

Date: Nov. 9, 2010

Item No. 3
File No. 10047

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: Nov. 4, 2010

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
November 1, 2010

DATE THE DECISION ISSUED
October 26, 2010

KELEE LANZA v DISTRICT ATTORNEY'S OFFICE (CASE NO. 10047)

FACTS OF THE CASE

Kellee Lanza ("Complainant") alleges that the San Francisco District Attorney's Office ("DA") and Chief of Administration Paul Henderson, have failed to comply with the requirements of the California Public Records Act by failing to produce several categories of documents which the Complainant first requested on June 29, 2010.

COMPLAINT FILED

On September 3, 2010, Ms. Lanza filed a complaint against the DA.

HEARING ON THE COMPLAINT

On October 26, 2010, Ms. Lanza presented her case before the Sunshine Ordinance Task Force ("Task Force"). Respondent was represented by Mr. Henderson and Assistant District Attorney Seth Steward.

Ms. Lanza said she made a public records request regarding DA Kamala Harris to the DA's office on June 29, 2010. She said the office responded on July 12 saying it needed an extra two weeks. She said starting mid August she started calling the office once a week and sent a reminder email during the last week of August. She said no response was provided. She said she additionally sent a demand letter on September 2, the day before she filed a complaint with the Task Force.

On Sept. 7, she said, she received 69 pages of documents, which met two of her 11 requests. She said last week she received more documents, but very little has been produced during the four-month period. Ms. Lanza had earlier said she worked for a public affairs company and that her request was related to the upcoming November 2 elections in which Ms. Harris was a candidate. In closing, Ms. Lanza said she also requested

ORDER OF DETERMINATION

information from two other city departments within the same time frame and was provided with the information within a few weeks.

Mr. Steward said he was not knowledgeable on the matter but was in attendance to request a continuance on behalf of his office. As he addressed the Task Force, Mr. Henderson entered the room and told the Task Force that his office has been responding to the request on a rolling basis. He said he could not provide the Task Force with specific answers to all questions because staff members working on the Complainant's request were not available, hence the request for a continuance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that the agency violated the Ordinance. Although Mr. Henderson asserted that the DA's office was making reasonable efforts to respond to Ms. Lanza's request, testimony elicited at the Task Force's October 26, 2010, hearing showed otherwise. For example, Mr. Henderson could provide no credible answer to the question of why the DA's office could not produce the job titles held by Ms. Harris for the past eight years - a mundane chore which undoubtedly involves a minimal exertion of effort. Similarly, Mr. Henderson could not explain why the DA's office failed for nearly four months to respond to a request for Ms. Harris's public calendar, when Section 67.29-5 requires the release of those documents within *three business days*.

Applying the implied rule of reason as established by *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 761 and other authorities, the Task Force concluded that, four months was an unreasonably long period of time to respond to at least the most basic requests, particularly given that the DA's office is accustomed to working within the confines of a very limited time frame when it comes to producing documents, e.g. for discovery purposes in litigation.

DECISION AND ORDER OF DETERMINATION

Applying the implied rule of reason from *Rosenthal, supra*, 34 Cal.App.3d at p. 761, and other authorities, the Task Force finds that the agency violated Sunshine Ordinance Section(s) 67.21(b) for failure to justify withholding of documents, 67.21 (e) for not sending a knowledgeable representative to the hearing, 67.25(d) for failing to provide documents within the statutorily mandated time period, 65.26 for not keeping withholding to a minimum, and 67.29-5 because calendars must be made available to any requester three business days subsequent to the calendar entry date.

The department shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on November 9, 2010.

ORDER OF DETERMINATION

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 26, 2010, by the following vote: (Snyder / Wolfe)

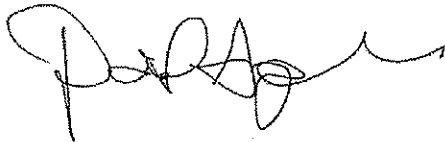
Ayes: Snyder, Washburn, Knoebber, Wolfe, Johnson, Knee

Excused: Cauthen, Manneh, Williams

Recused: Chan



Richard A. Knee, Chair
Sunshine Ordinance Task Force



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

c: Jerry Threet, Deputy City Attorney
Kellee Lanza, Complainant
Paul Henderson, Respondent
Seth Steward, Respondent
Sandip Patel, Respondent

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law and nominated by the Society of Professional Journalists, Northern California.