



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES

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

August 26, 2014 – 4:00 PM

Special Meeting

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

| | | | |
|--------|---------------------------------|---------|----------------------------------|
| Seat 1 | Mark Rumold | Seat 7 | Lee Hepner |
| Seat 2 | Ali Winston | Seat 8 | Todd David |
| Seat 3 | Josh Wolf | Seat 9 | Chris Hyland – Vice Chair |
| Seat 4 | (Vacant) | Seat 10 | Louise Fischer |
| Seat 5 | Allyson Washburn - Chair | Seat 11 | Bruce Oka (Hold Over) |
| Seat 6 | David Pilpel | | |

The meeting was called to order at 4:23 p.m. Members Pilpel, Hepner, David and Fischer were noted absent. There was a quorum.

2. **File No. 13090:** Complaint filed by Ging M. Louie against Frank Lee, Department of Public Works, for allegedly violating Sunshine Ordinance Sections 67.21(b) and 67.25(a) for failure to respond to an Immediate Disclosure Request in a timely and complete manner. (00:02:00 -00:06:00)

Member Hyland, seconded by Member Winston, moved to find jurisdiction of File No. 13090.

Public Comment:
None.

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn
Noes: 0 - None
Absent: 4 - Pilpel, Hepner, David, Fischer

The Complainant did not attend the Meeting. Frank Lee, Department of Public Works (Respondent), stated that the Complainant was provided all the documents that were requested. Victor Young, Administrator of the SOTF, stated that the Complainant was non-responsive to several attempts at communications.

Member Hyland, seconded by Member Winston, moved to table the matter.

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn

Noes: 0 - None

Absent: 4 - Pilpel, Hepner, David, Fischer

3. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. (00:48:00 -00:57:00)

Patrick Monette-Shaw stated that the Ethics Committee dismissed one of his complaints but did not provide any advice.

Paula Datesh stated that the Arts Commission has disobeyed the Task Force's Order of Determinations and requested that her Education, Outreach and Training Committee hearing be moved up to an earlier date.

Thomas Picarello stated that the complainants were at a disadvantage with only 6 members of the Task Force present and stated he has been waiting for over 4 months for his complaint to be heard.

4. **File No. 14062:** Complaint filed by Jonathan Germain against Edgar Lopez, Paul Travis and Frank Lee, Department of Public Works, for allegedly violating Sunshine Ordinance Sections 67.21(b), 67.24, 67.25(a) and 67.34 for failure to respond to a request for public records in a timely and complete manner on April 30, 2014, and an Immediate Disclosure Request on June 9, 2014. (00:06:00 -00:48:00)

Member Hyland, seconded by Member Winston, moved to find jurisdiction of File No. 14062.

Public Comment:

None.

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn

Noes: 0 - None

Absent: 4 - Pilpel, Hepner, David, Fischer

Jonathan Germain (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Frank Lee, Department of Public Works (Respondent), presented an overview of the department's defense. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent declined to provide a rebuttal. The Complainant provided a rebuttal.

Member Wolf, seconded by Member Hyland, moved to find Edgar Lopez, Paul Travis and Frank Lee (DPW), and the Department of Public Works, in violation of Sunshine Ordinance Section 67.21(b), 67.24 (a)(e) and 67.25(a).

Public Comment:

Patrick Monette-Shaw stated that public records requests cannot be subject to questions regarding the purpose of the request.

Charles Grisham stated that a statement of ignorance is not acceptable as a reason for not providing public records and questioned if the City Attorney was consulted.

Richard Knee suggested that Sunshine Ordinance Section 67.26 and 67.27 (withholding kept to a minimum and justification of withholding) is applicable and should be enforced.

Thomas Picarello stated that the employment status of complainants is not a relevant question and expressed concerns regarding the lack of attendance of all the members of the SOTF. Description of proposed violations should be stated.

Member Wolf amended the motion with approval of the second to include violations of Sunshine Ordinance Sections 67.26 and 67.27 regarding Withholding kept to a Minimum and Justification of Withholdings.

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn

Noes: 0 - None

Absent: 4 - Pilpel, Hepner, David, Fischer

Chair Washburn referred the matter to the Compliance and Amendments Committee and requested the Department of Public Works provide all the documents that have been withheld to the Complainant including but not limited to communications among city employees and third parties, written notes and other records regarding the project at 2111-2115 Jennings Street (documents originally requested by the Complainant) within 5 business days of the Order of Determination.

5. **File No. 14069:** Complaint filed by David Eisenberg against Edgar Lopez, Paul Travis and Frank Lee, Department of Public Works, for allegedly violating Sunshine Ordinance Sections 67.21(b), 67.24, 67.25(a) and 67.34 for failure to respond to a request for public records in a timely and complete manner. (00:57:00 -01:28:00)

Member Oka, seconded by Member Rumold, moved to find jurisdiction of File No. 14069.

Public Comment:

None.

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn
Noes: 0 - None
Absent: 4 - Pilpel, Hepner, David, Fischer

Charleene Bizily (Complainant representative) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Frank Lee, Department of Public Works (Respondent), presented an overview of the department's defense. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent declined to provide a rebuttal. The Complainant provided a rebuttal.

Member Hyland, seconded by Member Oka, moved to find Edgar Lopez, Paul Travis and Frank Lee (DPW), and the Department of Public Works, in violation of Sunshine Ordinance Section 67.21(b), 67.24 (a)(e), 67.25(a), 67.26, and 67.27.

