



**SUNSHINE ORDINANCE TASK FORCE**  
**Compliance and Amendments Committee**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**Minutes - Draft**

**Hearing Room 408**  
**City Hall, 1 Dr. Carlton B. Goodlett Place**  
**San Francisco, CA 94102-4689**

**February 25, 2020 - 4:30 PM**

**Regular Meeting**

**Members:** Lila LaHood (Chair), Fiona Hinze and Bruce Wolfe

**1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES**

Chair LaHood called the meeting to order at 4:36 p.m. On the call of the roll Chair LaHood and Member B. Wolfe were noted present. Member Hinze was noted not present. A quorum was present.

The SOTF Administrator noted that the Petitioners/Complainants for item No. 5, File No. 19146 withdrew their complainant.

**2. Approval of the January 28, 2020, Compliance and Amendments Committee meeting minutes.**

**Action: Moved by Chair LaHood, seconded by Member B. Wolfe to approve the January 28, 2020, meeting minutes.**

Public Comment:  
None.

**The motion PASSED by the following vote:**

Ayes: 2 - LaHood, B. Wolfe  
Noes: 0 – None  
Absent: 1 - Hinze

3. **Public Comment:** Members of the public may address the Committee on matters that are within the Committee’s jurisdiction but not on today’s agenda.

Speakers:

None.

4. **File No. 19138:** Complaint filed by Stephen Malloy against the University of California, Regents of the University of California, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, by failing to respond to a public records request in a timely and/or complete manner. (00:04:00 - 00:38:01)

Stephen Malloy (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Malloy stated that he was an employee of the University of California through their Department of Psychiatry and the Department of Public Health. Mr. Malloy stated that the contract submitted as part of his record is signed and is between the University of California, the City and the State and is a standard agreement. Mr. Malloy stated that the contract was signed and awarded on July 24, 2018. Mr. Malloy stated that Appendix G of the contract outlines the agreement that all restrictions and limitations enacted have to be provided. Mr. Malloy stated that he is a protected Veteran, and the University, as a contractor, has to comply with all equal benefits of Mr. Malloy including receipt of records. Mr. Malloy stated that he provided the University a list of employees who fell under Sunshine who have not produced written records. Mr. Malloy stated that his list includes Labor and Employee Relations, Human Resources and the Office of Personnel. Mr. Malloy requested records from those departments and they have not complied. Mr. Malloy stated that he knows those records exist because he has communicated with individuals in those departments. Mr. Malloy stated that the Custodian of Records in the Chancellors Office has refuse to provide those documents and to let Mr. Malloy see his records in-camera.

The University of California contacted the Administrator on February 25, 2020 to inform them that they would not be present for the hearing.

Member B. Wolfe stated that it is clear that the contract makes University of California under the jurisdiction of the City and County.

**Action: Moved by Member B. Wolfe, seconded by Chair LaHood, to find that the SOTF has jurisdiction, that the requested records are public and to refer the matter to the SOTF for hearing. Member B. Wolfe also moved that University of California is a contractor with the City and that based on the contract presented by the Petitioner and the applicable laws that apply to it.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 2 - B. Wolfe, LaHood

Noes: 0 - None

Absent: 1 - Hinze

5. **File No. 19146:** Complaint filed by Anonymous against City Librarian Michael Lambert and the Public Library for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to request for public records in a timely and/or complete manner.

The matter was withdrawn by the Complainant prior to the meeting.

6. **File No. 19114:** Complaint filed by Shane Anderies against Tyler Vu and the Public Defender's Office for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.24, 67.25, 67.26, 67.27 and 67.29 by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner. (00:38:04 – 02:01:01)

Chair LaHood stated that the purpose of this hearing is to determine if existing records are public.

Member B. Wolfe read the action from the Minutes from the February 5, 2020, SOTF hearing.

Tyler Vu (Public Defenders Office) (Respondent), provided a summary of the department's position. Mr. Vu stated that his office relied on the case of *Coronado Police Offices Ass'n. v. Carroll*, 106 Cal.App. 4<sup>th</sup> 1001 for their position. Mr. Vu stated that the function of the Public Defender's Office is not public in nature, and that it represents private clients. Mr. Vu that the records that the requested records pertaining to items 3-15, are used and maintained for the purposes of defending current and future clients and are therefore not public in nature. Mr. Vu stated the heart of the *Coronado* case is to determine what extent the Public Defender's Office is a public office. Mr. Vu stated that all records in their possession are used to defend private individuals however they are not public in nature. Mr. Vu stated that there are no records of misappropriation of public funds or resources or abuse of authority. Mr. Vu stated that those issues are public in nature, however his office does not have those records. Mr. Vu stated that the records that they do have concern private individuals.

Member B. Wolfe stated that the hard part is understanding the relationship of the Public Defender to City government.

Chair LaHood opined that because the SOTF has no in-camera privilege and it is impossible to make a determination.

