

Date: May 26, 2009

Item No. 13
File No. 09007

SUNSHINE ORDINANCE TASK FORCE

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Completed by: Chris Rustom

Date: May 15, 2009

***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.

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SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
May 5, 2009

DATE THE DECISION ISSUED
April 28, 2009

DAVID LARKIN v. DEPARTMENT OF PUBLIC WORKS (09007)

FACTS OF THE CASE

On January 7, 2009, Complainant David Larkin requested information about an investigation into the conduct of DPW surveyor Bruce Storrs following a complaint filed by David Larkin against Bruce Storrs. The investigation was conducted by Bureau manager Barbara Moy. Frank Lee of DPW disclosed some records but withheld others citing California Public Records Act section 6254 (c) and Article 1, Section of the California Constitution. The basis for the redaction or withholding of information cited by DPW is because the disclosure of the information would constitute an unwarranted invasion of personal privacy. Other correspondence from the agency indicated that draft documents were also withheld.

COMPLAINT FILED

On January 29, 2009, David Larkin filed a complaint against DPW and Barbara Moy alleging violations of the Sunshine Ordinance and the Public Records Act.

HEARING ON THE COMPLAINT

On April 28, 2009, Complainant David Larkin appeared before the Task Force and presented his claim. Respondent Agency was not present but had earlier submitted a letter requesting a continuance. No motion was made to continue the matter, and the Task Force proceeded with the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found, as an initial matter, that preliminary drafts of documents must be released under the Sunshine Ordinance, section 67.24(a)(1). The Task Force also found that under controlling CPRA case law (e.g., *Bakersfield City Sch. Dist. v. Superior Court* (2004) 118 Cal. App. 4th 1041) where "complaints of a public employee's

wrongdoing and resulting disciplinary investigation reveal allegations of a substantial nature, as distinct from baseless or trivial, and there is reasonable cause to believe the complaint is well founded, public employee privacy must give way to the public's right to know" even if no misconduct was found to have occurred. Under this standard, which governs over the narrower standard in 67.24(c)(7), the Department was not, on the facts presented to the Task Force, justified in withholding records regarding the investigation of the complaint into Mr. Storrs' conduct. Finally, unless a specific employee had a good faith basis to fear retaliation or was a whistle-blower (neither of which apply to the case at hand) the names of the employees interviewed during the investigation could not be withheld under 67.24(c) and should be released.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section 67.21 of the Sunshine Ordinance for failure to produce responsive documents including witness statements, reports and drafts regarding well-founded allegations of employee misconduct as the documents are required to be produced under sections 67.24 (a) (1) and Sec 67.24 (c)(7), as supplemented by CPRA case law.

The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on May 12, 2009.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on April 28, 2009, by the following vote: (Craven-Green / Goldman)
Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Goldman, Williams, Chu
Excused: Johnson, Chan



Kristin Murphy Chu, Chair
Sunshine Ordinance Task Force

c: David Larkin, complainant
Frank Lee, Dept of Public Works
Ernie Llorente, Deputy City Attorney