



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

January 21, 2020 - 4:00 PM

Regular Meeting

Seat 1	Vacant	Seat 7	Rodman Martin
Seat 2	Lila LaHood	Seat 8	Vacant
Seat 3	Josh Wolf - Vice Chair	Seat 9	Chris Hyland
Seat 4	Vacant	Seat 10	Matthew Yankee
Seat 5	Leuwam Tesfai	Seat 11	Fiona Hinze
Seat 6	Bruce Wolfe - Chair		

Ex-officio (*non-voting*) Clerk of the Board of Supervisors or his or her designee

Ex-officio (*non-voting*) Mayor or his or her designee

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

Chair B. Wolfe called the meeting to order at 4:15 PM. On the call of the roll Chair B. Wolfe and Members LaHood, Martin, Hyland, Yankee and Hinze were noted present. A quorum was present. Vice Chair J. Wolf and Member Tesfai were noted present at 4:16 PM.

2. Approval of minutes from the Sunshine Ordinance Task Force December 4, 2019, meeting.

The SOTF discussed the draft meeting minutes. Member Yankee requested that the minutes be corrected to reflect the number of votes taken in Item 4.

Action: Moved by Member Hyland, seconded by Member Yankee, to approve the December 4, 2019, meeting minutes.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 - Hyland, Yankee, Martin, J. Wolf, Tesfai, LaHood, Hinze, B. Wolfe

Noes: 0 - None

Absent: 0 - None

3. **File No. 19011:** Complaint filed by the Library Users Association against Theresa Buckley, Jose Cisneros, Christa Brown, Anne Stuhldreher and the Office of the Treasurer and Tax Collector for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(a)(b)(c), by failing to respond to a request for public records in a timely and/or complete manner and by failing to provide the requestor with assistance by directing the requestor to the proper office or staff person. (00:05:00 – 00:49:50)

Peter Warfield (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Warfield stated that Library Users Association asked the Treasurer and Tax Collector's Office (TTX) for the contact information of an author who contracted with their office. Mr. Warfield stated that the author performed work and provided library advice on what they should do regarding fines. Mr. Warfield stated that he was refused the contact information. Mr. Warfield stated that the author was a UC scholar who provided recommendations and research for the TTX with regard to the Library. Mr. Warfield stated that respondent's claim for withholding was that the information that it was confidential. Mr. Warfield asked the SOTF to find a violation against TTX.

Theresa Buckley (Treasurer and Tax Collector's Office) (Respondent), provided a summary of the department's position. Ms. Buckley stated that Mr. Warfield was seeking the contact information of the person who drafted the Library Report for TTX. Ms. Buckley stated that the author was a UC Berkeley graduate student who took on this project as part of his graduate studies. Ms. Buckley stated that his contact information was not a business address or business telephone number and that her office was maintaining the privacy of the scholar. Ms. Buckley stated that the student was hired not as a formal RFQ, but that her office can provide records with regard to when and why he was hired. Ms. Buckley stated that their response was timely and that TTX has responded to Mr. Warfield's request.

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

Action: Moved by Member Martin seconded by Member Hyland to find that the Treasurer and Tax Collector's Office violated Administrative Code, Sections 67.21(b) and 67.27(a), by failing to provide the contact information of the author in a timely and/or complete manner and providing justification for withholding this information.

Public Comment:

Anonymous clarified that this is not legal advice and stated that anyone who gets paid to do work for the City should be treated the same, and the public deserves to know with whom the City does business. Nowhere does SFAC 67.24 make distinctions between small or large contracts.

The motion PASSED by the following vote:

Ayes: 8 - Martin, Hyland, Yankee, J. Wolf, Tesfai, LaHood, Hinze, B. Wolfe

Noes: 0 - None

Absent: 0 - None

5. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. ***Public comment shall be taken at 5:00 p.m. or as soon thereafter as possible.***

Speakers:

Anonymous provided the following written summary of their public comment.

- Sometimes City attorneys mislead SOTF to gain an advantage. The State Bar can punish attorneys not showing candor to a tribunal (Professional Conduct Rule 3.3). For example, DPA's attorney represented to SOTF that SB 1421 "specifically requires" five types of redactions, including public interest. That is false. SB 1421 requires 4 types of redactions, and makes the balancing test an optional, 5th redaction type.
- DPW and David Steinberg run an almost ideal Sunshine process (except metadata). Every redaction is keyed to a justification, responses are timely and consistent: they indicate records, or no records, or if and why they withheld documents, for every item requested, and electronic records are provided as close to an exact copy in PDF form.

