

Date: Feb. 23, 2010

Item No. 15
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Administrators Report
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Completed by: Chris Rustom

Date: Feb. 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



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MEMORANDUM

TO: Sunshine Ordinance Task Force

DATE: February 19, 2010

SUBJECT: Administrator's Report

1. Requests from community persons:

From January 20, 2010 through February 16, 2010, the Task Force's office responded to approximately 406 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:

- #09069_Asian Law Caucus v Mayor's Office
- #09077_Raymond Banks v Public Health
- #09078_Anonymous Tenants v Planning Department
- #09082_Raymond Banks v Public Health
- #09083_Ellen Tsang v Department of Building Inspection
- #09085_Mike Addario v Arts Commission

5. Referral to Ethics Commission

- #09039_Rita O'Flynn v Mayor's Office of Housing
- #09042_Peter Warfield Public Library
- #09057_Peter Warfield v Clerk of the Board

6. Referral to the District Attorney

- #09039_Rita O'Flynn v Mayor's Office of Housing

COMMUNICATIONS RECEIVED LOG

Jan 21, 2010, through Feb 16, 2010

	DATE	FROM	DESCRIPTION	
1	1/12/2010	Melvin Banks	Acknowledgment	
2	1/20/2010	Raquel Redondiez	Sunshine request	
3	1/20/2010	James Chaffee	Inadequate response	
4	1/20/2010	Library Users Ass	Req for agenda item	
5	1/21/2010	Kimo Crossman	Overdue appeal	4
6	1/13/2010	Rita August	Disclosure request	2
7	1/13/2010	mpetrelis	Various issues	13
8	1/14/2010	Oliver Hack	Disclosure request	
9	1/15/2010	Rita August	IDR	
10	1/15/2010	Mark Brennan	Sunshine request	
11	1/18/2010	John Avalos	Sunshine request	
12	1/18/2010	James Keys	Request for documents	2
13	1/21/2010	City Hall	Evacuation	
14	1/22/2010	Rita August	CAO's compliance	
15	1/22/2010	pdateh	Mike Addario	7
16	1/22/2010	Dept of Elections	Newsletter	
17	1/27/2010	SF Guardian	Promotions	11
18	1/25/2010	Christian Holmer	SOTF clerk	
19	1/28/2010	District 5	Newsletter	
20	1/29/2010	City Hall	Book swap	
21	1/29/2010	Anmarie Mabbutt	New priorities	4
22	1/29/2010	Kimo Crossman	Opes source software	
23	2/2/2010	Rita August	Flynn v MOH	
24	2/5/2010	Anmarie Mabbutt	City Fields partnership	
25	2/5/2010	Anmarie Mabbutt	Planning IDR	2
26	2/5/2010	Anmarie Mabbutt	Playground renovations	
27	2/10/2010	pdateh	Arts Commission IDR	
28	2/11/2010	Brett Connet	Rotunda event	
29	2/12/2010	John Monroe	Black History Month	
30	2/16/2010	Melvin Banks	Health IDR	
31	2/16/2010	Rita August	Thank you	

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, Cont'd. 03/24/09, Withdrawn 3/24/09
1/6/2009	Michael Petrellis (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 6/7, 21-1 and CPRA 6253.9, CAC 5/12/09, Cont'd 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 6/7, 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 6/7, 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	Anhisa Porter-Sumchal (09014)	Board of Supervisors	Task Force 4/28/09, Cont'd 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, Cont'd 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, Cont'd 7/14/09, 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 5/26/09, Violated 67.21 (b), CAC 6/9/09
5/13/2009	Raymond Banks (09022)	SF HIV Health Services Planning Council	Task Force 5/26/09, No violation
5/13/2009	SORE (09023)	Public Utilities Commission	Task Force 5/26/09, No violation
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 Pitts (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

Complaints 2009

6/3/2009	Kenneth Kinnard (09031)	Human Rights Commission	Complaint 7/14/09; Cont requested 8/11/09, TF 8/25/2009, violated 8/7.21, 8/7.25, CAC 9/8/2009, 10/13/09, No further action.
6/18/2009	Dominic Maiorchi (09032)	Park and Recreation	Task Force 7/28/09, violated 8/7.27, 8/7.24, CAC 9/8/2009, No further action
6/23/2009	Sue Cauthen (09033)	Library Commission	Task Force 7/28/09, violated 8/7.15 (a) and 8/7.34, EOT 9/10, CAC 10/13/09, Task Force 10/27/2009, Comtd 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 8/7.15 (a) & (e), No further action
7/14/2009	Bridgid (09036)	Police Dept	Task Force 8/25/2009, violated 8/7.21 (a), 8/7.24 (g), 8/7.27, 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 8/7.21, 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 8/7.21, 8/7.29-7 (a), CAC 10/13/2009, comtd 11/10/2009, 12/8/2009, Task Force 01/15/10, 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	Anna 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 8/7.21, 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 8/7.1 (g), 8/7.21, CAC 9/8/2009, 10/13/09, Task Force 10/27/2009, comtd 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)	Elia Hill Hutch Center	Task Force 9/22/2009, CAC 10/13/2009, 11/10/2009, Withdrawn
8/14/2009	Dominic Maiorchi (09047)	Park and Recreation	Task Force 9/22/2009, withdrawn
8/14/2009	Brian Tomina (09048)	Bldg Inspection	Task Force 9/22/2009, withdrawn
8/17/2009	Randal Evans (09049)	Public Defender (Mojagic)	Task Force 9/22/2009, withdrawn
8/17/2009	Randal Evans (09050)	African American Art and Culture Complex	Task Force 9/22/2009, violated 8/7.21, CAC 10/13/2009, Tabled
8/20/2009	Marilyn Mollinedo (09051)	Zoological Society	Complaint Committee 10/13/2009, Task Force 10/27/2009, violated 8/7.21, 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 8/7.15 (d), EOT 10/08/2009, No further action
9/3/2009	Lou Dillon (09053)	Recreation and Park	Task Force 9/22/09, Comtd 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 8/7.21 (e), 8/7.21 (g), Comtd 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, Comtd 10/27/2009, 6/7.21 (a), 6/7.21 (b), CAC 11/10/2009, 12/8/2009, Task Force 01/15/10, 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

