

Date: Nov. 29, 2011

Item No. 33 & 34  
File No. 11085

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Library Users Association against the Arts Commission**
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Completed by: Chris Rustom

Date: Nov. 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 Complaint  
complaints

to:

sotf

10/14/2011 10:26 AM

Hide Details

From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Arts Commission

CONTACTED:Staff person

PUBLIC\_RECORDS\_VIOLATION:Yes

PUBLIC\_MEETING\_VIOLATION:No

MEETING\_DATE:August 17, 2011

SECTIONS\_VIOLATED:Section 67.16

DESCRIPTION:Art Commission Did Not Draft Minutes of its Visual Arts Committee Meeting of August 17, 2011 to Library Users Association.

HEARING:Yes

PRE-HEARING:No

DATE:

NAME:Peter Warfield

ADDRESS:

CITY:

ZIP:

PHONE:753-2180

CONTACT\_EMAIL:libraryusers2004@yahoo.com

ANONYMOUS:

CONFIDENTIALITY\_REQUESTED:No

# Library Users Association

P.O. Box 170544, San Francisco, CA 94117-0544

Tel./Fax (415) 753-2180

Tuesday, October 11, 2011

Honorable Members  
Sunshine Ordinance Task Force  
City Hall  
San Francisco  
By email: sotf@sfgov.org

Subject: **Complaint #2 of 2: Art Commission Did Not DRAFT MINUTES of its Visual Arts Committee Meeting of August 17, 2011 to Library Users Association**

Ladies and Gentlemen:

The Art Commission did not provide for inspection the draft Minutes of its August 17, 2011 Visual Arts Committee (VAC) meeting when Library Users Association asked to inspect them more than 10 days after the meeting. The staff member we contacted said that the Minutes would not be ready until the agenda for the September 12 full Art Commission meeting was issued.

We were notified of Minutes availability in an email dated Friday, September 9, 2011, the Friday before the Art Commission's meeting of Monday, September 12, 3pm. The email did not provide Minutes as an attachment, but instead referred to availability of the Minutes on the Art Commission website. A memo to Library Users Association dated September 7 referred to our prior request and stated the following:

*We spoke on the phone earlier regarding the draft minutes for the August 17, 2011 Visual Arts Committee Meeting. Unfortunately, **it is office policy to only distribute final minutes for public review.** These minutes will be posted online by Friday, September 9<sup>th</sup> and can be found here: <http://www.sfgov3.org/index.aspx?page=2510>*

(Emphasis added)

Library Users Association requests a prompt hearing on this complaint, and thanks you for your time and effort on this matter.

Sincerely yours,

Peter Warfield  
Executive Director, Library Users Association  
415/753-2180



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE  
MAYOR

JD BELTRAN  
INTERIM DIRECTOR OF  
CULTURAL AFFAIRS

PROGRAMS

CIVIC ART COLLECTION  
CIVIC DESIGN REVIEW  
COMMUNITY ARTS  
& EDUCATION  
CULTURAL EQUITY GRANTS  
PUBLIC ART  
STREET ARTISTS LICENSES

ARTS COMMISSION GALLERY  
401 VAN NESS AVENUE  
415.554.6080

WWW.SFARTSCOMMISSION.ORG

ARTSCOMMISSION@SFGOV.ORG

October 19, 2011

Honorable Members  
Sunshine Task Force  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

Dear Honorable Members of the Sunshine Task Force:

I am writing in response to complaint #11084 and complaint #11085 submitted on October 11, 2011 by Mr. Peter Warfield, executive director, Library Users Association.

The San Francisco Arts Commission (SFAC) is in compliance with the Sunshine Ordinance and Mr. Warfield's complaints are both outside the jurisdiction of the Sunshine Task Force and without merit because the Sunshine Ordinance does not require the Visual Arts Committee (VAC) which is an advisory committee of the SFAC, to audio record VAC meetings or to keep minutes of VAC meetings.

**1. The Sunshine Ordinance does not require audio recordings of advisory committee meetings.**

In complaint # 11084, Mr. Warfield states that the SFAC did not provide his organization with an audio recording of the August 17, 2001 VAC meeting, even though the SFAC does not currently record VAC meetings. According to the 2010-2011 Good Government Guide, Part Three, p.133, Section G.1., the VAC, as an advisory subcommittee of the of the full Arts Commission, is not a "board or commission listed in the charter" and thus is not required to audio record its meetings:

**G. Records of meetings**

**1. Audio recordings**

**"Each board or commission listed in the Charter must audio record regular and special meetings. Admin. Code § 67.14(b). Other policy bodies are not required to audio record their meetings, except for closed session portions of meetings. Admin. Code § 67.8-1(a)."** (Emphasis added)

**2. The Sunshine Ordinance does not require advisory bodies or committees of parent bodies to keep minutes of their meetings.**

In complaint # 11085, Mr. Warfield also states that the SFAC did not provide draft minutes of the August 17, 2011 VAC meeting until more than 10 days after the



CITY AND COUNTY OF  
SAN FRANCISCO

meeting. According to the 2010 -2011 Good Government Guide, Part Three, p.135, Section G.2. (c), the SFAC is not required to keep minutes for meetings of the VAC because the VAC is purely an advisory body of the parent body known as the Arts Commission:

**G. Records of meetings**

**2. Minutes**

**c. Other policy bodies**

***"Policy bodies that do not fit into one of the above two categories, such as purely advisory bodies and committees of parent bodies, are not required to keep meeting minutes or maintain a record of meetings."***

Although not required, the SFAC does keep minutes of all VAC meetings which are available to the public on the sfgov.org website and by request. Minutes for the August 17, 2011 VAC meeting were provided to Mr. Warfield within two days of his request. Those minutes are enclosed for your review.