Michael Petrelis thanked all the SOTF members who volunteer their time for democracy and suggested that all monthly SOTF meetings be televised on SFGOV TV.

4. **File No. 19015:** Complaint filed by Terrence J. Kerrisk against the Department of Human Resources for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner. (00:55:31 – 01:14:50)

Terence Kerrisk (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Kerrisk stated that he requested his probationary report from the Department of Human Resources on removal from his probationary position. Mr. Kerrisk stated that he did get a copy of the report from the Department of Human Resources, but that it was four years after release from his position. Mr. Kerrisk expressed his thanks to the SOTF for getting the report to him.

Respondent (Department of Human Resources) (Respondent), was not present for the hearing.

Mr. Kerrisk was provided an opportunity for a rebuttal.

Member Yankee stated that since Mr. Kerrisk received the report he needed, that this complaint is regarding timeliness.

Action: Moved by Member Yankee, seconded by Member Martin to find that the Department of Human Resources violated Administrative Code (Sunshine Ordinance), Sections, 67.21(b), by failing to provide the requested records in a timely manner and Administrative Code (Sunshine Ordinance), Section 67.21(e), by failing to send a representative to the hearing.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 8 - Yankee, Martin, J. Wolf, Tesfai, LaHood, Hinze, Hyland, B. Wolfe
Noes: 0 - None
Absent: 0 - None

6. **File No. 19061:** Complaint filed by John Hooper against the Office of Economic and Workforce Development for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner. (01:14:57 - 01:43:13)

John Hooper (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Hooper stated that this matter concerns the Green Benefits District (GBD) which taxes citizens for basic services. Mr. Hooper asked for documents related to the contracts between Office of Economic and Workforce Development (OEWD) and San Francisco Parks Alliance related to GBD in the Haight Ashbury neighborhood. Mr. Hooper stated that the contracts listed tasks and eight pages of deliverables. Mr. Hooper stated that OEWD needs to provide the public with answers regarding those deliverables.

Mark Sullivan spoke in support of the Petitioner. Mr. Sullivan stated that those public contracts and services were provided by OEWD and that the information should be made available to the general public.

Lillian Steilstra spoke in support of the Petitioner. Ms. Steilstra recalled that a GBD was proposed in the Sunset District and that the residents received emails, correspondence, and information. Ms. Steilstra stated that a letter to residents in the Sunset was drafted asking that they not comply with the GBD.

Marianne Mazzucco-Thompson (Office of Economic and Workforce Development (OEWD) (Respondent), provided a summary of the department's position. Ms. Mazzucco-Thompson stated that Mr. Hooper's complaint was that the request records were not provided in a timely manner. Ms. Mazzucco-Thompson stated that she went above and beyond to respond to Mr. Hooper's request by providing documents including seven deliverables received from SFParks Alliance, a monkey survey and the spreadsheet from that survey. Ms. Mazzucco-Thompson stated that she has provided records to Mr. Hooper.

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

Action: Moved by Member Martin seconded by Member Hyland to refer the matter to the Complaint Committee to consider the inclusion of new materials.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 - Martin, Hyland, Yankee, J. Wolf, Tesfai, LaHood, Hinze, B. Wolfe

Noes: 0 - None

Absent: 0 - None

Member Tesfai was noted absent at 5:58 PM.

7. **File No. 19062:** Complaint filed by John Hooper against Public Works for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner. (01:43:15 – 01:57:48)

John Hooper (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Hooper stated that he has nothing new to add and that he agrees that this matter be referred back to the Complaint Committee

Mark Sullivan spoke in support of the Petitioner. Mr. Sullivan stated that Public Works should provide invoices of the engineering company and how much public money has been spent on the contracts.

David Steinberg (Department of Public Works) (Respondent), provided a summary of the department's position. Mr. Steinberg stated that there was no request for invoices and that he has turned over all responsive records to Mr. Hooper. Mr. Steinberg stated that Parks Alliance contracts are not in the possession of Public Works. Mr. Steinberg stated that Public Works did not violate the Sunshine Ordinance and requested that no violation should be found in this matter.

A question and answer period occurred.

Action: Moved by Member LaHood, seconded by Member Hyland, requested that the records provided to the SOTF in File No. 19061 be included into the file for review, and referred the matter to the Complaint Committee to determine which documents are applicable to which respondent and to provide a recommendation to the SOTF.

Public Comment:

Anonymous suggested that the Complaint Committee review Sunshine Ordinance Section 67.29-7(c).

