



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

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

March 27, 2018
5:30 PM – 7:30 PM

Regular Meeting

Members: Leuwam Tesfai (Chair), Fiona Hinze and Bruce Wolfe

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

Chair Tesfai called the meeting to order at 5:30 p.m. On the call of the roll Chair Tesfai and Member Hinze were noted present. There was a quorum.

Member Bruce Wolfe was noted present at 5:50 p.m.

There were no agenda changes.

2. Approval of the February 27, 2018, Complaint Committee meeting minutes.

Member Hinze, seconded by Chair Tesfai, moved to approve the February 27, 2018, meeting minutes.

Public Comment:
None.

The motion PASSED by the following vote:

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

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:

Ann Treboux submitted the following 150 word summary of her public comment:

"Anne Trickey, of the San Francisco Arts Commission spends a lot of time contacting the server of a web site I have. She has been trying to remove the 33 Orders issued by this body against the SFAC. Trickey, made false claims of trademark infringement as a reason for removing copies of the Orders of Determination. This Morning, I met with my web site's administrator. Trickey, will no longer be able to use these Orders to slander and personally attack me.

Ann Trickey and Kate Patterson-Murphy have acted on their own at Sunshine hearings. They have never consulted with the SF City Attorney's Office and cite sections of California Code that don't exist. After Orders issue, they make the same mistake."

The Complaint Committee (Committee) shall hold hearing(s) on File No(s). 17134, 18013, 18009 and 18010 to: 1) determine if the Sunshine Ordinance Task Force (Task Force) has jurisdiction; 2) review the merits of the complaints; and/or 3) issue a report and/or recommendation to the Task Force. The Task Force, upon receipt of the report and/or recommendation from the Committee, shall schedule and conduct a hearing on the merits of the complaint.

4. **File No. 17134:** Complaint filed by Thomas Busse against the San Francisco Public Utilities Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.24(g)(i), 67.27, by failing to respond to a public records request in a timely and/or complete manner. (00:04:00 – 00:20:25)

SOTF Administrator noted that the Committee previously determined that the SOTF has jurisdiction on February 27, 2018.

Thomas Busse (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Busse stated that the requested Emergency Action Plans (EAP) have not been provided and that at a minimum the department should have provided the plans in a redacted format. Mr. Busse provided comments on the importance of the EAPs being made available for evaluation and public safety purposes. Mary Ellen Carroll, San Francisco Public Utilities Commission (SFPUC) (Respondent), provided a summary of the department's position. Ms. Carroll stated that the California Emergency Services Act (California Government Code, Section 8589.5(e) exempts the disclosure of EAPs. However, Ms. Carroll stated that due to recent emergencies the SFPUC is reevaluating their policy regarding the release EAPs in a redacted format and requested a continuance to a future date. Ms. Carroll estimated that the SFPUC would need approximately two weeks to evaluate EAPs and determine if they can be released in a redacted format. Ms. Carroll stated that personnel information, water system operating

procedures, and details of design/engineering would most likely be redacted. Mr. Busse stated that design/engineering information should not be redacted and is needed to evaluate the safety of facilities in question. A question and answer period occurred.

The Committee requested that the SFPUC be prepared to cite legal standards that determine what 'critical information' must be redacted from EAPs.

Member Hinze, seconded by Chair Tesfai, moved to continue the matter to the call of the chair.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 2 – Hinze, Tesfai

Noes: 0 – None

Absent: 1 – B. Wolfe

5. **File No. 18013:** Complaint filed by Thomas Busse against the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21(i), for acting as legal counsel to denying access to a public record. (00:20:25 – 01:10:00)

SOTF Administrator noted that the Committee previously determined that the SOTF has jurisdiction on February 27, 2018.

Thomas Busse (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Busse stated the City Attorney is an elected public official and that providing advice to city departments regarding compliance with the Sunshine Ordinance is a conflict of interest. Mr. Busse stated that the Office of the City Attorney should recuse itself in matters related to advising departments. Mr. Busse stated that there is circumstantial evidence that the Office of the City Attorney has provided advice to the SFPUC as to how to prevent the release of records. Andrea Guzman, Office of the City Attorney (Respondent), provided a summary of the department's position. Ms. Guzman stated that the Charter of the City and County of San Francisco mandates that the City Attorney provides advice to city departments. Therefore, the mandate of the city Charter overrides any requirements listed in Administrative Code (Sunshine Ordinance), Chapter 67. Ms. Guzman stated any advice provided by the Office of the City Attorney to the SFPUC is protected from disclosure pursuant to attorney-client privileges and court precedence listed in the St. Croix decision. A question and answer period occurred.

