

## San Francisco Sunshine Ordinance Task Force

### PUBLIC COMPLAINT PROCEDURE

Consistent with the language and spirit of the San Francisco Sunshine Ordinance (Ordinance) to provide the most open government possible (see City Administrative Code, Section §67.1), all inferences and evidence shall be viewed in the light most favorable to the petitioner.

Revised on: 4/26/2005; 5/22/2007; 3/25/2008; 4/28/09; 11/05/14; 04/04/17; 01/16/18; 12/5/18; 06/05/19; 9/24/19; 10/02/19

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The Sunshine Ordinance Task Force (SOTF) has an obligation under San Francisco Administrative Code §67.21(e), 67.30(c) and 12L.1-10 to respond to public complaints.

#### A. INQUIRIES IN PERSON OR BY PHONE

It is the goal of the SOTF to help the public gain access to public records and meetings. The staff of the SOTF will therefore work with members of the public to help achieve such access in order to avoid the need for filing complaints with the SOTF.

1. The Administrator shall discuss the request with the member of the public and attempt to mediate the request.
2. If unable to facilitate access to a desired record or to a public meeting, the SOTF staff shall advise the members of the public of his/her right to file a petition with the Supervisor of Records (the City Attorney's Office) and to pursue the SOTF complaint process and shall send the Complainant the SOTF Complaint Procedure.

#### B. FILING A COMPLAINT WITH THE SOTF

1. **How to submit a Complaint:** A letter or complaint form may be submitted to the SOTF via mail, fax, electronic mail (e-mail), or in person.
2. **What to include with the Complaint:** The Sunshine Ordinance Task Force Administrator shall review incoming complaints prior to acceptance to ensure that the following criteria are met at a minimum:
  - Short and concise description of the facts: (i.e. a description of documents requested, date of request, and any information regarding the agency's response).
  - The name of the Department where the request was submitted – as well as any individual working at the agency who the request involves. (*i.e. John Smith at the Police Department. Note: we need to know the actual person involved in the alleged violation, otherwise we list the department head*).
  - A description of how the action or inaction violates the Sunshine Ordinance.
  - Supporting documentation, if applicable, such as a copy of the request to department and or any response from the department.

- Provide at least one reliable method of contacting the requester (i.e. email address, mailing address or telephone number).
- 3. Petitioners/Complainants who do not include the minimum amount of information, as stated in Section B2, required to open a complaint file and are unresponsive to requests (no response or response that does not address the minimum filing requirements) for additional information will be scheduled before the SOTF for consideration of not accepting a submitted petition/complaint.
- 4. **Requirements for the case:** The case must be under the jurisdiction of the SOTF. Additionally, with approval of the SOTF Chair, one must ensure that the complaint is not duplicative of previously filed complaints or subject matter.
- 5. **Public openness and anonymity:** All submissions are considered public records and are open for public review. The SOTF will accept anonymous complaints. However, please note the SOTF will not redact submitted documents, unless mandated by law. It is the responsibility of the parties to ensure that all submissions do not include confidential information.

If a Complainant wishes to remain anonymous, they should list “Anonymous” as their name, use alternate anonymous contact information and insure that submitted documents do not include contact information regarding their identity. The use of alias or alternate names on complaints will not be accepted.

Upon receipt of a complaint, the Complainant shall be given a summary of the Complaint Procedure (see addendum). The responding City department/agency (respondent) shall be sent written notice of the complaint, with a request to respond to charges in the complaint within five business days. Failure to respond to a SOTF complaint and/or failure to provide requested documents may lead to a finding of violation of the Sunshine Ordinance.

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

1. Committee Hearing Schedule: At the discretion of the Chair, all complaints will be referred to the next available Committee to conduct a hearing to 1) determine if the SOTF has jurisdiction; 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 complaints.
2. Prior to the Committee hearing, the SOTF Deputy City Attorney shall prepare a memorandum to assist the SOTF in understanding the issues. All members of the SOTF are responsible for being familiar with the complaint issues prior to the meeting.

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. The Respondent is required to attend the SOTF hearings. However, accommodations can be made due to special circumstance by consensus of the SOTF or its committees. 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. An Order of Determination shall be issued by the Chair, on behalf of the Task Force.
6. Documentation:

To ensure that the SOTF is able to 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 take action 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.

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.

- (c) 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. RECONSIDERATION OF TASK FORCE FINDINGS**

1. Within 30 days of publication/issuance of the Order of Determination, either the petitioner/complainant or respondent may petition the SOTF for reconsideration only if information exists that was not available at the time of the hearing. The petitioning party must present the new information and provide a written explanation as to how the new information may change the SOTF's determination. The SOTF will accept no more than one request for reconsideration from each party for any specific complaint.
2. The SOTF or its committees shall consider petition for reconsideration at its next available meeting and determine if new information exist, is relevant and may change the outcome of the complaint. If a petition for reconsideration is granted, the hearing on the complaint will be reopened and rescheduled for hearing before the SOTF on a future date to consider the new information.
3. Reconsideration Hearing Procedure:
  - a. If a request for reconsideration is granted the complaint will be scheduled for hearing at the next available SOTF meeting.
  - 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 follow 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.

## **E. DEPARTMENT TO COMPLY WITH DETERMINATION OF THE SOTF**

1. The Administrator shall send the Order of Determination to the complainant and the respondent and, as necessary, request a written response which shall be monitored by the SOTF Compliance and Amendments Committee or any Committee recommended by the Chair. 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 issuance of the Order of Determination. The Compliance and Amendments Committee shall review whether there has been compliance with the Order of Determination.

2. If there is a failure to comply, a 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 of Determination shall be included with 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.

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

1. 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 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 action on any issues not directly addressed by the By-Laws or Complaint Procedures.

## **Addendum**

### **Complaint Procedure Summary**

1. 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).
2. 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.
3. The complaint shall be scheduled for a hearing before the SOTF or its Committee. Both parties shall be notified of the scheduled hearing date.
4. 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.
5. 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.
6. At the SOTF hearing, the SOTF will review the recommendation of its Committee and conduct a hearing on the merits of the complaint.
7. If the SOTF finds violations, an Order of Determination shall be issued and provided to all parties. At the discretion of the Chair the matter may be referred to Committee for following up on directives and/or compliance.
8. 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.
9. If needed the SOTF has the ability to refer the complaint to the Ethics Commission and/or the Board of Supervisor for enforcement proceedings.
10. For further information, contact the Sunshine Ordinance Task Force Administrator, at (415) 554-7724.

