

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TTD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

January 12, 2021

DATE DECISION ISSUED

October 7, 2020

**CASE TITLE – Stephen Malloy v. The University of California and the Regents of the
University of California**

(File No. 19138)

FACTS OF THE CASE

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

File No. 19138: Complaint filed by Stephen Malloy against the University of California, Regents of the University of California, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, by failing to respond to a public records request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On February 25, 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 was an employee of the University of California through their Department of Psychiatry and the Department of Public Health. Mr. Malloy stated that the contract submitted as part of his record is signed and is between the University of California, the City and the State and is a standard agreement. Mr. Malloy stated that the contract was signed and awarded on July 24, 2018. Mr. Malloy stated that Appendix G of the contract outlines the agreement that all restrictions and limitations enacted have to be provided. Mr. Malloy stated that he is a protected Veteran, and the University, as a contractor, has to comply with all equal benefits of Mr. Malloy including receipt of records. Mr. Malloy stated that he provided the University a list of employees who fell under Sunshine who have not produced written records. Mr. Malloy stated that his list includes Labor and Employee Relations, Human Resources and the Office of Personnel. Mr. Malloy requested records from those departments and they have not complied. Mr. Malloy stated that he knows those records exist because he has communicated with individuals in those departments. Mr. Malloy stated that the Custodian of Records in the

Chancellors Office has refuse to provide those documents and to let Mr. Malloy see his records in-camera.

The University of California contacted the Administrator on February 25, 2020 to inform them that they would not be present for the hearing.

Member B. Wolfe stated that it is clear that the contract makes University of California under the jurisdiction of the City and County.

Action: Moved by Member B. Wolfe, seconded by Chair LaHood, to find that the SOTF has jurisdiction, that the requested records are public and to refer the matter to the SOTF for hearing. Member B. Wolfe also moved that University of California is a contractor with the City based on the contract presented by the Petitioner and the applicable laws that apply to it.

The 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.

Stephen Malloy (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Malloy stated that in 2018 he asked the University for emails from specific employees and they have not complied. Mr. Malloy stated that in his job he communicated with City agencies daily and he wants those records. Mr. Malloy said that both the Mayor's Office and the City Attorney have given instruction to the University to not provide the requested records. Mr. Malloy stated that every agency that has released records did so because he was a contractor referring to his work with the City and those communications are his records and he should be allowed access. Mr. Malloy stated that in his contract there is a provision that Sunshine should be complied with. Mr. Malloy stated that the Regents violated the SOTF Ordinance. Mr. Malloy stated he was employed as an independent contractor to work exclusively with City employees for the homeless and that the Sobering Center is a Department of Health organization.

Respondent (The Regents of the University of California) (Respondent), provided a written summary of the department's position but was not present for the hearing.

Chair Wolfe stated that the University is an official contractor with the City and that Mr. Malloy pointed out in the contract that Sunshine is applicable. Chair Wolfe noted the letter dated September 4, 2019, from the City Attorney that it is the University's responsibility to hold the City harmless. Chair Wolfe stated that the City admits that a contract exists and affirms that the City provides a sobering center. Chair Wolfe stated that Mr. Malloy noted that in section 40 of the contract Sunshine is part of the contract. Chair Wolfe also noted that section 40 is not necessarily applicable to the release of public records.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the SOTF has no jurisdiction.

DECISION AND ORDER OF DETERMINATIONS

On October 7, 2020, moved by Member Yankee, seconded by Member Wong to find that the SOTF does not have jurisdiction.

The motion PASSED by the following vote:

Ayes: 6 - Yankee, Wong, Schmidt, LaHood, Hinze, Hyland
Noes: 1 - Wolfe

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Stephen Malloy (Petitioner/Complainant)
University of California, the Regents of the University of California (Respondent)