Lillian Steilstra stated that there is a full-time employee at Public Works with the title Green Benefits District Manager who manages GBDs. Ms. Steilstra stated that money was transferred to Parks Alliance from the City and that it would be good for the taxpayers to know this information.

The motion PASSED by the following vote:

Ayes: 7 - LaHood, Hyland, Yankee, Martin, J. Wolf, Hinze, B. Wolfe

Noes: 0 - None

Absent: 1 - Tesfai

8. **File No. 19044:** Complaint filed by Anonymous against Dennis Herrera and the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 61.26, 61.27, Government Code Sections 6253, 6253.9 and 6255, by failing to respond to a public records request in a timely and/or complete manner. (01:57:52 – 03:00:45)

Member Yankee stated that the IT Committee met and discussed metadata and decided that it is a public record and that there is not a blanket exemption that can be claimed for all metadata. Member Yankee stated that if there is a need to redact or withhold specific portions of metadata, that should be cited as would be for any matter before the SOTF.

Chair B. Wolfe stated the SOTF is picking up discussion of the complaint after the discovery process and before rebuttals.

John Cote (Office of the City Attorney) (Respondent), provided a summary of the department's position. Mr. Cote stated that there are security risks email metadata possess when redacting. Mr. Cote directed the SOTF to 67.21(l) regarding production of electronic data and noted that the easily generated language shows that voters recognized the need for practical limits in dealing with electronic data formats. Mr. Cote stated that 6253(a) of the Public Records Act under which exempt and nonexempt information need to be reasonably segregable. Mr. Cote stated that there are multiple steps and time-consuming processes to redact metadata. Mr. Cote stated that there are also security risks and possible human error associated with the burden of redacting information along with possible serious consequences from a mistake. Mr. Cote stated that producing metadata is burdensome and not required under Sunshine.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that this complaint is about a specific document located on page 518 of the agenda packet. Anonymous stated that the document was provided after the Complaint was issued. Anonymous stated that metadata is like a table which has names and values which may not be sensitive. Anonymous stated that before computers when a document was received by the City Clerk, it was date and time stamped which was the record. Anonymous stated there are violations of 67.21 for not providing a complete response, 67.26 for nonminimal withholding and 67.27 for not providing justification for withholding.

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

Chair B. Wolfe summarized the Respondent's position that the production of metadata is difficult to extract and voluminous. Chair B. Wolfe stated that this matter will start the process of developing a base line going forward. Chair B. Wolfe stated that he has been unable to locate previous cases regarding metadata. Chair B. Wolfe stated the headers from servers and email applications are 99% identical because there are provisions set up that are standard formats. Chair B. Wolfe stated that each City department has IT personnel and that if this had been a concern, the issue would have arisen years ago. Chair B. Wolfe stated that metadata is a public domain. Chair B. Wolfe stated that while not necessarily specified in the California Public Records Act or the Sunshine Ordinance, because it is part of the document, the matter is related to redactions. Chair B. Wolfe stated that many municipalities have created their own policies. Chair B. Wolfe cited the *Smith v. San Jose* case.

Action: Moved by Member Yankee, seconded by Member Martin, to find that City Attorney's Office violated Administrative Code (Sunshine Ordinance), Sections 67.21 (b) by failing to provide the requested records in a timely and/or complete manner, 67.26, by failing to keep withholding to a minimum, and 67.27 by failing to provide justification for withholding.

Public Comment:

Hank Heckel stated that Anonymous is seeking hundreds of documents and the burden takes many forms. Mr. Heckel stated that he agrees with the Respondent. Mr. Heckel stated that there is no authority cited in the law.

Michael Petrelis stated that he supports Anonymous and that Sunshine is a key part of democracy.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Martin, J. Wolf, LaHood, Hinze, Hyland, B. Wolfe

Noes: 0 - None

Absent: 1 - Tesfai

Member Hinze was noted absent at 7:50 p.m.

9. **File No. 19092:** Complaint filed by Justin Barker against the San Francisco Zoo for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner. (03:00:54 - 03:41:37)

Justin Barker (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Barker stated that on August 17, 2019, the SOTF found the Zoo in violation of the Sunshine Ordinance and an Order of Determination was issued in case no. 19048. Mr. Barker stated once the Order of Determination was issued in that file, he asked the Zoo for the requested records. Mr. Barker stated that he attended the September 24, 2019, Compliance and Amendments Committee hearing regarding 19048 and requested to ensure that he received his records and he reported that he had not. Mr. Barker stated that this is another request for additional records. Mr. Barker stated that he has not received any of his requested records and he wants the Zoo to be held accountable. Mr. Barker stated that the City owns the animals and property and referenced the Lease Agreement provided. Mr. Barker stated that he has made records requests to the Parks and Recreation Department who co-manages the Zoo and they have continually said that he needs to work with the Zoo because Parks and Recreation does not have the records he is seeking. Mr. Barker stated that the City of San Francisco owns the property and all of the animals and the Zoo outsources the management to the San Francisco Zoological Society. Mr. Barker stated that the Zoo is not following the law. Mr. Barker requested that this matter and file no. 19048 be forwarded to the Ethics Commission and the District Attorney.

