

## **San Francisco Sunshine Ordinance Task Force (SOTF)**

### **COMPLAINT PROCEDURES**

This document explains how to bring a complaint to the SOTF, how to present and support your complaint, and the process the SOTF follows to consider and resolve your complaint. The SOTF exists to help the public gain access to public records and meetings. We will work with you to resolve your complaint informally, and if necessary to formally schedule your complaint for a hearing before the full task force.

#### **A. STEP 1: CONTACT SOTF ABOUT RESOLVING YOUR REQUEST**

1. If you believe you have been improperly denied access to public records or public meetings, you may contact the SOTF Administrator to discuss the issue. The Administrator will attempt to resolve the issue by mediating with the appropriate City or County agency. You may contact the Administrator by phone at 415-554-7724, by email at [sotf@sfgov.org](mailto:sotf@sfgov.org) or in person at Sunshine Ordinance Task Force, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683

2. If unable to reach a resolution, the Administrator will advise you of your right to file a petition with the Supervisor of Records (the City Attorney's Office) and to file a formal complaint with the SOTF.

#### **B. STEP 2: FILE A COMPLAINT WITH THE SOTF**

1. If the Administrator is not able to obtain an informal resolution, you may submit a complaint form or letter to the SOTF.

2. Carefully review the recommendations below on how to present your complaint. To present an effective complaint, the SOTF strongly recommends that you include the following:

- The name of the City or County agency, department or governmental body which is the object of your complaint.
- The person(s) who handled your request at that agency (example: John Smith at the Police Department).
- A clear and concise description of what occurred. This description may include what documents were requested, what response was received, the dates of the request and response, and other pertinent information.
- A clear and concise description of how public records and/or public meeting laws were violated. Include references to the relevant sections of the law whenever possible.

For example, if you believe records were not provided in a timely fashion, state that they were not provided within the 10 days required and cite the applicable section of the law if you know it (example: Sunshine Ordinance, Section 67.21(a)).

- Documentation that directly supports or shows that the alleged violations occurred (example: your dated request for information and an agency's dated response). Choose your documentation carefully and avoid supplementary material that does not clearly address whether public records and meetings laws were violated. Good documentation is critical to presenting your case effectively. Please submit only 1 copy of each supporting document, including email exchanges.

- Information on how we can best contact you by email, phone, and surface mail. If you want to remain anonymous, you should list "Anonymous" as your name, use alternate anonymous contact information, and ensure that your submissions do not include information that might reveal your identity. We will not accept the use of alias or alternative names on complaints, and we do not redact or edit submissions. All submissions are public records open to public review. It is your responsibility to protect your confidential personal information.

3. SOTF will work with you to ensure that you present the strongest possible case. However, if your case lacks basic information necessary to make a reasoned determination, we may decline to consider your case.

4. Once we receive your complaint, we will send the named respondent written notice via email of the complaint and a request for response within 5 business days. If a current email address for a respondent is not known, the notice shall be sent to the head of their department or agency, or to the public body of which they are/were a member. Failure to respond to a SOTF complaint or to provide the requested documents may lead to a determination that the City or County agency violated the Sunshine Ordinance.

### **C. SOTF PUBLIC HEARING PROCEDURE**

1A. Priority Handling of Section 67.21(b) Petitions: Petitions that allege violations of S.F. Admin. Code Section 67.21(b) shall be designated for priority handling and immediately assigned upon receipt to a complaints calendar in a committee, to effect compliance with S.F. Admin. Code Section 67.21(e) time requirements. The committee shall be informed of the date of the applicable 45-day deadline mandated by Section 67.21(e). The Petitioner and Respondent shall be required to attend when the Committee reviews the petition.

The Committee shall review all Section 67.21(b) petitions and assign them for hearing before the full Task Force on a hearing date prior to the applicable 45-day limit. The Committee shall review to 1) ascertain if the SOTF has jurisdiction and the records are public and if the complaint is new or duplicates a previous complaint by the same complainant; 2) review the merits of the

complaint; and/or 3) issue a report and/or recommendation to the SOTF. In cases of any Section 67.21(b) allegations the Committee shall submit a proposed determination and, where applicable, a proposed order, to be placed on the next Task Force meeting consent agenda. Any Section 67.21(b) Petition the Committee does not forward to the consent agenda shall be scheduled at the next SOTF meeting. The Committee shall instruct the parties to provide any further information that might inform the full SOTF's determination and order or clarify significant legal issues.

