



# 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

August 1, 2018 - 4:00 PM

## Regular Meeting

Seat 1	Matthew Cate	Seat 7	vacant
Seat 2	Lila LaHood	Seat 8	Frank Cannata
Seat 3	Josh Wolf	Seat 9	Chris Hyland - <b>Vice Chair</b>
Seat 4	Rishi Chopra	Seat 10	Louise Fischer
Seat 5	Leuwam Tesfai	Seat 11	Fiona Hinze
Seat 6	Bruce Wolfe - <b>Chair</b>		

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 Wolfe called the meeting to order at 4:15 pm. On the call of the roll Chair Wolfe, and Members Wolf, Cannata, Fischer, Cate, LaHood and Hinze were noted present. Vice-Chair Hyland and Members Tesfai and Chopra were noted not present. There was a quorum.

Member Tesfai was noted present 4:33 pm.

There were no agenda changes.

### 2. **Approval of minutes from the Sunshine Ordinance Task Force June 6, 2018, meeting.**

**Member Hinze, seconded by Member Cannata, moved to approve the June 6, 2018, meeting minutes.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 8 – Tesfai, Cate, J. Wolf, LaHood, Cannata, Fischer, Hinze,  
B. Wolfe  
Noes: 0 - None  
Absent: 1 – Hyland, Chopra

3. **File No. 18022:** Complaint filed by Kevin Williams against the Bayview Opera House and the Arts Commission for allegedly violating Administrative Code, Section 12L.5 (Nonprofit Public Access Ordinance), by failing to respond to a request for public records in a timely and/or complete manner.

*(On June 19, 2018, the Education, Outreach and Training Committee determined that the SOTF has jurisdiction and referred the matter to the SOTF for hearing. Pursuant to Administrative Code, Section 12L.5, Mr. Williams submitted a complaint against the Bayview Opera House to the Arts Commission. The Arts Commission considered the complaint and issued a response. Mr. Williams has requested that that the SOTF provide an advisory opinion regarding the complaint.)*

Kevin Williams (Petitioner) provided a summary of his complaint and requested the Committee find a violation. Mr. Williams stated that the Bay View Opera House is a nonprofit agency that it is subject to the Freedom of Information Act. Mr. Williams also stated that the Bayview Opera House receives Federal Tax Exempt status and qualifies as a public body. Mr. Williams stated that Kate Patterson of the Arts Commission and Ms. Ockel of the Bayview Opera House have not turned over meeting minutes, the by-laws, the resumes of Board Members and information on how money was allocated and spent on the \$3 million renovation.

Kate Patterson, Arts Commission (Respondent) provided a summary department's position. Ms. Patterson stated that the Arts Commission did an investigation into Mr. Williams' claims on the Bayview Opera House's compliance pursuant Administrative Code 12L and stated that the Arts Commission has provided their findings. Ms. Patterson stated that the Arts Commission has provided all available the Bayview Opera House records including by-laws, the minutes of public meetings and all documents that are required to be public. Ms. Patterson stated that Mr. Williams was referred to the Department of Public Works and the San Francisco Municipal Transportation Agency for additional records not in the possession of the Arts Commission.

Barbara Ockel, Bayview Opera House (Respondent) provided a summary of the Bayview Opera House's position. Ms. Ockel stated that she has responded to many of Mr. Williams repeated and duplicative requests and has provided all records as required by Administrative Code 12L. Ms. Ockel stated that certain documents requested by Mr. Williams have never been in the possession of the Opera House including documents on the \$3 million renovation. Ms. Ockel stated that this was a City project and that the Opera House was not involved with the financing of the project.

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

**Chair Wolfe inquired if members of the SOTF would like to make a motion regarding the matter. There being no motion Chair Wolfe called for Public Comment.**

Public Comment:

Francisco Da Costa spoke on behalf of the Petitioner and stated that the \$3 million cannot be accounted for. Mr. Da Costa inquired as to why members of the SOTF were not familiar with Administrative Code 12L.

Ray Hartz spoke on behalf of the Petitioner, stated the requirements of law and stated that the SOTF should tell the Arts Commission to provide the requested information.

Ann Treboux spoke on behalf of the Petitioner and stated that Kate Patterson does not provide requested information and that she believes that Mr. Williams has not received his documents.

Thomas Busse suggested filing a Registry of Trust and file form CT-9.

**There being no motion, the SOTF closed the matter. No additional actions to be taken.**

4. **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. *(No Action) Public comment shall be taken at 5:00 p.m. or as soon thereafter as possible.*

Public Comment:

Ann Treboux provided the following written summary of her public comment:

“On June 15, 2018, 8:00 am, I was standing on Market/Spear Street, a female came within inches of me. She put a cell phone camera a few inches from me and took photos. I said nothing and shot a 58 second cell phone tape of the incident. She was shouting, “What you shoved me! Stop shoving me! I now have to file a police report.” She stood within inches of me while she did not call Police. About 2 ½ hours later, Anne Trickey filed an assault report against me in the Tenderloin Station. Her evidence was a 20 year-old DMV photo of me. She lied on the report claiming I assaulted her twice/was verbally abusive. I filed a harassment report against her attaching the video. Two weeks later a SFPD Lieutenant called. She said, “She reviewed the information and no crime was committed. I was told to continue videotaping Trickey.”