The Respondent was not present for the hearing.

Chair B. Wolfe opined that there are two things to consider with regard to the relationship the Zoo has with the City. First, is this a 12L issue? Second, is the Zoo under specific contracts under the Sunshine Ordinance? Chair B. Wolfe stated that information such as do the animals get filtered water and what food they are being fed should be in their Lease and Management Agreement. Chair B. Wolfe stated that if you are addressing the 12L issue, that might be beyond the scope of what a 12L might allow and a review of the contract might be what is disclosable.

Vice-Chair J. Wolf opined that if the City owns the animals, there must be a direct link to the public records related to the assets owned by the City and those owned by the Zoo as a nonprofit. Vice-Chair J. Wolf stated that there has to be a budget.

Member Yankee expressed a concern that there is a contract and that the Zoo is not following through on what was agreed in the contract. Member Yankee stated that a communication should be addressed to the City Compliance Office and include a copy of the contract and say that the SOTF found that they are not in compliance with 67.16.2.

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

Mr. Barker waived his rebuttal time.

Action: Moved by Member Hyland, seconded by Vice-Chair J. Wolf, to find that the Zoo violated Administrative Code (Sunshine Ordinance), Sections 67.21, by failing to respond to a request for public records in a timely and/or complete manner, 67.27 by failing to provide justification for withholding records and referred the matter to the Compliance and Amendments Committee with a request that the City Administrator appear to respond to the provisions of the Lease Agreement relating to the Sunshine Ordinance.

Public Comment:

Anonymous stated that he supports the motion and further stated that if a nonprofit is doing things for the City, they should be found in violation of the Sunshine Ordinance.

The motion PASSED by the following vote:

Ayes: 6 - Hyland, J. Wolf, Yankee, Martin, LaHood, B. Wolfe

Noes: 0 - None

Absent: 2 – Tesfai, Hinze

10. **File No. 19093:** Complaint filed by Michael Petrelis against Sean Elsbernd and the Office of the Mayor for allegedly violating Administrative Code, (Sunshine Ordinance) Sections 67.21 by failing to respond to a request for public records in a timely and/or complete manner. (03:41:37 – 05:16:43)

Michael Petrelis (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Petrelis stated that when he submitted his records request to the Mayor's Office requesting Chief of Staff Sean Elsbernd's calendar he expected a complete response and not a few single calendar entries. Mr. Petrelis has not heard from the Mayor's Office regarding Mr. Elsbernd's complete calendar. Mr. Petrelis believes that Mr. Elsbernd is keeping a calendar that the Mayor's Office is not producing.

Hank Heckel (Mayor's Office) (Respondent), provided a summary of the department's position. Mr. Heckel stated that this case is about document production versus creating or maintaining documents. Mr. Heckel stated that he asked for a ten-day extension in which to respond to Mr. Petrelis' records request. Mr. Heckel stated that his response was timely and that the requested records were provided. Mr. Heckel stated that the issue of whether the Chief of Staff is required to maintain a calendar was identified by the Ethics Commission. Mr. Heckel stated that Mr. Elsbernd does maintain a calendar and that it was produced to Mr. Petrelis. Mr. Heckel referred to Administrative Code, Section 67.29-7, which refers to documents that are maintained in the course of business which were provided. Mr. Heckel provided and referred to the Mayor's Records Retention Policy to the SOTF.

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

Vice-Chair J. Wolf opined that the records that do exist are consciously being deleted and whether or not there is a City retention policy, that was not signed by the current

administration, the calendar is a public record. Vice-Chair J. Wolf stated that Mr. Elsbernd's calendar should have been retained under the retention policy and these records are being destroyed.

Action: Moved by Vice-Chair J. Wolf, seconded by Member Martin, to find that Sean Elsbernd and the Office of the Mayor, did not violate Administrative Code (Sunshine Ordinance), Section 67.21.

Public Comment:

Anonymous provided the following written summary of their public comment.

