

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
March 28, 2020**

DATE DECISION ISSUED
January 21, 2020

CASE TITLE – Justin Barker v. San Francisco Zoo
(File No. 19092)

FACTS OF THE CASE

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

File No. 19092: Complaint filed by Justin Barker against the San Francisco Zoo for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On October 22, 2019, Information Technology Committee, acting in its capacity to hear petitions/complaints heard the matter.

Justin Barker (Petitioner), provided a summary of the complaint and requested the Committee to find a violation. Mr. Barker stated that on August 8, 2019, he sent a public records request to the San Francisco Zoo. Mr. Barker stated that the Zoo claimed that the request was overly broad and voluminous. Mr. Barker stated that this request is an expanded version of Request No. 19048. Mr. Barker stated that he would like to combine both requests and wanted to know what his options were. Mr. Barker stated that he wants the Zoo to provide the requested records.

The San Francisco Zoo (Respondent), was not present for the hearing and the SOTF Administrator was not provided notification of the absence.

Moved by Member J. Wolf, seconded by Member Hinze, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing.

The Committee referred the matter to the SOTF. On January 21, 2020, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Justin Barker (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Barker stated that on August 17, 2019, the SOTF found the Zoo in violation of the Sunshine Ordinance and an Order of Determination was issued in case no. 19048. Mr. Barker stated once the Order of Determination was issued in that file, he asked the Zoo for the requested records. Mr. Barker stated that he attended the September 24, 2019, Compliance and Amendments Committee hearing regarding 19048 agendized to ensure that he received his records and he reported that he had not. Mr. Barker stated that this is another request for additional records. Mr. Barker stated that he has not received any of his requested records and he wants the Zoo to be held accountable. Mr. Barker stated that the City owns the animals and property and referenced the Lease Agreement provided. Mr. Barker stated that he has made records requests to the Parks and Recreation Department who co-manages the Zoo and they have continually said that he needs to work with the Zoo because Parks and Recreation does not have the records he is seeking. Mr. Barker stated that the City of San Francisco owns the property and all of the animals and the Zoo outsources the management to the San Francisco Zoological Society. Mr. Barker stated that the Zoo is not following the law. Mr. Barker requested that this matter and file no. 19048 be forwarded to the Ethics Commission and the District Attorney.

The Respondent was not present for the hearing.

Chair B. Wolfe opined that there are two things to consider with regard to the relationship the Zoo has with the City. First, is this a 12L issue? Second, is the Zoo under specific contracts under the Sunshine Ordinance? Chair B. Wolfe stated that information such as do the animals get filtered water and what food they are being fed should be in their Lease and Management Agreement. Chair B. Wolfe stated that if you are addressing the 12L issue, that might be beyond the scope of what a 12L might allow and a review of the contract might be what is disclosable.

Vice-Chair J. Wolf opined that if the City owns the animals, there must be a direct link to the public records related to the assets owned by the City and those owned by the Zoo as a nonprofit. Vice-Chair J. Wolf stated that there has to be a budget.

Member Yankee expressed a concern that there is a contract and that the Zoo is not following through on what was agreed in the contract. Member Yankee stated that a communication should be addressed to the City Compliance Office and include a copy of the contract and say that the SOTF found that they are not in compliance with 67.16.2.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the San Francisco Zoo violated Administrative Code (Sunshine Ordinance), Sections 67.21, by failing to respond to a request for public records in a timely and/or complete manner, 67.27 by failing to provided justification for withholding records and referred the matter to the Compliance and Amendments Committee with a request that the City Administrator appear to respond to the provisions of the Lease Agreement relating to the Sunshine Ordinance.

DECISION AND ORDER OF DETERMINATIONS

On January 21, 2020, Action: Moved by Member Hyland, seconded by Vice-Chair J. Wolf, to find that the Zoo violated Administrative Code (Sunshine Ordinance), Sections 67.21, by failing to respond to a request for public records in a timely and/or complete manner, 67.27 by failing to provided justification for withholding records and referred the matter to the Compliance and Amendments Committee with a request that the City Administrator appear to respond to the provisions of the Lease Agreement relating to the Sunshine Ordinance.

Public Comment:

Anonymous stated that he supports the motion and further stated that if a nonprofit is doing things for the City, they should be found in violation of the Sunshine Ordinance.

The motion PASSED by the following vote:

Ayes: 6 - Hyland, J. Wolf, Yankee, Martin, LaHood, B. Wolfe

Noes: 0 - None

Absent: 2 – Tesfai, Hinze



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Justin Barker (Petitioner/Complainant)
Vitus Leung, San Francisco Zoo (Respondent)