



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

November 17, 2015 - 4:00 PM

Special Meeting

Members: Louise Fischer (Chair), Fiona Hinze, Eric Eldon

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

Chair Fischer called the meeting to order at 4:00 p.m. All members were present. There was a quorum.

There were no agenda changes.

The Complaint Committee held a hearing on File Nos. 150129, 15134, 15141 and 15142 to: 1) determine if the Sunshine Ordinance Task Force (SOTF) has Jurisdiction; 2) review the merits of the complaints; and/or 3) issue a report and/or recommendation to the SOTF. The SOTF, upon receipt of the report and/or recommendation from the Complaint Committee, shall: 1) accept the recommendation of the Complaint Committee; or 2) schedule the complaint for a hearing before the SOTF at a future date.

Item Nos. 2 and 3 were called together but heard separately.

- 2. File No. 15129:** Complaint filed by Joel Warne against Freya Horne and the Sheriff's Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to a request for public records in a timely and/or complete manner. (00:02:00 – 00:41:00)

Member Hinze, seconded by Member Eldon, moved to find jurisdiction.

Public Comment: None.

The motion PASSED by the following vote:

Ayes: 3 –Eldon, Hinze, Fischer

Noes: 0 – None

Joel Warne (Complainant) provided a summary of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Freya Horne, Legal Counsel, Sheriff's Department (Respondent), provided a summary of the department's position and stated that the Public Records Act exempts from disclosure records of investigations conducted by local police agencies pursuant to CA Government Code, Section 6254(f) and Administrative Code (Sunshine Ordinance), Section 67.24(d). Mr. Warne stated that his request for records occurred prior to the start of the misconduct investigation. There were no speakers in support of the Respondent. A question and answer period followed. The Complainant provided a rebuttal.

Mr. Warne stated that he is now limiting his request for public records to the following items:

Item 8 – “A copy of any security camera footage, audio recordings, or any other electronic media captured at General Hospital on or between August 8 and 9 2015 from any corridor, room or other space at or in which my person was located or relocated during the course of treatment, e.g. security camera footage that shows me being restrained, bound and forcibly sedated and the events preceding the succeeding that activity”.

The Committee indicated that additional information is needed and requested that the following questions be submitted to the Sunshine Ordinance Task Force's Deputy City Attorney:

- Pursuant to the Sunshine Ordinance, Section 67.24(d) and other relevant regulations, if the public records request was submitted prior to the start of a misconduct investigation does the public records request take precedence over the need to withhold certain records related to the investigation?

Chair Fischer, seconded by Member Hinze, moved to refer the matter to the January 6, 2016, meeting of the Sunshine Ordinance Task Force without recommendations to conduct a hearing on the merits of the complaint.

Public Comment: None.

The motion PASSED by the following vote:

Ayes: 3 - Eldon, Hinze, Fischer

Noes: 0 - None

3. **File No. 15134:** Complaint filed by Joel Warne against the Department of Public Health for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to a request for public records in a timely and/or complete manner. (00:41:00 – 00:51:00)

Member Hinze, seconded by Member Eldon, moved to find jurisdiction.

Public Comment: None.

The motion PASSED by the following vote:

Ayes: 3 - Eldon Hinze, Fischer

Noes: 0 - None

Joel Warne (Complainant) provided a summary of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. The Department of Public Health (DPH) (Respondent) was not present. A request for continuance was verbally submitted by DPH. However, DPH was informed by email that their request for continuance was not granted. A question and answer period followed.

Mr. Warne stated that he is now limiting his request for public records to the following items:

Item 8 – “A copy of any security camera footage, audio recordings, or any other electronic media captured at General Hospital on or between August 8 and 9 2015 from any corridor, room or other space at or in which my person was located or relocated during the course of treatment, e.g. security camera footage that shows me being restrained, bound and forcibly sedated and the events preceding the succeeding that activity”.

Item 14 – Documents regarding the obligation to document informed consent for treatment administered between August 8 and 9, 2015.

Item 15 – Documents serve as justification for assessing patient with expenses at a rate of \$1,807 for (1) two-milliliter ampule of generic 2 mg/2ml benztropine myselate. This may be satisfied by providing a copy of a whole sale pharmaceutical acquisition receipt or invoice.

