



SUNSHINE ORDINANCE TASK FORCE
Complaint Committee
CITY AND COUNTY OF SAN FRANCISCO
MINUTES - DRAFT
REMOTE MEETING

February 15, 2022
5:30 PM

Remote Regular Meeting

Members: Dean Schmidt (Chair), Laura Stein

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

Chair Schmidt called the meeting to order at 5:37 p.m. On the call of the roll Chair Schmidt and Member Stein were noted present. A quorum was present.

The Committee discussed the Agenda and noted that in Item No. 7 (File No. 22005) the Petitioner requested a postponement.

Action: Moved by Member Stein, seconded by Chair Schmidt to allow the continuance of file no. 22005 until the next Complaint Committee meeting.

Public Comment:

Peter Warfield stated that he has no problem with the request to continue the matter.

The motion PASSED by the following vote:

Ayes: 2 - Stein, Schmidt

Noes: 0 - None

Chair Schmidt stated that he was unable to access the link on Item 9 and requested public comment and action on the issue.

Action: Moved by Member Stein, seconded by Chair Schmidt to allow description of the difficulties members of the public experienced trying to access the link to Item 9.

Public Comment:

Peter Warfield, Executive Director Library Users Association, libraryusers2004@yahoo.com, P.O. Box 170544, San Francisco, California, 94117-0544, stated that he also had difficulty linking to Item 9 until this evening.

The motion PASSED by the following vote:

Ayes: 2 - Stein, Schmidt

Noes: 0 - None

2. Approval of the January 18, 2021, Complaint Committee meeting minutes.

Member Stein made suggested changes to the minutes.

Action: Moved by Chair Schmidt, seconded by Member Stein to approve the January 15, 2022, Complaint Committee meeting minutes with amendments.

Public Comment:

Peter Warfield stated that some of the material is prejudicial and will make people think something is untrue of what he said and there is no opportunity to provide a 150-word summary for his case.

Anonymoose #3 wanted to resolve the issue of a previous comment which is nonjudgmental whether it is private or not.

Action: Moved by Chair Schmidt, seconded by Member Stein to amend their motion where the word private is changed to say personal.

Public Comment:

Peter Warfield stated that when people are using their phones to do government business and the whole concept of what constitutes a private or personal email address the issue is how it is being used.

The motion PASSED by the following vote:

Ayes: 2 - Schmidt, Stein

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.

Anonymoose #3 thinks that when a hearing begins at 6:30 it puts a burden on the public and wondered if there was a rule to address housekeeping matters at the beginning and suggested that cases be heard as early as possible.

Peter Warfield suggested that when a person is identified and speaks it is not always clear who you are speaking with and would be a good housekeeping item.

4. **File No. 20059:** Complaint filed by Anonymous against the Department of Public Health for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25 by failing to respond to an Immediate Disclosure request in a timely and complete manner.

Anonymoose (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymoose stated that he made a simple request for Public Health's communications with the Center for Disease Control. Anonymoose stated that there should only be a few records, not thousands. Anonymoose stated that those records should have been provided almost two years ago. Anonymoose stated that the Department of Public Health turned his request into a NextRequest request. Anonymoose stated that one and a half years later Public Health closed the request.

Natalie Pojman (Department of Public Health) (Respondent), provided a summary of the department's position. Ms. Pojman stated that on February 28, 2020, Public Health received an Immediate Disclosure Request asking for records using 13 key words for documents and emails. On March 3, 2020, this request was converted into a standard records request. On March 11, 2020, the Custodian invoked a 10-day extension. On March 30, 2020, over 20,000 emails were identified and that in light of the global pandemic DPH would need to re-review the responsive records and the Custodian emailed the Petitioner asking for search terms to help narrow the search. On October 2020, the Custodian was unable to conduct a diligent search and without that guidance closed the request.

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 violations of CPRA 6253(b) by failing to make records promptly available to any person upon payment of fees covering direct costs of duplication and 6253(c) by failing to provide those records within 10 days from receipt of the request.

Public Comment:

Peter Warfield expressed concern that sections of the Ordinance were not included in the motion and wondered why Anonymoose was not able to participate in the NextRequest process.

The motion PASSED by the following vote:

Ayes: 2 - Stein, Schmidt

Noes: 0 - None

5. **File No. 20053:** Complaint filed by Anonymous against Lt. Kathryn Waaland, Police Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b)(1) by failing to respond to a records request in a complete and timely manner, 67.26 withholding of records.

Anonymoose (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymoose stated that this is another simple case from 2019, pre Covid-19, wherein they requested copies of all records from January 2019 in response to Senate Bill 1421. Anonymoose stated that they never received a single requested record. Anonymoose stated that they received many extensions but never produced a single record.