In short, and for the reasons stated above, the SFAC is in compliance with the Sunshine Ordinance.

Thank you for your attention to this matter.

Sincerely,



Susan Pontious  
Public Art Program Director  
San Francisco Arts Commission  
25 Van Ness, Suite 345  
San Francisco, CA 94102  
(415) 252- 2587

# Library Users Association

P.O. Box 170544, San Francisco, CA 94117-0544

Tel./Fax (415) 753-2180

November 17, 2011

Honorable Members  
Sunshine Ordinance Task Force  
City Hall  
San Francisco  
By email: sotf@sfgov.org

Subject: **Our Response to Art Commission's Reply to Our Complaint #2 of 2-- (Art Commission Did Not Provide DRAFT MINUTES of its Visual Arts Committee (VAC) Meeting of August 17, 2011 to Library Users Association)**

Ladies and Gentlemen:

Library Users Association earlier this week (11/14/11) received from the SOTF Administrator the Art Commission's reply to our complaint of October 11, 2001, and reply with this letter. Please note the reply is in two parts: Part One is essentially the same as for the complaint about failure to provide an audio recording; Part Two adds additional reasons for violation.

We note their reply is dated October 19, and it did not reach Library Users Association until nearly a month later, on the evening of November 14, 2011. Their reply is the same for each of our two complaints, regarding failure to record a meeting of the Visual Arts Committee (VAC) # 11084, and failure to provide Minutes of that meeting on a timely basis, # 11085.

## **PART ONE**

The Commission letter argues that the Visual Arts Committee (VAC) is an "advisory committee of the SFAC [Arts Commission]." As such, the argument continues, the VAC "is not a 'board or commission listed in the charter' and thus is not required to audio record its meetings."

*We consider this to be a dangerous argument that would allow circumvention of the clear language and spirit of Sunshine by the simple stratagem of placing the work of a Charter body into one or more subcommittees.* Then the parent body, rubber stamping the work of its committee(s), could evade all the requirements applying to a charter board/commission under Sunshine, and the public would have no minutes or tape recordings of meetings at which the real work was done.

In fact, at the Arts Commission, the real work IS done by the Visual Arts Committee (VAC) for the topic area it covers. At the August 17, 2011 meeting of the VAC, for example, the group was attended by the **Commission President**, P.J. Johnston; the

administrative head of the department, **Interim Director J.D. Meltran**; and many staff members. In addition, discussion of the Bernal Heights Branch Library mural 100% demolition and replacement project included participation by the **City Librarian**, and **artists for the new murals**. A multi-paragraph description of the proceedings was in the VAC Minutes of the meeting.

At the full Arts Commission meeting of September 12, 2011, the Bernal Heights Branch Library mural destruction and replacement project was on the agenda -- as a **CONSENT ITEM** -- and could have passed, together with another group of projects without a single word of discussion. The Commission President "pulled" the item so that it could be discussed -- ***but announced that no one from the Library and none of the artists were present to make presentations or answer questions.*** Public comment was allowed, but it was not followed by substantive discussion by the Commissioners.

Finally, we note that the Brown Act defines "legislative bodies to which the law applies. Section 54952 (b) it says that "legislative body" means:

"(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter."

We note that the Visual Arts Committee has been in existence for decades, performing similar work of the Arts Commission over time.

## **PART TWO, REGARDING MINUTES OF THE VISUAL ARTS COMMITTEE (VAC):**

The Draft Minutes should have been available upon request, when we requested the minutes on or before September 7, 2011. Sunshine 67.16, Minutes, says:

"The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting."

But even if the VAC were not subject to this rule, the draft Minutes existed, and should have been provided promptly -- or else alternatives might have been suggested, for example the rough notes the secretary prepares on her PC as she sits at the meeting. We were given no assistance with alternatives. But we were told at the time that the reason for not getting the minutes was "office policy." That is not a justification for refusing to provide an already-prepared, and recent, document. The

Arts Commission made u wait because of "policy." Sunshi Section 67.21 requires "every person having custody of any public record or public information" to *provide public inspection "at normal times, and during normal and reasonable hours of operation, without unreasonable delay,* and without requiring an appointment." [Emphasis added]

We quoted from the relevant memo sent by the Arts Commission in our complaint, and will undertake to bring it for inspection to any hearing.

Conclusion

***We ask you to reject the argument of the Arts Commission's letter, and determine that the VAC, and any other subcommittee of the Arts Commission, must follow the requirements of the Sunshine Ordinance with respect to boards and commissions named in the charter.*** In this case, that meant production within 10 days of the August 17, 2011 meeting. **In addition, we ask that you affirm the requirement to provide any requested materials without unreasonable delay.**

Library Users Association requests a prompt hearing on this complaint, and thanks you for your time and effort on this matter.

Sincerely yours,

Peter Warfield  
Executive Director, Library Users Association  
415/753-2180