

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
March 25, 2019

DATE DECISION ISSUED
March 6, 2019

CASE TITLE – Robert M. Smith v. Fine Arts Museums of San Francisco
File No.18049

FACTS OF THE CASE

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

File No. 18049: Complaint filed by Robert M. Smith against the Fine Arts Museums of San Francisco (FAMSF) 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 July 17, 2018, the Compliance and Amendments Committee acting in its capacity to hear petitions/complaints heard the matter.

The Compliance and Amendments Committee (Committee) reviewed File No. 18049 to determine if the Sunshine Ordinance Task Force has jurisdiction and determine if the requested records are public pursuant to Administrative Code (Sunshine Ordinance), Sections 67.21(e). The Complainant and Respondent were **NOT REQUIRED** to attend the July 17, 2018, Committee meeting but may attend to provide testimony related to the above listed determinations. A hearing to review the merits of the complaint will be scheduled on a future date.

Member Hinze, seconded by Chair Cannata, moved to find that the SOTF has jurisdiction in File Nos. 18049 and that the records are public. A hearing on the merits of the complaint will be scheduled on a future date.

On August 28, 2018, the Compliant Committee continued the matter to their next meeting and requested that the Respondent provide the requested information.

Robert M. Smith (Petitioner) provided a summary of his complaint and requested the Committee find a violation. Mr. Smith stated that he has not received a copy his application to be a docent and a roster of current docents from the Fine Arts

Museums as requested. Mr. Smith stated that FAMSF has not conformed to the law in regards to the public records and that he is not required to narrow the nature of his request.

Melissa Powers, Manager of Board Relations and Special Projects (Respondent), provided a summary of the department's position. Ms. Powers stated that the Fine Arts Museums of San Francisco are governed one governmental agency and two 501c(3) non-profit organizations. Ms. Powers stated that all employees, whether they work for the City or the two nonprofits, have the same email domain name at famsf.org and that all emails would need to be reviewed to determine which are considered to be a public record. Ms. Powers stated that it was determined that there were over 250 thousand records which would need to be reviewed by staff which is overly burdensome and requested that Mr. Smith narrow the scope of his request. Ms. Powers stated that FAMSF responded to the requests in a timely manner and that requests for extension were properly invoked. Ms. Powers suggested an invocation of the rule of reason may be required in order to prevent disruption of the regular duties of the department by limited the amount of staff hours to work on the Mr. Smith's public records request.

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

Member B. Wolfe and Chair Tesfai requested that Ms. Powers provide information five days before the next Complaint Committee hearing regarding what are the legal and contractual relationships of the two Co-FAM and FAM, the City's entity; the public entity and the two private entities.

Member B. Wolfe, seconded by Member Hinze, moved to continue the matter to the next Complaint Committee for hearing and requested information from the Respondent.

On January 22, 2019, the Complaint Committee heard the matter and referred it to the Sunshine Ordinance Task Force for hearing.

Robert M. Smith (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Smith stated that he wanted to make three points: 1) that Ms. Powers promised to make documents available on a rolling basis and that there was a duty to make them available; 2) Ms. Powers has very little training in Sunshine; 3) that the Museums have provided very few documents.

Melissa Powers, Fine Arts Museums of San Francisco (Respondent), provided a summary of the department's position. Ms. Powers stated that at the last meeting of the Complaint Committee there were questions that were to be sent to the City Attorney regarding what does and does not apply to Co-FAM and that

she is awaiting the legal opinion. Ms. Powers stated that she has provided public documents to Mr. Smith and that she has requested search terms from Mr. Smith to narrow the scope of the document review. Ms. Powers stated that her resources have been taxed to the limit and that there is no intention of malfeasance.

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

Member Cate, seconded by Member Martin, moved to refer the matter to the SOTF for hearing.

On March 6, 2019, the SOTF heard the matter.

Robert Smith, (Petitioner) provided a summary of the complaint and requested the Committee find a violation. Mr. Smith stated that the Museum consistently does not produce documents. Mr. Smith spoke about silos 1, 2 and 3; that silo 1 (FAM) is a public department and silos 2 and 3 (Co-FAM and FAMSF) are private departments of the Museum. Mr. Smith stated that his request for documents is to silo 1 which is public and a City Department. Mr. Smith stated that he believes that all employees of the Museum are City employees. Mr. Smith stated that all employees of the Museums share the same computers and that the Museums are not providing records.

Melissa Powers, Fine Arts Museum, (Respondent), provided a summary of the department's position. Ms. Powers stated that Mr. Smith has received his responsive documents. Ms. Powers stated that Mr. Smith is not entitled to the records of Co-FAM. Ms. Powers stated that she has asked Mr. Smith to provide search terms to narrow the scope of the request. Ms. Powers stated that she has a small pool of employees to review over 70,000 documents and inquired as to how do they find correspondence related to what Mr. Smith requests. Ms. Powers stated that not all of the employees of the Museum are City employees.

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

Member Cannata requested that the first 10% (7,000) of the 70,000 documents be made available by the Museums and should be provided to Mr. Smith before the next Committee meeting.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that The Fine Arts Museums violated Administrative Code (Sunshine Ordinance), Section 67.21(e), by failing to provide documents in a timely or complete manner.

DECISION AND ORDER OF DETERMINATIONS

On March 6, 2019, Member Hyland, seconded by Member J. Wolf, moved to find that the Fine Arts Museums violated Administrative Code, Section 67.21(e), by failing to provide documents in a timely and/or complete manner.

The motion PASSED by the following vote:

Ayes: 9 - Cannata, Hinze, Hyland, Martin, LaHood, Tesfai, J. Wolf,
Yankee, B. Wolfe

Noes: 0 - None

Absent: 2 - Cate and Chopra

Chair B. Wolfe requested that the matter be referred to the Compliance and Amendments Committee to ensure that the requested records are provide to Mr. Smith on a rolling basis (10% of the total by the April meeting of the Committee).

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

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Robert M. Smith (Petitioner/Complainant)
Fine Arts Museums (Respondent)