



**SUNSHINE ORDINANCE TASK FORCE**  
**Complaint Committee**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**MINUTES**

**Hearing Room 408**  
**City Hall, 1 Dr. Carlton B. Goodlett Place**  
**San Francisco, CA 94102-4689**

**November 27, 2018**  
**5:30 PM – 7:30 PM**

**Regular Meeting**

**Members:** Fiona Hinze (Chair), Matthew Cate and Rodman Martin

**1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES**

Chair Hinze called the meeting to order at 5:35 p.m. On the call of the roll Chair Hinze and Member Cate were noted present. Member Martin was noted not present. There was a quorum.

Member Martin was noted present at 5:43 p.m.

**Chair Hinze, seconded by Member Cate, moved to change the order of the Agenda to hear Item No. 4 (File No. 18077) later in the agenda.**

Public Comment:  
None.

**The motion PASSED by the following vote:**

Ayes: 2 - Hinze, Cate  
Noes: 0 - None  
Absent: 1 - Martin

2. **Approval of the October 23, 2018, Complaint Committee meeting minutes.**

**Member Cate, seconded by Chair Hinze, moved to approve the October 23, 2018, meeting minutes.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 2 – Hinze, Cate

Noes: 0 - None

Absent: 1 - Martin

3. **Public Comment:** Members of the public may address the Committee on matters that are within the Committee's jurisdiction but not on today's agenda.

Speakers:

None.

4. **File No. 18077:** Complaint filed by Diana Gutierrez against John Tucker and the Fire Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to an Immediate Disclosure Request for public records in a timely and/or complete manner.

Diana Gutierrez (Petitioner) was not present and did not inform the SOTF that she would not attend.

John Tucker, Fire Department (Respondent) was present but did not speak.

**Chair Hinze, seconded by Member Cate, moved to file the matter due to nonappearance of the Complainant without prior notice.**

*(Pursuant to SOTF Complaint Procedure failure to appear at a SOTF hearing without notifying the SOTF will result in the matter being file/closed. Notice will be provided to the Petitioner and opportunity will be provided to reopen the complaint.)*

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 3 - Hinze, Cate, Martin

Noes: 0 - None

5. **File No. 18079:** Complaint filed by Ellen Tsang against Lily Madjus and the Department of Building Inspection (DBI) for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner. (00:23:45 - )

Ellen Tsang (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Ms. Tsang stated that of her 4 requests she did not receive a response to request No. 4. Ms. Tsang went to the DBI offices to pick up a CD which contained some of the requested documents. Ms. Tsang stated that she had to return to the DBI offices to pick up another CD containing records but that the requested records included redacted documents. Ms. Tsang stated that she has never received a response to request No. 4.

Lily Madjus, Department of Building Inspection (Respondent), provided a summary of the department's position. Ms. Madjus stated that all requested records were provided via a CD which Ms. Tsang picked up at DBI offices because the records could not be emailed due to size restrictions. Ms. Madjus stated that she had responded to request no. 4 on August 27, 2018. Ms. Madjus stated that she informed Ms. Tsang that there was another CD which they mailed to her. Ms. Madjus stated that DBI has not withheld any documents. Ms. Madjus stated that certain records were redacted as required.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

**Member Cate, seconded by Member Martin, moved to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing.**

Public Comment:  
None.

**The motion PASSED by the following vote:**

Ayes: 3 - Hinze, Cate, Martin  
Noes: 0 - None

6. **File No. 18081:** Complaint filed by David Tucker against Bianca Polovina and the Office of Labor Standards Enforcement for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.24(b)(2), by failing to respond to a request for litigation documents in a timely and/or complete manner. (00:24:51-00:

David Tucker (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Tucker stated that he is seeking a copy of the settlement agreement and related correspondence to an administrative review of the Office of Labor Standards Enforcement of unpaid healthcare benefits owed by the Arch Diocese of San Francisco to Arch Diocese employees. Mr. Tucker stated that Arch Diocese employee Peggy O'Donnell has a right to see all documents to determine that her rights would not be finalized by the judge in a timely manner and wants a copy immediately for review.

Patrick Mulligan, Director of the Office of Labor Standards Enforcement (Respondent), provided a summary of the department's position. Mr. Mulligan stated that the office is claiming investigative privilege in response to the request and the complaint which is provided by California Evidence Code Sections 1040, 1041 and California Government Code Section 6254 and 6276. Mr. Mulligan stated that this particular case is paralleled by a class action lawsuit the terms of which have not settled and require approval of a judge which may be finalized by the first week of December and will be provided upon settlement.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Member Cate opined that there are several legal issues regarding the scope of the investigatory privilege and that whatever happens with the class action settlement changes the legal questions. The Committee is requesting the City Attorney's Office provide an explanation of the privileges that the Respondent is claiming and how they apply to a contingent settlement agreement.

**Member Cate, seconded by Member Martin, moved to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing without recommendation.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 3 - Hinze, Cate, Martin

Noes: 0 - None

7. **File No. 18083:** Complaint filed by Robert M. Smith against the Fine Arts Museums of San Francisco (FAMSF) 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.

Robert Smith (Petitioner) requested a continuance via email.

**Chair Hinze, seconded by Member Cate, moved to continue to matter to the call of the chair.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 2 - Hinze, Cate

Noes: 0 - None

Absent: 1 - Martin

8. **ADJOURNMENT**

There being no further business the meeting was adjourned at 6:47 p.m.

**APPROVED: 1/22/19**

**Complaint Committee**

**Sunshine Ordinance Task Force**

N.B. The Minutes of this meeting set forth all actions taken by the Sunshine Ordinance Task Force on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.