



SUNSHINE ORDINANCE TASK FORCE
Complaint Committee
CITY AND COUNTY OF SAN FRANCISCO
MINUTES

REMOTE MEETING

September 21, 2021
5:30 PM

Remote Regular Meeting

Members: Dean Schmidt (Chair), Laura Stein and Kai Forsley

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

Chair Schmidt called the meeting to order at 5:32 p.m. On the call of the roll Chair Schmidt and Members Stein and Forsley were noted present. A quorum was present.

There were no agenda changes.

2. Approval of the August 17, 2021, Complaint Committee meeting minutes.

Action: Moved by Chair Schmidt, seconded by Member Stein, to continue the matter to the Call of the Chair.

Public Comment:

David Pilpel noted that he intended to provide his notes for his public comment and realized that his comments for Item 6 exceeded the 150-word requirement.

The motion PASSED by the following vote:

Ayes: 3 - Schmidt, Stein, Forsley
Noes: 0 - None

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:

David Pilpel provided comment on AB361 and AB39; two pieces of legislation that extend the virtual teleconference requirement for another two years. Mr. Pilpel encouraged the SOTF to bring this legislation forward to discuss at the October SOTF hearing.

Mark Sullivan provided the following written summary of their public comment:

“Merriam-Webster Freedom of Speech: right to express information, ideas, and opinions free of government restrictions based on content and subject only to reasonable limitations. Definition really series court cases. To see if speech specifically protected, would look for similar rights and reasonable limitations stated in access laws. Bigger rights beginning. Limitations listed later. Brown Act 54950 “... people ...do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” Repeated 67.1 (b) (d) 67.1 (g)...” ... policy body or passive meeting body... right to an open and public process.” Cannot have limitations if you don't acknowledge a person's speech right. Many limitations in Ordinance: 67.4 (a)(3) “ ... need not provide opportunities for comment by members of the public, ... person presiding may, ..., entertain questions comments ...may be relevant ...business of the gathering.””

Anonymous #3 agrees with the prior Public Commentor that freedom of speech is important. Anonymous #3 also noted that the District Attorney is refusing to provide records based on the balancing test. Anonymous #3 stated that he can file his own ethics complaints.

4. **File No. 21082:** Complaint filed by Anonymous against Phil Ginsburg and the Recreation and Parks Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 by failing to respond to a records request in a complete and/or timely manner; 67.25 by failing to respond in a complete and timely manner to an Immediate Disclosure Request; 67.25(d) by failing to provide responsive records on a rolling basis; 67.26 for non-minimum withholding, 67.27 by failing to provide written justification for withholding; 67.29-7(a) by failing to keep and preserve correspondence and records; 67.29-5 by failing to keep and disclose a compliant Prop G calendar; 67.34 for willful failure and official misconduct.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that during the June 8 Board of Supervisors hearing, Phil Ginsburg was questioned. Anonymous stated that after the

hearing he requested Mr. Ginsburg's communications used in preparation of the hearing. Anonymous stated that he did receive some records but nothing having to do with his 67.21(4) records request specifically asking for Mr. Ginsburg's calendar descriptions. Anonymous asked the committee to find a timeliness violation.

Tiffany Lin-Wilson (Parks and Recreation) (Respondent), provided a summary of the department's position. Ms. Lin-Wilson acknowledged that there were timeliness issues and that NextRequest was locked which will be corrected after the meeting. Ms. Lin-Wilson noted that she does not maintain Mr. Ginsburg's calendar.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Stein, seconded by Member Forsley, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing

Public Comment:

Mark Sullivan provided the following written summary of their public comment:

“Withholding Nextrequest from public from the start is a violation Sunshine Ordinance 67.21 (a) “without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person.” CPRA 6253 (b) “each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person” It does not say “promptly” to the requester only. 6253 (d) agency cannot delay or obstruct records inspection. Custodians of records using NextRequest can make a request public to anyone at any time. Now, they do so after fully completing the request. This is an unreasonable delay. No need for anyone to sign in. This Order should be taken care of within Anonymous 3 complaints without someone filing a separate complaint. Go to all city departments.”

David Steinberg noted that Mr. Sullivan is incorrect and that all NextRequests for Public Works are open and public.