Complaints 2009

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	Erin 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 Pflater (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, 03/09/2010
10/21/2009	Armarie Mabbutt (09070)	Recreation and Park	Task Force 11/24/2009, violated 67.14 (c), CAC 01/12/10, 02/09/20, 03/09/2010
10/21/2009	Armarie Mabbutt (09071)	Recreation and Park	Task Force 11/24/2009, No violation
10/23/2009	Armarie Mabbutt (09072)	Clerk of the Board	Task Force 11/24/2009, 01/05/10, No violation
10/23/2009	Armarie 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 Slarr (09075)	City Attorney's Office, Jack Song	Task Force 12/8/2009, 01/05/10, 1/26/10, CAC 03/09/10
11/2/2009	Armarie 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
12/16/2009	Anonymous Tenants (09078)	Planning Department	Task Force 01/05/2010, violated 67.21 (b) (1), 67.26, CAC 02/09/10, No further action
12/16/2009	Kenneth Kinnard (09079)	Human Rights Commission	Task Force 01/05/2010, Tabled, TF 01/05/26, CAC 03/09/10
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
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
12/29/2009	Karl Beale 09086	Planning Department	Complaint Committee 02/09/2010

Potential Complaints 2010

Date Received	Name	Department/Respondent	Status
1/12/2010	Nick Pasquarello 10001	General Services Agency	Task Force 02/23/2010
1/22/2010	Nancy Cross 10002	Law Library	Task Force 02/23/2010
1/22/2010	Nancy Cross Rita O'Flynn 10003	ECS Sanctuary	Task Force 02/23/2010
1/22/2010	Rita O'Flynn 10004	City Attorney's Office	Task Force 02/23/2010, Withdrawn

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
December 21, 2009

DATE THE DECISION ISSUED
December 1, 2009

ASIAN LAW CAUCUS V. MAYOR'S OFFICE (09069)

FACTS OF THE CASE

The Asian Law Caucus said that on Sept. 2, 2009, it submitted an Immediate Disclosure Request to the Mayor's Office for a copy of a City Attorney Office memo that was allegedly leaked to the San Francisco Chronicle newspaper and for copies of any communications the Mayor's Office had with the Chronicle regarding the issue. The Asian Law Caucus alleges that the Mayor's Office responded late to the first request and not at all to the second request.

COMPLAINT FILED

On October 13, 2009, the Asian Law Caucus filed a complaint with the Sunshine Ordinance Task Force.

HEARING ON THE COMPLAINT

On December 1, 2009, Asian Law Caucus staff attorney Angela Chan presented the organization's case to the Task Force. The Mayor's Office was not represented. There was also no one in the audience who spoke or presented facts or evidence on behalf of the respondent. Chair Richard Knee did note that Brian Purchia of the Mayor's Press Office was in the audience earlier, but left a note to say that he had to leave to respond to press requests.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Chan told the Task Force that the Mayor's Office responded late to her first request by sending her a link to the City Attorney's website where the memo in question had been posted. When Ms. Chan followed up on the status of the second request, she was told that the previous email completed the Mayor's Office's response. Ms. Chan sent another email, warning the Mayor's Office that if it did not respond, she would file a Sunshine complaint. The Mayor's Office has not responded and has not provided justification for withholding the documents relevant to her second request as provided by Sec. 67.27, she said. The Mayor's Office has a duty to maintain records of these communications under Sec. 67.29-7 (a) and these communications must be kept in accordance with Sec. 67.29-1, regardless of

ORDER OF DETERMINATION

the replacement, retirement or transfer of public officials, she said. The documents are public records covered by CPRA 6252 (e) and (g) and must be kept under Sec. 67.20 (b) of the Ordinance, she said. Ms. Chan argued that there was no privilege or exclusion for the documents and no attorney-client privilege existed because the Mayor's Office has released the document. She said Mayor Gavin Newsom needs to explain to the residents of San Francisco by whom, why and how the document was leaked.

DECISION AND ORDER OF DETERMINATION

The Task Force was troubled by the fact that the Mayor's Office representative left before the matter was called, because Task Force members needed to know the Mayor's position and response. After further debate the Task Force voted to continue the matter of whether documents had been impermissibly withheld by the Mayor's Office to its next meeting on January 5, 2010, to allow the Mayor's Office to respond to Ms. Chan's allegations.

However, the Task Force did find the Mayor's Office:

- in violation of Sec. 67.21 (e) for failure to appear, by the following vote (Cauthen / Washburn)


Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee
Excused: Johnson, Chu, Chan, Williams

- in violation of Sec. 67.27 for failure to provide justification for withholding, by the following vote (Cauthen / Washburn)

Ayes: Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee
Noes: Craven-Green
Excused: Johnson, Chu, Chan, Williams

The motion to continue was by the following vote (Knee / Craven-Green)

Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee
Excused: Johnson, Chu, Chan, Williams



Richard Knee
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Asian Law Caucus, Complaint
Mayor's Office, Respondent

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
January 29, 2010**

DATE THE DECISION ISSUED
January 5, 2009

ASIAN LAW CAUCUS V. MAYOR'S OFFICE (09069)

FACTS OF THE CASE

The Asian Law Caucus said that on Sept. 2, 2009, it submitted an Immediate Disclosure Request to the Mayor's Office for a copy of a City Attorney Office memo that was leaked to the San Francisco Chronicle newspaper and for copies of any communications the Mayor's Office had with the Chronicle regarding the issue. The Asian Law Caucus alleges that the Mayor's Office responded late to the first request and ignored the second request.

COMPLAINT FILED

On October 13, 2009, the Asian Law Caucus filed a complaint with the Sunshine Ordinance Task Force.

HEARING ON THE COMPLAINT

On December 1, 2009, Asian Law Caucus staff attorney Angela Chan presented the organization's case to the Task Force. The Mayor's Office was not represented. There was also no one in the audience who spoke or presented facts or evidence on behalf of the respondent. Task Force chair Richard Knee reported that Brian Purchia of the Mayor's Press Office was in the audience earlier, but left a note saying he had to leave to respond to press requests. That action concerned members who wanted to query the Mayor's Office regarding the complaint. The Task Force continued the matter to the January 5, 2010, meeting, to which the Mayor's Office failed to send a representative.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Chan told the Task Force on December 1, 2009, that the Mayor's Office responded late to her first request by sending her a link to the City Attorney's website, where the memo in question had been posted. When Ms. Chan followed up on the status of the second request, she was told that the previous email completed the Mayor's Office's response. Ms. Chan sent another email, warning the Mayor's Office that if it did not respond, she would file a Sunshine complaint. The Mayor's Office has not responded and has not provided justification for withholding the documents relevant to her second request as required by Sec. 67.27, she said. The Mayor's Office has a duty to maintain records of these

ORDER OF DETERMINATION

communications under Sec. 67.29-7 (a) and these communications must be kept in accordance with Sec. 67.29-1, regardless of the replacement, retirement or transfer of public officials, she said. The documents are public records covered by California Public Records Act Sections 6252 (e) and (g), and must be kept under Sec. 67.20 (b) of the Ordinance, she said.

