

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

December 5, 2011

DATE THE DECISION ISSUED

November 29, 2011

JASON GRANT GARZA v DEPARTMENT OF PUBLIC HEALTH (CASE NO.11081)

FACTS OF THE CASE

Jason Grant Garza ("Complainant") alleges that the San Francisco Department of Public Health ("DPH") violated the Sunshine Ordinance by failing to provide documents responsive to his Immediate Disclosure Request dated October 4, 2011.

COMPLAINT FILED

On October 6, 2011, Mr. Garza filed his complaint against DPH.

HEARING ON THE COMPLAINT

On November 29, 2011, Complainant presented his case to the Task Force. Eileen Shields, DPH Public Information Officer, and Chona Peralta, DPH Compliance Manager, represented DPH.

Mr. Garza told the Task Force his case is about a request for documents, emails, correspondence, logs, and notes regarding denial of services at the Tom Waddell Health Center clinic on two occasions.

He said he made an Immediate Disclosure Request for the following from DPH:

- (1) A copy of his medical records from his visits to the clinic in June 2010 and August 2011;
- (2) A copy of his signed Health Insurance Portability and Accountability Act ("HIPPA") form releasing his clinic health care information from San Francisco General to the Haight Ashbury Free Clinic;
- (3) Documentation provided to state and federal regulatory agencies noticing an investigation and finding of a HIPPA violation against San Francisco General;
- (4) Information on how to file a complaint against clinic security staff, and
- (5) All notes and reports relating to the denials that the clinic sent to Chona Peralta to "create a false misleading representation."

Mr. Garza said he did not receive the requested information. He said he believes he is not

required to sign a HIPPA release form to receive copies of his own medical records because the HIPPA law was meant to allow an individual to control review of his own records by third parties rather than restrict an individual's access to his or her own records. In addition, he said, the Task Force concluded in previous cases that he was not required to sign the HIPPA release to receive his own records.

Eileen Shields, DPH Public Information Officer, told the Task Force the first three of five parts of the request are the same as those in a case that was previously heard where no Sunshine Ordinance violation was found. She said DPH requires the signature of the client to release medical records pursuant to HIPPA requirements. She said Mr. Garza refuses to sign the release.

Chona Peralta, DPH Compliance Manager, said DPH would release the medical records requested in part one when Mr. Garza signed a release pursuant to HIPPA requirements. She said she received emails from Mr. Garza regarding the denial of services at the clinic and then explained the situation to the medical director of the clinic. The medical director, she said, conducted an investigation and found that Mr. Garza was offered services. During the first clinic visit, she said, he was referred to a social worker to discuss applying for benefits. Ms. Peralta said when the social worker arrived, Mr. Garza had left. On the second occasion, Mr. Garza and his companion were escorted out of the clinic by security personnel for not complying with staff's request to stop videotaping in the clinic. Mr. Garza, she said, was offered a chance to speak to a social worker but he failed to attend the appointment.

On questioning, Ms. Shields said Mr. Garza was sent the signed HIPPA release form requested in part two on September 30. Mr. Garza said he had received a release form signed in 2006 but no release forms signed in 2010 and 2011. Ms. Shields admitted DPH has only the form from 2006.

Ms. Shields said the documents regarding the HIPPA notice of investigation and violation requested in part three were previously provided to Mr. Garza after the hearing in August. She said DPH did not respond to part four of the request asking for information on filing a complaint against clinic security personnel. She told the Task Force security was provided by the Sheriff's Department, and Mr. Garza would need to contact that department to file a complaint against a deputy. She said there were no documents responsive to part five of the request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the statements of complainant and respondent and the email exchanges provided as supporting documentation, the Task Force concluded additional research was required regarding the interpretation of HIPPA release requirements to an individual's own medical records based on state and local open government laws. The Task Force was concerned about the medical provider's right to adequately document release of protected public information.

The Task Force further concluded that parts two and five of the request had been satisfied. Both parties agreed DPH released the 2006 HIPPA release form requested in part two, and

DPH admitted that form was the only one in its possession. Respondents stated no documents were responsive to part five of the request.

Based on respondents' own admissions, the Task Force found that DPH failed to provide the records and information requested in parts three and four. Although respondents claimed DPH previously provided Mr. Garza with the same documents requested in part three, the Task Force concluded DPH was required to provide the documents as requested under this new and separate request. In addition, DPH failed to direct Mr. Garza to the Sheriff's Department for information on filing a complaint against a deputy as requested in part five.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that DPH violated Sunshine Ordinance Sections 67.25(a) for failure to respond to an Immediate Disclosure request in a timely manner and 67.27 for not providing justification for withholding the information by not responding to parts three and four of Complainant's public information request. The Task Force further finds that DPH violated Sunshine Ordinance Section 67.21(c) for failing to assist the requestor by not directing Complainant to the Sheriff's department for further assistance.

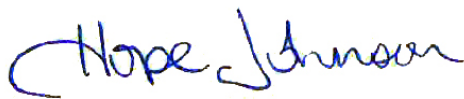
DPH shall release the records and information requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, December 13, at 4:00 p.m. in Room 406 at City Hall. The Committee will review compliance with this Order. In addition, the Committee will conduct research on HIPPA requirements to resolve ongoing issues related to part one of the request for medical records. An expert presentation may be conducted at the December 13, 2011 meeting or at a future meeting as agreed upon by the Committee.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011, by the following vote: (Johnson/Washburn)

Ayes: Snyder, Knee, Washburn, Wolfe, West, Johnson

Excused: Costa

Absent: Cauthen, Manneh, Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Jason Grant Garza, Complainant
Eileen Shields, Respondent
Chona Peralta, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.