

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

April 5, 2012

DATE THE DECISION ISSUED

March 7, 2012

LIBRARY USERS ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO. 12001)

FACTS OF THE CASE

Complainant Library Users Association alleged that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by improperly redacting contact information on speaker cards responsive to a public records immediate disclosure request made on December 15, 2011.

COMPLAINT FILED

On January 13, 2012, Peter Warfield of the Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against the SFAC alleging violations of Sunshine Ordinance public records provisions.

HEARING ON THE COMPLAINT

On March 7, 2012, Peter Warfield appeared before the Task Force and presented the Library User Association's complaint. Respondent SFAC was represented by Public Information Officer Kate Patterson, who presented SFAC's response.

On December 15, 2011, the Library Users Association requested electronic copies of speaker cards submitted by members of the public at Arts Commission meetings from September through November 2009 and September through December 2011 and at Visual Arts Committee meetings from September through November 2009 and in August 2011. The Library Users Association also requested to inspect the original speaker cards at SFAC's office.

On December 19, 2011, the SFAC secretary produced electronic copies of the existing speaker cards responsive to the request and offered dates for Mr. Warfield to pick up copies of the cards and listen to audio tapes at the SFAC office. When Mr. Warfield inspected the speaker cards on December 20, 2011, he learned that the SFAC had redacted contact information from the cards produced to him the previous day. Mr. Warfield alleged the SFAC had not previously notified the Library Users Association that information had been redacted or provided justification for the redactions.

ORDER OF DETERMINATION

Ms. Patterson stated that the SFAC redacted personal contact information from the speaker cards to protect individuals' rights to privacy pursuant to the California Constitution, Article 1, Section 1. She explained that the City Attorney's Office has advised the SFAC to redact personal contact information. She further explained the SFAC does not want to risk being the subject of a lawsuit for releasing personal information provided by members of the public.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.

The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

In addition, the Task Force found that the SFAC failed to provide the Library Users Association with justification for withholding information at the time the speaker cards were produced.

The Task Force also concluded that the SFAC would benefit the public by placing language on speaker cards that notifies members of the public they are not required to complete a speaker card to speak during a public meeting.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information.

The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Manneh)

Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

ORDER OF DETERMINATION

Absent: 1 - Cauthen
Excused: 2 – Chan, Wolfe
Recused: 0

A handwritten signature in blue ink that reads "Hope Johnson". The signature is written in a cursive, flowing style.

Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Peter Warfield, Library Users Association, Complainant
Kate Patterson, Arts Commission, Respondent
Tom DeCaigny, Director of Cultural Affairs, Arts Commission
Jerry Threet, Deputy City Attorney