



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

December 3, 2014 - 4:00 PM

Regular 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	Rishi Chopra	Seat 10	Louise Fischer
Seat 5	Allyson Washburn - Chair	Seat 11	Fiona Hinze
Seat 6	David Pilpel		

Ex-officio (*non-voting*) Clerk of the Board of Supervisors or his or her designee

Ex-officio (*non-voting*) Mayor or his or her designee

The meeting was called to order at 4:08 p.m. Members Winston, Pilpel, Hyland and Hinze were noted absent. There was a quorum.

2. Approval of minutes from the September 7, 2010, January 4, 2011, January 20, 2011, January 25, 2011, February 22, 2011, March 17, 2011, March 22, 2011, April 21, 2011, April 26, 2011, October 28, 2014, and November 5, 2014, meetings.

Chair Washburn proposed clerical corrections to the October 28, 2014, and November 5, 2014, meeting minutes.

Member David, seconded by Member Fischer, moved to approve the September 7, 2010, January 4, 2011, January 20, 2011, January 25, 2011, February 22, 2011, March 17, 2011, March 22, 2011, April 21, 2011, April 26, 2011, October 28, 2014, and November 5, 2014, meeting minutes as amended.

Public Comment:

None.

The motion passed by the following vote:

Ayes: 7 - Rumold, Wolf, Chopra, Hepner, David, Fischer, Washburn

Noes: 0 - None

Absent: 4 - Winston, Pilpel, Hinze, Hyland

3. **File No. 12058:** Complaint filed by Dominic Maionchi against Recreation and Park for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.26 for failing to provide records requested pertaining to berthing contracts between the City and County of San Francisco and slip holders. (00:04:30 - 00:22:00)
(The Sunshine Ordinance Task Force (SOTF) will consider and determine how to proceed with the Ethics Commission's referral of File No. 12058 back to the SOTF and possible re-referral to the Ethics Commission.)

Member Hepner, seconded by Member David, moved to authorize finalizing the referral letter to the Ethics Commission with the addition of the following:

- I. List the dates of the SOTF meetings that Phil Ginsburg, General Manager, Recreation and Park, was informed/notice of the SOTF meetings.
- II. List date the Order of Determination was copied to General Manager Ginsburg.

Deputy City Attorney Nicholas Colla answered questions regarding the matter.

Public Comment:

Thomas Picarello expressed opposition to the motion and requested a copy of the draft letter to the Ethics Commission.

The motion passed by the following vote:

Ayes: 7 - Rumold, Wolf, Chopra, Hepner, David, Fischer, Washburn

Noes: 0 - None

Absent: 4 - Winston, Pilpel, Hinze, Hyland

4. **File No. 14047:** Complaint filed by Thomas Peele against Supervisor Katy Tang, Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(c), 67.25(a), and 67.29-7 for failure to respond to an Immediate Disclosure Request in a timely and complete manner. (00:22:00 - 01:47:00)

Member Rumold, seconded by Member David, moved to find jurisdiction of File No. 14047.**Public Comment:**

None.

The motion passed without objection.

Member Rumold requested to recuse himself from the matter.

Thomas Peele (Complainant) and Dyanna Quizon, Aide to Supervisor Katy Tang (Respondent) expressed no objections to the recusal of Member Rumold and deferred to the Task Force.

Member Rumold, seconded by member David, moved to recuse Member Rumold from the matter.

Public Comment:

Richard Knee stated that no second is required and no discussion is necessary.

Allen Grossman stated that with the recusal of Member Rumold the Task Force would be left with the bare minimum of 6 members for quorum and therefore require a unanimous decision. He stated that the burden of proof needs to be shifted to the department.

Thomas Picarello stated that if familiarity with a respondent is due cause for recusal that all Task Force members should recuse themselves due to their relationship to the Board of Supervisors during the appointment process.

