

**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
October 31, 2018

DATE DECISION ISSUE
October 3, 2018

CASE TITLE – Julian Sarkar v. Jose Cisneros and the Office of the Treasurer and Tax Collector (18001)

FACTS OF THE CASE

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

Complaint filed by Julian Sarkar against Jose Cisneros and the Office of the Treasurer and Tax Collector (TTX) for allegedly violating Administrative Code (Sunshine Ordinance, Section 67.21), by failing to respond to a request for public records in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On April 17, 2018, the Education, Outreach and Training Committee acting in its capacity to hear Petitions/Complaints heard the matter.

Julian Sakar (Petitioner) provided a summary of the complaint and requested the Committee to find violations. Mr. Sakar stated that his initial request for records was mishandled by the Treasurer and Tax Collector and he did not receive a response until additional inquiries were submitted. Mr. Sakar stated that he is looking for information as to how the Treasurer and Tax Collector received his name and targeted him for review. Theresa Buckley, Office of the Treasurer and Tax Collector (Respondent) provided a summary of the department's position and provided a summary of how the department is organized and separated into different sections that act independently. Ms. Buckley acknowledged that the November 30, 2017, letter requesting records was mishandled as communication but the Treasury and Tax Collector has since provided responsive records to the November 30, 2017, and December 19, 2017 (received on December 28, 2017), request for records. Ms. Buckley stated that certain records were withheld for confidentiality purposes pursuant to Business and Taxation Code, Section 6.22-1(h). Ms. Buckley stated that providing a description of the records that have been withheld will violate confidentiality requirements. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

The Committee suggested that the Respondent provide a simplified index of records that will not violate confidentiality, listing the number and type of records that have been withheld and the reason each record was withheld. The Committee requested that the parties work together to determine if certain confidential topics pertaining to Mr. Sarkar can be discussed at the full Task Force hearing. As there is a possibility that records were transmitted to the wrong address, the Committee requested the Respondent to resend their responsive records to the Petitioner.

The Committee noted that the SOTF's jurisdiction is limited to the existence and timely disclosure of public records and cannot review operational policies and procedures of departments that are not covered by Administrative Code (Sunshine Ordinance), Chapter 67.

Member Fischer, seconded by Member Eldon moved to find jurisdiction in the matter, find that the requested records are public, and referred the matter to the SOTF for hearing with the recommendation to find a violation of Administrative Code (Sunshine Ordinance), Section 67.21 for failing to respond to a public records requests in a timely manner.

On October 3, 2018, the SOTF held a hearing to review the recommendation from Education, Outreach and Training Committee and/or to review the merits of the petition/complaint.

Julian Sarkar (Petitioner) provided a summary of his complaint and requested the Committee find a violation. Mr. Sarkar stated that the Treasurer and Tax Collector's Office sent a letter to his home addressing him by using his nickname and threatened him with penalties if he did not register himself as a business. Mr. Sarkar stated that he was told to go to the website and register and complete their checklist which included information regarding what constitutes a business in San Francisco (if you work in the City at least seven days per year you constitute a business and therefore you must register). Mr. Sarkar stated that he requested records, on multiple occasions, regarding how the Respondent determined that Mr. Sarkar might have been running a business in San Francisco and did not received an adequate response. Mr. Sarkar stated that in response to his request, he received copies of letters he sent in requesting information and included the letter from the Treasurer and Tax Collector's office and other emails from their employees sent to him. Mr. Sarkar stated that the Treasurer's and Tax Collector's office indicated that requested records are protected by the tax payer privilege and official information privilege.

Theresa Buckley, Treasurer and Tax Collector's Office (TTX) (Respondent) provided a summary of the department's response. Ms. Buckley provided a privilege log identifying documents responsive to Mr. Sarkar's request which were withheld according to the San Francisco Business and Tax Regulation

Code under confidentiality provisions and tax payer information received in confidence. Ms. Buckley provided an overview of what the functions of the divisions of Treasurer and Tax Collector's Office. Ms. Buckley acknowledged that they mishandled Mr. Sarkar's original request for records and has taken steps to correct the situation. Ms. Buckley stated that information provided in confidence cannot be disclosed under Business and Taxation Code, Section 6.22-1.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the Treasurer and Tax Collector's Office violated Administrative Code (Sunshine Ordinance), Section 67.21

DECISION AND ORDER OF DETERMINATIONS

Member Cannata, seconded by Member J. Wolf, moved to find that the Treasurer and Tax Collector's Office violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to public records request in a timely manner.

The motion PASSED by the following vote:

Ayes: 7 - Cannata, J. Wolf, Cate, Tesfai, LaHood, Hinze, B. Wolfe
Noes: 0 - None
Absent: 2 - Hyland, Chopra

Member Cannata, seconded by Member J. Wolf, moved to order the Treasurer and Tax Collector's Office provide redacted records responsive to the request for records listed in the privileged log provided by the Treasurer and Tax Collector's Office.

The motion PASSED by the following vote:

Ayes: 6 - Cannata, J. Wolf, Cate, LaHood, Hinze, B. Wolfe
Noes: 1 - Tesfai
Absent: 2 - Hyland, Chopra

Chair B. Wolfe referred the matter to the Compliance and Amendments Committee to insure compliance with the order to provide redacted records.



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Julian Sarkar (Petitioner)
Theresa Buckley, Treasurer and Tax Collector's Office (Respondent)