

**SUNSHINE ORDINANCE  
TASK FORCE**



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John St. Croix, Executive Director  
Ethics Commission  
25 Van Ness Ave Ste 220  
San Francisco CA 94102

March 30, 2015

Re: Referral to the Ethics Commission – Dominic Maionchi (Complainant) v. Phil Ginsburg, General Manager, Recreation and Park Department (Respondent), for failure to provide Un-redacted copies of records pertaining to waiting lists for slips in the Marina Yacht Harbor. (Task Force File No. 12058)

Dear Executive Director St. Croix,

The Task Force previously referred this matter to the Ethics Commission (Commission) for enforcement by letter dated March 3, 2014. The Commission heard the matter at its April 28, 2014 meeting and referred the matter back to the Task Force “for further factual information.”

By way of background, the Task Force heard the complaint on May 1, 2013. The Complainant alleged that the Recreation and Park Department (Department) violated public records laws by failing to timely respond to his November 22, 2012 public records request and failing to provide un-redacted copies of the requested records pertaining to waiting lists for slips in the Marina Yacht Harbor. The Complainant appeared before the Task Force and presented his claim. Olive Gong, Custodian of Records for the Department, presented the Department’s defense. The issue in this case was whether the Department violated Sunshine Ordinance sections 67.21 and 67.24 and / or California Public Records Act section 6253.

The Task Force found the testimony of the Complainant persuasive and that Sunshine Ordinance section 67.26 was applicable in this case. The Task Force did not find the testimony of the Department persuasive regarding the alleged violation of Sunshine Ordinance section 67.26. An Order of Determination was issued on June 12, 2013.

The Complainant provided an update at the July 16, 2013 Compliance and Amendments Committee meeting. The Complainant stated that the Department had provided the same documents as had been provided in response to the original records request, which does not comply with the Order of Determination. Olive Gong of the Department stated that the California Government Code supports the Department’s decision to redact the documents provided to the Complainant and not disclose others. The committee found noncompliance with the Order of Determination and referred the matter back to the Task Force with recommendation to refer it to the Ethics Commission for enforcement for violating Sunshine Ordinance sections

67.21 (i), 67.26, and 67.34, and for the Chair to draft a letter to the City Attorney stating that the Department's attorney is in violation of Sunshine Ordinance section 67.21 (i).

The Complainant provided an update at the November 6, 2013 Task Force meeting. Olive Gong of the Department presented the Department's defense and stated that the Department is not in violation according to their interpretation and policy not to disclose addresses. The Task Force found the Department in violation of the Sunshine Ordinance as determined in the Order of Determination (sections 67.21 (e), 67.24 (g), and 67.34) and referred the matter to the Ethics Commission for enforcement, specifically naming Phil Ginsburg, General Manager, Recreation and Park Department, responsible.

As stated above, the Task Force referred the matter to the Ethics Commission for enforcement by letter dated March 3, 2014. The Commission heard the matter at its April 28, 2014 meeting and referred the matter back to the Task Force "for further factual information."

The Task Force heard the matter subsequently on September 3, October 1, and November 5, 2014. At the September 3, 2014 meeting the Task Force decided not to hear the matter again on the merits but to consider a new motion to again refer the matter to the Ethics Commission for enforcement with additional factual information as requested. In particular, the attached Findings are intended to provide additional detail to support the Task Force's referral for enforcement. Further, to avoid unnecessary duplication, only new material (agendas, minutes, and other documents) since the Task Force's March 3, 2014 referral is attached here.

It should be noted the Phil Ginsburg, General Manager, Recreation and Park Department, was aware of the proceedings before the Sunshine Ordinance Task Force and that notice of hearings were copied/provided to Mr. Ginsburg regarding the following:

September 23, 2013 - Notice for the October 2, 2013, SOTF meeting transmitted.  
September 26, 2013 - Reminder to Ms. Gong requesting that Mr. Ginsburg appear at the October 2, 2013, SOTF meeting.  
October 2, 2013 - Meeting continued to October 24, 2013 at the request of both parties.  
October 24, 2013 - Notice for the November 6, 2013 SOTF meeting transmitted.  
March 3, 2014 - Copy of the SOTF November 6, 2013, referral to the Ethics Commission.

The motion to refer this matter to the Ethics Commission for enforcement was passed at the November 6, 2013, meeting of the Sunshine Ordinance Task Force by the following vote:

Ayes: 8 – Knee, Washburn, Pilpel, Sims, Hyland, Oka, Fischer, Grant  
Absent: 1 – David

The motion to refer this matter back to the Ethics Commission was passed at the December 3, 2014, meeting of the Sunshine Ordinance Task Force by the following vote:

Ayes: 7 - Rumold, Wolf, Chopra, Hepner, David, Fischer, Washburn

Noes: 0 - None

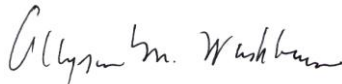
Absent: 4 - Winston, Pilpel, Hinze, Hyland

This referral is made pursuant to Sunshine Ordinance section 67.30 (c), which provides that “the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts.”

In this case, the Task Force finds Phil Ginsburg, General Manager, Recreation and Park Department, in violation of Sunshine Ordinance section 67.26 and further finds the violation a **willful failure** of the department head to discharge his duties under the Sunshine Ordinance pursuant to Sunshine Ordinance section 67.34. Just as the Ethics Commission found John Rahaim, Director, Planning Department, responsible for actions in File No. 13024 on July 28, 2014 we believe that Mr. Ginsburg is responsible here and should be similarly held accountable.

Thank you for your attention to this matter. Documents described above related to this matter are attached along with the Order of Determination. You may contact Task Force Administrator Victor Young at [sotf@sfgov.org](mailto:sotf@sfgov.org) or (415) 554-7724 with any questions.

