

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION  
July 24, 2017**

**DATE ISSUED**  
July 5, 2017

**CASE TITLE – Gregory Berlin, Terra Aeris Law Group v. Office of the Treasurer and Tax Collector (File No. 17038)**

**FACTS OF THE CASE**

On April 26, 2017, the following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 17038: Complaint filed by Gregory Berlin, Aqua Terra Aeris Law Group, against the Office of the Treasurer and Tax Collector, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.26, by failing to respond to public records request in a complete manner and failing to keep withholding of records to a minimum.

**HEARING ON THE COMPLAINT**

On May 23, 2017, the Complaint Committee (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to the SOTF for hearing.

Gregory Berlin (Petitioner) provided a summary of the complaint and requested the SOTF for find violations. Mr. Berlin objects to the department's redaction of certain records and provided examples of other entities providing similar information. There were no speakers on behalf of the Petitioner. Debra Lew, Treasurer/Tax Collector (Respondent), provided a summary of the department's position and stated that information disclosed by taxpayers is confidential as disclosure could disadvantage the taxpayer if the information was distributed to the public. Ms. Lew stated that if specific information was accidentally distributed previously the department is now not required to disclose similar information. There were no speakers on behalf of the Respondent. The parties were provided an opportunity for rebuttals.

The Committee opined that that public records laws specify that the disclosure of public records that "would" disadvantage specific parties may be redacted but the Treasurer/Tax Collector must have proof of the creation of a disadvantage through disclosure.

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

Gregory Berlin, Aqua Terra Aeris Law Group, provided an overview of the complaint and requested that the Task Force find violations. Mr. Berlin stated that the department has not fulfilled their burden to prove that the information requested regarding the number of employees working for specific companies would provide an unfair business advantage. There were no speakers in support of the Petitioner. Debra Lew, Treasurer and Tax Collector's Office (Respondent), provided a summary of the department's position. Ms. Lew stated that the records in question were submitted by members of the public with the expectation of privacy. Ms. Lew stated that the documents were redacted pursuant to California Government Code, Section 6254 which allows for withholding of *"Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information."* Upon receipt of information from Deputy City Attorney Colla, Ms. Lew suggested that the issue of financial and taxpayer privacy may also be a factor in redacting the information. Mr. Berlin objected any continuances, the introduction of new arguments and requested the Task Force to take immediate actions. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent and Petitioner were provided the opportunity for rebuttals.

Nicholas Colla, Deputy City Attorney, provided comments and responded to question from the Task Force.

The SOTF opined that evidence of an unfair competitive disadvantage has not been provided by the Office of the Treasurer and Tax Collector.

#### FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented the SOTF found that the Office of the Treasurer and Tax Collector violated Administrative Code (Sunshine Ordinance), Section 67.21.

## ORDER OF DETERMINATION

Member Tesfai, seconded by Member Hinze, moved to find that the Office of the Treasurer and Tax Collector violated Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.26, by failing to respond to a public records request in a complete manner and failing to keep withholding of records to a minimum.

The motion PASSED by the following vote:

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

Noes: 1 – Fischer

Absent: 1 – Chopra

  
Bruce Wolfe, Chair  
Sunshine Ordinance Task Force

- c. Gregory Berlin (Petitioner/Complainant)  
Debra Lew, Office of the Treasurer and Tax Collector (Respondent)