This priority process will not alter the process for deciding other kinds of petitions/complaints as set forth below at 1B.

1B. Committee Hearing Schedule (other than Section 67.21(b) Petitions): At the discretion of the Chair, all other complaints will be referred to the next available Committee to conduct a hearing to 1) determine if the SOTF has jurisdiction and if the complaint is new or duplicates a previous complaint by the same complainant; 2) review the merits of the complaint; and/or 3) issue a report and/or recommendation to the SOTF. The Complainant and Respondent are required to attend the Committee hearing to review the complaint.

2. All members of the SOTF are responsible for being familiar with the complaint issues prior to the committee hearing the SOTF Deputy City Attorney or the SOTF Administrator, may prepare upon request by the SOTF, a memorandum to assist the SOTF in understanding the issues.

3. The Administrator shall advise the complainant and the affected department/agency of the date, time, and location of the Committee and/or Full Task Force meetings at which the complaint will be discussed. The Administrator shall inform both parties of the deadline to submit any supporting documentation. Both parties shall be held to the stated deadline: five working days before the hearing.

4. Upon receipt of the referral/recommendation from its Committees, the SOTF shall conduct a public hearing. Members of the public who attend meetings of the Sunshine Ordinance Task Force are expected to behave responsibly and respectfully. Any member of the Sunshine Ordinance Task Force may call for decorum due to disorderly conduct of meeting participants. Persons who engage in threatening and/or menacing behavior may be asked to leave. This provision supplements the rules and policies adopted by City Hall, the Sheriff's Office, or the Board of Supervisors related to decorum, prohibited conduct or activities, noise, etc. and is not meant to be exhaustive.

5. After hearing all testimonies, the SOTF shall determine if violations of the Sunshine Ordinance have occurred and/or provide other directives as needed. Orders stated at the conclusion of the SOTF complaint hearing are effective immediately and compliance is required within 5 business days of the hearing. The task force will also notify the parties by email of their orders on the business day following the hearing. A memorandum summarizing the

reasoning behind the decision and order may be issued by the Task Force at a later date.

#### 6. Documentation:

To ensure that the SOTF can review documentation prior to meeting, it is requested that supporting documentation be provided at least five working days prior to the hearing date to both the Task Force and the opposing party (Respondent or Complainant). Any documents or other evidence provided less than five days prior to the meeting may not be reviewed or may not be allowed as evidence.

(If documents are provided less than five working days prior to the hearing, the complaint hearing may be continued unless the opposing party agrees to allow the late acceptance of the new evidence. The Task Force reserves the right to determine if any late submission of documents will have an impact on the complaint hearings and to take actions as needed.)

#### 7. Attendance and Requirements for the Complainant and Respondent:

(a) Unless otherwise provided in these procedures the Complainant and the Respondent are required to attend the hearings regarding complaints. However, at the discretion of the SOTF or its Committees, accommodations may be made in response to special circumstances or requests made by the Complainant and/or the Respondent.

(b) If the Complainant fails to appear at a SOTF or Committee hearing regarding their complaint without prior communication the matter may be filed and dismissed without prejudice. Complaints dismissed without prejudice are considered closed and no further actions are to be taken. The Complainant shall be notified of the action and may request that their complaint be reopened in writing if requested within 60 days. The Complainant may also refile the complaint on a future date. The SOTF or its Chairperson shall determine if the complaint shall be reopened.

(c) Complainant may authorize a knowledgeable person to represent them at SOTF hearings. The signed letter authorizing a representative must be submitted with the following information: File No. and statement that the third party is authorized to represent the complainant. The SOTF reserves the right to verify information as needed.

(d) After an initial in-person appearance, the Complainant may authorize the SOTF to proceed with the hearing in absentia on the complaint without the Complainant's presence at the hearing. The only information that will be considered from the Complainant will be the submitted written documents or information provided at prior hearings. Complainant waives their rights to provide testimony if they authorize the SOTF to proceed without their attendance.