- This is not legal advice. SOTF should investigate a 67.26 violation by Respondents for failing to key their redactions to justifications. The public must make its own conclusions as to why senior government officials would choose to rapidly, actively, destroy records. Regardless, as the Mayor's Office asserts this right to destroy records, I simply request every week the next and the past 10 days of calendars, to ensure an interlocking, overlapping span of requests to prevent any destruction of records.

The motion FAILED by the following vote:

Ayes: 0 - None

Noes: 6 - J. Wolf, Martin, Yankee, LaHood, Hyland, B. Wolfe

Absent: 2 - Tesfai and Hinze

Mr. Heckel stated that the first he had heard of 67.26 raised was by a nonparty and that he was unaware procedurally that a nonparty could raise a new basis for a complaint in a file where it was never been addressed in either the filings or the argument. Mr. Heckel stated that he is aware that Anonymous is raising an issue of redactions that were unidentified. Mr. Heckel stated that the redactions were for cell phone numbers and personnel information.

Chair B. Wolfe stated that it is presumed that all documents are public records until Respondent cites that it is not and that it can be withheld. Chair B. Wolfe stated that if a record is withheld, then it is presumed it is a violation. Chair B. Wolfe stated that the SOTF has had problems in the past with finding no violations versus closing the file.

Mr. Heckel stated that he thought it procedurally improper for a nonparty to raise a violation that was never discussed and believes that it puts the respondent at a disadvantage.

Chair B. Wolfe stated that the SOTF gets responses from members of the public and respondents all the time regarding subjects that are applicable and that this matter speaks to the complaint because so many of Mr. Elsbernd's calendar entries were deleted.

Action: Moved by Chair B. Wolfe, seconded by Vice-Chair J. Wolf to find that Sean Elsbernd and the Office of the Mayor violated Administrative Code (Sunshine Ordinance), Section 67.26, by failing to keep withholding to a minimum.

Public Comment:

Anonymous stated that he is in support of the motion to find a violation of 67.26.

The motion FAILED by the following vote:

Ayes: 2 - Hyland, J. Wolf

Noes: 4 - B. Wolfe, Martin, Yankee, LaHood

Absent: 2 - Tesfai and Hinze

Chair B. Wolfe stated there being no additional motion no violation was found and the file is closed.

11. **File No. 19091:** Complaint filed by Anonymous against Mayor London Breed, the Office of the Mayor, Hank Heckel, Sean Elsbernd, Andres Power, Andrea Bruss, Marjon Philhour, Jeff Cretan, Sophia Kittler for allegedly violating Administrative Code, (Sunshine Ordinance) Sections 67.21, 67.26, 67.27 and 67.29-7, by failing to respond to a request for public records in a timely and/or complete manner. (05:16:56 - 05:19:19)

This matter was continued to the call of the Chair.

Action: Moved by Member Yankee, seconded by Member Martin to Continue the matter to the Call of the Chair.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 6 - Yankee, Martin, J. Wolf, LaHood, Hyland, B. Wolfe

Noes: 0 - None

Absent: 2 - Tesfai, Hinze

12. **Reports from Sunshine Ordinance Task Force Committees.** (05:19:23 – 05:19:48)

No reports from Committees.

Public Comment:

None.

13. **Sunshine Ordinance Task Force – Chair’s Report.** (05:28:23 - 05:32:24)

Chair B. Wolfe reported that the referral of the SOTF regarding *Hartz v. President Yee* did not go in favor of Mr. Hartz. Chair B. Wolfe contacted the Ethics Commission regarding the amount of discovery completed and Chair B. Wolfe did not see any of the SOTF documents presented to the Commissioners. Chair B. Wolfe stated that the Ethics Commission record reflected the Hartz matter de novo.

Chair B. Wolfe stated that the end of the budget period was coming soon and asked that the members consider staffing or database matters. Chair B. Wolfe also stated that several of the SOTF terms end April 27th 2020, except for Member Hinze.

Vice-Chair J. Wolf stated that there should be an intermediary for both the staff and community outreach as an advocacy role as opposed to a clerk.

14. **Staff Report, Complaints and Communications.** (05:28:35 - 05:31:21)

Task Force and Committee hearing schedule

Member Hyland stated corrections to the SOTF hearing schedule.

SOTF Administrator presented the report.

Chair B. Wolfe stated that there will be no Administrator’s Report present at the February 5, 2020, SOTF hearing.

Public Comment:

None.

No actions taken.

15. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Sunshine Ordinance Task Force.** (05:31:31 – 05:32:24)

No action taken.

16. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:47 p.m.

APPROVED: February 5, 2020
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.