Ms. Chan argued that there was no privilege or exclusion for the documents and no attorney-client privilege existed because the Mayor's Office has released the document. She said Mayor Gavin Newsom needs to explain to the residents of San Francisco by whom, why and how the document was leaked. Ms. Chan said on January 5, 2010, that she has not received any information nor been contacted by the Mayor's Office since she last testified. She said the actions of the Mayor's Office are in violation of Sec. 67.34 for willful failure and should be deemed official misconduct. She also said she had not received a response to the letter that Chair Knee had written to the Mayor's Office.

DECISION AND ORDER OF DETERMINATION

After further debate on December 1, 2009, the Task Force found the Mayor's Office:

- in violation of Sec. 67.21 (e) for failure to appear, by the following vote (Cauthen / Washburn)

Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee
Excused: Johnson, Chu, Chan, Williams

- in violation of Sec. 67.27 for failure to provide justification for withholding, by the following vote (Cauthen / Washburn)

Ayes: Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee
Noes: Craven-Green
Excused: Johnson, Chu, Chan, Williams

The motion to continue was by the following vote (Knee / Craven-Green)

- Ayes: Craven-Green, Cauthen, Manneh, Washburn, Knoebber, Goldman, Knee
Excused: Johnson, Chu, Chan, Williams

On January 5, 2010, the Task Force found the Mayor's Office:

- in violation of Sec. 67.34 for willful failure to comply and Sec. 67.21 (e) for failing to appear.

The Mayor's Office is directed to provide the afore-cited copies of correspondence between the Mayor's Office and the San Francisco Chronicle within five business days after receiving this Order of Determination, and is ordered to appear before the Compliance and Amendments Committee February 9, 2010. (Goldman / Knoebber)

ORDER OF DETERMINATION

- Ayes: Manneh, Washburn, Knoebber, Chu, Chan, Goldman, Williams, Knee



Richard A. Knee
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Asian Law Caucus, Complaint
Mayor's Office, Respondent

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**ORDER OF DETERMINATION
January 29, 2009**

DATE THE DECISION ISSUED
January 5, 2009

MELVYN BANKS v. DEPARTMENT OF PUBLIC HEALTH (09077)

FACTS OF THE CASE

Complainant Raymond Banks said the Department of Public Health (DPH) has failed to provide notice of, and an opportunity for members of the public to provide comments at, meetings of the DPH Privacy Board (Privacy Board). Mr. Banks also said that DPH failed to respond to an Immediate Disclosure Request (IDR) for a copy of the San Francisco Share Mandate Policy and for notes taken by DPH employees during a meeting on September 22, 2009, between DPH and AIDS service providers regarding a transition from Reggie to ARIES reporting systems, which Mr. Banks made on November 19, 2009. On November 3, 2009, DPH responded by email to Mr. Banks' request to attend DPH Privacy Board meetings by stating that the body was not a legislative body under the Brown Act, and thus was not required to allow public attendance at its meetings.

COMPLAINT FILED

On November 6, 2009, Mr. Banks filed a complaint against DPH. On November 24, 2009, Mr. Banks amended his complaint to provide more supporting material and to add the allegations regarding his November 19, 2009, IDR. At the hearing on jurisdiction on his complaint, Mr. Banks agreed to withdraw the additional allegations regarding his November 19, 2009, IDR and file those as a separate complaint.

HEARING ON THE COMPLAINT

On January 5, 2010, Melvyn Banks presented his claim. The respondent was not represented. There was also no one in the audience who spoke or presented facts or evidence on behalf of the respondent.

Mr. Banks said the Public Health Privacy Board meetings were closed to the public and he would like to know what goes on behind closed doors because in some cases it could be infringing on constitutional privacy rights. He also said two employees from the same department are contradicting themselves on the existence of the local Share Mandate Policy, a document he requested and has not received.

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

The Task Force found, based on the written response of DPH, the testimony of complainant and the advice of the Deputy City Attorney, that the Privacy Board consists solely of employees of DPH that review and develop policies related to an issue of public health, namely client and patient confidentiality, and that it therefore constitutes a "passive meeting body" under Administrative Code § 67.3(c)(5).

DPH argued in its written response that it cannot allow attendance at the meetings of the Privacy Board by members of the public because the meetings routinely involve discussion of details of confidential client health information that is protected from disclosure by federal law. Although DPH did not identify the federal law involved, the assumption was made that the law in question is the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR §§ 164.500, et seq. The Task Force found that, even assuming that HIPAA would prevent disclosure of the information referred to by DPH at meetings of the Privacy Board, such disclosures could take place during closed sessions, if necessary, and still preserve the ability of the Privacy Board to allow attendance by members of the public. Further, the failure of DPH to send a representative to the complaint hearing prevented the Task Force from being able to determine whether the allegedly confidential client information referred to by DPH was the type of information protected by HIPAA or whether disclosure of such information was necessary to the conduct of Privacy Board meetings.

Given the availability of closed sessions to address any necessary discussion of confidential client information protected by HIPAA, the Task Force found that there was no conflict between the requirements of HIPAA and those of the Sunshine Ordinance. It therefore found DPH to be in violation of the requirements of the Ordinance.

DECISION AND ORDER OF DETERMINATION

The Task Force found that the agency violated Section 67.4, which covers passive meetings. The matter was referred to the Feb. 11, 2010, Education, Outreach and Training Committee meeting.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on Jan. 5, 2010, by the following vote: (Washburn / Goldman)
Ayes: Manneh, Washburn, Knoebber, Chu, Chan, Goldman, Williams, Knee.



Richard A. Knee
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Melvyn Banks, Complainant
Eileen Shields, Respondent

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
January 29, 2009**

DATE THE DECISION ISSUED
January 5, 2009

ANONYMOUS TENANTS v. PLANNING DEPARTMENT (09078)

FACTS OF THE CASE

Complainant, Anonymous Tenants (Tenants), said he requested public records from the Planning Department (Planning) on October 21, 2009, and that Planning has yet to fully respond to that request. In particular, Tenants said that Planning has failed to provide (1) each and every material that Mr. Robert Middlestadt submitted to Planning Commission;" and (2) the label photos, 3-R reports, and similar (non-plan) documents with the project address."

COMPLAINT FILED

On November 17, 2009, Tenants filed a Sunshine Complaint against Planning for its alleged violations of §§67.21, 67.26, and 67.27.

HEARING ON THE COMPLAINT

On January 5, 2010, Anonymous Tenants presented his claim. The respondent was not represented and no one in the audience spoke or presented facts or evidence on behalf of the respondent.

Complainant Anonymous Tenants said the two documents he requested were in the Planning Department's possession. The documents were requested because he wanted to use it at a permit application hearing. As of date, no documents had been provided.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that the department failed to respond. However, it was unclear whether documents request existed.

