

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TTD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION
November 22, 2016**

DATE ISSUED
November 2, 2016

CASE TITLE – Ellen Tsang v. Tom Hui, Daniel Lowrey, and Lily Madjus, Department of Building Inspection. (File No. 16066)

FACTS OF THE CASE

On July 22, 2016, Ellen Tsang (Complainant) filed the following complaint:

File No. 16066: Complaint filed by Ellen Tsang against Tom Hui, Daniel Lowrey, and Lily Madjus, Department of Building Inspection, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On September 27, 2016, the Complaint Committee heard the matter.

Ellen Tsang (Complainant) provided a summary of the complaint and requested the Task Force to find a violation. Ms. Tsang stated that the Department of Building Inspection provided documents that were not specific to the public records requested. There were no speakers in support of the Complainant. Lilly Madjus, Department of Building Inspection (Respondent), provided a summary of the department's position. Ms. Madjus stated that the department has been working with Ms. Tsang via correspondence and in-person over the last 6 to 12 months and have previously provided the requested documents. In addition, Ms. Madjus provided a summary of the documents provided to Ms. Tsang. There were no speakers in support of the Respondent. A question and answer period followed. The Complainant and Respondent were allowed to provide rebuttals.

The Committee opined that referring to documents previously sent to the Complainant and providing documents not specific to the public records requested has confused the issue and made it difficult to determine if the records have been provided. In addition, it cannot be assume that Ms. Tsang has previously received the records and is allowed to submit additional requests for the same records.

In an effort to resolve the complaint the Committee requests that the Respondent review the public records and provide a detailed and separate response to each of Ms. Tsang's 11 requests as follows:

- Provide only the document specifically requested
- Do not provide documents that are questionable or might not be related to the specific document requested
- If you do not have a specific document, provide a statement stating that you do not have any responsive records to the request
- Do not refer to previously transmitted document, please provide a copy of the record
- Provide printouts of any information requested that is maintained online
- Provide copies of signed documents and the name of the signer if possible. Use of other resources to determine who signed the document may be necessary.
- Copies of emails or other records responsive to Ms. Tsang's requested records.

In an effort to make documents easier to find during the next hearing please number the pages or otherwise delineate your responses for reference.

On November 2, 2016, the Sunshine Ordinance Task Force (Task Force) heard the matter.

Ellen Tsang (Complainant) provided an overview of the complaint and requested the Task Force to find violations. Ms. Tsang stated that she received numerous documents that were not related to her request and could not determine if the requested documents were provided as parts of the provided documents. There were no speakers in support of the Complainant. Lily Madjus, Department of Building Inspection (Respondent), provided a summary of the department's position. Ms. Madjus presented a revised response to Ms. Tsang's request and provided specified documents that were responsive to Ms. Tsang's requests or stated that the department does not have the record in question. Steve Penelli, Chief Plumbing Inspector, described his interactions with Ms. Tsang and the time the department has dedicated to responding to Ms. Tsang. There were no additional speakers in support of the Respondent. A question and answer period followed. The Respondent and Complainant were provided the opportunity for rebuttals.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the Task Force found that a violation of Administrative Code (Sunshine Ordinance), Section(s) 67.21 (b), (c), and 67.25, occurred.

ORDER OF DETERMINATION

The Complaint Committee referred the matter to the Sunshine Ordinance Task Force with the recommendation to find jurisdiction and to find that a violation of Administrative Code (Sunshine Ordinance), Sections 67.21 (b) and 67.25 (b), occurred for failing to respond to an Immediately Disclosure Request in a timely manner and complete manner. The Committee further requests that the Task Force conduct a de novo hearing on the merits of the complaint. Both parties are required to attend the Sunshine Ordinance Task Force hearing. In addition, it is recommended that the Task Force consider referral to the Compliance and Amendments Committee after their consideration to insure compliance with any findings.

On November 2, 2016, the Task Force found that Tom Hui, Daniel Lowrey, and Lily Madjus, Department of Building Inspection, violated Administrative Code (Sunshine Ordinance), Section(s) 67.21 (b), (c), and 67.25, by failing to respond to an Immediate Disclosure Request in a timely manner and failing to assist a requester in identifying the existence form, and nature of any records or information maintained.

The Task Force referred the matter to the Compliance and Amendments Committee. It was requested that Ms. Tsang review the documents provided to her on October 28, 2016, and November 2, 2016, and provide a list of specific documents that have not yet been provided that are within the scope of Ms. Tsang's 11 items discussed during the meeting to the Sunshine Ordinance Task Force. The Compliance and Amendments Committee shall determine if the Department of Building Inspection has provided the documents requested by Ms. Tsang and/or evaluate DBI's position that they do not have document responsive to specific requests.

The motion PASSED by the following vote:

Ayes: 10 - Baranetsky, Eldon, J. Wolf, Tesfai, Maass, Cannata, Fischer,
Hinze, Hyland, Wolfe
Noes: 0 - None
Absent: 1 - Chopra



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. Ellen Tsang (Complainant)
Tom Hui, Department of Building Inspection (Respondent)
Daniel Lowrey, Department of Building Inspection (Respondent)
Lily Madjus, Department of Building Inspection (Respondent)