

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
June 15, 2021

DATE DECISION ISSUED
April 7, 2021

CASE TITLE – Chris Kohrs v. the Police Commission
File No. 19145

FACTS OF THE CASE

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

File No. 19145: Complaint filed by Chris Kohrs against the Police Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.5 and 67.21, by failing to respond to a public records request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On September 15, 2021 the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Chris Khors (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Khors stated that he went before the Police Commission, in closed session, regarding his termination from the Police Department. Mr. Khors requested a copy of the recording and transcript of that hearing which he received. Mr. Khors stated that after reviewing the hearing materials, he believes dialogue was missing and the recording was not authentic. Mr. Khors believes this because deliberations that took place were not recorded as the Court Reporter left the room. Mr. Khors also requested the make and model of the recording equipment. Mr. Khors believes that the audio was altered. Mr. Khors requested a copy of the digital original.

Sgt. Stacy Youngblood (Police Department) (Respondent), provided a summary of the department's position. Sgt. Youngblood stated that Mr. Khors as a former Police Officer, was provided a copy of the closed session recording and transcript the same day he requested it. Sgt. Youngblood also stated that Mr. Khors was informed that he could come to the Office at any time to listen to the record. Sgt. Youngblood noted that the recording matches the transcript the

Police Commission has. Sgt Youngblood stated that Mr. Khors was also given a copy of his personnel record which would not be available to members of the general public.

Action: Moved by Member J. Wolf, seconded by Member Yankee, to find that the requested records are public and to refer the matter to the SOTF for hearing.

The motion PASSED by the following vote:

Ayes: 3 - J. Wolf, Yankee, Hinze

Noes: 0 - None

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.

Chris Kohrs (Petitioner) provided a summary of the complaint and requested the Committee find a violation. Mr. Kohrs stated that on March 6, 2019, he had a hearing before the Police Commission. Mr. Kohrs requested a copy of the original recording and transcript of the hearing. Mr. Kohrs stated that he was provided that recording and transcript of his hearing through a public records request. Mr. Kohrs noted that after reviewing the recording and transcript he noticed that his attorney was cut off and that deliberations during the hearing were not recorded. Mr. Kohrs had the recording analyzed and the forensic results remain inconclusive.

Sgt. Stacy Youngblood (Police Commission) (Respondent), provided a summary of the department's position. Sgt. Youngblood stated that on September 13, 2020, he provided both a copy of the original Police Commission recording and transcript to Mr. Kohrs.

Member Yankee noted that the transcript and portions of the audio recording seem to be incomplete. Member Yankee stated that the Petitioner said that part of the recording was deleted not that records were not turned over.

Sgt. Youngblood stated that the entire proceeding was recorded except for deliberations and during that time the court reporter was asked to leave the room.

Chair Wolfe stated that the SOTF has the transcript and heard the recording and there seem to be missing parts and that under Sunshine there must be a recording of the session. Chair Wolfe also cited 67.8-1 which states that all closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and shall be retained for 10 years.

Action: Moved by Member Yankee, seconded by Member Schmidt, to continue the matter to the call of the Chair, requested that that Sgt. Youngblood provide a recording of the closed session of the Police Commission hearing and request that DCA Price-Wolf provide an analysis of the issue.

On November 24, 2020, the Compliance and Amendments Committee held a hearing to review the recommendation from the SOTF and/or to review the merits of the petition/complaint.

Chris Khors (Petitioner) responded to questions from the Committee and provided an overview of the complaint. Mr. Khors stated that he did not receive an unredacted/unaltered audio recording. Mr. Khors stated that he recalls certain statements that were not present on the audio record, noted that the audio recording was broken into several parts and provide other instances supporting his allegation.

Sgt. Youngblood (Police Commission) (Respondent) responded to questions from the Committee and stated that the audio recording cannot be provided without a court order. Sgt. Youngblood stated that case in question is still open due to pending lawsuits. Sgt. Youngblood stated that due to the fact that the record is a personnel record it is not disclosable but was provided to Mr. Khors once a waiver was signed. Sgt. Youngblood stated that the audio recording was provided and was not altered as alleged by Mr. Khors. Sgt. Youngblood stated they only record the closed session and SFGOV.TV records the public portion of the meeting.