Item 16 – Documents that serve as justification for assessing patients with expenses at a rate of \$134 for every available dosage for name brand Haldol by method or route administered. This may be satisfied by providing a copy of a whole sale pharmaceutical acquisition receipt or invoice.

Item 17 – Documents that serve as justification for assessing patients with expenses at a rate of \$134 for every available dosage of generic haloperidol by method or route administered. This may be satisfied by providing a copy of a whole sale pharmaceutical acquisition receipt or invoice.

Item 18 - Documents that serve as justification for assessing patients with an expense at a rate of \$134 for every available dosage of name brand Haldol by method or route administered. This may be satisfied by providing a copy of a whole sale pharmaceutical acquisition receipt or invoice.

Mr. Warne indicated that the Department of Public Health informed him that the records could not be provided as it was proprietary information of a third party.

Chair Fischer, seconded by Member Hinze, moved to refer the matter to the January 6, 2016, meeting of the Sunshine Ordinance Task Force to conduct a hearing on the merits of the complaint without recommendation. In addition, the Committee recommends that a violation of Administrative Code (Sunshine Ordinance), Section 67.21(e), be found for failure of the Department of Public Health to attend November 17, 2015, meeting of the Complaint Committee to explain the basis for its decisions to withhold the records requested.

Public Comment: None.

The motion PASSED by the following vote:

Ayes: 3 - Eldon, Hinze, Fischer
Noes: 0 – None

4. **File No. 15141:** Complaint filed by Mike Anderer against John Gavin and the Office of the City Administrator for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7, 67.9, 67.16 and 67.21, by: 1) failing to post an agenda in a timely manner; 2) failing to make available documents related to agenda items; 3) failing to make meeting minutes available in a timely manner; and 4) failing to provide public records in a timely and/or complete manner. (00:51:00 – 01:27:00)

Member Hinze, seconded by Chair Fischer, moved to find jurisdiction.

Public Comment: None.

The motion PASSED by the following vote:

Ayes: 3 -, Eldon, Hinze, Fischer
Noes: 0 - None

Mike Anderer (Complainant) provided a summary of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. John Gavin, City Administrator's Office (Respondent), provided a summary of the department's position. There were no speakers in support of the Respondent. A question and answer period occurred. The Complainant and Respondent provided rebuttals.

The Committee reviewed the individual components of the complaints as follows:

- The Committee believes that a violation of Administrative Code (Sunshine Ordinance), Section 67.7 occurred as the Committee Central Market and Tenderloin Area (CAC) failed to post their October 1, 2015, agenda online 72 hours prior to the meeting. Mr. Gavin indicated that there were technical issues at that time that have been resolved and that he now has access to post directly to the CAC's website.
- The Committee does not believe that there was a violation Sunshine Ordinance, Section 67.9, as Mr. Gavin indicated that he did not receive the supporting documents for agenda items on the CAC October 1, 2015, meeting with enough time to post it online. The documents were provided during the meeting in question. The Committee recommends that Mr. Gavin work with the various stakeholders to indicate that all supporting documents should be provided in a timely manner so that they can be distributed prior to a meeting. In addition, the Committee recommended that the Complainant work with Mr. Gavin to create a method for distribution of documents that are not provided to CAC staff in a timely manner.
- The Committee does not believe that there was a violation of Sunshine Ordinance, Section 67.16, for failure to post the August 5, 2015, and October 1, 2015, CAC minutes in a timely manner. Section 67.16 states that draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. Mr. Anderer indicated that he did not request copies of the draft minutes in question. However, the Committee suggested that draft minutes be posted online for the convenience of the public.
- Mr. Anderer withdrew his complaint regarding the online posting of information regarding the CAC vacancies. Mr. Anderer discovered that the Board of Supervisors and 311 maintains the CAC's vacancy information on their websites.

Member Hinze, seconded by Chair Fischer, moved to refer the matter to the Sunshine Ordinance Task Force with the recommendation to find jurisdiction and that a violation of Administrative Code (Sunshine Ordinance), Section 67.7, occurred for failing to post the October 1, 2015, CAC agenda in a timely manner.