Thomas Busse provided information regarding John O'Bammy and his publications and provided other general comment.

Ray Hartz stated that his first case before the SOTF was in 2008 and that none of his SOTF complaint has ever been enforced.

5. **File No. 18009:** Complaint filed by Ann Treboux against Dwight Moore and the Office of the City Attorney, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(a)(d)(e), 67.26, 67.29.5 and 67.34 4, 67.25, 67.26 and 67.27, by willfully failing to respond to an Immediate Disclosure Request.

*(On March 27, 2018, the Complaint Committee determined that the SOTF has jurisdiction and referred the matter to the SOTF for hearing.)*

Member Tesfai provided a summary of the matter.

Ann Treboux (Petitioner) provided a summary of the complaint and requested the Task Force to find violation. Ms. Treboux stated that she requested Dwight Moore provide copies of police reports, which she did not receive. Ms. Treboux stated that she did not receive response or out of office message from Mr. Moore. Ray Hartz spoke on behalf of the Petitioner.

John Cote, Office of the City Attorney (Respondent) provided a summary of the department's position. Mr. Cote stated that the department was unaware of the request until the complaint was filed with the SOTF and provided a response immediately upon notification. Mr. Cote stated that Mr. Moore's email account provide an auto response indicating that he was out of the office and provided an alternate contact. Mr. Cote stated that the City Attorney's office has an email address to accept public records requests (sfcityattorney.org) that Ms. Treboux's should have utilized. Mr. Cote stated that certain documents were withheld based on the attorney work product privilege.

Deputy City Attorney Nicholas Colla responded to questions from the SOTF. Mr. Colla stated that this particular issue is attorney work product or an investigative privilege issue.

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

**Member Tesfai, seconded by Member Cannata, moved to find that Dwight Moore and the Office of the City Attorney violated of Administrative Code Section 67.25 by failing to respond in an Immediate Disclosure Request in a timely manner.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 8 – Tesfai, Cate, J. Wolf, LaHood, Cannata, Fischer, Hinze,

B. Wolfe

Noes: 0 - None

Absent: 2 – Hyland, Chopra

6. **File No. 17086:** Complaint filed by Ray Hartz against Dennis Herrera and Bradley Russi, Office of the City Attorney, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(i), by acting as legal counsel for city employees or any person having custody of public records for the purpose of denying access to the public.  
(On June 26, 2018, the Complaint Committee determined that the SOTF has jurisdiction and referred the matter to the SOTF for hearing.)

Member Tesfai provided a summary of the matter.

Chair Wolfe inquired if Mr. Hartz wanted included the memos submitted less than five days before the meeting. Mr. Hartz stated that he did not want the memo considered.

Ray Hartz (Petitioner) provided a summary of his complaint and request the SOTF to find a violation. Mr. Hartz stated that he believes the advice provided by the City Attorney's Office to various agencies to withhold public records. Mr. Hartz stated that the City Attorney's Office advice given to the City Librarian is based on hypotheticals and on denying or withholding public records. Mr. Hartz stated the City Attorney's Office provided advice to city agencies to not follow Sunshine Ordinance.

John Cote, Office of the City Attorney (Respondent) provided a summary of the department's position. Mr. Cote stated that the complaint solely regarding whether or not there was a violation of 67.21(i) which states that the City Attorney shall not act as counsel for any city employee or person having custody or access to public records for the purpose of denying access to the public of public records. Mr. Cote stated that the referenced memo does not advise the City Librarian to deny access to public records. . Mr. Cote stated that the City Charter requires the Office of the City Attorney to advice city agencies and therefore supersedes the Sunshine Ordinance.

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

Deputy City Attorney Nicholas Colla responded to questions from the SOTF.

J. Wolf requested that the SOTF City Attorney representative provide a memo analyzing the arguments that the City Charter supersedes Sunshine Ordinance, Section 67.21(i).

**Public Comment:**

Thomas Busse stated that he had written extensively about 67.21(i) and the controlling case law is *City and County of San Francisco v. Cobra Systems* in 2006 which held that when the conflicted party runs a government law office the entire office is disqualified.

**Member J. Wolf, seconded by Member Cannata, moved to continue the matter to the call of the chair and requested that DCA Colla draft a memo regarding the application of the San Francisco Charter vs. Administrative Code 67.21(i).**

**The Motion PASSED by the following vote:**

Ayes: 6 - J. Wolf, Cannata, LaHood, Fischer, Hinze, B. Wolfe

Noes: 2 - Tesfai, Cate

Absent: 2 – Hyland, Chopra

7. **File No. 18013:** Complaint filed by Thomas Busse against the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21(i), for acting as legal counsel to denying access to a public record.  
*(On March 27, 2018, the Complaint Committee referred the matter to the SOTF for hearing.)*

Member Tesfai provided a summary of the matter.