Chair Tesfai opined that Sunshine Ordinance, Section 67.21(i), allows the Office of the City Attorney to provide advice to city departments regarding how to comply with the Sunshine Ordinance or whether or not a specific action will violate the Sunshine Ordinance. However, the Office of the City Attorney is not allow to provide advice to

city departments regarding methods to intentionally avoid complying with the Sunshine Ordinance.

The Committee opined that documentation has not been provided regarding possible violations of Sunshine Ordinance, Section 67.21(i).

The Committee requested that the Office of the City Attorney provide legal citations as to why they believe the city's Charter takes precedence over Administrative Code (Sunshine Ordinance), Chapter 67, as the Sunshine Ordinance, Section 67.36, states that "the provisions of this Sunshine Ordinance supersedes other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public records access to public information shall apply."

Member Hinze, seconded by Chair Tesfai, moved to refer the matter to the SOTF for hearing with the recommendation to dismiss the complaint without prejudice.

Public Comment:

Ann Treboux comment on her public records request experiences with the Office of the City Attorney and stated that the advice may have been provided verbally.

The motion PASSED by the following vote:

Ayes: 3 – B. Wolfe, Hinze, Tesfai

Noes: 0 – None

6. **File No. 18009:** Complaint filed by Ann Treboux against Dwight Moore and the Office of the City Attorney, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(a)(d)(e), 67.26, 67.29.5 and 67.34, by willfully failing to respond to an Immediate Disclosure Request. (01:10:00 – 01:27:00)

Ann Treboux (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Ms. Treboux stated she has not received the investigative notes or other responsive records. Andrea Guzman, Office of the City Attorney (Respondent), provided a summary of the department's position. Ms. Guzman acknowledged that the response to the public records request was late as Mr. Moore was out of the office. Ms. Guzman stated that out of office messages were provided and a response to the request was provided once the request was processed. Ms. Guzman requested that future public records requests be copied to the general records request email address in order to prevent delay in the future. Ms. Guzman stated that investigative notes are protected from disclosure pursuant to attorney work product rights, attorney client privileges and the California Evidence Code. A question and answer period occurred.

The Committee requested that the SOTF Deputy City Attorney provide legal analysis as to the applicability of the exemption for attorney work product to the request investigatory notes of an investigator.

The Committee also requested the Respondent to provide specificity as to why they believe the attorney's work product exemptions should apply to investigative notes. It is also suggested that samples be provided of what is included in the investigative note that would qualify for work product exemptions.

Member Wolfe, seconded by Member Hinze, moved to find that the SOTF has jurisdiction, determined that the records are public, and referred the matter to the SOTF for hearing.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 – B. Wolfe, Hinze, Tesfai
Noes: 0 – None

7. **File No. 18010:** Complaint filed by Denta Tadesse against the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Chapter 67, by violating the rights to privacy. ((01:27:00 –))

SOTF Administrator Victor Young noted that the Petitioner was not present and did not inform the SOTF of their absence.

Member Hinze, seconded by Member Wolfe, moved to table and conclude the matter due to the lack of appearance of the Petitioner.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 – B. Wolfe, Hinze, Tesfai
Noes: 0 – None

(After the meeting Mr. Tadesse (Petitioner), sent an email to the SOTF stating that he was unable to attend as he was not allowed to enter the building.)

8. **File No. 18015: Administrator's Report: Review of NextRequest Public Records Request Software.**

SOTF Administrator Victor Young provide a summary of his experience in submitting a request for public record through NextRequest.

Public Comment:

Ann Treboux commented on her experiences with Next Request.

Member Hinze, seconded by Member Wolfe, moved to refer the matter to the SOTF for hearing and request that the SOTF Administrator prepare a summary of findings to the SOTF.

9. **Announcements, Comments, Questions, Future Agenda Items, and Pending Calendar by members of the Committee.**

There were no announcements.

Public Comment:

None.

10. **ADJOURNMENT**

There being no further business the meeting was adjourned at 7:28 p.m.

APPROVED: April 24, 2018
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.