Sincerely,



Allyson Washburn  
Chair, Sunshine Ordinance Task Force

Enclosures

- c: Sunshine Ordinance Task Force Members
- Nicholas Colla, Deputy City Attorney
- Dominic Maionchi, Complainant
- Olive Gong, Custodian of Records, Recreation and Park Department
- Phil Ginsburg, General Manager, Recreation and Park Department

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Findings in the Matter of Dominic Maionchi (Complainant) v. Phil Ginsburg, General Manager, Recreation and Park Department (Respondent), for failure to provide unredacted copies of records pertaining to waiting lists for slips in the Marina Yacht Harbor (Task Force File No. 12058)

**SUMMARY:** In this matter, Dominic Maionchi (Complainant) is seeking unredacted copies of waiting list applications for certain boat slips in the Marina Yacht Harbor operated by the Recreation and Park Department (Department). The Complainant submitted a request for the subject public records on November 22, 2012. The Department responded on December 3, 2012 and provided copies of the records sought, redacting personal contact information (addresses and telephone numbers). The Complainant was not satisfied with the redacted records and filed a complaint / petition with the Sunshine Ordinance Task Force (Task Force) on December 12, 2012 seeking the unredacted records.

The Task Force heard the matter on May 1, 2013, determined that the Department should have provided unredacted copies of the requested records, ordered the Department to do so within 5 days, and scheduled a follow-up committee hearing for July 16, 2013. The Task Force Order was issued on June 12, 2013. At the July 16, 2013 committee hearing Olive Gong, the Department's representative, indicated that the Department would not comply with the Task Force's Order and would continue to withhold unredacted copies of the subject records, citing advice from its Deputy City Attorney, Francesca Gessner of the Government Team, and its own internal but unwritten department policy. The committee referred the matter back to the full Task Force for further consideration. At its August 7, 2013 meeting the Task Force heard from both parties, discussed the matter again, and continued it to the September 4, 2013 meeting to prepare this referral document with written findings.

**BACKGROUND FACTS:** The Department operates a Marina Yacht Harbor containing boat slips pursuant to Rules and Regulations (Rules) adopted by the Recreation and Park Commission. The Rules were last amended in 2012 following a public hearing and some apparent disagreement over application and interpretation of the previous Rules. The Task Force was informed that the Department considers Rental Agreements for boat slips to be contracts and does not redact personal contact information when disclosing copies of such Rental Agreements, but considers waiting list applications not to be contracts and thus does redact personal contact information when disclosing copies of such waiting list applications. Further, the Department charges a fee for renting space under a Rental Agreement and also charges a fee to get on and stay on the waiting list. The Complainant stated at the May 1, 2013 Task Force hearing that his belief is that the Department did not properly follow the waiting list and allowed at least one person on the waiting list below to obtain a boat slip ahead of those higher up on the waiting list. The Complainant stated that in order to pursue his allegation he needed the personal contact information of those people on the waiting list so that he might contact them to discuss matters.

**ANALYSIS:** It appears that there are 5 pages at issue; i.e. 5 people on the waiting list in question. The Complainant is not contesting timeliness of response and the parties appear to be in agreement as to the facts. The dispute appears to turn on whether the privacy interests in nondisclosure of personal contact information of the waiting list applicants outweigh the public interest in disclosure of that information under these specific facts and circumstances. Based on the Complainant's statements, he appears to be pursuing a matter of public interest, i.e. whether the Department is following its own Rules and offering boat slips to those people on the waiting list in strict order as such slips become available. This would appear to shed light on government operations and not likely result in personal gain on the part of the Complainant, an unwarranted invasion of privacy of people on the waiting list, or some other inappropriate result.

Since successful applicants on the waiting list will obtain a boat slip under a Rental Agreement with the Department, by which time the Department acknowledges that their personal contact information will become public, the privacy interest of the waiting list applicants is at best temporary. Indeed, the only reason that their personal contact information might not be available is that a boat slip was not immediately available, thus requiring the waiting list process itself. The Good Government Guide maintained by the City Attorney's office, in its most recent (2010-11) edition, states that "Ordinarily, the City will not disclose personal contact information in response to a public records request, as such information does not generally shed light on the operations of government." This advice is not absolute, but provides a rebuttable presumption as to whether such personal contact information may be disclosed.

**CONCLUSION:** Under the specific facts and circumstances in this matter, the Department should have provided unredacted copies of the requested records in its initial response to the request, following the Task Force's determination, or at least prior to this referral. Instead, the Department continues to assert that it will not disclose personal contact information on records of this type. The Task Force, however, finds that the information is being sought to shed light on the operations of government, thus defeating the presumption not to disclose. In this case the Task Force finds that the public interest in disclosure outweighs the privacy interest of those persons on the waiting list and that their personal contact information should be provided to the Complainant. Phil Ginsburg, the General Manager of the Department, is ultimately responsible for the decision not to disclose the requested information. Given conflicting advice from the City Attorney and the Task Force, the decision not to disclose might not ordinarily be considered a willful failure to act under the Sunshine Ordinance but merely a failure to act according to, and a violation of, the Ordinance. However, given the prolonged nature of this case and the Department's unwillingness to consider disclosure or any other alternative to nondisclosure the Task Force further finds the violation on Mr. Ginsburg's part to be willful in nature.

A motion to adopt these Findings was passed at the November 6 2013, meeting of the Sunshine Ordinance Task Force by the following vote:

Ayes: 8 – Knee, Washburn, Pilpel, Sims, Hyland, Oka, Fischer, Grant  
Absent: 1 – David