

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

August 4, 2011

DATE THE DECISION ISSUED

July 26, 2011

ALICIA GAMEZ v DEPARTMENT OF PUBLIC HEALTH (CASE NO. 11043)

FACTS OF THE CASE

Alicia Gamez alleges that, on multiple occasions between October 2010 and May 31, 2011, the Department of Public Health ("DPH") violated public records laws by failing to adequately respond to her requests for public documents. In addition, she alleges that DPH failed to follow public meetings laws for multiple meetings of the Noise Ordinance Task Force ("NOTF") from November 2008 to the present.

COMPLAINT FILED

On May 31, 2011, Ms. Gamez filed a complaint against DPH, without identifying which specific provision(s) of the public meetings and public records laws were violated.

HEARING ON THE COMPLAINT

On July 26, 2011, Ms. Gamez presented her case to the Task Force. Tom Rivard of DPH provided the response. The matter was first heard on June 28th, but had to be continued to July 26th because of time constraints.

Ms. Gamez testified that she made numerous inquiries regarding the noise ordinance after a noisy restaurant opened next door to her residence. She said as she investigated, she found that there was a lot of disparity between the implementation of the ordinance and the code requirements. She said she began to ask questions about how was it that DPH arrives at a certain interpretation and never provided a satisfactory answer. At a certain point in time, she was asked to take a Sunshine Ordinance training and a public records and public meetings training. After the training, she said, she visited the noise ordinance website and noticed numerous violations. She said although her requests were not technically correct, she realized that DPH should have assisted her throughout the process. She said a neighbor has also requested information and a response has yet to be received.

Mr. Rivard testified that the NOTF has received requests for documents and that in response, the NOTF provided documents as they became available. He said the NOTF has generated documents explaining the legal issues of concern to Ms. Gamez. He said

there may be some concern about timing, but the NOTF operated with the best of intentions. He said Ms. Gamez has also been told that the new complete review on guidelines for restaurant construction is being generated and that she would receive a copy.

He said DPH did not know that the NOTF was a policy body and therefore subject to public-meetings laws. Based on that belief, NOTF meetings were only noticed to its members while the agendas and minutes were posted as time allowed. He said the Sept. 15, 2011, meeting has been posted and admitted the NOTF could have benefitted by some public participation. People, he said, are interpreting the ordinance to suit their own point of view.

On June 21st, Eileen Shields, Public Information Officer for DPH, responded to the complaint, acknowledging DPH's failure to comply with Sunshine Ordinance public meeting requirements.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence, the Task Force concluded that the NOTF was created by the San Francisco Board of Supervisors under Police Code Section 2918 and, therefore, subject to the Sunshine Ordinance pursuant to Section 67.3(d). The Task Force further concluded, based largely on the NOTF's own admissions, that the NOTF did not follow state and local laws regarding public access to meetings, public information, and public records.

DECISION AND ORDER OF DETERMINATION

The Task Force finds Tom Rivard and the NOTF in violation of:

(1) Sunshine Ordinance Sections 67.6 for not announcing the time and place of the meetings, 67.7 for not meeting agenda requirements for regular meetings, 67.7-1 for not meeting public notice requirements for meetings, 67.9 for not making agendas and related materials public, 67.13 for preventing the public to attend meetings, 67.15 for not allowing public testimony at meetings, 67.16 for not providing the meeting minutes, 67.21 for preventing access to public records, 67.22 for not releasing oral public information, 67.25 for not responding in a timely manner, 67.26 for withholding records, 67.27 for not providing written justifications for withholding of records, 67.29-7 for not maintaining correspondence and records;

(2) Section 6253 of the California Public Records Act for not meeting the time limits set for responding to public records requests; and

(3) Brown Act Sections 54953 for not meeting the requirement that meetings be open and public, 54954 for not announcing the time and place of regular meetings, 54954.2 for not posting agendas, and 54954.3 for not allowing public testimony. The NOTF was ordered to show how the violations have been rectified. The Compliance and Amendments Committee was ordered to refer the matter back to the Task Force with a recommendation that letters be sent to the Director of Public Health, the Board of Supervisors and the Mayor expressing concern that the Noise Ordinance Task Force is meeting without guidelines.

The letters are to include copies of suggestions, if any, made by the NOTF to the Board of Supervisors.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011, by the following vote: (Wolf/Washburn)

Ayes: Manneh, Washburn, Costa, Wolfe, Chan, West, Johnson

Excused: Knee

Absent: Snyder, Knoebber

Recused: Cauthen

The Task Force also finds DPH and Dr. Rajiv Bhatia in violation of Sunshine Ordinance Sections 67.21 for preventing access to public records, 67.22 for not releasing oral public information, 67.25 for not responding in a timely manner, 67.26 for withholding records, and 67.27 for not providing written justification for withholding of records.

The agency shall appear before the Compliance and Amendments Committee on Tuesday, August 9th at 4 p.m. in Room 406 at City Hall.

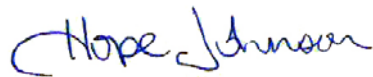
This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011, by the following vote: (Johnson/Costa)

Ayes: Manneh, Washburn, Costa, Wolfe, Chan, West, Johnson

Excused: Knee

Absent: Snyder, Knoebber

Recused: Cauthen



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Alicia Gamez, Complainant
Tom Rivard, Respondent
Rajiv Bhatia, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.