The motion failed by the following vote:

Ayes: 2 - Rumold, David

Noes: 5 - Wolf, Chopra, Hepner, Fischer, Washburn

Absent: 4 - Winston, Pilpel, Hinze, Hyland

Thomas Peele (Complainant) provided an overview of the complaint and requested the Task Force to find violations. Geoffrey King and Dr. Derek Kerr spoke in support of the Complainant. Dyanna Quizon, Aide to Supervisor Katy Tang (Respondent) acknowledged that there was a delay in retrieving and responding to the faxed Immediate Disclosure Request and further stated that steps have been taken to prevent future delays. 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.

Deputy City Attorney Colla answered questions regarding the matter.

The Task Force requested details on the steps taken by Supervisor Tang's office to prevent future delays in responding to public records requests.

The Task Force requests additional information regarding the retention of electronic communications by members of the Board of Supervisors and the Clerk of the Board's role in maintaining records. An explanation is requested regarding the testimony and Supervisor Tang's June 4, 2014, response that states "the Supervisors may, but are not required to, keep the emails themselves, if the Clerk is copied on the emails. The Clerk shall make the communication a part of the official record by placing the communication in the file. It is department policy that if a record request is made, the Office of the Clerk of the Board records manager will provide that information to the requester." In addition, the Task Force suggests that Supervisors notify requesters that the Office of the Clerk of the Board may have additional documents not maintained by the Supervisor's office. The Task Force requests that the Office of the Clerk of the Board's records manager

appear at the January 7, 2015, Task Force meeting to provide information regarding the obligation of supervisors to maintain emails in various circumstances.

New evidence was discovered in the form of an email subject to the records request dated May 14, 2014, from Member Wolf to Dyanna Quizon, Aide to Supervisor Tang. The email was not provided to the Complainant and is not in the Clerk's Office.

Member Hepner, seconded by Member David, moved to find Supervisor Katy Tang, Board of Supervisors, in violation of Administrative Code (Sunshine Ordinance), Sections 67.21(c) and 67.25(a) for failure to assist a requester in identifying the existence, form, and nature of any record and directing a request to the proper office or staff person and failure to respond in a timely and complete manner.

Public Comment:

Richard Knee suggested additional violation of Sunshine Ordinance, Section 67.29-7 for failure to maintain the records in a businesslike manner and 67.26 for failure to keep withholding to a minimum.

Jonathan Germain commented on the authority and duty of the city to maintain records.

Thomas Picarello suggested that a willful violation be found and that Supervisor Tang should appear at the meeting to describe her office policy.

The motion passed by the following vote:

Ayes: 6 - Wolf, Chopra, Hepner, David, Fischer, Washburn

Noes: 1 - Rumold

Absent: 4 - Winston, Pilpel, Hinze, Hyland

Member Wolf, seconded by Member Hepner, moved to continue the matter to January 7, 2015, Task Force meeting to consider additional violations of the Sunshine Ordinance (including but not limited to Sunshine Ordinance, Section 67.29.7- Failure to maintain records in a businesslike manner).

The motion passed by the following vote:

Ayes: 7 - Rumold, Wolf, Chopra, Hepner, David, Fischer, Washburn

Noes: 0 - None

Absent: 4 - Winston, Pilpel, Hinze, Hyland

5. **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. (01:47:00 - 01:54:00)

Paula Datesh stated that the Arts Commission's website was down for a week and that the date and time of a meeting was not announced during the meeting.

Richard Knee stated that the Society of Professional Journalist is accepting nomination for the James Madison Award for championing open government and

the First Amendment. The deadline for nominations is January 9, 2015.
Information is available at spjnorcal.org

Allen Grossman commented on the excessive amount of time needed to hear each complaint and stated that the Task Force should not speculate on the issues.

Deputy City Attorney Nicholas Colla disclosed that he has knowledge of the properties referenced in Files No. 14079, 14035, and 14070 due to his other duties with the City Attorney's Office. However, those other duties did not involve the Sunshine Ordinance and there is no conflict of interest.