DECISION AND ORDER OF DETERMINATION

The Task Force found that the agency violated Sections 67.21 (b), (e) and (l), and 67.26. All withheld documents should be provided within five days of the date of this Order

ORDER OF DETERMINATION

of Determination. The matter was referred to the Feb. 9, 2010, Compliance and Amendments Committee meeting.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on Jan. 5, 2010, by the following vote: (Goldman / Washburn)
Ayes: Manneh, Washburn, Knoebber, Goldman, Williams, Knee.



Richard A. Knee, Chair
Sunshine Ordinance Task Force

- c: Jerry Threet, Deputy City Attorney
- Anonymous Tenants, Complainant
- John Rahaim, Respondent
- Linda Avery, Respondent
- Brian Smith, Respondent

**SUNSHINE ORDINANCE
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ORDER OF DETERMINATION
January 29, 2010

DATE THE DECISION ISSUED
January 5, 2009

MELVYN BANKS v. DEPARTMENT OF PUBLIC HEALTH (09082)

FACTS OF THE CASE

Complainant Raymond Banks said the Department of Public Health (DPH) failed to respond in timely fashion to an Immediate Disclosure Request (IDR) for a copy of the San Francisco Share Mandate Policy related to the new ARIES reporting system, which Mr. Banks made to Maria Martinez on October 30, 2009. On November 16, 2009, DPH responded by email to Mr. Banks' request by providing him with a copy of the local share policy regarding the Reggie reporting system, but stated that there was no local share policy with regard to the ARIES reporting system that is replacing Reggie.

COMPLAINT FILED

On November 16, 2009, Mr. Banks filed a Sunshine complaint against DPH. On December 28, 2009, Mr. Banks sought to amend his complaint to add allegations of violations of the California Public Records Act due to the failure by DPH to assist him in accurately identifying the information he sought. Mr. Banks was advised that if he wished to amend his complaint so close to the hearing date, it would require that his complaint be continued to a later meeting to allow DPH adequate time to respond to the additional allegations.

HEARING ON THE COMPLAINT

On January 5, 2010, Melvyn Banks presented his claim. The respondent submitted a letter but was not represented at the hearing and no one in the audience spoke or presented facts or evidence on behalf of the respondent.

Mr. Banks said that the previously existing Reggie client reporting system was developed in cooperation with the community of individuals receiving HIV services and respected their desires to maintain confidentiality in the reporting system. Mr. Banks further stated that DPH is proposing that the shift to the state-mandated ARIES reporting system be accompanied locally by a requirement that any client accepting HIV related services must agree that their private information will be shared among all service providers in the ARIES reporting system, or lose the ability to access services. Mr. Banks stated that the proposed policy change affects 20,000 people and it violates their constitutional privacy rights. He

ORDER OF DETERMINATION

wanted to know why DPH created a policy that was against the confidentiality requirements of the Health Insurance Portability and Accountability Act ("HIPAA") of 1996.

Mr. Banks further stated that the change in policy was first described to him by DPH officials as a "local share mandate" policy that was being considered by DPH. After he requested the document that represented the "local share mandate," Mr. Banks was told by DPH that there was no local share mandate, since the policy was a part of the state mandated ARIES reporting system. Mr. Banks presented further evidence that showed that the ARIES reporting system mandated by the state allows, rather than requires, a local share mandate to be adopted as policy by local governments. Nevertheless, DPH stated in its written response to Mr. Banks' IDR that it had provided him with the only document that reflected a local share policy that associated with the previously existing Reggie reporting system. DPH stated that there was no document reflecting a local share mandate policy under the new ARIES system.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that DPH had referred to a local share mandate policy document in communicating with Mr. Banks, but had failed to produce the document referred to in response to Mr. Banks' IDR. In the absence of a DPH representative, the Task Force concluded that DPH possessed responsive documents that it failed to provide to Mr. Banks.

DECISION AND ORDER OF DETERMINATION

The Task Force found that the agency violated Sec. 67.21 (b) and (e), Section 67.25 and CPRA Section 6253.1 (a) 1, 2 and 3. (Washburn / Goldman)

The respondent is hereby directed to provide the San Francisco Share Mandate Policy related to the new ARIES reporting system to the complainant within 5 business days after receiving this Order of Determination and to provide assistance to the complainant in further identifying documents that would be responsive to his request. This matter is referred to the Feb. 9, 2010, Compliance and Amendments Committee meeting.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on Jan. 5, 2010, by the following vote: (Washburn / Goldman)

Ayes: Manneh, Washburn, Knoebber, Chu, Goldman, Williams, Knee



Richard A. Knee
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Melvyn Banks, Complaint
Eileen Shields, Respondent

**SUNSHINE ORDINANCE
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ORDER OF DETERMINATION
January 29, 2009

DATE THE DECISION ISSUED
January 5, 2009

ELLEN TSANG v. DEPARTMENT OF BUILDING INSPECTION (09083)

FACTS OF THE CASE

Complainant Ellen Tsang said that on December 8, 2009, at 3:47 p.m., she sent an Immediate Disclosure Request (IDR) to William Strawn of the Department of Building Inspection (DBI) requesting that building permit application No. 200910229545 for 2650-52 Hyde Street be provided by email to her in digital format. Ms. Tsang further said Mr. Strawn had previously communicated that this document would be available in digital format as of December 8, 2009, after 2 p.m. Ms. Tsang further said that Mr. Strawn failed to respond to this request by the close of business on December 9, 2009.

COMPLAINT FILED

On December 10, 2009, Ms. Tsang filed a complaint with the Task Force alleging a violation of public records and public meeting laws.

HEARING ON THE COMPLAINT

On January 5, 2010, Ms. Tsang presented her case. Mr. Strawn represented the respondent agency.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Tang said the document exists in electronic format because another person had seen it on a DBI computer. She also said Mr. Strawn's letter to the Task Force is a response to somebody else's request and not intended for her. She said Mr. Strawn had said a summary of the case was available on the website but the Board of Appeals accepts only copies of permit applications and not summaries.

DECISION AND ORDER OF DETERMINATION

The Task Force found that the agency violated Sections 67.21 and 67.25. The respondent is hereby directed to provide the requested building permit application copy to the complainant within 5 business days after receiving this Order of Determination. The matter is referred to the Feb. 9, 2010, Compliance and Amendments Committee meeting, to which the respondent is directed to send a knowledgeable representative.

ORDER OF DETERMINATION

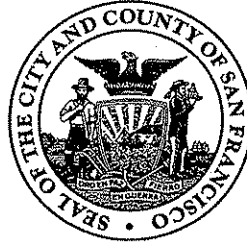
This Order of Determination was adopted by the Sunshine Ordinance Task Force on Jan. 5, 2010, by the following vote: (Washburn / Goldman)
Ayes: Manneh, Washburn, Knoebber, Goldman, Williams, Knee.



