

**SUNSHINE ORDINANCE
TASK FORCE**

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ORDER OF DETERMINATION
March 2, 2018

DATE ISSUED
January 16, 2018

CASE TITLE – Marvin Lambert v. Planning Department and Recreation and Parks.
(File No. 17091)

FACTS OF THE CASE

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 17091: Complaint filed by Marvin Lambert against the Planning Department and Recreation and Parks for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.24, 67.25, 67.26 and 67.27, by failing to respond to a public records request in a timely and complete manner.

HEARING ON THE COMPLAINT

On September 19, 2017, The Compliance and Amendments Committee (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to the SOTF for hearing.

Marvin Lambert (Petitioner) provided a summary of his complaint and requested the Committee to find violations. Mr. Lambert stated that Recreation and Park should not be able to cite attorney client privilege for withholding all requested records as it is overreaching and acts to hide incriminating documents. Christine Silva (Respondent) provided a summary of the department's position. Ms. Silva acknowledged that the response was two days late but all records have been provided. Eric Pawlowsky, Recreation and Parks (Respondent) stated that the department's initial response was responsive documents was timely but additional records were found and provided at a later time. Mr. Pawlowsky stated that additional records previously withheld due to attorney client privilege would not be released.

The Committee requested that Recreation and Park provide additional details regarding their use of attorney client privilege to withhold certain records and that specific codes and law be cited.

The Committee opined that the Planning Department violated Sunshine Ordinance, Section 67.21, as the Planning Department acknowledged that they were two day late in responding to the public records request. The Committee believe that Recreation and Parks violated Sunshine Ordinance Section 67.21, as Recreation and Park stated that they failed to include certain documents with their initial response to the public records request. The Committee requests that the Task Force review and clarify the issue of attorney client privilege in regards to public records requests.

On January 16, 2018, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Marvin Lambert (Petitioner), provided a summary of the complaint and requested the SOTF to find violation. Mr. Lambert stated that both the Planning Department and Recreation and Parks acknowledged that they did not provide records in a timely manner. In addition, Mr. Lambert stated that Recreation and Parks incorrectly invoked Attorney Client Privilege to justify withholding of records and that records should be provided in a redacted format. There were no speakers in support of the Petitioner. Christine Silva, Planning Department (Respondent), provided a summary of the department's position. Ms. Silva acknowledged that the Planning Department response was two days late but all records have been provided. Eric Pawlowsky, Recreation and Parks (Respondent) provided a summary of the department's position. Mr. Pawlowsky stated that the department's initial response was timely but additional records were found and provided on a later date. Mr. Pawlowsky stated that five (5) emails between Recreation and Park staff and their city attorney representative regarding CEQA on a project was withheld as allowed under Attorney Client Privilege. Mr. Pawlowsky stated that Recreation and Parks attempt to remain neutral in CEQA discussion and disclosing privileged information would bias discussions on various subject matter discussion. Mr. Pawlowsky stated that the work product or CEQA is currently online and available to the public. There were no speakers in support of the Respondents. A question and answer period followed. The parties were provided an opportunity for rebuttal.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found a violation of Administrative Code (Sunshine Ordinance), Section 67.21.

ORDER OF DETERMINATION

Member Cannata, seconded by Member Hinze, moved to find that the Planning Department violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely manner.

The motion PASSED by the following vote:

Ayes: 7 – Eldon, Maass, Cannata, Fischer, Hyland, Hinze, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, J. Wolf

Excused: 1 – Tesfai

Member Cannata, seconded by Vice Chair Hyland, moved to find that Recreation and Parks violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely manner.

The motion PASSED by the following vote:

Ayes: 7 – Eldon, Maass, Cannata, Fischer, Hyland, Hinze, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, J. Wolf

Excused: 1 – Tesfai



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. Marvin Lambert (Petitioner/Complainant)
Christine Silva, Planning Department (Respondent)
Eric Pawlowsky, Recreation and Parks (Respondent)