

**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
December 27, 2017**

DATE ISSUED
November 1, 2017

CASE TITLE – Ray Hartz v. Department of Real Estate (File No. 17084)

FACTS OF THE CASE

On July 12, 2017, the following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 17084: Complaint filed by Ray Hartz against John Updike and the Department of Real Estate for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(e), 67.25 and 67.29(a)(c), by failing to respond to an Immediate Disclosure Request in a complete manner or failing to maintain required records.

HEARING ON THE COMPLAINT

On August 22, 2017, the Complaint Committee (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to the SOTF for hearing.

Ray Hartz (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Hartz stated that the department is legally required to maintain certain records and cannot state they have not received it. Mr. Hartz stated that the certification of compliance, as required by the lease, has not been provided and he has not received any documents showing that the Friends of the Public Library has paid rent. Mr. Hartz stated that Section 67.29 of the Sunshine Ordinance requires departments to maintain records. Claudia Gorham, Department of Real Estate (Respondent), provided a summary of the department's position. Ms. Gorham provided a timeline of the department's response and stated that the department responded in a timely and complete manner. Ms. Gorham stated that a copy of the entire lease file was provided and that the lease file contained all required records pursuant to records retention guidelines. Ms. Gorham stated that a copy of the Rent Roll detailing the rent payments received from the Friend of the Public Library can be provided, but the document was not requested pursuant to the department interpretation of the request for public records.

Chair Wolfe requested that the Department of Real Estate be prepared to explain their reason for excluding certain records, describe what is maintained in a lease file and address any other relevant issues brought up at the Complaint Committee hearing.

On November 1, 2017, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Ray Hartz (Petitioner), provided a summary of the complaint and requested the SOTF to find violations. Mr. Hartz stated that he wanted the Public Library and the Department of Real Estate to provide the requested documents separately for comparison purposes. Mr. Hartz stated that he has not received a copy of the lease or rent roll from the Department of Real Estate. There were no speakers on behalf of the petitioner. Director John Updike and Claudia Gorman, Department of Real Estate (Respondent), provided a summary of the department's position. Director Updike stated that the entire lease file was provided with the exception of the lease which was confirmed to have been provided by the Public Library. Director Updike describe the lease and the process for renewal by the Friends of the Public Library. Director Updike stated that the rent rolls could be created and provided but that it was not specifically requested. There were no speakers in support of the Respondent. A question and answer period followed. The Petitioner and Respondent were provided an opportunity for rebuttals.

The SOTF opined that requested documents must be provided when requested and that one cannot reference a copy of a document provided by another department as there is a possibility that the version in their possession may be different from that held by another party. The SOTF requests that the Department of Real Estate provide a copy of the lease in their possession and the rent roll.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented the SOTF found violations of Administrative Code (Sunshine Ordinance), Sections 67.21(e) and 67.25.

ORDER OF DETERMINATION

Member Cannata, seconded by Member J. Wolf, moved to find Director John Updike and the Department of Real Estate violated Administrative Code (Sunshine Ordinance), Sections 67.21(e) and 67.25, by failing to respond to an Immediate Disclosure Request in a timely and complete manner.

The motion PASSED by the following vote:

Ayes: 8 – Eldon, J. Wolf, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, Tesfai

The SOTF referred the matter to the Compliance and Amendments Committee to confirm that the Department of Real Estate has provided a copy of the lease and the rent roll to Mr. Hartz.

On November 11, 2017, Director John Updike, Department of Real Estate, provided the lease and a summary of the payments made vs. payments owed since the inception of the lease. Mr. Updike stated that other records related to the matter were not retained pursuant to the City Administrator's record retention policies.



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. Ray Hartz (Petitioner/Complainant)
Director John Updike, Department of Real Estate (Respondent)