Thomas Busse (Petitioner) provided a summary of his Complaint and request that the SOTF find violations. Mr. Busse's stated that due to conflicts of interest City Attorney's Office should not be allowed to provide advice to city agencies in certain situations.

John Cote, Office of the City Attorney (Respondent), provided a summary of the department's position. Mr. Cote stated that the complaint solely regarding whether or not there was a violation of 67.21(i) which states that the City Attorney shall not act as counsel for any city employee or person having custody or access to public records for the purpose of denying access to the public of public records. Mr. Cote further stated that the issue is whether or not the City Attorney's Office provided advice for the purpose of withholding documents from the public. Mr. Cote stated that there is no evidence in the record that a violation of 67.21(i) occurred. Mr. Cote stated that the City Charter safeguards the right of the city agencies to receive legal advice from the City Attorney's Office.

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

Deputy City Attorney Nicholas Colla responded to questions from the SOTF.

**Public Comment:**

Ray Hartz provided comments regarding the case being similar to his own case and that there is a conflict of interest.

**Member J. Wolf, seconded by member Cannata, moved to continue the matter to the call of the chair and requested additional information in the application of the San Francisco Charter vs. Administrative Code 67.21(i).**

**The Motion PASSED by the following vote:**

Ayes: - J. Wolf, Cannata, LaHood, Fischer, Hinze, B. Wolfe

Noes: - Tesfai, Cate

Absent: - Hyland and Chopra

8. **File No. 18015: Administrator's Report: Review of NextRequest Public Records Request Software.**

SOTF Administrator Victor Young provided a summary of the Next Request Public Records Request Software and responded to questions from the SOTF. NextRequest is a public records management system used by some departments in the City to track and fill public records requests. Administrator Young submitted a request to test the system.

Member Tesfai suggested that NextRequest provide a webinar on how to use the system.

**Member Cannata, seconded by Member Hinze moved to continue this matter to the call of the Chair.**

Public Comment.

Ann Treboux provided comment on NextRequest. Ms. Treboux looked into NextRequest and each department that she contacted used this system very successfully except for the Arts Commission.

Ray Hartz commented on any how citizen of the City should be able to get documents that are requested. Mr. Hartz stated that any member of the public should be able to speak at a public meeting without interruption or harassment by the Task Force.

**The motion PASSED by the following vote:**

Ayes: 8 – Tesfai, Cate, J. Wolf, LaHood, Cannata, Fischer, Hinze,  
B. Wolfe

Noes: 0 - None

Absent: 1 – Hyland, Chopra

9. **Sunshine Ordinance Task Force - Annual Report.**

Chair Wolfe provided a summary on the status of the SOTF Annual Report. Chair Wolfe stated that he will send out suggested edits and anyone who wants a copy can request it through our office.

No actions taken.

**Member Hinze, seconded by Tesfai motion to continue this item to the call of the Chair. The Motion was taken by acclamation.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 8 – Tesfai, Cate, J. Wolf, LaHood, Cannata, Fischer, Hinze,  
B. Wolfe

Noes: 0 - None

Absent: 1 – Hyland, Chopra

10. **Reports from Sunshine Ordinance Task Force Committees.**

- Complaints Committee
- Compliance and Amendments Committee
- Education, Outreach and Training Committee
- Rules Committee
- Information Technology Ad Hoc Committee

Member Tesfai stated that the Complaints Committee did not meet in July.

Member Cannata had nothing to report for the Compliance and Amendments Committee.

Member Wolf stated that the Education, Outreach and Training Committee's next meeting will be on August 21 and that there is a need for two other members.

Member Hinze stated that the Rules Committee has a few items to discuss. Member Hinze stated that we need more members to participate as Member Fischer is resigning.

Chair Wolfe provided an update on the development of a database for all SOTF Orders of Determination in order to avoid conflict with past determinations.

Public Comment:

Ray Hartz stated that he is not sure how complaints are tracked and inquired as to why it takes so long for a complaint to be scheduled for hearing.

The SOTF took no actions on the matter.

11. **Sunshine Ordinance Task Force - Chair's Report.**

Chair Wolfe welcomed the new members and provided information regarding appoint to SOTF committees. Chair Wolfe thanked Member Fischer for her service.

Public Comment:

Ray Hartz commented on DCA Colla leaving the meeting before adjournment and the SOTF low membership resulting in the need to get unanimous verdict on his cases.

The SOTF took no actions on the matter.

12. **Administrator's Report, Complaints and Communications.**

- Task Force and Committee hearing schedule
- Complaints submitted and hearing files created
- Communications to the Task Force
- Summary of pending complaints and other issues

SOTF Administrator Victor Young presented the Administrator's report.



Public Comment:

None.

The SOTF took no actions on the matter.

13. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Sunshine Ordinance Task Force.**

Member Cannata inquired of video for SOTF meetings.

Public Comment:

Ray Hartz commented on an Immediate Disclosure Request that he would like to make. Mr. Hartz requested a list of his complaints which are outstanding.

14. **ADJOURNMENT**

Member Cannata, seconded by Member Cate moved to adjourn. The motion passed without objection.

There being no further business the meeting was adjourned at 9:15 p.m.

**APPROVED: October 3, 2018**

**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.