6. **File No. 14079:** Complaint filed by David Eisenberg against David Curto and Trent Rhorer, Human Services Agency, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25 for failure to adequately respond to a request for public records in a timely manner. (01:54:00 - 02:44:00)

Member David, seconded by Member Hepner, moved to find jurisdiction of File No. 14079.

The Human Services Agency contested jurisdiction. Diana Christensen and David Curto, Human Services Agency (Respondent), stated that the requested document was provided by the City Attorney's Office due to a pending lawsuit. The City Attorney's Office was therefore responsible for determining what documents to release.

Deputy City Attorney Nicholas Colla commented on jurisdiction.

Public Comment:

Thomas Picarello commented on jurisdiction.

The motion passed without objection.

David Eisenberg (Complainant) provided an overview of the complaint and requested the Task Force to find violations. Jonathan Germain spoke in support of the Complainant. Diana Christensen and David Curto, Human Services Agency (Respondent) provided a summary of the department's defense. Due to a pending lawsuit regarding the subject property the Human Services Agency deferred decisions of what records to release to the City Attorney's Office. In addition, due to technical difficulty and the migration to a new email server, certain emails have been lost and cannot be retrieved at this time. 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.

Deputy City Attorney Colla answered questions regarding the matter.

Public Comment:

Allen Grossman stated that the Task Force cannot ask what a requester intends to do with the requested records.

Female Speaker stated that pending lawsuits should not be a factor in determining what documents should be released and suggested that public comment should be taken at the beginning of an item.

Due to the lack of a motion the Task Force found no violation and concluded matter.

The meeting was recessed from 6:55 p.m. to 7:05 p.m.

7. **File No. 14035:** Complaint filed by Jonathan Germain and Alka Joshi against Trent Rhorer and David Curto, Human Services Agency, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, and 67.34 for failure to adequately respond to a request for public records in a timely manner. (03:33:00 - 04:15:00)

Member David, seconded by Member Hepner, moved to find jurisdiction of File No. 14035.

Public Comment:

None.

The motion passed without objection.

Jonathan Germain and Alka Joshi (Complainant) provided an overview of the complaint and requested the Task Force to find violations for failure to provide records related to an informal bid for architectural services. There were no speakers in support of the Complainant. Diana Christensen and David Curto, Human Services Agency (Respondent) provided a summary of the department's defense. Mr. Curto stated that the proposed contract has not progressed to the bidding stages and that any information provided by potential contractors is informational and/or was unsolicited. Therefore the requested records do not exist. In addition, due to technical difficulty and the migration to a new email server, certain emails have been lost and cannot be retrieved at this time. 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 Hepner, seconded by Member Wolf, moved to find Trent Rhorer, David Curto, and the Human Services Agency in violation of Administrative Code (Sunshine Ordinance), Sections 67.21(b) for failure to respond in a timely and complete manner to a public records request.

Public Comment:

David Eisenberg provided various comments.

The motion failed by the following vote:

Ayes: 5 - Rumold, Wolf, Chopra, Hepner, Washburn

Noes: 2 - David, Fischer

Absent: 4 - Winston, Pilpel, Hinze, Hyland

There being no further motions, the Task Force found no violation and concluded the matter.

8. **File No. 14070:** Complaint filed by Jonathan Germain against David Curto and Trent Rhorer, Human Services Agency for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, 67.29-7, and 67.34 for failure to adequately respond to a request for public records in a timely manner. (04:15:00 - 04:41:00)

Member Hepner, seconded by Member David, moved to find jurisdiction of File No. 14070.

Public Comment:

None.

The motion passed without objection.

Jonathan Germain (Complainant) provided an overview of the complaint and requested the Task Force to find violations for failure to provide various records. There were no speakers in support of the Complainant. Diana Christensen and David Curto, Human Services Agency (Respondent), provided a summary of the department's defense. Mr. Curto stated that due to technical difficulty and the migration to a new email server, certain emails have been lost and cannot be retrieved at this time. 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 Wolf, seconded by Member Hepner, moved to find Trent Rhorer, David Curto, and the Human Services Agency in violation of Administrative Code (Sunshine Ordinance), Sections 67.29-7 for failure to maintain and preserve records.

