

Date: October 27, 2009

Item No. 4
File No. 09044

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Peter Warfield v Board of Appeals**
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

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.

This page purposely left blank



ORDER OF DETERMINATION
September 1, 2009

DATE THE DECISION ISSUED
August 25, 2009

PETER WARFIELD V. BOARD OF APPEALS (09044)

FACTS OF THE CASE

Peter Warfield requested to review a Board of Appeals file and requested copies of a portion of the same. Initially he was allowed to fully inspect the file and make notes. Mr. Warfield also requested copies of certain portions of that file. The copies were available the next day, without redactions. Mr. Warfield requested to rereview the same file. That second time, however, he was instructed by staff that he could not write down any names, addresses or emails. Mr. Warfield was also supervised by a staff member as he reviewed the file, in order to enforce the limitations imposed on Mr. Warfield's review of the Board of Appeals files. Mr. Warfield alleges that there should be no limits on copying name and contact information from the files. Mr. Warfield also alleged that no legal justification for the restriction/redaction of personal contact information was provided in a written communication. Finally, Mr. Warfield alleges that his ability to inspect the documents was interfered with by the orally stated rules imposed by the Board of Appeals and sharp questioning as he made notes from the supervising Board employee.

COMPLAINT FILED

On August 11, 2009, Peter Warfield filed a complaint with the Sunshine Ordinance Task Force.

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 Cynthia Goldstein, Director of the Board of Appeals.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. Warfield told the Task Force that 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 was allowed to review the file he requested and requested a few copies of support and opposition letters. The copies were provided the next day without redaction. On August 3, 2009, he was orally informed by staff that contact information and names of individuals were being redacted. There was no

ORDER OF DETERMINATION

written procedures as the requirement was announced at a staff meeting. On August 5, 2009, Mr. Warfield was allowed to review the same file but under the watchful eye of an employee.


The Board of Appeals explained that Mr. Warfield came to the office to inspect the file, just a few hours before a Board of Appeals hearing on August 5, 2009, and rather than asking him to come back another day the department accommodated his request to review the file but imposed the new rules regarding the restriction on copying and redaction of personal contact information contained in the file. No justification for the restriction/redaction was made available to Mr. Warfield because when he arrived, staff was preparing for the meeting. The Task Force was told that the names of people testifying before the Board are exempt from disclosure under public meeting laws. The address and home were redacted to protect the privacy rights of the public.

The Task Force noted that it has consistently ruled that -- unless a member of the public requests anonymity, is a whistleblower, or someone who could otherwise face retribution if his/her name and contact information were known -- the name and contact information for members of the public submitting public testimony is a matter of public record and should be released upon request. There was no reason provided why that ruling would not apply to the facts in this Complaint.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.1 (g) and 67.21 of the Sunshine Ordinance by restricting Mr. Warfield's ability to note the names and contact information for individuals and entities who submitted public testimony to the Board of Appeals and/or for redacting the same from public records. To the extent any information has been withheld from Mr. Warfield, that Board is directed to release the same within 5 days of this Order of Determination. The Board is also directed to appear before the Compliance and Amendments Committee on September 8, 2009 to discuss compliance with this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 25, 2009, by the following vote: (Cauthen / Goldman)
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
Cynthia Goldstein, respondent
Rosa Sanchez, Deputy City Attorney



Gavin Newsom
Mayor

Cynthia G. Goldstein
Executive Director

September 15, 2009

Erica Craven-Green
Chair, Compliance and Amendments Committee
Sunshine Ordinance Task Force
c/o Chris Rustom, Office of the Clerk, Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2009 SEP 15 PM 1:04
BY

Re: Complaint #09044 Order of Determination

Dear Ms. Craven-Green:

Thank you for your email message dated September 10, 2009 regarding the Board of Appeals' response to the Order of Determination in Complaint #09044.

Please be assured that it has been and will continue to be the practice of the Board of Appeals to disclose "all identifying and contact information" for businesses and organizations. It was not the intent of this office to redact any such business or organizational contact information and to the extent this may have happened, it was inadvertent.

With respect to the separate issue of the redaction of home telephone numbers and personal email addresses, while I appreciate the invitation to discuss this further with members of the Compliance and Amendments Committee, I do not believe my doing so will contribute to the resolution of this matter. As explained in my letter to the Committee dated September 8, 2009:

In light of the unique relevance of an individual's residence in the context of building, planning, and other land use-related permits, the Board has concluded that disclosure of home addresses in communications pertaining to such permits that are in the public review file serves a significant public interest that outweighs the privacy interests of the individuals in this information. Accordingly, the Board will comply with the order to disclose home addresses, as well as the names. The Board will continue, however, to redact home phone numbers and personal email addresses from correspondence to the Board before making the documents public because this information does not play a role in the Board's decision making process or assist citizens in monitoring government. (emphasis added)

In the context of building, planning, and other land use-related permits before the Board of Appeals, we intend to continue to draw this distinction between home addresses on the one hand (which shall be disclosed), and home phone numbers and personal email addresses on the other (which shall remain protected), for the reasons outlined above. It is my understanding that the City Attorney's Office has advised City departments to redact home telephone numbers and personal email addresses in order to protect individuals' privacy rights, and we intend to adhere to that practice.



1650 Mission Street
Suite 304
San Francisco
California 94103



TEL (415) 575-6880
FAX (415) 575-6885
www.sfgov.org/boa



Erica Craven-Green
Chair, Compliance and Amendments Committee
Sunshine Ordinance Task Force
c/o Chris Rustom, Office of the Clerk, Board of Supervisors
September 15, 2009
Page 2.

Regarding Mr. Warfield's request for documents, my office has reached out to Mr. Warfield to let him know that we are prepared to provide him with copies of letters from members of the public that do not have names and addresses redacted. We are awaiting his reply in order to know how best to proceed in delivering them to him.

Sincerely,



Cynthia G. Goldstein
Executive Director