

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
January 12, 2021

DATE DECISION ISSUED
September 2, 2020

CASE TITLE – Stephen Malloy v. Department of Public Health
File No. 19109

FACTS OF THE CASE

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

File No. 19109: Complaint filed by Stephen Malloy against Dept. of Public Health for violating Administrative Code (Sunshine Ordinance), Sections 67.24, 67.25, 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 July 28, 2020, the Compliance and Amendments Committee acting in its capacity to hear petitions/complaints heard the matter.

Stephen Malloy (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Malloy stated that he originally filed his case in May 2019 and on October 4, 2019, the Dept. of Public Health (DPH) released only 9 emails. Mr. Malloy stated that he provided DPH with a list of all persons who worked on his case and requested their email records. Mr. Malloy stated that he has not received all his requested records. Mr. Malloy opined that Covid-19 is not the problem; that this is a violation of Administrative Code, Section 67.34; the willful failure of DPH to release those requested records.

Veronica Vien (Department of Public Health) (Respondent), provided a summary of the department's position. Ms. Vien stated that the matter was heard in February 2020 and that DPH wants to work with Mr. Malloy. Ms. Vien noted that DPH received Mr. Malloy's list of individuals requesting their emails and asked for a list of search terms. Ms. Vien stated that her department is working to respond to Mr. Malloy's request, however due to Covid-19, technical difficulties and the challenges of working remotely, DPH has been providing limited responses. Ms. Vien noted that 1,000s of emails need to be converted into pdf, reviewed for sensitive information and redacted

Member B. Wolfe stated that this case was heard in October 2019 and wondered why DPH was unable to provide Mr. Malloy his requested records on a rolling basis. Member B. Wolfe noted that he was concerned about timeliness and opined that DPH may be withholding records for another reason. Member B. Wolfe opined that this matter should be referred back to the SOTF to find a violation of Administrative Code, Section 67.34.

Action: Moved by Member B. Wolfe, seconded by Member Hinze, to refer the matter back to the SOTF with the recommendation to find that Department of Public Health Manager Grant Colfax in violation of Administrative Code, Section 67.34, for willful failure and official misconduct for failure to implement the Sunshine Ordinance Task Force Order of Determination.

The Committee referred the matter to the SOTF. On September 2, 2020, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Member LaHood stated that the SOTF found no violation, there has been no progress and that there have been delays and issues beyond Covid-19.

Stephen Malloy (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Malloy referred back to the audio of the Compliance and Amendments Committee hearing in July. Mr. Malloy stated that the City Attorney provided specific instruction to Ms. Vien to stop working on his case which is the reason he does not have his records. Mr. Malloy stated that he is calling for an investigation.

Veronica Vien (Department of Public Health) (Respondent), provided a summary of the department's position. Ms. Vien stated that her department received Mr. Malloy's records request in May 2019 and was able to provide records in October 2019. Ms. Vien opined that some of those challenges are due to Covid-19 and that her department has had limited resources in reviewing records. Ms. Vien has not provided subsequent requested records to Mr. Malloy.

Member Yankee stated that relying on Covid-19 is unacceptable.

Chair B. Wolfe stated that respondent had five months to comply with the records request. Chair B. Wolfe noted there have been additional information and interruptions that the Compliance and Amendments Committee found excessive. Chair B. Wolfe opined that the department head, Mr. Grant Colfax, should have made some contact with the Petitioner and that Mr. Colfax is responsible for not providing the requested records to Mr. Malloy.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the Department of Public Health violated Administrative Code (Sunshine Ordinance), Section 67.34.

DECISION AND ORDER OF DETERMINATIONS

On September 2, 2020, the SOTF moved by Chair B. Wolfe, second by Member Tesfai to find a violation of 67.34 for official misconduct by Grant Colfax and the Department of Public Health and to refer the matter to the Ethics Commission.

The motion PASSED by the following vote:

Ayes: 7 - B. Wolfe, Tesfai, LaHood, Yankee, Hinze, J. Wolf, Hyland

Noes: 0 - None

Absent: 0 - None

A handwritten signature in blue ink, appearing to be 'B. Wolfe', enclosed in a circular scribble.

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- cc. Stephen Malloy (Petitioner/Complainant)
Grant Colfax, Department of Public Health (Respondent)
Veronica Vien, Department of Public Health (Respondent)