The motion PASSED by the following vote:

Ayes: 3 - Stein, Forsley, Schmidt

Noes: 0 - None

5. **File No. 21083:** Complaint filed by Anonymous against Mark Buell and the Recreation and Parks Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 by failing to respond to a records request in a complete and/or

timely manner; 67.25 by failing to respond in a complete and timely manner to an Immediate Disclosure Request; 67.25(d) by failing to provide responsive records on a rolling basis; 67.26 for non-minimum withholding, 67.27 by failing to provide written justification for withholding; 67.29-7(a) by failing to keep and preserve correspondence and records; 67.29-5 by failing to keep and disclose a compliant Prop G calendar; 67.34 for willful failure and official misconduct.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that he hopes that Ms. Lin-Wilson feels better and is pleased that she conceded no contest for the timeliness issue for this item and item 6.

Tiffany Lin-Wilson (Recreation and Parks) (Respondent), provided a summary of the department's position. Ms. Lin-Wilson acknowledged no contest to a violation of timeliness.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Stein, seconded by Member Forsley, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing and requests that the SOTF find violations of CPRA 6253(c) and 6253.3 and Administrative Code Section 67.21(k).

Public Comment:

Mark Sullivan stated that all City agencies should use NextRequest and is happy to hear that more requests like these are open to the public.

The motion PASSED by the following vote:

Ayes: 3 - Stein, Forsley, Schmidt

Noes: 0 - None

6. **File No. 21088:** Complaint filed by Mark Sullivan against the Recreation and Parks Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b), 67.26, 67.27, and 67.29-7(a), and California Government Code 6253(c), by failing to respond to a public records request in a timely and/or complete manner, failing to keep withholding to a minimum, failing to provide justification for withholdings, and failing to maintain and disclose correspondence.

Mark Sullivan (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Sullivan stated that this complaint is for timeliness and wanted to give notice that Recreation and Parks does not comply with Sunshine. Mr. Sullivan stated that Ms. Lin-Wilson did provide over 50 emails.

Tiffany Lin-Wilson (Recreation and Parks) (Respondent), provided a summary of the department's position. Ms. Lin-Wilson acknowledged no contest to a violation of timeliness.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Stein, seconded by Chair Schmidt, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing with a recommendation to find a violation of Administrative Code, Section 67.21 for timeliness and CPRA 6253(c).

Public Comment:

Anonymous #3 stated that this finding is great and that determinations will come faster with the opportunity to use the pilot program for advancing certain complaints forward.

The motion PASSED by the following vote:

Ayes: 3 - Stein, Schmidt, Forsley

Noes: 0 - None

7. **File No. 21069:** Complaint filed by Mark Sullivan against David Steinberg and the Department of Public Works for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.3 by failing to provide definitions, 67.21 by failing respond to a records request in a timely and/or complete manner.

Mark Sullivan (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Sullivan stated that he thought there would be a few records, but there were thousands and he is willing to narrow the request. Mr. Sullivan stated that Mr. Steinberg noted that he did not need to narrow the request. Mr. Sullivan stated that as the custodian Mr. Steinberg should not disregard the original focus of the request.

David Steinberg (Department of Public Works) (Respondent), provided a summary of the department's position. Mr. Steinberg stated that he stands by his response. Mr. Steinberg stated that there should be no violation of 67.25(a) which was suspended by the Mayor's Proclamation. Mr. Steinberg stated that he made several requests of the Petitioner to narrow the request and despite what the Petitioner said he made minimal suggestions. Mr. Steinberg requested that the committee find a ruling of no violation.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Chair Schmidt, seconded by Member Stein, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing and requests the SOTF to find a violation of Administrative Code, Section 67.21 and to amend the complaint and remove claim regarding 67.3.

Public Comment:

Anonymous #3 stated that 67.3 and CPRA 6253 is the same argument that the District Attorney used until they realized that documents need to be provided. Anonymous #3 noted that In *Smith v Fine Arts Museum* the request required review of 250,000 potential records, and SOTF still unanimously ordered production of 7,000 out of 70,000 responsive records in one month as a rolling response, finding that even that was *not* too many records.

The motion PASSED by the following vote:

Ayes: 3 - Schmidt, Stein, Forsley

Noes: 0 - None

8. Announcements, Comments, Questions, and Future Agenda Items by Members of the Complaint Committee.

Chair Schmidt spoke about this Committee changing its agenda packet procedures. Chair Schmidt noted that this should be addressed by the SOTF. Chair Schmidt also noted that he wants to address the complaint backlog.

Public Comment.

Anonymous #3 stated that he is happy to hear that Member Stein has reached out to IT people in the City and is also happy to see that the administrators are using electronic emails.

9. ADJOURNMENT

There being no further business the meeting was adjourned at 7:48 p.m.

APPROVED: 10/19/21

Complaint 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.