

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
September 15, 2016**

DATE ISSUED
August 3, 2016

CASE TITLE – Nick Pasquariello v. Mayor Edwin Lee and Steve Kawa, Office of the Mayor (File No. 16023)

FACTS OF THE CASE

On February 17, 2016, Nick Pasquariello (Complainant) filed a complaint alleging that the Mayor Edwin Lee and Steve Kawa, Office of the Mayor (Respondent), violated Administrative Code (Sunshine Ordinance), Section 67.25 by failing to respond to an immediate Disclosure Request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On June 21, 2016, the Compliance and Amendments Committee (Committee) heard the matter.

Nick Pasquariello (Complainant) provided a summary of the complaint and requested the Task Force to find violations. Mr. Pasquariello stated that his request was directed only to Mayor Edwin Lee and Chief of Staff Steve Kawa and not the entire Office of the Mayor. There were no speakers in support of the Complainant. Carl Nicita, Office of the Mayor (Respondent), provided a summary of the department's position. Mr. Nicita stated an extension of time to respond to the Immediate Disclosure Request was invoked and that a response to Mr. Pasquariello's request from the entire Office of the Mayor was provided in a timely manner. There were no speakers in support of the Respondent. A question and answer period followed. The Complainant and Respondent were allowed to provide rebuttals.

Upon review of the complaint the Committee unanimously agreed that the request or records was directed to Mayor Edwin Lee and Chief of Staff Steve Kawa and not the entirety of the Office of the Mayor. While the provision of records from the entirety of the Office of the Mayor was most likely provided in the abundance of caution to ensure that all records were provided, it was not directly responsive to the request and had the effect of inundating the Complainant with unresponsive documents.

The Committee disagreed with the Respondent's decision to not treat the request as appropriately filed as an Immediate Disclosure Request. Pursuant to Administrative Code, Section 67.25 (b), an extension of time (10 days) may be warranted due to the

voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department. However, there are no provisions that allows the Respondent to discount the validity of an Immediate Disclosure Request and apply a 10 day response time. In addition, the Committee does not believe that circumstances/qualifying factors that allow for the extension of time to respond to an Immediate Disclosure Request were met.

On August 3, 2016, the Sunshine Ordinance Task Force (Task Force) reviewed the recommendation of the Committee.

Nick Pasquariello (Complainant) provided an overview of the complaint and requested the Task Force to find violations. Kirsten Macaulay, Office of the Mayor (Respondent), provided a summary of the department's position and stated that Mr. Pasquariello was verbally informed that additional time was needed to responded to his request and that all records have been provided.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the Task Force finds that a violation of Administrative Code (Sunshine Ordinance), Sections 67.21 (b) and 67.25, occurred.

DECISION AND ORDER OF DETERMINATION

The Sunshine Ordinance Task Force adopted the Compliance and Amendments Committee recommendation to find jurisdiction and find that that Mayor Edwin Lee and Chief of Staff Steve Kawa, Office of the Mayor, violated Administrative Code (Sunshine Ordinance), Sections 67.21 (b) and 67.25, by failing to respond to a public records request in an appropriate manner and failing to respond to an Immediate Disclosure Request in a timely manner.

The motion PASSED by the following vote:

Ayes: 8 - Eldon, J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, B. Wolfe
Noes: 0 - None
Absent: 1 - Chopra
Excused 1 - Hyland

Bruce Wolfe, Chair
Sunshine Ordinance Task Force



- c. Nicholas Colla, Deputy City Attorney
Nick Pasquariello, Complainant
Mayor Edwin Lee, Respondent
Steve Kawa, Respondent
Kirsten Macaulay, Office of the Mayor
Carl Nicita, Office of the Mayor