Mr. Vu stated that is the heart of the *Coronado* case in that the question of to what extent is the Public Defender's Office is a public agency or private agency. Mr. Vu stated that

the court sided on the private side. Mr. Vu stated that the court's decision was based upon the scanning of files, the data from public sources and sharing data found during the investigation process. Mr. Vu stated that the data was collected from private clients and assembled all materials. Mr. Vu stated that the court opined that the act of assembling data was a private function of the Public Defender's Office and outlined what was private and public. Mr. Vu stated that they provided all public records and complied with *Coronado*. Mr. Vu stated that his office would have difficulty locating misconduct records because they are not located in personnel records.

Member B. Wolfe questioned why it would be difficult to locate records of misconduct in personnel files based on the appeal of *Coronado*. Member B. Wolfe stated that the Appellate Court denied the appeal on the grounds that the database is not a public record. Member B. Wolfe stated that the *Coronado* case stated that the nondisclosure of records out-weighs the public interest. Member B. Wolfe stated that in *Coronado* the file was not in the database and that the San Diego Public Defender was claiming that the requested records were contained in the database. Member B. Wolfe questioned if everything in the database not disclosable or is it disclosable.

Shane Anderies (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Anderies stated that he agreed that the *Coronado* decision was a good decision but that it has nothing to do with his request for records. Mr. Anderies stated that he is not asking for client files. Mr. Anderies stated that he was requesting records pertaining to Thomas Ostly that related to alleged misconduct. Mr. Anderies stated that he was informed that those records are neither public records and do not exist. Mr. Anderies stated that Thomas Ostly was asking for records based on himself. Mr. Anderies stated that if people from the Public Defender's Office filed a Bar complaint against Mr. Ostly alleging misconduct, there should be records regarding the complaint against him.

Member B. Wolfe stated that the SOTF is to not judge the Petitioner but need to determine if the reasons for nondisclosure are correct.

Chair LaHood asked if misconduct files would be attached to personnel files in Human Resources?

Mr. Vu stated that items 4-15 were not clients of the Public Defender's Office. Mr. Vu stated items 5-9 outlined in the August 6, 2019, response from the Public Defender's Office, are public defenders. Mr. Vu stated that Mr. Ostly identified people in items 10, 11, 12, 14, 15 as Public Defenders and not District Attorneys. Mr. Vu stated that the accusations of misconduct against Mr. Ostly came about during the course of representing clients.

**Action: Moved by Member B. Wolfe, seconded by Chair LaHood, to continue the matter pending the advice of legal counsel.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 2 - B. Wolfe, LaHood

Noes: 0 - None

Absent: 1 - Hinze

7. **File No. 19080:** Complaint filed by Paul A. Vander Waerdts against the Dept. of Homelessness and Supportive Housing for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25 for failing to respond to an Immediate Disclosure Request in a timely manner. (02:01:09 – 02:20:19)

Paul Vander Waerdts (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Vander Waerdts stated that he submitted an Immediate Disclosure Request to the Department of Homelessness and Supportive Housing (HSH). Mr. Vander Waerdts stated that he did not receive a response to his request the following business day. Mr. Vander Waerdts requested documentation of HSH to prove compliance with state law and Welfare Institutions Code 8256(b) requiring the Department bring their housing programs into compliance with state law. Mr. Vander Waerdts continues to have discussions with HSH to obtain the requested records he believes they have. Mr. Vander Waerdts asked for a continuance so that he and HSH could resolve the issue.

Abigail Stewart-Kahn (Department of Homelessness and Supportive Housing) (Respondent), provided a summary of the department's position. Ms. Stewart-Kahn stated that HSH received Mr. Vander Waerdts's Immediate Disclosure Request but that it was not deemed an Immediate Disclosure Request because it was not simple or routine and they had to consult with other departments. Ms. Stewart-Kahn stated that HSH provided the documents in a timely manner. Ms. Stewart-Kahn stated that her department would like to undertake another search because there might be other documents responsive to Mr. Vander Waerdts's request.

A question and answer period occurred.

**Action: Moved by Member B. Wolfe, second by Chair LaHood to find that the SOTF has jurisdiction, that the requested records are public and to refer the matter to the SOTF for hearing.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 2 – B. Wolfe, LaHood

Noes: 0 - None

Absent: 1 - Hinze

8. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Compliance and Amendments Committee.** (02:20:31 – 02:31:00)

Member B. Wolfe wanted to revisit file no. 19114, *Anderies v. Public Defender’s Office* to identify questions to direct to the SOTF Deputy City Attorney. Member B. Wolfe questioned whether the items 4-15 outlined in the August 6, 2019, response from the Public Defender’s Office are public and that 4-9 should be taken independently of 10-15. Member B. Wolfe’s second question is what activities and records of the Public Defender are considered public?

Chair LaHood asked what part of a client file including text, random communication and email generated around a bar association complaint that are not specifically part of a record? Chair LaHood also questioned what part of a client file would be considered public record or not?

Member B. Wolfe questioned that if there is other information that pertains to the client, but is not part of the client’s file, does that mean that it may be attached or unattached to a specific client file versus random discussions or communications about misconduct?

Public Comment:

None.

9. **ADJOURNMENT**

There being no further business the meeting was adjourned at 7:08 p.m.

**APPROVED: DRAFT**  
**Compliance and Amendments Committee**  
**Sunshine Ordinance Task Force**

N.B. The Minutes of this meeting set forth all actions taken by the Sunshine Ordinance Task Force on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.