Public Comment:

Sam (Sarah) Dennison, CAC Member, expressed support for the diligent work being performed by John Gavin and stated that the purpose of the complaint was to ensure that similar problems don't occur in the future.

The motion PASSED by the following vote:

Ayes: 3 - Eldon, Hinze, Fischer

Noes: 0 – None

5. **File No. 15142:** Complaint filed by William Clark against Treasurer Jose Cisneros and the Office of the Treasurer /Tax Collector for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to maintain and make public records available for inspections and examination. (01:27:00 – 02:18:00)

Member Pilpel, seconded by Chair Fischer, moved to find jurisdiction.

Public Comment: None.

The motion PASSED by the following vote:

Ayes: 3 - Eldon, Hinze, Fischer

Noes: 0 – None

William Clark (Complainant) provided a summary of the complaint and requested the Task Force to find violations. Mr. Clark stated that California Government Code, Section 27002 and San Francisco Charter, Article VI, Section 6.106, requires the Treasurer to maintain the records in question. There were no speakers in support of the Complainant. Stephanie Profitt, Office of the Treasurer/Tax Collector (Respondent), provided a summary of the department's position and stated that a diligent search was performed and that there were no responsive documents found. In addition, the Respondent stated that the Treasurer/Tax Collector does not collect the Street Artist fees and is therefore not responsible for tracking the fund. The Respondent has previously suggested that the Controller's Office and/or the Arts Commission be contacted for additional information. There were no speakers in support of the Respondent. A question and answer period occurred. The Respondent provided a rebuttal. The Complainant provided a rebuttal.

The Committee requested that the following questions be sent to the Office of the Controller and the City Attorney to clarify the responsibility of the Office of the Treasurer/Tax Collector:

- Is the Treasurer/Tax Collector required to track the receipts and expenditures to and from the San Francisco Arts Commission - Street Artist Program Fund for Fiscal Year 2013/2014?
- If not the Treasurer/Tax Collector, who is required to track the receipts and expenditures of the San Francisco Arts Commission - Street Artist Program Fund for FY 2013/2014?

The Complainant believes that California Government Code, Section 27002, and San Francisco Charter, Article VI, Section 6.106, requires the Treasurer/Tax Collector to maintain a record of receipts and expenditures of the San Francisco Arts Commission - Street Artist Program for FY 2013/2014.

California Government Code 27002

The Treasurer shall keep an account of the receipt and expenditure of all money received or paid out by him or her in books provided for the purpose. He or she shall enter in the books the amount, the time, from whom, and on what account all money was received by

him or her, and the warrant number, the amount, time, and on what account all disbursements were made by him or her.

San Francisco Charter, Section 6.106. TREASURER.

The Treasurer shall be responsible for the collection of taxes, the receipt of all monies collected by the City and County and their safeguard, deposit and investment in accordance with sound financial practices, and shall be responsible for collection of delinquent revenue. The Treasurer shall appoint a Chief Assistant and a Tax Collector who shall serve at the pleasure of the Treasurer.

Member Eldon, seconded by Member Hinze, moved to refer the matter to the Sunshine Ordinance Task Force with the recommendation to find jurisdiction and that no violation of the Administrative Code (Sunshine Ordinance), Chapter 67 occurred.

The Sunshine Ordinance Task Force’s review of the recommendation will be delayed until a response is received regarding questions submitted to the Office of the Controller and the City Attorney.

Public Comment:

Ann Treboux expressed support of the motion, stated that the complaint is unfounded and provided a history of the issue. (Ms. Treboux public comment was interrupted which required the resetting of the timer)
Robert Clark supported the motion and requested an opinion from the City Attorney’s Office.

The motion PASSED by the following vote:

Ayes: 3 - Eldon, Hinze, Fischer
Noes: 0 – None

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

Speakers:
None.

- 7. **Announcements, Comments, Questions, and Future Agenda Items**

None.

- 8. **ADJOURNMENT**

There being no further business, the meeting was adjourned at 6:23 p.m.

APPROVED: 1/6/2016



**Victor Young
Administrator
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.