



SUNSHINE ORDINANCE TASK FORCE
Complaint Committee
CITY AND COUNTY OF SAN FRANCISCO
MINUTES

REMOTE MEETING

January 19, 2021
5:30 PM

Regular Meeting

Members: Dean Schmidt (Chair), Matthew Yankee and Bruce Wolfe

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Chair Schmidt called the meeting to order at 5:35 p.m. On the call of the roll Chair Schmidt and Members Yankee and Wolfe were noted present. A quorum was present.

Action: Moved by Member Wolfe, second by Member Yankee to waive the Compliant Procedure rule to allow more than 2 complaints per the same Anonymous Petitioner to be heard in this meeting for File Nos. 20045, 20046, 20047 and 20048.

Public Comment:

Peter Warfield commented that he has no connection or knowledge about these matters and has been to the SOTF hearings for many years and combining complaints is destructive for the public and for the complainant. Mr. Warfield has never heard of waiving complaint procedures on spur of the moment and has no idea about how this will work.

Anonymous #1. The matter is very confusing for long participants in the SOTF. All questions need to be addressed to know that due process is being thrown out the window.

Member Wolfe stated that this item has been on the agenda and was properly noticed. Member Wolfe stated that the SOTF complaint procedures do not allow the items to be combined. Member Wolfe stated that the question is whether to waive the complaint procedure to allow the petitioner to have more than one complaint on the Agenda.

The motion PASSED by the following vote:

Ayes: 3 - Wolfe, Yankee, Schmidt

Noes: 0 - None

2. **Approval of the December 2, 2020, Special Meeting minutes and December 15, 2020, Complaint Committee meeting minutes.**

Action: Moved by Yankee, seconded by Member Wolfe to approve the December 2, 2020, Special Meeting minutes and December 15, 2020, meeting minutes.

Public Comment:

Anonymous #2 noted a correction for File No. 20011, Dr. Sumchai's matter against the Mayor's Office regarding an alleged a meeting violation with amendments as provided by an Anonymous speaker.

The motion PASSED by the following vote:

Ayes: 3 - Yankee, Wolfe, Schmidt

Noes: 0 - None

3. **Public Comment:** Members of the public may address the Committee on matters that are within the Committee's jurisdiction but not on today's agenda.

Peter Warfield stated that he would appreciate hearing about the range of public agencies using different platforms because it is difficult to follow who is making a motion. Mr. Warfield also and suggested changing the By-laws while the pandemic is going on.

Anonymous #2 agreed with Mr. Warfield and also brought up and having commissioners on boards. Anonymous #2 stated that today he was informed by Linda Gerull of the Department of Technology that they have created a new version of software related to metadata. Anonymous #2 also asked that other members of the public have their matters scheduled soon.

Anonymous #3 expressed concerns regarding the technology used. Anonymous #3 noted that the Board of Supervisors uses Microsoft Teams and has a bridge to WebEx which the general public uses to connect to meetings. Anonymous #3 stated that the variety of different platforms is very confusing.

Anonymous #4 expressed concern with the way the SOTF Administrator is conducting business at the office. Anonymous #4 stated that it is difficult to reach Administrator. Anonymous asked if a fax is sent to City Hall how often does the Administrator go to City Hall to pick up faxes?

Member Wolfe addressed the speaker's concern regarding the 45-day rule that was not followed pre-pandemic. Member Wolfe stated that since the shelter in place order there were requests sent to every complainant to waive the 45-day rule. Member Wolfe stated that the SOTF has exhausted that process and we are as close as possible for any new complaints to be in complaints. Member Wolfe stated that City Hall is closed and for certain staff there is limited access, however the SOTF appreciates your patience during these times.

4. **File No. 20045:** Complaint filed by Anonymous against Jeanine Nicholson of the Fire Department for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.29-5 by to keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous pointed to page 23 of the packet which shows an example of Jeannie Nicholson's produced calendar. Anonymous alleges that all parts of Ms. Nicholson's Prop G calendar must record issues discussed. Anonymous pointed out that Ms. Nicholson's monthly meeting with Mayor Breed does not include a description of issues discussed. Anonymous also noted that Ms. Nicholson's interview with the Guardian Reporter Hughes did not include issues discussed. Anonymous stated that the law requires that you make a general statement of issues and these are public records.

John Tucker (Fire Department) (Respondent), provided a summary of the department's position. Mr. Tucker stated that on December 7, 2019, the Department received an Immediate Disclosure Request via email to the Fire Department for Ms. Nicholson's calendar entries and emails and responded on December 10, 2019. Mr. Tucker stated that San Francisco Fire Department's Prop G calendar has appropriate meetings calendared including the required list of attendees. Mr. Tucker stated that apart from 4 calendar separate entries the department has complied and provided all other responsive records. Mr. Tucker noted that his department has taken additional steps to be more compliant.