Richard A. Knee
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Ellen Tsang, Complainant
William Strawn, Respondent

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ORDER OF DETERMINATION
January 29, 2010

DATE THE DECISION ISSUED
January 5, 2009

MIKE ADDARIO v. ARTS COMMISSION (09085)

FACTS OF THE CASE

Complainant Mike Addario said that, on September 23, 2009 and on September 29, 2009, he sent an Immediate Disclosure Request (IDR) to Howard Lazar of the San Francisco Arts Commission (the Commission) requesting unspecified documents. The 9/29/09 IDR amended the previous IDR, adding documents to those previously requested. Complainant further said that Mr. Lazar responded on October 2, 2009, by invoking an extension of not more than 14 calendar days from September 29, 2009, to provide the documents. He quoted from a letter from Mr. Lazar that "The Arts Commission will endeavor to respond to you as quickly as possible, and no later than October 13, 2009." Mr. Addario further said that he has received all documents requested in the original, 9/23/09 IDR, but not the additional documents requested on 9/29/09. Mr. Addario added that Mr. Lazar told him on November 4, 2009, that he would provide the additional documents to Mr. Addario by the end of the following week, i.e. November 13, 2009. When filing the complaint, Mr. Addario said that he still had not received the additional requested documents from the 9/29/09 IDR. He also complained about various irregularities with the administration of the San Francisco Street Artist Program Liaison Committee, but failed to make any specific allegation.

COMPLAINT FILED

On December 6, 2009, Mr. Addario filed a complaint with the Task Force alleging a violation of public records and public meeting laws.

HEARING ON THE COMPLAINT

On January 5, 2010, Mr. Addario presented his case. Mr. Lazar represented the respondent agency.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. Addario said he has not inspected the documents responsive to the September 23, 2009, IDR but a time sheet appeared to have been altered. On the irregularities, he said the Commission changed the bylaws of the liaison committee without the committee's consent. Mr. Lazar said he was late in responding to the IDR because of staffing issues. He said his department has announced that outside help would be sought if the information requests

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from its 400 members continue at their current pace. He said he has provided Mr. Addario with over 200 pages of information and all documents are copies of the original.

DECISION AND ORDER OF DETERMINATION

The Task Force found that the agency violated Section 67.25 for untimely response. The matter was referred to the Feb. 9, 2010, Compliance and Amendments Committee meeting to see if all requested documents have been provided, and redactions, if any, are listed and justified.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on Jan. 5, 2010, by the following vote: (Chu / Knoebber)
Ayes: Manneh, Knoebber, Chu, Chan Goldman, Williams, Knee.



Richard A. Knee
Chair, Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Mike Addario, Complainant
Howard Lazar, Respondent

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February 15, 2010

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco CA 94102

Referral of Sunshine Ordinance Complaint #09039, Rita O'Flynn v. Mayor's Office of Housing

This is a referral from the September 22, 2009, Order of Determination from the Sunshine Ordinance Task Force against the Mayor's Office of Housing, (MOH) through its representatives Douglas Shoemaker and Oliver Hack, for failure to comply with the Order of Determination and failure to appear at Task Force hearings. The referral is made pursuant to Sunshine Ordinance sections 67.30(c) and 67.34.

Background

Complainant Rita O'Flynn has been communicating with and submitting record requests to the MOH regarding, among other issues, a federal HUD Lead Abatement Grant for lead abatement at a property owned by Ms. O'Flynn and administered by MOH. In March 2008, Ms. O'Flynn requested the opportunity to review the entire HUD Lead Abatement files with respect to her property at the MOH. After she reviewed the files, she requested that they be copied in their entirety. Upon receiving the copies, she realized that the provided records did not include emails regarding 1672/1674 Great Highway that she had reviewed in person, including an email from a tenant at Ms. O'Flynn's property to the MOH. Ms. O'Flynn then submitted a specific request for all email records regarding the lead abatement grant and her property, and she was told that the email records had been deleted since MOH keeps electronic records for only two years. Ms. O'Flynn also alleged that on September 11, 2009, MOH produced a February 2007 email between two employees of the MOH (Michael Palmer and Myrna Melgar-Iton) regarding 1672/1674 Great Highway that Ms. O'Flynn claimed was not produced in response to her original request, and should have been produced from Ms. Melgar-Iton's emails at MOH had those emails not been deleted. Mr. Hack of the MOH indicated that the Palmer/Melgar-Iton email was found as a result of a subsequent search of Mr. Palmer's email and he produced it because he wasn't sure if Ms. O'Flynn had already received it.

Task Force Hearing

On September 22, 2009, Ms. O'Flynn and Mr. Hack appeared before the Task Force again. Ms. O'Flynn's amended submission to the Task Force included specific allegations identifying emails that were responsive to her request and should have been produced originally, but were not, including the email between Ms. Melgar-Iton and Ms. O'Flynn's tenant and the email between Mr. Palmer and Ms. Melgar-Iton about Ms. O'Flynn's property. Mr. Hack of the MOH did not respond or address Ms. O'Flynn's specific evidence, but reasserted that the MOH had produced all responsive emails from Ms. Melgar-Iton and other members of the MOH staff and that any deleted emails were properly deleted after two years in accordance with the MOH records retention schedule. Mr. Hack also noted that he produced the February 2007 email between Ms. Melgar-Iton and Mr. Palmer from Mr. Palmer's email as a result from a subsequent search for responsive emails regarding her property.

The Task Force was troubled by the MOH's failure to respond to Ms. O'Flynn's evidence and explain why certain emails were not produced from a search of Ms. Melgar-Iton's email. Moreover, the Task Force found that emails regarding the lead abatement work and terms of that grant should have been retained, under the Mayor's Office's own records retention policy, for a minimum of five years.

Order of Determination

The Task Force found that the MOH violated Sunshine Ordinance Section 67.21 for failure to produce requested records and Section 67.29-7(a) for failure to maintain records as required by the Administrative Code and MOH's retention policy. The MOH was directed to ask the Department of Technology to restore Ms. Melgar-Iton's emails that fall within the time frames Ms. O'Flynn requested during her original request. The order was limited to Ms. Melgar-Iton's emails, as the evidence provided indicated that Ms. Melgar-Iton's emails were not produced and subsequently deleted (as opposed to other members of the MOH as to whom no showing had been made that emails have been improperly deleted). The cost to restore and review Ms. Melgar-Iton's records for responsive emails was to be borne by the MOH. The agency was told to appear before the Compliance and Amendments Committee on October 13, 2009, to discuss compliance.

Hearings at the Compliance and Amendments Committee

At the October 13, 2009 Compliance and Amendments meeting, Mr. Shoemaker of the MOH said the office believes it has supplied all the emails in their possession but following the issuance of the Order of Determination the office was going to replicate all the emails within the time period the O'Flynn's have requested on a rolling basis. He also said his office would work with the Department of Technology to get a snapshot of Ms.