Lt. Lynn Reilly (Police Department) (Respondent), provided a summary of the department's position. Lt. Reilly stated that on October 16, 2019, the department received a request for copies of all records created from January 2019 in response to Senate Bill 1421. Lt. Reilly stated that in November 2019 Police Legal received complaint 19124 for violations of 67.21 by failing to provide records in a complete and/or timely manner; 67.26 by failing to keep withholding to a minimum and 67.27 by failing to provide a redaction key. Lt. Reilly stated that Anonymoose filed a petition with the Supervisor of Records. Lt. Reilly stated that the department closed the request.

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 the recommendation to find violations of 67.21(b) by failing to respond in a complete and timely manner; 67. 21(c) for not responding to the request in the quantity, form and nature and that this is not a proper use of the rule of reason as described in the Good Government Guide and requests that the Deputy City Attorney review the rule of reason as addressed in the Good Government Guide and determine whether it needs to be considered in light of the California Supreme Court decision in *Bruce v. Gregory*.

Public Comment:

Peter Warfield expressed support for the motion and appreciates that the mover is questioning the Good Government Guide and that the Committee is requesting advice from their Deputy City Attorney.

The motion PASSED by the following vote:

Ayes: 2 - Stein, Schmidt

Noes: 0 - None

6. **File No. 20124:** Complaint filed by Stiliyan Bejanski against Kevin Guy and the Office of Short-Term Rentals for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.24 for failing to provide public information; 67.25 for failing to respond to an Immediate Disclosure Request in a timely manner, 67.26 for failing to keep withholding to a minimum; 67.27 for failing to justify withholding and 67.29 and failing to provide an index of records.

Stiliyan Bejanski (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Bejanski stated that the Office of Short-Term Rentals has failed to provide requested audio recordings in a complete and timely manner. Mr. Bejanski suggested violations of Administrative Code Sections 67.24 by failing to allow access to the requested records and 67.27 by failing to provide justification of records

The respondent was not present for the hearing and did not inform the SOTF Administrator of their absence.

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

Action: Moved by Member Stein, seconded by Chair Schmidt that the SOTF has jurisdiction, that the requested records are public and to find violations of Administrative Code, (Sunshine Ordinance) Sections 67.21 by failing to provide the requested records in a complete and timely manner, and 67.21(e) for failing to send a person most knowledgeable to the hearing; that the agency has admitted the records were tardy and recommends that this matter be scheduled for the Consent calendar.

Public Comment:

Peter Warfield addressed the importance of a consent calendar and to understand how the violation occurred agreed with the Committee to send the matter to the SOTF.

The motion PASSED by the following vote:

Ayes: 2 - Stein, Schmidt

Noes: 0 - None

7. **File No. 22005:** Complaint filed by Marc Norton Against the Department of Public Health for allegedly violating Administrator Code (Sunshine Ordinance), Sections 67.21, by failing to respond to a public records request in a timely and/or complete manner.

See above motion to continue the matter to the Call of the Chair.

8. **File No. 22006:** Complaint filed by Andrew White against the Department of Police Accountability for allegedly violating Administrator Code (Sunshine Ordinance), Sections 67.1, 67.21, 67.24(d), by failing to respond to a public records request in a timely and/or complete manner.

Andrew White (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. White stated on December 20, 2021, he requested a police officer's star number and mediation. Mr. White stated that his request for the star number was denied based on Penal Code 832.7, officer information.

Sara Maunder (Department of Police Accountability) (Respondent), provided a summary of the department's position. Ms. Maunder stated that on December 20, 2021, the office received Mr. White's handwritten letter requesting an officer's star number and mediation. Ms. Maunder said on December 21, 2021, her office responded with a written denial based on Penal Code 832.7. Ms. Maunder stated that Mr. White's request for the star number was treated as a public records request.

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 over the badge number, not the mediation issue, that the requested records are public and to refer the matter to the SOTF for hearing with the recommendation to find a violation of 67.21(b) by failing to produce records in a complete and timely manner.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 2 - Schmidt, Stein

Noes: 0 - None

9. **Further consideration of efficient changes to complaint process.**

Chair Schmidt stated that this item, as outlined in the included memo, has been discussed before in this Committee and that either member could choose to include it in a proposal

to put before the SOTF. Chair Schmidt stated that Member Stein should make that choice.

Member Stein stated that each point in the Ordinance is worthy of discussion and that the process of the overhauling of complaints, like the Bejanski matter, could be a waste of time and should be included in the consent calendar.

Chair Schmidt stated that this process should be put be debated before the SOTF.

Action: Moved by Chair Schmidt, seconded by Member Stein to move forward with all six items of this proposal and recommend that each of the six be considered by the SOTF.

Public Comment:

Mark Sullivan provided the following written public comment. SOTF respondent form requesting information in response to a complaint should be treated as a public record request. Failure to respond to the SOTF request should be a violation of public record laws. Enforcing a response will increase SOTF efficiency in handling complaints.

The motion PASSED by the following vote:

Ayes: 2 - Schmidt, Stein

Noes: 0 - None

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

No actions taken.

11. **ADJOURNMENT.**

There being no further business the meeting was adjourned at 8:56 p.m.

**APPROVED: DRAFT
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.