawings and comments) were made available to interested parties in the City Library's "Branch Improvement\Project Files\Park\Design Docs" folder.~~

As such, the Committee recommended that this matter be referred back to the full Task Force for a hearing at its October 27, 2009, meeting to further consider whether the Order of Determination has been satisfied or whether the matter should be referred to the Ethics Commission for further enforcement.

If, prior to the full Task Force meeting, the Library was able to provide Mr. Warfield the opportunity to inspect the original "50% Construction Plans" or provide Mr. Warfield with a full-size copy of those plans, the issue of referral may be moot (depending on the decision of the full Task Force).

We look forward to hearing from you at the October 27, 2009, meeting.

Sincerely,



Erica Craven-Green  
Chair, Compliance and Amendments Committee

cc: C&A members  
Peter Warfield