Melgar-Iton's email inbox during the time frame covered by the request and to search for emails that deal with the subject matter as requested by the O'Flynn's.

The matter was continued to November 10, 2009, meeting to which the MOH did not attend. Correspondence from the MOH to Ms. O'Flynn was provided, explaining that Ms. Melgar-Iton's email was searched using specified terms and responsive emails were turned over to Ms. O'Flynn. Ms. O'Flynn argued that only a handful of emails had been produced and none at all from 2005, during the time that the lead abatement work was being done, leading her to question the thoroughness of the search.

Members of the Committee were disappointed and stressed the need for the department to be present because the Committee had questions, including when Ms. Melgar-Iton's emails had been restored and for what time frames. Members expressed concerns that while the MOH may well be in compliance with the Order of Determination, the Committee could not decide that without answers to some basic questions from the MOH. Members also noted that the Committee could find MOH in willful violation for failure to comply and attend the hearings, but to do so would not be to Ms. O'Flynn's advantage. Therefore, the matter was again continued to the December 8, 2009, meeting in order to get additional information from the MOH, and a letter seeking that additional information was sent by the Chair to the MOH.

At the December 8, 2009, meeting, again, the MOH was not represented at the hearing and no correspondence had been sent to the Task Force from the MOH explaining whether the MOH was in compliance with the Order of Determination.. Members then voted to forward to matter to the Task Force for a finding of willful violation under Sections 67.21(e), 67.30 and 67.34 for willful failure to comply with the Order of Determination and repeated failure to send a representative to the hearings.

Task Force Referral

At the Task Force's January 5, 2010, meeting, and again in the absence of a MOH representative, members voted to refer the matter to the District Attorney and the Ethics Commission for investigation and enforcement based on a finding of willful violation under Sections 67.21(e), 67.30 and 67.34 for willful failure to comply with the Order of Determination and repeated failure to send a representative to the hearings.

Supporting Materials

The enclosed CD contains material in reference to this referral including (1) the September 22, 2009, Task Force Order of Determination, (2) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, (3) the clarification letter to MOH, (4) the minutes from the Task Force meetings on August, 25, 2009, September 22, 2009, January 5, 2010, meetings and the minutes from the Compliance and Amendments Committee meetings on October 13, 2009, November 10, 2009, and December 8, 2009.

If you need any further information, including audio recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator at (415) 554-7724.



Richard Knee, Chair
Sunshine Ordinance Task Force

cc: Rita O'Flynn, complainant
Dough Shoemaker, respondent
Oliver Hack, respondent
Jerry Threet, Deputy City Attorney

SUNSHINE ORDINANCE
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February 17, 2010

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco CA 94102

Referral of Sunshine Ordinance Complaint #09042, Peter Warfield v. Public Library

This is a referral from the September 1, 2009, Order of Determination against the Public Library, through its representative Sue Blackman, Secretary of the Library Commission, and from the Motion on October 27, 2009, finding that the Library should be found in violation of the Sunshine Ordinance sections 67.21(e) and 67.34 for failure to send knowledgeable representative to Task Force and committee meetings. The referral is made pursuant to Sunshine Ordinance sections 67.30(c) and 67.34.

Background

On August 11, 2009, Peter Warfield filed a complaint with the Sunshine Ordinance Task Force alleging that the Library administration refused to provide copies of the Park Branch's renovation plans, which he was given a prior opportunity to inspect and copies of which had been promised to him. The Library asserted that the documents were "draft" documents exempt from disclosure.

Task Force Hearing and Order of Determination

The matter was heard on September 1, 2009. Mr. Warfield presented his case and Ms. Blackman presented the Library's response. The Task Force initially noted that Sec 67.24 (a)(i) was passed to make it clear that, unlike state law, draft 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 either were the type of draft not retained by the Department or 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 exempt 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 claim to an exemption from disclosure.

The Task Force issued an Order of Determination finding that the Library violated section 67.21 by failing to provide responsive documents and ordering the Library to provide Mr. Warfield with the documents he requested within five days after issuance of the Order of Determination.

Hearings at the Compliance and Amendments Committee

The matter was initially heard by the Task Force's Compliance and Amendments Committee on September 8, 2009. At that time the Committee was informed in a letter from Ms. Blackman that the Library would not be attending the meeting, but that the Library would be providing the previously withheld documents to Mr. Warfield for his inspection and/or copying. After debating among members, the Committee agreed that since there were indications that the Library would comply and because the Order of Determination did not specify the response time, Ms. Blackman would be asked to appear at the next Compliance and Amendments Committee meeting.

The Compliance and Amendments Committee heard the matter again on October 13, 2009. Again, no representative from the Public Library was present. But Ms. Blackman had informed the Task Force administrator verbally that she had provided the complainant with a copy of the "50% Construction Plans." Mr. Warfield, however, informed the Task Force that what had been provided to him was not the full size set of original plans, but a copy of a reduced size set. Mr. Warfield was told by the Library that the full-size original plans had been destroyed.

The Compliance and Amendments Committee had numerous questions for the Library that could not be answered because the Library failed to send a representative. The questions included when did the Library discover that the original full-size plans had been destroyed, why the original set of plans had been destroyed, the Library's practice for maintenance and preservation of planning documents, and why a full size copy could not be reproduced for Mr. Warfield from electronic records (which are normally maintained by public agencies). The Committee was concerned because reduction of the

plans could have compromised review of the scale in the drawings/plans and otherwise inhibited the public's ability to comment on the plans (e.g., if reduction removed or failed to capture notations made on the plans).

A motion was made for the Committee chair to write a letter to the Library expressing displeasure at its officials' failure to appear at the hearings, asking why the original and/or a full size set of the documents were not provided and why, instead, a reduced size copy of the plans were provided after the five-day deadline imposed by the Order of Determination. The Library was also to respond as to when the original was destroyed and whether could it provide full-sized copies of the plans from other sources. The Library was told that if there was no response to the Compliance and Amendments Committee within five days following receipt of the letter, the Committee would recommend a hearing on the status and potential referral at the next full Task Force meeting.

Referral by Task Force

The Library did not respond within five days of the Compliance and Amendment's Committee letter, so the matter was set for hearing at the October 27, 2009, full Task Force meeting. Ms. Blackman, who was present on behalf of the Library, told the Task Force that the Library honestly tried to comply but that it was miscommunication over the size of the document that caused the problem. She also brought Mindy Linetzky of the Department of Public Works, who said it was not the Department's policy to keep or retain hard copies of design documents until the design was in its final stage. She, however, did produce a full size copy of the "50% Construction Plans," printed from an electronic source for Mr. Warfield's inspection and/or possession provided he pay for the cost of reproducing the full-size document. Mr. Warfield responded that he had been quite clear about what he wanted to view and have copied, but the Library failed for months to comply with his request and the Order of Determination.

