

**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 - REVISED
July 24, 2017

DATE ISSUED
July 5, 2017

CASE TITLE – Larry Chan v. Lieutenant Kathryn Waaland and the San Francisco Police Department (File No. 16113)

FACTS OF THE CASE

On December 19, 2017, the following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 16113: Complaint filed by Larry Chan against Lieutenant Kathryn Waaland and the San Francisco Police Department 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.

HEARING ON THE COMPLAINT

On January 24, 2017, the Complaint Committee (Committee) acting in its capacity to hear petitions/complaints heard and continued the matter.

The Committee reviewed the written complaint and response submitted by the parties. Upon review of the records the Committee requested that the following questions be forwarded to the Respondent:

- Was the case/investigation ongoing or completed at the time the public records request was submitted?
- What type of information was redacted from the provided documents?
- Why was it necessary to redact the entire page?
- Why was the redaction necessary?

On February 28, 2017, the Complaint Committee (Committee) acting in its capacity to hear petitions/complaints heard and continued the matter.

Larry Chan (Petitioner/Complainant) provided a summary of the complaint. Mr. Chan stated that the investigation of the Police complaint in question has ended but an appeal of the findings is pending. Task Force Administrator Victor Young noted that the Police Department responded to questions from the Committee regarding the status of the Police complaint and the nature of the redactions.

Upon review of the Police Department's response the Committee opined that the reason for the redaction is unclear as the nature of the information that was redacted cannot be evaluated without testimony from the Police Department.

On March 28, 2017, the Complaint Committee (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to SOTF without recommendations.

Lt. Kathryn Waaland and Ashly Worsham, Police Department (Respondent) provided a summary of the department's position and answered questions from the Committee. Ms. Worsham stated that the case file in question is considered open until the Police Chief takes action. In addition, it was stated by the Police Department representatives that even if the case file is closed the requested record will still be provided in a redacted format pursuant to California Evidence Code, Section 6254(f), and Penal Code, Sections 832.5, 832.7 and 832.8. Larry Chan provided a summary of the complaint and stated that the records are needed to prepare his case.

On April 5, 2017, the SOTF held a hearing to review the findings from Committee and to review the merits of the petition/complaint.

Larry Chan (Petitioner/Complainant) provided an overview of the complaint and requested that the Task Force find violations. There were no speakers in support of the Petitioner/Complainant. The representative from the Police Department (Respondent) was not present. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent and Complainant were provided the opportunity for rebuttals.

On June 7, 2017, the SOTF held a hearing to consider the request for reconsideration of the Order of Determination, and the request for reconsideration was granted.

On July 5, 2017, the SOTF held a hearing to reconsider new evidence provided by the Respondent.

Larry Chan (Petitioner) provided a summary of his complaint. Mr. Chan stated he is allowed to disclose his own personnel record at his discretions. Mr. Chan clarified that he wishes to review the body of the email sent from Lt. Reilly's personal email account, with attached screenshots of a facebook page, to Lt. Reilly's work email account. Mr. Chan stated that the email in question is not in his personnel file and should be released. Steven Beck and Lt. Waaland, Police Department (Respondent) provided a summary of the department's position. The Police Department stated that the email is part of a disciplinary action and is therefore considered a personnel document which can be viewed but not copied by the employee pursuant to Penal Code, Section 832.7. Mr. Beck stated that the Police Department is not required to disclose or redact the requested document. A question and answer period followed.

Vice Chair Hyland, seconded by Member Hinze, moved to rescind the April 5, 2017, SOTF decision to find a violation of Administrative Code (Sunshine Ordinance), Sections 67.21(e), 67.26 and 67.27.

The motion PASSED by the following vote:

Ayes: 9 – Eldon, J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe

Noes: 0 – None

Absent: 1 – Chopra

Vice Chair Hyland, seconded by Member J. Wolf, moved to rescind the April 5, 2017, SOTF decision to find a violation of Administrative Code (Sunshine Ordinance), Section 67.21(e), and the order to the Police Department to re-submit records in a format that limits redacts to identifying information.

The motion PASSED by the following vote:

Ayes: 7 – Eldon, J. Wolf, Tesfai, Maass, Fischer, Hinze, Hyland

Noes: 2 – Cannata, B. Wolfe

Absent: 1 – Chopra

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented the SOTF found that Lieutenant Kathryn Waaland and the Police Department violated Administrative Code (Sunshine Ordinance), Section 67.27.

ORDER OF DETERMINATION

Member J. Wolf, seconded by Vice Chair Hyland, moved to find that Lieutenant Kathryn Waaland and the Police Department violated Administrative Code (Sunshine Ordinance), Section 67.27, by failing to provide sufficient justification for redacting public records.

The motion PASSED by the following vote:

Ayes: 9 – Eldon, J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, Hyland,
B. Wolfe

Noes: 0 – None

Absent: 1 – Chopra

A handwritten signature in blue ink, appearing to read 'B. Wolfe', enclosed within a circular scribble.

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. Larry Chan (Petitioner/Complainant)
Lt. Kathryn Waaland, Police Department (Respondent)