Public Comment:

Charles Grisham stated that the Department of Public Works is not concerned with timeframe of responses.

Jonathan Germain expressed concern that the Department of Public Works deflected questions and was not responsive to requests.

Thomas Picarello supports the motion and requested that willful violations be found. In addition, Mr. Picarello objected to grouping complaints for the benefit of departments.

The motion failed by the following vote:

Ayes: 5 - Rumold, Wolf, Oka, Hyland, Washburn
Noes: 1 - Winston
Absent: 4 - Pilpel, Hepner, David, Fischer

Member Winston expressed concerns regarding File Nos. 14062 and 14069 and the motives behind the complaints and disclosure of the requested records.

Member Hyland, seconded by Member Oka, moved to find Edgar Lopez, Paul Travis and Frank Lee (DPW), and the Department of Public Works, in violation of Sunshine Ordinance Section 67.21(b), 67.24 (a)(e), 67.25(a), 67.26, and 67.27.

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn
Noes: 0 - None
Absent: 4 - Pilpel, Hepner, David, Fischer

Chair Washburn referred the matter to the Compliance and Amendments Committee and requested the Department of Public Works provide all the documents that have been withheld to the Complainant including but not limited to communications among city employees and third parties, written notes and other records regarding the project at 2111-2115 Jennings Street (documents originally

requested by the Complainant) within 5 business days of the Order of Determination.

The meeting was recessed from 5:49 p.m. to 6:10 p.m.

File No. 14067: Complaint filed by Charles Grisham against Frank Lee, Department of Public Works, for allegedly violating Sunshine Ordinance Sections 67.21 and 67.34 for failure to respond to a request for public records in a timely and complete manner.
(01:28:00 -02:18:00)

Member Winston, seconded by Member Oka, moved to find jurisdiction of File No. 14067.

Public Comment:
None.

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn
Noes: 0 - None
Absent: 4 - Pilpel, Hepner, David, Fischer

David Eisenberg (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Frank Lee, Department of Public Works (Respondent), presented an overview of the department's defense. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal. The Complainant provided a rebuttal.

Member Rumold, seconded by Member Winston, moved to find Frank Lee (DPW) and the Department of Public Works, in violation of Sunshine Ordinance Sections 67.21(c) for failure to assist the requester in identifying the existence, form and nature of a requested record (index of records).

Public Comment:
Jonathan Germain stated that the Department of Public Works has consistently mishandled Sunshine requests and that willful failure to comply with the Sunshine Ordinance should be found.
Thomas Picarello stated that there should be willful violation of the Sunshine Ordinance due to the persistent failure to comply with requests for public records.

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn
Noes: 0 - None
Absent: 4 - Pilpel, Hepner, David, Fischer

Chair Washburn referred the matter to the Education, Outreach and Training Committee (to be heard after File Nos. 14062 and 14069 are heard by the Compliance and Amendments Committee). The Task Force requests that the DPW provide a presentation to the committee and a copy of the written procedures regarding how DPW processes public records requests. Of particular interest is the training provided to staff regarding assisting the public in finding the requested record.

6. **File No. 14065: Civil Grand Jury Report - Ethics in the City: Promise, Practice or Pretense.** (002:18:00 -)

Discussion occurred regarding the Task Force recommendations regarding the Civil Grand Jury Report.

Member Hyland, seconded by Member Wolf, moved to approve the Task Force's response to the Civil Grand Jury Report as amended and authorized Chair Washburn to finalize the response.

Public Comment:

Thomas Picarello provided various suggestions to the Civil Grand Jury response and suggested that the matter be continued to a future date.

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn

Noes: 0 - None

Absent: 4 - Pilpel, Hepner, David, Fischer

7. **File No. 14073: Proposed amendments to Sunshine Ordinance Section 67.29-5 - Calendars of Certain Officials.**

Chair Washburn and former member Richard Knee summarized the proposal to amend Sunshine Ordinance Section 67.29-5.

Member Hyland, seconded by Member Winston, moved to request that an ordinance be drafted to amend Sunshine Ordinance Section 67.29-5 and that steps be taken to present the ordinance to the Board of Supervisors for approval.

Public Comment:

Thomas Picarello expressed support of the amendment.

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn

Noes: 0 - None

Absent: 4 - Pilpel, Hepner, David, Fischer

8. **Sunshine Ordinance Task Force Meeting Schedule.**

The Task Force discussed the meeting schedule. The Task Force special meetings of November 25, 2014, and December 23, 2014, were cancelled. The Administrator shall poll the members of the Task Force to determine if a quorum will be available for the remainder of the meetings.

9. **Approval of Minutes from the August 6, 2014, Meeting.**

Member Oka, seconded by Member Hyland, moved to approve the August 6, 2014, meeting minutes as amended.

Public Comment:

Thomas Picarello request that his public comment be amended to state the following: "Thomas Picarello agreed with the reorganization of the committees but suggested that the Task Force perform their own analysis and not defer to the opinion of the City Attorney's Office."

The motion passed by the following vote:

Ayes: 6 - Rumold, Winston, Wolf, Oka, Hyland, Washburn

Noes: 0 - None

Absent: 4 - Pilpel, Hepner, David, Fischer

10. **Announcements, Comments, Questions, and Future Agenda Items.**

Member Rumold requested a hearing regarding a review and analysis of policies concerning peace officer hearings and the balance between the public's right to know with peace officer confidentiality required by statute.

11. **ADJOURNMENT**

There being no further business the meeting was adjourned at 7:38 p.m.

APPROVED: 10/1/2014



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.