The Task Force voted, first, on a motion to refer the Library to the Ethics Commission for its failure to comply with the Order of Determination, requiring providing Mr. Warfield with access to the construction plans within five days after issuance of the Order of Determination. That vote failed, 4-3.

The Task Force then voted on a motion to refer the Library to the Ethics Commission for violating sections 67.21(e) and 67.34 of the Ordinance by failing to send a representative to all Task Force and committee hearings on this matter. That vote passed, 7-0.

This request and referral are made under Sections 67.30(c) and 67.34 of the Sunshine Ordinance whereby the Task Force shall make referrals to a municipal office with enforcement power under this Ordinance whenever it concludes that any person has violated any provision of this Ordinance and referrals shall be made to the Ethics Commission based on findings of willful failure to comply with the Ordinance.

Supporting Materials

The enclosed CD contains material in reference to this referral including (1) the September 1, 2009, Task Force Order of Determination, (2) correspondence between the Task Force and the Library regarding this matter; (3) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, (4) the minutes from the Task Force meetings on August 25, 2009, October 27, 2009, and (5) the minutes from the Compliance and Amendments Committee meetings on September 8, 2009, and October 13, 2009.

If you need any further information, including audio recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator at (415) 554-7724.



Richard A. Knee, Chair
Sunshine Ordinance Task Force

cc: Peter Warfield, complainant
Sue Blackman, respondent
Jerry Threet, Deputy City Attorney

**SUNSHINE ORDINANCE
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February 16, 2010

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco CA 94102

Referral of Sunshine Ordinance Complaint #09057, Peter Warfield v. Clerk of the Board of Supervisors

This is a referral from the November 3, 2009, Order of Determination from the Sunshine Ordinance Task Force against the Clerk of the Board, through its representative Legislative Deputy Director Rick Caldeira, for failure to comply with the Order of Determination in that it did not provide unredacted contact information about members of City and County commissions, boards, task forces and other office holders. The referral is made pursuant to Sunshine Ordinance section 67.30(c).

Background

On September 9, 2009, Peter Warfield filed a complaint with the Sunshine Ordinance Task Force alleging that the Clerk's Office did not provide him prompt access to a file that contained contact information on members of the Library Citizen Advisory Commission, and instead asked him to return after three hours, when he was allowed to view documents from the file with redactions. He also claimed that legal justification for the redactions was not provided. Mr. Warfield noted that on prior occasions, he was allowed to see and receive copies of similar documents without redaction.

Task Force Hearing and Order of Determination

The matter was scheduled to be first heard on September 22, 2009, but was continued to October 27, 2009. At the latter meeting the Task Force noted that in the past it has consistently found that, in absence of a specific request for privacy or fear of retaliation, contact information in government files including home and email addresses is generally public information. The Task Force also noted that when a person volunteers to serve in the public domain, he or she may need to give up certain privacy rights that a private citizen may enjoy in order to allow members of the public to effectively communicate with the official. Therefore, if a person serving on a government body provides contact information to the City,

that information should be disclosed to members of the public. Individuals who choose to serve on policy-making bodies or passive bodies, however, can protect their privacy if they wish by opening a Google email account and/or a Post Office Box to use for City business to avoid releasing his or her home contact information.

Based on the foregoing, the Task Force found the Clerk's Office in violation of Section(s) 67.21 (a) and 67.21 (b) for failure to provide records for inspection or review on a timely basis and for making impermissible redactions. The Clerk's Office was directed to produce unredacted copies of the documents that Mr. Warfield requested within five calendar days of the issue date of the Order of Determination and to appear before the Compliance and Amendments Committee on November 10, 2009, to discuss compliance with the Order of Determination.

Hearings at the Compliance and Amendments Committee

A hearing on the status of the Clerk's Office compliance with the Order of Determination was held on November 10, 2009. Madeline Licavoli, Deputy Clerk with the Clerk's Office, informed the body that the Clerk was revisiting the policy and had decided that the home address, home telephone and home fax numbers, home email, Social Security number and date of birth on applications and rosters for boards and commissions would be redacted before documents would be released. The home address would not be redacted if specific residency is required to be appointed to a specific seat on a board or commission. The Clerk's Office noted that information provided on Form 700s will not be redacted. The matter was continued to the Compliance and Amendments Committee on December 8, 2009, because members wanted to see the new policy.

On December 8, 2009, Ms. Licavoli attended the hearing and said the Clerk's new policy was in effect but that because Mr. Warfield was a member of the Library CAC, he would be given unredacted access only to the LCAC roster. However, he would not have unredacted access to other boards and commission rosters. The Committee did not take issue with the redaction of personal, non-contact information (*e.g.*, social security numbers, DOBs) but stated its position again that members of the public should be able to contact directly people serving on government boards and commissions by having access to the same mailing and email addresses that the City uses to communicate with them and encouraged the City to either set up email accounts for individuals appointed to boards and commissions (*i.e.*, non-government employees) and/or encourage those who did not want their home email and/or home mailing addresses to be released to the public to set up specific email or mailing addresses that would be used for their City business. Recognizing, that this issue was an important one that has repeatedly arisen at the Task Force, members recommended that the matter be sent to the next full Task Force meeting for failure to comply with the Order of Determination.

Referral by Task Force

At the Task Force meeting on January 5, 2010. Ms. Licavoli said the Clerk had reviewed and revised the policy and no further changes were planned. Members of the public could contact the commission, board and task force members and office holders through their respective clerks or secretaries, she said. Mr. Warfield reiterated that this case was about denial of access to information and urged the Task Force to refer it to the appropriate authority for enforcement. The matter was originally referred to the Education, Outreach and Training Committee, but the motion was amended and referred the matter to the Ethics Commission for the Clerk's Office's failure to comply with the Order of Determination and their continued failure to provide contact information for members of board and commissions to members of the public.

This request and referral are made under Section 67.30(c) of the Sunshine Ordinance whereby the Task Force shall make referrals to a municipal office with enforcement power under this Ordinance whenever it concludes that any person has violated any provision of this Ordinance.

Supporting Materials

The enclosed CD contains material in reference to this referral including (1) the November 3, 2009, Task Force Order of Determination, (2) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, (3) the minutes from the Task Force meetings on September 22, 2009, October 10, 2009, January 5, 2010, and the minutes from the Compliance and Amendments Committee meetings on November 10, 2009, and December 8, 2009.

If you need any further information, including audio recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator at (415) 554-7724.