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

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

Public Comment:

Peter Warfield agrees that these are public records and appreciates what Anonymous is doing and to clarify his rights. Mr. Warfield stated that public agencies need to comply with Ordinance. Mr. Warfield noted that there was no contribution from the Deputy City Attorney memo which was stripped from the SOTF.

The motion PASSED by the following vote:

Ayes: 3 - Wolfe, Yankee, Schmidt
Noes: 0 - None

5. **File No. 20046:** Complaint filed by Anonymous against Joaquin Torres of the Department of Economic and Workforce Development for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.29-5 by to keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that on page 12 of pdf, this is the same complaint as the previous case regarding Mr. Torres' Prop G Calendar. Anonymous stated that receiving the invite from another Department is not acceptable. Anonymous noted that there is no statement of issues to discuss in the item described as Special Events co-chair check in meeting. Anonymous also noted that there is no description for the meeting with weekly staff.

Marianne Thompson (Office of Economic and Workforce Development, OEWD) (Respondent), provided a summary of the department's position. Marianne Thompson stated the complaint was received in February 2020. Ms. Thompson stated that Director Torres takes seriously obligation to maintain a Prop G Calendar which includes time, place, attendees and subject matter. Ms. Thompson stated that she is willing to work with Anonymous to provide additional information, however she requests that that discussion take place offline.

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

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

Public Comment:

Peter Warfield stated that he has no connection to this complaint and is not familiar with specifics. Mr. Warfield noted that compliance with the Sunshine Ordinance is considered part of their job duties, not an after-thought, and that having an off the record settlement should not take place.

The motion PASSED by the following vote:

Ayes: 3 - Yankee, Wolfe, Schmidt
Noes: 0 - None

6. **File No. 20047:** Complaint filed by Anonymous against John Arntz, Department of Elections for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.29-5 by to keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that on page 13 of the pdf the allegations are the same as previous complaints; failing to provide a compliant Prop G calendar. Anonymous state that recurring meetings can change and that the actual recurrence must be outlined. Anonymous stated that, “Debra weekly meeting” is not a correct meeting. No clue of what this meeting happens and does not matter if this is a weekly meeting that occurred. The issues can be different every week and the law says that you need to address the subject of the meeting. Meeting between the department head and the department of technology, no clue on what they discussed. May know the subject matter but might now know who attended.

John Arntz (Department of Elections) (Respondent), provided a summary of the department’s position. Mr. Arntz stated that the meetings Anonymous is referring to are weekly check-in meetings with the managers where he often does a quick follow up. Mr. Arntz also stated that he has established weekly meetings. Mr. Arntz stated that his Prop G calendar is straight from outlook.

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

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

Public Comment:

Peter Warfield stated that he is not a party to this complaint and not familiar with the issues, however he appreciates that the head of the department attended the hearing. Mr. Warfield noted that there is a public record and is an important lesson on how the calendar was created.

The motion PASSED by the following vote:

Ayes: 3 - Yankee, Wolfe, Schmidt
Noes: 0 - None

The Complaint Committee recessed at 7:33 and returned to the hearing at 7:40 pm.

7. **File No. 20048:** Complaint filed by Anonymous against Manohar Raju of the Public Defender's Office for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.29-5 by to keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that there were complications with this particular Prop G calendar including lack of locations and a general statement of what was discussed. Anonymous noted that a statement of issues was included in the Public Defender's calendar entries for meetings with the Mayor and felony brown bag debriefings. Anonymous stated that every respondent needs to agree in writing that their old calendars do not comply with Administrative Code Section 67.29-5.

Tyler Vu (Public Defenders Office) (Respondent), provided a summary of the department's position. Mr. Vu opened the discussion by saying that prior to request the Public Defender had kept a calendar and however it was not done in compliance with Prop G. The Public Defender's executive assistant has worked to comply with the requirements of Prop G and has included the location, title of event, attendees and subject of discussion. Mr. Vu noted that one thing that has been made clear is that his department has a lot to learn now that he has listened to what Anonymous and the other respondents have said.

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

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

Public Comment:

Peter Warfield stated thanks to all participants and the great work the SOTF has been doing. Mr. Warfield opined that the valuable work the SOTF does and what the Complainant does by following the law, raising issues and questions for the general public and what laws are being violated and what rights members of the public.

