

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
May 21, 2019

DATE DECISION ISSUED
April 3, 2019

CASE TITLE – David Tucker v. Office of Labor Standards Enforcement
(File No. 18081)

FACTS OF THE CASE

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 18081: Complaint filed by David Tucker against Bianca Polovina and the Office of Labor Standards Enforcement for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.24(b)(2), by failing to respond to a request for litigation documents in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On November 27, 2018, Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

David Tucker (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Tucker stated that he is seeking a copy of the settlement agreement and related correspondence to an administrative review of the Office of Labor Standards Enforcement of unpaid healthcare benefits owed by the Arch Diocese of San Francisco to Arch Diocese employees. Mr. Tucker stated that Arch Diocese employee Peggy O'Donnell has a right to see all documents to determine that her rights would not be finalized by the judge in a timely manner and wants a copy immediately for review.

Patrick Mulligan, Director of the Office of Labor Standards Enforcement (Respondent), provided a summary of the department's position. Mr. Mulligan stated that the office is claiming investigative privilege in response to the request and the complaint which is provided by California Evidence Code Sections 1040, 1041 and California Government Code Section 6254 and 6276. Mr. Mulligan stated that this particular case is paralleled by a class action lawsuit the terms of which have not settled and require approval of a judge which may be finalized by the first week of December and will be provided upon settlement.

Member Cate opined that there are several legal issues regarding the scope of the investigatory privilege and that whatever happens with the class action settlement changes the legal questions. The Committee requested the City Attorney's Office provide an explanation of the privileges that the Respondent is claiming and how they apply to a contingent settlement agreement.

Member Cate, seconded by Member Martin, moved to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing without recommendation.

On April 3, 2019, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

David Tucker (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Tucker provided the history of the Peggy O'Donnell's complaint against the Arch Diocese of San Francisco, an administrative action in San Francisco Superior Court against the Office of Labor Standards Enforcement (OLSE). Mr. Tucker stated that up until eight months ago, he was receiving documents from Bianca Polovino, of the OLSE on a rolling basis. Mr. Tucker stated as of eight months again he stopped receiving any documents from the OLSE and that there is a settlement agreement before a judge that should be provided.

Pat Mulligan (OLSE) (Respondent), provided a summary of the department's position. Mr. Mulligan stated that this is an administrative complaint and cited California Evidence Code 1040 and 1041 and California Government Codes Sections 6254 and 6276 which speak to investigations and process for civil enforcement. Mr. Mulligan stated that the requested settlement agreement between the Arch Dioceses and the OLSE that they are negotiating is being reviewed by the judge in the class action and cannot be provided until the class action suit is settled and released by the judge.

Member Tesfai opined that the City wants to make certain that restitution is made around laws which have been violated and that the OLSE has an interest in seeing to it that San Francisco laws are followed, which is why payment in this matter is call restitution and not necessarily providing a settlement to the class.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that Office of Labor Standards Enforcement, (Respondent) **DID NOT VIOLATE** Administrative Code (Sunshine Ordinance), Section 67.24(b)(2).

DECISION AND ORDER OF DETERMINATIONS

On April 3, 2019, Member J. Wolf, seconded by Member Hinze, moved to find that Office of Labor Standards Enforcement violated, Administrative Code (Sunshine Ordinance), Section 67.24(b)(2) by failing to make documents available in a complete and/or timely manner.

The motion **FAILED** by the following vote resulting in no violation:

Ayes: 0 - None

Noes: 8 - Yankee, Martin, J. Wolf, Hinze, Tesfai, Cannata, LaHood,
B. Wolfe

Absent: 3 - Cate, Chopra, Hyland



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. David Tucker (Petitioner/Complainant)
Patrick Mulligan, Office of Labor Standards Enforcement (Respondent)