

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

September 1, 2009

DATE THE DECISION ISSUED

August 25, 2009

PETER WARFIELD V. BOARD OF APPEALS (09044)

FACTS OF THE CASE

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

COMPLAINT FILED

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

HEARING ON THE COMPLAINT

On August 25, 2009, Complainant Peter Warfield appeared before the Task Force and presented his claim. Respondent Agency was represented by Cynthia Goldstein, Director of the Board of Appeals.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. Warfield told the Task Force that on July 30, 2009, he went to the Board of Appeals and dropped off a letter in support of an appeal filed by Ingar Horton against the Library which is seeking to demolish the Ortega branch. He was allowed to review the file he requested and requested a few copies of support and opposition letters. The copies were provided the next day without redaction. On August 3, 2009, he was orally informed by staff that contact information and names of individuals were being redacted. There was no

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

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

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

DECISION AND ORDER OF DETERMINATION

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

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

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

Excused: Chan, Chu



Richard Knee, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Peter Warfield, complainant
Cynthia Goldstein, respondent
Rosa Sanchez, Deputy City Attorney