Upon discussion the Committee expressed concern that the SOTF Deputy City Attorney has not yet provided an official analysis of the issue. The Committee referenced the following site:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421

Member Wolfe inquired if time codes review of the meeting for the various portion of the meeting in order to check for gaps in the recording. Member Wolfe asked questions regarding the recording method used by the Police Commission.

Action: Moved by Member Wolfe, seconded by Member Wong, to refer the matter to the SOTF for hearing with the recommendation that Sunshine Ordinance, Section 67.8-1, occurred for not recording the closed session in its entirety.

The Committee requested the following:

Request DCA Price-Wolfe to provide advice on this matter prior to the SOTF meeting for discussion of possible disclosure to the public.

Police Commission policy on recording of closed session.
Time Code of the complete meeting and the complete closed session
portion of the meeting.

On January 26, 2021, the Compliance and Amendments Committee held a further hearing to review the recommendation from the SOTF and/or to review the merits of the petition/complaint.

Chair LaHood opened the discussion and provided a summary and noted that this case has been before the SOTF and the issue is regarding closed session recording of deliberations.

Chris Kohrs (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Kohrs stated that he has not received a copy of the closed session recording.

Sgt. Stacy Youngblood (Police Commission) (Respondent), provided a summary of the department's position. Sgt. Youngblood noted that the recording exists and has not been provided to the Petitioner because a section of the hearing was a closed session. Sgt. Youngblood stated that the Commissioners voted not to disclose the recording based on attorney/client privilege.

Member Wolfe stated that it was not made clear that the assertion of attorney/client was made at the time of the hearing. Member Wolfe stated that Mr. Kohrs had not received the recording because Sgt. Youngblood testified that the recording did not exist. Member Wolfe noted that Sgt. Youngblood testified that there is no set standard on whether they do or do not record closed session deliberations.

In response to Member Wolfe's statement Sgt. Youngblood stated that the Police Commission voted to not disclose the recording because attorney/client privilege was asserted and because the recording was considered part of a personnel record. Sgt Youngblood cited Penal Code 832.7(a) for withholding personnel records. Sgt. Youngblood stated that Mr. Kohrs was terminated and lost his appeal. Sgt. Youngblood stated that closed session hearings are always recorded.

Mr. Kohrs stated that he did receive the recording but was referring to closed session deliberations that are missing and noted that specific statements were not provided in the transcript.

Member Wolfe noted that the Respondent cited Penal Code 832.7(a) where the content of the information is not disclosable in any criminal proceeding and that this is not a public record. Member Wolfe suggested that the Commission's position regarding closed sessions seems to have been correct but can the rest of it be disclosed. Member Wolfe asked what is being withheld from the

petitioner. Member Wolfe stated these issues are not under the jurisdiction of the SOTF.

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

Action: Moved by Member Wolfe, seconded by Member Wong, to refer the matter back to SOTF with the Committee's findings that the recording of the closed session exists and that while some recordings have been produced to the petitioner, under the justification of Penal Code 832.7. In addition, the Committee finds that the records are public under Administrative Code 67.8-1. The Committee noted that they are not acting or making judgements Penal Code 832.7(a) which the respondent states is justification. In addition, the SOTF should consider Penal Code 832.7(b) regarding the withholding of records as a test for future complaints.

On April 7, 2021 the SOTF held a hearing to review the recommendations from the Committee and/or to review the merits of the Petition/complaint.

Chris Kohrs (Petitioner) and Sgt. Youngblood (Police Commission) (Respondent), responded to questions from the SOTF.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the Police Commission **DID NOT VIOLATE** Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.5.

DECISION AND ORDER OF DETERMINATIONS

On April 7, 2021, Member Schmidt, seconded by Member Wong, moved to find that the Police Commission DID NOT violate Administrative Code, Sections 67.21 and 67.5.

The motion PASSED by the following vote:

Ayes: 6 - Padmanabhan, Neighbors, Stein, Schmidt, Wong, Yankee
Noes: 4 - Hyland, Forsley, LaHood, Wolfe
Absent: 1 - Frazier

Bruce Wolfe, Chair
Sunshine Ordinance Task Force



cc. Chris Kohrs (Petitioner/Complainant)
Sgt. Stacy Youngblood and the Police Commission (Respondent)