## 8. Continuances:

(a) A complainant may waive the 45-day rule and request a continuance. If the request is received five business days in advance of the scheduled hearing it shall be granted. For requests submitted less than five business days in advance or for requests for subsequent continuances, the request may be granted by a simple majority vote of the members present.

(b) If a respondent submits a request for continuance at least five business days in advance, upon agreement of the complainant the continuance shall be granted. If the complainant does not agree to the continuance, the request for continuance is not made within five business days, or the respondent is requesting a subsequent continuance, such continuance shall be granted by a simple majority vote of the members present.

(c) In order to provide determinations in a timely manner the SOTF will schedule complaints for hearing as soon as possible at the discretion of the Chair. If the Complainant is unable or refuses to attend a scheduled hearing on a specific date within 120 days, the SOTF may schedule a hearing to consider taking no further action and to close the file due to inactivity.

(d) It shall be the policy to grant continuances if requested by the Complainant for the first time. The SOTF Chair and their designee is authorized to grant a first-time continuance request at their discretion. Further continuances are at the discretion of the Chair.

## 9. Administrator's Authority to Table/Close Files:

At the discretion of the Task Force Administrator, complaint hearings may be delayed or scheduled before the SOTF for hearing to consider tabling the matter if the Complainant is unresponsive to communication attempts.

After six months have elapsed and at the discretion of the Administrator, the Administrator may inform the Complainant that complaint files will be closed unless they provide confirmation of intent to attend a hearing on a specific date.

The Complainant will be notified of the intent to table/close complaint files and the matter will be scheduled before the SOTF for consideration of tabling/closing the complaint due to inactivity.

## 10. Combining Petitions/Complaints

The Complaint Committee or other Committee authorized to process complaints shall review and determine whether or not to combine complaints for a single hearing prior to scheduling before the Task Force. However, at the Task Force hearing, members may request that certain items/complaints be severed and heard separately. If a complaint is severed at the time of hearing, the parties, with approval of the Task Force, may request a continuance of the severed

item.

The following criteria shall be used to determine if complaints should be combined for hearing purposes:

- Same nucleus of facts
- Same Complainant and Respondent
- Same Complaint and/or Administrative Codes Section in question
- Issues or violations must be within 90 days of submission of the initial complaint

11. Limiting the number of complaints per Petitioner/Complainant to be schedule at each meeting

The SOTF and its Committees shall limit each Petitioner/Complainant to a maximum of two (2) complaints per meeting. The Chair of the SOTF or its Committees may exceed the maximum number of complaints per Petitioner/Complainant per meeting at their discretion.

#### **D. DEPARTMENT TO COMPLY WITH SOTF ORDER**

1. If a public records violation is found, the custodian of records shall be ordered to provide the record to the complainant within five business days after the hearing at which the orders were announced. The Administrator will also send notice of any orders to the complainant and the respondent on the business day following a complaint hearing. The SOTF may also request that the Compliance and Amendments or another SOTF Committee monitor and review whether a department has complied with SOTF's orders.

2. If there is a failure to comply, a SOTF Committee of the SOTF may recommend that the SOTF notify the District Attorney, the California Attorney General, the Board of Supervisors and/or the Ethics Commission, who may take measures they deem necessary to ensure compliance with the Ordinance. A copy of the order shall be included with any such notification.

3. If appropriate, the respondent and complainant shall be sent a notice that the District Attorney, California Attorney General, Board of Supervisors and Ethics Commission have been contacted, and of the complainant's independent right to pursue the issue in court.

#### **E. REQUEST FOR RECONSIDERATION OF TASK FORCE FINDINGS**

1. The petitioner or respondent may submit a request for reconsideration of any SOTF order within 30 days only in cases where new and pertinent information becomes available. The petitioning party must provide the new information, new supporting documents, and a written explanation of why or how this new information should change the SOTF's determination. The petitioning party must also certify that the new information and new supporting documents were not available at the time of the original complaint. The SOTF will accept no more than one

request for reconsideration from each party for any given complaint. A request for reconsideration is not an appeal or a rehearing of the entire case; it addresses only whether the new information is pertinent to the outcome.