Public Comment:

Alka Joshi provided various comments regarding the request for documents and stated that the neighborhood will not stand for project approval without neighborhood comment.

David Eisenberg provided various comments to support the allegation that the Human Services Agency was trying to approve the project without public input.

The motion failed by the following vote:

Ayes: 5 - Rumold, Wolf, Chopra, Hepner, Washburn

Noes: 2 - David, Fischer

Absent: 4 - Winston, Pilpel, Hinze, Hyland

There being no further motions, the Task Force found no violation and concluded the matter.

9. **File No. 14101:** Complaint filed by the San Francisco Urban Forest Coalition, against Tom C. Hui, Director, Department of Building Inspection, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, 67.26, and 67.27 for failure to adequately respond to requests for public records and failure to justify the withholding of records relevant to the request. (02:44:00 - 03:33:00)

Member David, seconded by Member Hepner, moved to find jurisdiction of File No. 140101.

Public Comment:
None.

The motion passed without objection.

Allen Grossman (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. William Strawn, Commission Director, Department of Building Inspection (Respondent) provided a summary of the department's defense. Mr. Strawn stated that the new database system is still under construction and the requested sample reports are not yet available for distribution. 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 Chopra, seconded by Member Wolf, moved to find Director Tom C. Hui and the Department of Building Inspection in violation of Administrative Code (Sunshine Ordinance), Section 67.21(b) for failure to respond to a public records request in a timely and complete manner.

Public Comment:
None.

The motion passed by the following vote:

Ayes: 7 - Rumold, Wolf, Chopra, Hepner, David, Fischer, Washburn
Noes: 0 - None
Absent: 4 - Winston, Pilpel, Hinze, Hyland

Member Chopra, seconded by Member Hepner, moved to find Director Tom C. Hui and the Department of Building Inspection in violation of Administrative Code (Sunshine Ordinance), Section 67.21(c) for failure to assist a requester in identifying the existence, form, and nature of any record and directing a request to the proper office or staff person.

Public Comment:
None.

The motion failed by the following vote:

Ayes: 3 - Chopra, Hepner, Washburn
Noes: 4 - Rumold, Wolf, David, Fischer
Absent: 4 - Winston, Pilpel, Hinze, Hyland

The Task Force Administrator noted that the complaint is still open and that upon further investigation additional violations may be found.

Chair Washburn referred the matter to the Compliance and Amendments Committee to monitor implementation of the new computer database and provision of the requested sample documents/screenshots/interface (mockup) requested by the Complainant. The Task Force also requests a timeline for the implementation of the new computer database.

10. Sunshine Ordinance Task Force Meeting Schedule, Committee Assignments and Complaint Committee Procedure. (04:41:00 - 04:53:00)

Victor Young, Task Force Administrator, provided a summary of the 2015 meeting schedule and Complaint Committee Procedure.

The Task Force discussed and finalized the 2015 meeting schedule and assignments.

Public Comment:
None.

11. Administrator's Report.

Victor Young, Task Force Administrator, provided a summary of the Administrator's Report.

Public Comment:
None.

12. Announcements, Comments, Questions, and Future Agenda Items.

Deputy City Attorney Nicholas Colla's report on pending court cases will be scheduled for the next meeting of the Task Force.

Member Rumold expressed his disappointment in the Task Force for denying his recusal request and forcing him to participate in a matter. Member Rumold opined that it is an absence of professional courtesy.

Member Wolf stated that a recusal is the equivalent of a "no" vote due to the voting requirements and that the issue should be further discussed. In addition, Member Wolf stated that the majority of the complaints heard today were related to technical and information technology issues. Member Wolf opined that an advisory committee should be convened to address the various technical issues.

Public Comment:
None.

13. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:25 p.m.

APPROVED: January 7, 2015



**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.