

**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
March 2, 2018 (Revised 3/14/18)

DATE ISSUED
January 16, 2018

CASE TITLE – Kathleen Courtney and the Russian Hill Community Association v. Nicholas Foster and the Planning Department. (File No. 17104)

FACTS OF THE CASE

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

File No. 17104: Complaint filed by Kathleen Courtney and the Russian Hill Community Association against Nicholas Foster and the Planning Department for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a request for public records in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On October 17, 2017, The Education, Outreach and Training Committee (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to the SOTF for hearing.

Kathleen Courtney (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Ms. Courtney stated that they received responses to their 4 initial requests but found that they were incomplete. Ms. Courtney accepts the Planning Department's statement that they did not willfully withhold records but stated that the Planning Departments process for maintaining records and posting them online is out of date and not enforced. Ms. Courtney requested that the Sunshine Ordinance Task Force directs the Planning Department to create and enforce records retention policy and maintain procedures. Christine Silva, Planning Department (Respondent), provided a summary of the department's position. Ms. Silva stated that the Department did not initially withhold records when responding to the public records request. However, upon review of the issue the Planning Department found a "glitch" in the online system where certain documents were misclassified and certain classification of documents were hidden from view online and to Planning's staff. Ms. Silva stated that that the 'glitch' has been addressed. A question and

answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

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.

John Borruso, Russian Hill Community Association (Petitioner), provided a summary of the complaint and requested the SOTF to find violation. In addition to finding violations of the Sunshine Ordinance, Mr. Russo requested that the SOTF ask the Planning Department to: 1) require all planners to post their documents to the Property Information Map as soon as they are created (within 10 days); 2) create a comprehensive procedure manual with compliance considered in staff evaluations; and 3) announce the new procedures to the public. Kathleen Courtney spoke in support of the Petitioner. Christine Silva, Planning Department ((Respondent), provided a summary of the department's position. Ms. Silva stated that the Department did not intentionally withhold records when responding to the public records request. However, upon review of the issue the Planning Department found a "glitch" in the online system where certain documents were misclassified, numbering approximately 1,300 documents, and were hidden from online viewing and to members of the public as well as Planning's staff. Ms. Silva stated that the 'glitch' has been addressed and all records are available online. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

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 Nicholas Foster and the Planning Department violated Administrative Code 67.21, by failing to respond to a public records request in a timely and complete manner and to refer the matter to the Compliance and Amendments Committee to confirm that documents that were accidentally hidden have posted online as intended by the Planning Department and that the documents related to the complaint have been provided. In addition, it is moved to refer the matter to the Education, Outreach and Training Committee to review the Planning Department's procedures, policy and training to insure that public records are being made available to the public 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. Kathleen Courtney, Russian Hill Community Association (Petitioner/Complainant)
Christine Silva, Planning Department (Respondent)
Nicholas Foster, Planning Department (Respondent)