Richard Knee, Chair
Sunshine Ordinance Task Force

cc: Peter Warfield, complainant
Madeline Licavoli, respondent
Rick Caldeira, respondent
Jerry Threet, Deputy City Attorney

SUNSHINE ORDINANCE
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February 15, 2010

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Referral of Sunshine Ordinance Complaint #09039, Rita O’Flynn v. Mayor’s Office of Housing

This is a referral from the September 22, 2009, Order of Determination from the Sunshine Ordinance Task Force against the Mayor’s Office of Housing, (MOH) through its representatives Douglas Shoemaker and Oliver Hack, for failure to comply with the Order of Determination and failure to appear at Task Force hearings. The referral is made pursuant to Sunshine Ordinance sections 67.30(c) and 67.34.

Background

Complainant Rita O’Flynn has been communicating with and submitting record requests to the MOH regarding, among other issues, a federal HUD Lead Abatement Grant for lead abatement at a property owned by Ms. O’Flynn and administered by MOH. In March 2008, Ms. O’Flynn requested the opportunity to review the entire HUD Lead Abatement files with respect to her property at the MOH. After she reviewed the files, she requested that they be copied in their entirety. Upon receiving the copies, she realized that the provided records did not include emails regarding 1672/1674 Great Highway that she had reviewed in person, including an email from a tenant at Ms. O’Flynn’s property to the MOH. Ms. O’Flynn then submitted a specific request for all email records regarding the lead abatement grant and her property, and she was told that the email records had been deleted since MOH keeps electronic records for only two years. Ms. O’Flynn also alleged that on September 11, 2009, MOH produced a February 2007 email between two employees of the MOH (Michael Palmer and Myrna Melgar-Iton) regarding 1672/1674 Great Highway that Ms. O’Flynn claimed was not produced in response to her original request, and should have been produced from Ms. Melgar-Iton’s emails at MOH had those emails not been deleted. Mr. Hack of the MOH indicated that the Palmer/Melgar-Iton email was found as a result of a subsequent search of Mr. Palmer’s email and he produced it because he wasn’t sure if Ms. O’Flynn had already received it.

Task Force Hearing

On September 22, 2009, Ms. O'Flynn and Mr. Hack appeared before the Task Force again. Ms. O'Flynn's amended submission to the Task Force included specific allegations identifying emails that were responsive to her request and should have been produced originally, but were not, including the email between Ms. Melgar-Iton and Ms. O'Flynn's tenant and the email between Mr. Palmer and Ms. Melgar-Iton about Ms. O'Flynn's property. Mr. Hack of the MOH did not respond or address Ms. O'Flynn's specific evidence, but reasserted that the MOH had produced all responsive emails from Ms. Melgar-Iton and other members of the MOH staff and that any deleted emails were properly deleted after two years in accordance with the MOH records retention schedule. Mr. Hack also noted that he produced the February 2007 email between Ms. Melgar-Iton and Mr. Palmer from Mr. Palmer's email as a result from a subsequent search for responsive emails regarding her property.

The Task Force was troubled by the MOH's failure to respond to Ms. O'Flynn's evidence and explain why certain emails were not produced from a search of Ms. Melgar-Iton's email. Moreover, the Task Force found that emails regarding the lead abatement work and terms of that grant should have been retained, under the Mayor's Office's own records retention policy, for a minimum of five years.

Order of Determination

The Task Force found that the MOH violated Sunshine Ordinance Section 67.21 for failure to produce requested records and Section 67.29-7(a) for failure to maintain records as required by the Administrative Code and MOH's retention policy. The MOH was directed to ask the Department of Technology to restore Ms. Melgar-Iton's emails that fall within the time frames Ms. O'Flynn requested during her original request. The order was limited to Ms. Melgar-Iton's emails, as the evidence provided indicated that Ms. Melgar-Iton's emails were not produced and subsequently deleted (as opposed to other members of the MOH as to whom no showing had been made that emails have been improperly deleted). The cost to restore and review Ms. Melgar-Iton's records for responsive emails was to be borne by the MOH. The agency was told to appear before the Compliance and Amendments Committee on October 13, 2009, to discuss compliance.

Hearings at the Compliance and Amendments Committee

At the October 13, 2009 Compliance and Amendments meeting, Mr. Shoemaker of the MOH said the office believes it has supplied all the emails in their possession but following the issuance of the Order of Determination the office was going to replicate all the emails within the time period the O'Flynn's have requested on a rolling basis. He also said his office would work with the Department of Technology to get a snapshot of Ms.

Melgar-Iton's email inbox during the time frame covered by the request and to search for emails that deal with the subject matter as requested by the O'Flynn's.

The matter was continued to November 10, 2009, meeting to which the MOH did not attend. Correspondence from the MOH to Ms. O'Flynn was provided, explaining that Ms. Melgar-Iton's email was searched using specified terms and responsive emails were turned over to Ms. O'Flynn. Ms. O'Flynn argued that only a handful of emails had been produced and none at all from 2005, during the time that the lead abatement work was being done, leading her to question the thoroughness of the search.

Members of the Committee were disappointed and stressed the need for the department to be present because the Committee had questions, including when Ms. Melgar-Iton's emails had been restored and for what time frames. Members expressed concerns that while the MOH may well be in compliance with the Order of Determination, the Committee could not decide that without answers to some basic questions from the MOH. Members also noted that the Committee could find MOH in willful violation for failure to comply and attend the hearings, but to do so would not be to Ms. O'Flynn's advantage. Therefore, the matter was again continued to the December 8, 2009, meeting in order to get additional information from the MOH, and a letter seeking that additional information was sent by the Chair to the MOH.

At the December 8, 2009, meeting, again, the MOH was not represented at the hearing and no correspondence had been sent to the Task Force from the MOH explaining whether the MOH was in compliance with the Order of Determination. Members then voted to forward to matter to the Task Force for a finding of willful violation under Sections 67.21(e), 67.30 and 67.34 for willful failure to comply with the Order of Determination and repeated failure to send a representative to the hearings.

Task Force Referral

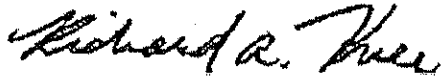
At the Task Force's January 5, 2010, meeting, and again in the absence of a MOH representative, members voted to refer the matter to the District Attorney and the Ethics Commission for investigation and enforcement based on a finding of willful violation under Sections 67.21(e), 67.30 and 67.34 for willful failure to comply with the Order of Determination and repeated failure to send a representative to the hearings.

Supporting Materials

The enclosed CD contains material in reference to this referral including (1) the September 22, 2009, Task Force Order of Determination, (2) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, (3) the clarification letter to MOH, (4) the minutes from the Task Force meetings on August, 25, 2009, September 22, 2009, January 5, 2010, meetings and the minutes from the Compliance and Amendments Committee meetings on October 13, 2009, November 10, 2009, and December 8, 2009.

District Attorney
February 15, 2010
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Richard Knee, Chair
Sunshine Ordinance Task Force

cc: Rita O'Flynn, complainant
Dough Shoemaker, respondent
Oliver Hack, respondent
Jerry Threet, Deputy City Attorney