The motion PASSED by the following vote:

Ayes: 3- Wolfe, Yankee, Schmidt

Noes: 0 - None

8. **File No. 19139:** Complaint filed by Anonymous against Jeanne Buick, Henry Voong and the Department of Human Resources for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.24(h), for failing to cite a prohibited deliberative process exemption, 67.26 for failing to keep withholding to a minimum and 67.27 for failing to provide justification of withholding.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous began on page 25 of the pdf p253. Anonymous noted that this is an issue regarding the enhancements to the CPRA that are in the Sunshine Ordinance one of them being Government Code 6254(h). Anonymous stated that on December 19 DHR withheld an email sent on December 13, their justification was labor relations and cited Government Code 6254(p)(2). Anonymous argued that 6254(p)(2) allows them to withhold information on a local agency's deliberative processes under 6254(h) and other nonrelative information. Anonymous stated that the Respondent is required to provide the information that would only be exempt under the deliberative process which he argues should be disclosed. Anonymous argues that either they are withholding information that would be disclosed under 6254(h) or they refuse to state what part of the exemption applies.

Steve Ponder (Classification and Compensation Director, Department of Human Resources (DHR)) (Respondent), provided a summary of the department's position. Mr. Ponder stated that there is labor relations and a deliberative process. Mr. Ponder stated this matter is regarding an email regarding a discussion about a matter with our union and how to proceed with a specific matter and clearly falls under labor relations. Mr. Ponder stated that he appreciates the process by which a deliberative process is made which is generally allowed under the CPRA. Mr. Ponder stated that he is not claiming deliberative process, which is generally allowed but there are special exemptions and there is a clear exemption under the Sunshine Ordinance. Mr. Ponder stated that their city attorney has given clear guidance on how to respond. Mr. Ponder reminded the Committee that this matter is regarding a very brief email. Mr. Ponder stated that he will not engage in an elaborate discussion on why it was withheld. Mr. Ponder stated that DHR dutifully replied to the request but did not disclose the email.

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

Action: Moved by Member Wolfe, seconded by Member Yankee, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing and to request advice from the City Attorney on the Ordinance with regard to the prohibition of the deliberative process on 67.24(h) and 6254(p)(2) of the CPRA and the Committee also requested that the advice be made public.

Public Comment:

Denta Tadesse stated that it is hurtful to hear based on his own past experience same exemption that he gave of the City Attorney of George Cothran giving a private memo to his property manager. Mr. Tadesse stated that the closed meeting had to do with the deliberative process and privacy. Mr. Tadesse stated that people of color do not have the opportunities and black people are treated poorly.

Peter Warfield stated that he has no direct connection with this case but it raises some important questions and he is glad that SOTF has made the motion and supports it.

The motion PASSED by the following vote:

Ayes: 3 - Wolfe, Yankee, Schmidt
Noes: 0 - None

9. **Discussion regarding SOTF Complaint Form.**

The Committee agreed that this matter will be addressed at the Orientation.

Public Comment:

Anonymous stated that his only comment is the full SOTF suggested deletions that where parts of the Ordinance are addressed. Anonymous hopes that it goes to the SOTF for discussion.

Peter Warfield stated that it would be helpful to provide the document so that those changes are provided on what is now a complicated form. Mr. Warfield noted that a person can send a letter to the administrator with their complaints and asked if this would be something beneficial to the public.

Denta Tadesse stated that these new suggestions on complaint form are helpful. Previous comment was not directed at SOTF members and is not personal. Mr. Tadesse stated that the SOTF has a responsibility to make things fair.

10. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Complaint Committee.**

Member Wolfe noted that after listening to the first batch of cases regarding Prop G Calendars, he recommends that the Mayor provide new training or retraining of the Executive branch and then provide a monitoring report. Member Wolfe noted with interest that several departments have not been correctly retaining Prop G calendars. Member Wolfe stated that the Ordinance has been law for 20 years and they may not

have been providing their calendars until recently. Member Wolfe stated that this issue should be referred to EOT for training.

Chair Schmidt noted that if effectuated, Prop G calendar retraining would be a good thing.

Action: Moved by Member Wolfe, second by Member Yankee that a recommendation to the Education, Outreach and Training Committee to create and deliver communication to the Mayor requesting retraining as per Administrative Code 67.31 with response from the Mayor as to their implementation plans and provide a monitoring report.

Public Comment:

Peter Warfield noted that with respect to this specific motion, he is in favor of training on Sunshine for all levels of government in San Francisco. Mr. Warfield stated that so many practices and policies in are effect and may need to be justified.

Anonymous agrees with this motion and Education Outreach and Training is a great place to start, but with regard to previous commenters it would be useful to see if this process can be done. Anonymous stated that the changes that were made to the Sunshine Ordinance by the Mayor, and outlined by the City Attorney, it is hard to understand what the City Attorney's memo states.

The motion PASSED by the following vote:

Ayes: 3 - Wolfe, Yankee, Schmidt
Noes: 0 - None

11. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:27 p.m.

APPROVED: February 16, 2021
Complaint Committee
Sunshine Ordinance Task Force

N.B. The Minutes of this meeting set forth all actions taken by the Sunshine Ordinance Task Force on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.