

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
January 13, 2021

DATE DECISION ISSUED
October 7, 2020

CASE TITLE – Anonymous v. Police Department
(File No. 19098)

FACTS OF THE CASE

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

Complaint filed by Anonymous against the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.26 and 67.27, by failing to respond to a public records request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On September 15, 2020, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that he sent a records request to the Police Department and they responded on July 15, 2020, asking for a 14-day extension. Anonymous stated that on August 5, 2020, the Police Department sent blank emails and continued to provide documents on a rolling basis. Anonymous stated that on February 19, 2020, the Police Department responded stating that more records would be produced. Anonymous believes that those records were not copies of original records. Anonymous also noted that the Police Department did not provide citations for the redactions in the records provided.

Lt. Andraychak (Police Department) (Respondent), provided a summary of the department's position. Lt. Andraychak stated that Anonymous' request was not simple or routine. In addition to emails, Anonymous asked for Facebook Messenger documents. Lt. Andraychak noted that his department is still processing some emails from the Command staff and due to Covid-19 and riots, some officers were taken away from providing the requested records. Lt. Andraychak also noted that he is not aware of any rulings regarding metadata.

Lt. Andraychak stated that he can ask officers to check their personal email accounts and will provide that information.

The Complaint Committee referred the matter to the SOTF.

On October 7, 2020, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that the Police Department did not comply with his request. Anonymous said SFPD told their employees that they would not have any responsive records if they did not use their personal emails for work purposes, which Anonymous said does not comply with the *City of San Jose v. Superior Court* (2017) case. Anonymous stated that the records they did provide were not copies of originals. Anonymous stated that SFPD did not provide email header metadata and that the new practice of the Police Department is to include references and footnotes. Anonymous noted that the SOTF has held metadata is a public record. Anonymous stated that they did not provide the to and from of the text messages.

Lt. Andrew Cox (Police Department) spoke on behalf of the Respondent and stated that the Respondent was on scene dealing with the untimely death of a Fire Fighter.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the Police Department violated Administrative Code (Sunshine Ordinance), Sections 67.21(b) by failing to provide copies of electronic records by printing and scanning them; 67.21(k) by failing to search for all personally held public records within the scope of *City of San Jose v. Superior Court* (2017); Section 67.26 by withholding partial text message records namely the To and From of each message and also by withholding all email metadata namely email headers, and Section 67.26 by failing to key each redaction with a footnote or other clear reference to a justification.

DECISION AND ORDER OF DETERMINATIONS

On October 7, 2020, the SOTF moved by Member Hyland, seconded by Member LaHood, to find the Police Department in violation of Administrative Code (Sunshine Ordinance), Sections 67.21(b), by failing to provide copies of electronic records by printing and scanning them instead; 67.21(k) by failing to search for all personally held public records within the scope of *City of San Jose v. Superior Court* (2017); Section 67.26 by withholding partial text message records namely the To and From of each message and also by withholding all email metadata namely email headers, and Section 67.26 by failing to key each redaction with a footnote or other clear reference to a justification.

The motion PASSED by the following vote:

Ayes: 7 - Hyland, LaHood, Schmidt, Wong, Yankee, Hinze,
Wolfe
Noes: 0 - None



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Anonymous (Petitioner/Complainant)
Lt. Andrew Cox, Police Department (Respondent)