

**SUNSHINE ORDINANCE
TASK FORCE**



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September 15, 2010
(Revised)

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Referral of Willful Violation of the Sunshine Ordinance

This is a referral from the August 28, 2010, hearing of the Sunshine Ordinance Task Force (“Task Force” or “SOTF”) against a Department of Public Health (“DPH”) employee for willfully violating the Sunshine Ordinance. The referral is made pursuant to Sunshine Ordinance Section 67.30(c).

On July 9, 2010, Jason Grant Garza filed a complaint with the Task Force alleging that DPH, through Eileen Shields, failed to respond to an Immediate Disclosure Request.

DPH was informed of the complaint and was asked to provide a response within five business days. The complainant and respondent were also informed that a hearing on the matter had been set for the Task Force’s regular meeting of August 24, 2010.

On August 9, 2010, by email, Ms. Shields informed the Task Force that she was submitting a statement in lieu of sending a representative to the hearing because of “the narrow parameters of (DPH’s) ability to respond to this complaint, and Mr. Garza’s history of rude and hostile behavior towards me and other DPH staff.”

Mr. Garza presented his claim to the Task Force at the hearing on August 24, 2010. DPH was not represented. No one in the audience presented facts and evidence in support of the respondent.

By not sending a knowledgeable representative to the hearing, DPH violated Section 67.21(e) of the Ordinance, which states: “an authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.”

The Task Force found that the expressed safety concerns did not excuse DPH’s failure to send a representative in light of the fact that DPH could have but did not request the

presence of security personnel and/or send an alternate representative(s) to the Task Force hearing.

The Task Force found that the DPH through Ms. Shields, willfully violated Section 67.21(e). This request and referral are made under Section 67.30(c) of the Sunshine Ordinance, whereby the Task Force shall make referrals to a municipal office with enforcement power under this Ordinance whenever it concludes that any person has violated any provision of this Ordinance.

Attached is a copy of Ms. Shields' August 9, 2010, email to the Task Force.

If you need any further information, including the audio recording of the meeting referenced above, please feel free to contact us, or the Task Force Administrator at (415) 554-7724.



Richard Knee, Chair
Sunshine Ordinance Task Force



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

cc: Jason Grant Garza, complainant
Eileen Shields, respondent
Mitchell H. Katz, Director of Public Health
Jerry Threet, Deputy City Attorney
Jana Clark, Deputy City Attorney

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



Eileen Shields/DPH/SFGOV

08/09/2010 09:22 AM

To SOTF/SOTF/SFGOV@SFGOV

cc

bcc

Subject Re: Sunshine Complaint Received: #10038_Jason Grant
Garza vs Dept of Public Health

History: This message has been forwarded.

Dear Sunshine Task Force:

I have reviewed Mr. Garza's complaint a number of times in an effort to understand the nature of his SOTF complaint and exactly what records this Department is allegedly denying him. As I understand the public records aspect of Mr. Garza's e-mail, the complainant alleges that DPH is refusing to provide him with copies of documents/records relating to a problem accessing health care services at Tom Waddell Health Center. Because any engagement on behalf of an individual with a DPH clinic is, by definition a medical matter, then any records that were created as a result of his visiting the clinic are confidential and require a federally-approved form for release.

In response to his request following what he describes as a failure to get emergency services at Tom Waddell Health Center, I sent Mr. Garza a form that the Health Insurance Portability and Accountability Act (HIPAA) mandates we use before releasing any protected health information. Mr. Garza refused to sign this. In the absence of his refusal, the Department cannot legally release the records.

Explained another way: The Department can no more release Mr. Garza's medical records though the Sunshine Ordinance than if any other member of the public asked to obtain those records. This violates HIPAA standards.

If records were created by the Sheriff's Department, then those records are maintained by that agency and not by DPH.

Finally, in respect to Mr. Garza's complaint that he was denied membership into Healthy San Francisco, the eligibility workers determined that Mr. Garza already has medical coverage and therefore does not qualify for the program. Beyond that, I cannot comment on his history of medical care as these records are protected, confidential information and I have no knowledge of them. I also do not believe this is a Sunshine Ordinance issue.

Given the narrow parameters of this Department's ability to respond to this complaint, and Mr. Garza's history of rude and hostile behavior towards me and other DPH staff, I submit this statement in lieu of sending a representative to the August hearing.