2. The SOTF or one of its committees shall consider a request for reconsideration at its next available meeting to determine whether the information and supporting materials are new, and whether they warrant a reconsideration of the outcome of the complaint.

3. The Reconsideration Hearing Procedure:

(a) If the request for reconsideration is granted, we will reopen the complaint and schedule it for the next available hearing before the SOTF in order to consider the new information exclusively.

(b) The SOTF's previous vote to find violation shall be considered rescinded with a vote pending action.

(c) The requester of the reconsideration shall be provided five (5) minutes to provide testimony as to how the new information provided will affect the decision of the SOTF.

(d) The opposing parties will be provided five (5) minutes to provide testimony regarding the new information provided. NOTE: Testimony should be limited to the submitted new information.

(e) The SOTF may perform one of the following actions based upon the new information submitted by the petitioner:

(i) Move to revote on the original motion without changes

(ii) Move to substitute a motion with a different action (f) Accept public comment on the motion

(g) SOTF votes on the motion

(h) If the actions of the SOTF changes, a Revised Order of Determination will be issued. An additional Orders of Determination will not be issued by the SOTF if their decision is unchanged.

## **F. DOCUMENTATION AND INFORMATION REGARDING INDIVIDUAL COMPLAINTS**

The Administrator shall keep a file of all documents and a log of all petitions filed with the SOTF, including the dates of each petition, the department/agency against which it was made, the nature of the complaint and its status. This file shall be in compliance with its records and retention schedule.

## **G. CORRESPONDENCE**

1. Communications and/or written arguments to the SOTF or its individual members regarding open SOTF complaints shall be placed into the complaint file and distributed to complainants, respondents, the public, and members of the SOTF as part of the agenda packet material upon scheduling for hearing.
2. New complaint filings, general communications to the SOTF, and communications in which the SOTF was copied will be logged and listed in Administrator's Report for review at the regularly scheduled meeting of the SOTF.
3. If so requested and at the discretion of the Chair of the SOTF and/or his/her designee, communications not related to an open complaint will be included in the Administrator's Report for the SOTF's review; and/or forwarded to the members of the SOTF.
4. It is the preference of the members of the SOTF to limit forwarded communications as the SOTF cannot discuss requests or take actions outside of a noticed public hearing. Requests for communications to be immediately forwarded to the members of the SOTF must specifically be stated on the request.

#### **H. MISCELLANEOUS**

The Chair of the SOTF and his/her designee has the authority to take actions on any issues not directly addressed by the By-Laws or Complaint Procedures.

#### **Addendum Complaint Procedure Summary**

You may fill out a complaint form or access a form online at [sfgov.org/site/sunshine](http://sfgov.org/site/sunshine), or you may send a letter by U.S. mail or e-mail filing a formal complaint. File the complaint with the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Pl., Room 244, San Francisco, CA 94102-4689; or you may submit it by fax to (415) 554-5163 or e-mail to [sotf@sfgov.org](mailto:sotf@sfgov.org).

The SOTF staff, upon review of the complaint for completeness, shall refer the complaint to the Respondent who has five days to respond to the complaint.

The complaint shall be scheduled for a hearing before the SOTF or its Committee. Both parties shall be notified of the scheduled hearing date.

Additional supporting documents may be submitted but must be received five working days prior to the hearing date in order to be included in the packet material.

At the Committee hearing, the Committee shall: a) determine jurisdiction; b) review the merits of the complaint; and c) refer the matter with recommendations to the SOTF.

At the SOTF hearing, the SOTF will review the recommendation of its Committee and conduct a



hearing on the merits of the complaint.

If the SOTF determines any violations occurred, the custodian will be ordered to comply at the conclusion of the hearing and a written notice provided to all parties by email the following business day. At the discretion of the Chair the matter may be referred to Committee for following up on directives and/or compliance.

If a motion to find violations fails or if no motion is made, no violation is found and the matter is closed and essentially dismissed. The maker of the motion may vote against their own motion but cannot speak against it.

If needed the SOTF can refer the complaint to the Ethics Commission and/or the Board of Supervisor for enforcement proceedings.

For further information, contact the Sunshine Ordinance Task Force Administrator, at (415) 554-7724.