

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION - REVISED
October 11, 2016

DATE ISSUED
September 7, 2016

CASE TITLE - Ray Hartz v. Supervisor Eric Mar, Board of Supervisors
(File No. 15072)

FACTS OF THE CASE

On March 15, 2015, Ray Hartz (Complainant) file the following complaint:

File No. 15072: Complaint filed by Ray Hartz against Supervisor Eric Mar, Board of Supervisors, for violating Administrative Code (Sunshine Ordinance), Section 67.25 (a), for failure to respond to an Immediate Disclosure Request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On June 3, 2015, the Sunshine Ordinance Task Force (Task Force) heard the matter.

Ray Hartz (Complainant) provided an overview of the complaint and requested the Task Force to find violations. Victor Lim, Legislative Aide to Supervisor Eric Mar (Respondent), provided a summary of the Supervisor Mar's position. Mr. Lim acknowledged that the response to the Immediate Disclosure Request was not provided to the Complainant and that steps have been taken to ensure that the oversight does not occur again in the future.

The Task Force found that Supervisor Eric Mar, Board of Supervisors, in violation of Administrative Code (Sunshine Ordinance), Section 67.25 (a), for failure to respond to an Immediate Disclosure Request in a timely manner.

The matter shall be referred to the Education, Outreach, and Training Committee (EOTC) to develop methods to prevent future mishandlings of Immediate Disclosure Requests.

On May 9, 2016, EOTC heard the matter.

Ray Hartz (Complainant) provided additional information regarding the complaint and request that additional violations be found. Supervisor Eric Mar's Office

indicated that due to a scheduling conflict they were unable to attend the meeting.

The EOTC discussed the matter and opined that Orders of Determination from the Task Force should request specific documents or actions from the Respondent.

The EOTC sent a letter to Supervisor Eric Mar stating/requesting the following:

- The Sunshine Ordinance Task Force heard the complaint on June 3, 2015, and issued an Order of Determination.
- It does not appear that the Supervisor Mar has provided an official response to the Complainant.
- Notice of hearing was provided to your office but the Committee was not informed of your scheduling conflict until after the meeting started.
- It is requested that Supervisor Mar or a knowledgeable representative appear at the next meeting of the Committee and that the following issues be addressed prior to the next scheduled meeting:
 - Provide an official response to Mr. Hartz's Immediate Disclosure request with a copy to the Committee.
 - Provide written documentation of your office procedure for responding to public records request.
 - Provide written documentation of the improvements made to insure that public records request are not lost and responded to in a timely manner referenced during the June 3, 2015, meeting of the Task Force.

It was further requested that Supervisor Mar or his representative provide the above listed document prior to the next Committee meeting.

Supervisor Mar was also informed in the letter that failure of Supervisor Mar or his representative to comply with the request and to attend the next meeting of the EOTC will result in the referral of the matter to the Task Force with the recommendation and a violation of Administrative Code (Sunshine Ordinance), Section 67.34, be found for willfully violating the Sunshine Ordinance and referral to the Ethics Commission for enforcement.

On July 26, 2016, EOTC heard the matter.

Ray Hartz (Complainant) provided a summary of the complaint and stated that a response to the Immediate Disclosure Request has not yet been provided. Angelina Yu, Legislative Aide to Supervisor Eric Mar (Respondent), provided a summary of the department's position and provided a summary of improvements made to their procedure for responding to public records requests. On July 26, 2016, Ms. Yu provided an official response to Mr. Hartz's request as requested by the Committee.

Chair Hyland provided a history of the Task Force hearings on the matter and the lack of attendance of the person knowledgeable of the complaint at meetings.

The EOTC referred the matter back to the Sunshine Ordinance Task Force with the recommendation to find additional violations of Administrative Code (Sunshine Ordinance), Sections 67.21 (e) and 67.34, for failing to comply or not fully complying with a request for public records and for willfully failing to discharge duties imposed by the Sunshine Ordinance, the Brown Act and the Public Records Act.

On September 7, 2016, the Task Force heard the matter.

Ray Hartz (Complainant) provided an overview of the complaint and requested the Task Force to find additional violations. Mr. Hartz stated that there were multiple opportunities for the Respondent to provide a response but it was never provided. Victor Lim and Angelina Yu, aides to Supervisor Eric Mar, Board of Supervisors, (Respondent), provided a summary of the departments position and stated that actions have been taken to insure the proper handling of future public records requests.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the Task Force finds that violations of 67.21 (e), 67.25 (a) and 67.34, occurred.

DECISION AND ORDER OF DETERMINATION

On June 3, 2016, the Task Force found Supervisor Eric Mar, Board of Supervisors, in violation of Administrative Code (Sunshine Ordinance), Section 67.25 (a), for failure to respond to an Immediate Disclosure Request in a timely manner and referred the matter to the EOTC to develop methods to prevent future mishandlings of Immediate Disclosure Requests.

On May 9, 2016, and July 26, 2016, the EOTC met to review the complaint. The EOTC found the Respondent to be unresponsive to requests and determined that the Respondent did not provide a written response to the Complainant's public records request until July 26, 2016. The EOTC recommended that additional violations be found for failing to comply or not fully complying with a request for public records and for willfully failing to discharge duties imposed by the Sunshine Ordinance, the Brown Act and the Public Records Act.

On September 7, 2016, the Task Force reviewed the matter and accepted the EOTC recommendations to find additional violations of Administrative Code (Sunshine Ordinance), Section 67.21 (e) and 67.34 found for failing to comply or not fully

complying with a request for public records and for willfully failing to discharge duties imposed by the Sunshine Ordinance, the Brown Act and the Public Records Act.

The Task Force referred the matter to the Ethics Commission pursuant to San Francisco Administrative Code (Sunshine Ordinance), Section 67.30 (c), which provides that "the Task Force shall make referrals to a municipal office with enforcement power under this Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts."

This Order of Determination was adopted by the Sunshine Ordinance Task Force on September 7, 2016 by the following vote:

The motion PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Maass, Cannata, Fischer, Hinze,
Hyland, B. Wolfe
Noes: 0 - None
Absent: 1 - Chopra
Excused: 1 - Tesfai


Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. Nicholas Colla, Deputy City Attorney
- Ray Hartz, Complainant
- Supervisor Eric Mar, Board of Supervisors
- Victor Lim, Office of Supervisor Eric Mar