

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION**

September 1, 2009

**DATE THE DECISION ISSUED**

August 25, 2009

*PETER WARFIELD V. PUBLIC LIBRARY (09042)*

**FACTS OF THE CASE**

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

**COMPLAINT FILED**

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

**HEARING ON THE COMPLAINT**

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

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

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

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

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

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

### **DECISION AND ORDER OF DETERMINATION**

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

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 25, 2009, by the following vote: ( Craven-Green / Cauthen )

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



Richard Knee, Chair  
Sunshine Ordinance Task Force

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