

Date: Feb. 23, 2010

Item No. 6 & 7
File No. 10002

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Nancy Cross against the Law Library**
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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.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

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MEMORANDUM

February 18, 2010:

NANCY CROSS v. LAW LIBRARY (10002)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Nancy Cross alleges that the San Francisco County Law Library ("Law Library") does not hold public meetings, post agendas and does not provide public access to public documents.

COMPLAINANT FILES COMPLAINT:

On January 22, 2010, Ms. Cross filed a Complaint against the Law Library for its alleged violations.

JURISDICTION

Section 67.3 of the Sunshine Ordinance provides that a "Policy Body" shall include: "[a]ny other board or commission enumerated in the charter" or "[a]ny board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors." Each county Law Library is governed and established by state statute, Business and Professions Code Section 6500, et seq., which provides for the allocation of state court fees to fund the libraries, county Board of Supervisors to provide space for the libraries, and for a foundation board to govern each library. The foundation board consists of state court judges from that county, as well as local lawyers appointed by the local Board of Supervisors. It would appear that, based on the establishment of the county law libraries under state law, they are not a "policy body" under the Ordinance, and therefore the Task Force does not have jurisdiction to hear a complaint against it.

California Government Code Section 54951 defines a "local agency" subject to its provisions as "a county, . . . district, political subdivision, . . . or any board, commission or agency thereof, or other local public agency function." "Local agencies" are subject to the requirements of both the Brown Act and the California Public Records Law. It would appear that the Law Library is a "local agency" under the Brown Act and thus must comply with these requirements. However, there is a further question whether the Task Force has jurisdiction to hear a complaint of a state law violation against an agency that is not subject to the local Ordinance.

MEMORANDUM

The Task Force was established by local ordinance and provided express authority thereunder to adjudicate whether a record sought from a local agency by a member of the public is a public record under the California Public Record Act, as further defined by the Sunshine Ordinance. See Section 67.21. The authority of the Task Force under the local Ordinance does not appear to extend to cover adjudication of alleged violations of state law by a "local agency" under state law that is not also covered by the local Ordinance. The Task Force therefore does not appear to have jurisdiction to hear this complaint.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

Section 67.3 deals with definition of a policy body.

Section 54951 of the California Government Code ("Brown Act"):

Section 54951 defines a "Local Agency" subject to the Act's requirements.

APPLICABLE CASE LAW:

- *Kaye v. Board of Trustees of the San Diego County Public Law Library* (2009) 179 Cal.App.4th 48 – in this lawsuit brought by an employee of the library for unlawful termination, the Court of Appeals reviewed a claim that the board of trustees of the library violated Government Code § 54957(b) in the manner that it met to consider the employee's termination. The court's decision assumed without analysis that the Brown Act governed the actions of the library board of trustees.

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

Ms. Cross alleges that there are no public meetings of the Law Library, and also seems to allege that the public is not provided access to public documents maintained by Law Library. There was no response to the allegations at the time of this memorandum.

B. Contested facts/ Facts in dispute:

There was no response to Ms. Cross' allegations at the time of this memorandum.

QUESTIONS THAT MAY ASSIST IN DETERMINING FACTS:

- Does the Law Library hold public meetings?
- If so, does it provide public notice of those meetings?
- Does it provide public access to public documents maintained in its possession?

MEMORANDUM

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Does the Task Force have jurisdiction under the Sunshine Ordinance to hear the complaint?
- Were sections of the Sunshine Ordinance, Brown Act, Public Record Act, and/or California Constitution Article I, Section three violated?

SUGGESTED ANALYSIS

Under Section 67.3 of the Ordinance:

- Is the Law Library covered by the Ordinance?

Under Section 54951 of the Government Code:

- Is the Law Library a "local agency"?
- If so, does the Task Force have jurisdiction to hear a complaint of violations of state law against a state created agency absent any violation of the local Ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

Section 67.3 of the Administrative Code (Sunshine Ordinance)

(d) "Policy Body" shall mean:

...

- (2) Any other board or commission enumerated in the charter;
- (3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;....

MEMORANDUM**CALIFORNIA GOVERNMENT CODE SECTIONS 54950, ET SEQ. ("BROWN ACT")****§ 54951. LOCAL AGENCY**

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
 - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article

MEMORANDUM

IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.



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2010 JAN 22 AM 11:11

BY [Signature]

SUNSHINE ORDINANCE TASK FORCE
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Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission San Francisco Law Library

Name of individual contacted at Department or Commission _____

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section _____
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

Do I have a right to attend board meetings, see, where?, posted agendas including online; review and get copies of agency documents, financial and otherwise, and what authority does the Mayor and Board of Supervisors have? It appears that the Library Board holds no public meetings, reports to no one, is city funded.

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹
Name Nancy Cross 201 8th Street at Howard Street, San Francisco 94103 Address _____
Telephone No. _____ E-Mail Address _____

Date 1-20-10 [Signature: Nancy Cross]
Signature

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).
07/31/08



Marcia
Bell/LAWLIBRARY/SFGOV
02/02/2010 03:14 PM

To SOTF/SOTF/SFGOV@SFGOV
cc Ethics Commission/ETHICS/SFGOV@SFGOV
bcc

Subject Re: Sunshine Complaint Received: #10002_Nancy Gross v
Law Library 

We just now received this email and will be happy to reply more specifically. However, we thought it prudent to notify you at the outset that the Law Library is an autonomous agency, not a department of the city and county, and the SF Sunshine Ordinance does not apply to the law library.

Marcia Bell

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