

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
January 12, 2021

DATE DECISION ISSUED
December 2, 2020

CASE TITLE – Stephen Malloy v. Department of Human Resources
(File No. 19140)

FACTS OF THE CASE

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

File No. 19140: Complaint filed by Stephen Malloy against the Department of Human Resources for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to a request for public records 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.

Stephen Malloy (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Malloy stated that this matter began in November 2019. Mr. Malloy stated that he received six emails on November 14 which were heavily redacted. Mr. Malloy contends that the City Attorney's Office unlawfully requested that the Department of Human Resources not release any records. Mr. Malloy stated that his case is rooted in bias and discrimination. Mr. Malloy stated that this matter regards official misconduct of the City Attorney by clearly directing Human Resources to not release records or redact them correctly.

The Respondent was not present for the hearing and did not inform the SOTF Administrator of their absence.

The Committee referred the matter to the SOTF.

On December 2, 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 originally filed his original complaint in November 2019 and allowed an extension of time to respond on January 14, 2020. Mr. Malloy asked the SOTF go to page 2273 to see Human Resources' failure to cite the appropriate redaction laws. Mr. Malloy also noted pages 2287 – 2289 where there are other examples of improper redactions. Mr. Malloy also noted Sunshine and Brown Act violations because he was not provided records other than blacked out pages. Mr. Malloy specifically requested records showing meeting notices, texts and other things that should have been provided. Mr. Malloy stated that as an independent contractor with the City of San Francisco an investigation of discrimination should have been conducted against the Department of Public Health. Mr. Malloy asked for 67.34 violation of willful misconduct on Micki Callahan and the Department of Human Resources.

The Respondent was not present for the hearing and did not inform the Administrator of their absence.

Mr. Malloy stated he is aware that Department of Public Health employee Vien was advised by the City Attorney to not release any records. Mr. Malloy opined that the Department of Human Resources saw the order of the City Attorney. Mr. Malloy was never sent records that invoked attorney/client privilege. Mr. Malloy stated that Susan Gard and Micki Callahan were communicating about him and stated that they should meet and have that discussion. Mr. Malloy stated that the subject of the meeting was to conduct an investigation on Mr. Malloy.

Chair Wolfe noted that if UCSF was a contractor for hire. Chair Wolfe asked if they were meeting as a deliberative body or an advisory board or committee? Chair Wolfe believes that to be a Human Resources issue, however regarding the redactions, SOTF needs to determine if that record is public.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Mr. Malloy stated that the subject of himself in relationship to the City is that Ms. Callahan established a local rule that you can be called "a nigger," and her office did nothing. Mr. Malloy stated that it was City policy that Ms. Callahan was not going to administer a claim. Mr. Malloy stated that City of San Francisco HR Director is more than capable to speaking to these issues which is indicative to the issue of wrongdoing. Mr. Malloy believes there is no excuse of not being able to articulate these issues and ask questions. Even if redaction must show legal citation and DHR is choosing not to do that.

Member Schmidt noted redaction does not look very good. Department of Human Resources may have attorney client communication that is not being produced but see a violation with those redactions.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the Department of Human Resources violated Administrative Code (Sunshine Ordinance), Sections 67.21(e)) for not sending an authorized representative to the hearing; 67.24(h) for deliberative process exemption; 67.26 by not keeping withholding to a minimum and 67.27 by not providing a footnote and key legal citations.

DECISION AND ORDER OF DETERMINATIONS

Action: Moved by Chair Wolfe, second by Member Hyland to find the Department of Human Resources violated Administrative Code, Sections 67.21(e) for not sending an authorized representative to the hearing; 67.24(h) for deliberative process exemption; 67.26 by not keeping withholding to a minimum and 67.27 by not providing a footnote and key legal citations. The SOTF ordered the Custodian of Records to comply with request and refer the matter to the Compliance and Amendments Committee for monitoring.

The motion PASSED by the following vote:

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



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Stephen Malloy (Petitioner/Complainant)
The Department of Human Resources (Respondent)