



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**

**April 23, 2019
5:30 PM**

Regular Meeting

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

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

Chair Martin called the meeting to order at 5:30 p.m. On the call of the roll Chair Martin and Members Hinze and Yankee were noted present. A quorum was present.

Action: Moved by Member Yankee, seconded by Member Hinze, to change the order of the Agenda to hear Item No. 4 (File No. 19015) later in the agenda.

Public Comment:
None.

The motion PASSED by the following vote:

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

2. Approval of the February 26, 2019, Complaint Committee meeting minutes.

Action: Moved by Member Yankee, seconded by Member Hinze, to approve the February 26, 2019, meeting minutes.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Yankee, Hinze Martin

Noes: 0 - None

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. 19015:** Complaint filed by Terrence J. Kerrisk against the Department of Human Resources 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. (00:05:00 – 00:48:00)

Terence Kerrisk (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Kerrisk stated that he was told by his supervisor at Public Works to falsify time card records of certain employees. Mr. Kerrisk stated that in September 2015, he was released from his job. Mr. Kerrisk sent a request to the Civil Service Commission requesting investigation notes and materials which were the basis of the report used to justify termination and was told that they were in the possession of the Department of Human Resources (DHR). Mr. Kerrisk stated that five months later he was told by DHR that Public Works did no wrong in releasing him from his job. Mr. Kerrisk stated that DHR never released the investigative notes and materials in their possession to him.

Susan Gard, Department of Human Resources (Respondent), provided a summary of the department's position. Ms. Gard stated that she responded to Mr. Kerrisk's document request and acknowledged that she did not respond in a timely manner. Ms. Gard stated that she does not have the details of the investigation into Mr. Kerrisk's release from his job, and that there was no evidence found against Mr. Kerrisk's former supervisor. Ms. Gard stated that in the interest of privacy, DHR withheld the investigative report.

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

Member Yankee suggested to Mr. Kerrisk that he request the investigative records in the possession of Public Works and refile his Sunshine complaint as needed.

Action: Moved by Member Hinze, seconded by Member Yankee to find jurisdiction, that the records are public, and that DHR violated Administrative Code, Section 67.21, by failing to respond in a timely and/or complete manner.

The Committee requested that DHR produce the investigation report in redacted format.

Public Comment:
None.

The motion PASSED by the following vote:

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

5. **File No. 19017:** Complaint filed by Elica Vafaie, Asian Americans Advancing Justice, Asian law Caucus, Jeffrey Wang, Council on American-Islamic Relations, San Francisco Bay Area, Alan Schlosser No. CA American Civil Liberties Union of Northern California against Lt. Kathryn Waaland and the Police Department 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.

Elica Vafaie, Asian Americans Advancing Justice, Asian Law Caucus (Petitioner) provided a summary of the complaint and requested the Committee to find a violation.

Ms. Vafaie stated that on October 12, 2018, she submitted an Immediate Disclosure Request to the Police Department and they responded on October 15, 2018. Upon review of the requested document, Ms. Vafaie stated that she discovered that the referenced 'white document' was not provided. Ms. Vafaie stated that she followed up on the missing document and the Police Department indicated that they would not provide the 'white document' and did not provide a reason for withholding. Ms. Vafaie requested that her supplemental record sent to SOTF Administrator on April 22, 2019, be included in the packet.

Action: Moved by Member Yankee, seconded by Member Hinze to include the supplemental materials provided late by Ms. Vafaie into the packet after the deadline.

Public Comment:
None.

The motion PASSED by the following vote:

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

Lt. Katherine Waaland, Police Department (Respondent), provided a summary of the department's position. Lt. Waaland stated that the Police Department received the Immediate Disclosure Request for records from Ms. Vafaie on October 12, 2018, and responded on October 15, 2018, in a timely manner. Lt. Waaland stated that the Police Department received a request on January 10, 2019, for the 'white document,' and responded citing Administrative Code 67.27(a)(b), Government Code 62.54(f)(k) and

Evidence Code 1040 which exempts the request records. Lt. Waaland stated that there is an understanding between the SFPD and the FBI that this document not be disclosed.

Member Yankee asked if the FBI had communicated that the “white document” could not be produced and was there an email sent with instructions?

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

Action: Moved by Member Yankee, seconded by Member Hinze, to find jurisdiction, that the records are public and to refer the matter to the SOTF for hearing with the recommendation that the Police Department violated Administrative Code (Sunshine Ordinance) Section 67.24, by failing to provide requested records in a timely and/or complete manner.

Public Comment:
None.

The motion PASSED by the following vote:

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

6. **File No. 19018:** Complaint filed by Anonymous against the Arts Commission for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Ann Lacy (Petitioner), provided testimony via telephone. Upon inquiry from Chair Martin, Ms. Lacy noted that she recently changed her name from Ann Treboux to Ann Lacy and recently undated her contact information.

Ann Lacy (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Ms. Lacy stated that she made a document request on March 20, 2019, asking for a list of current street artists and did not get a response. Ms. Lacy stated that she went to NextRequest.com and searched for her File No. 19-1021 but could not find a response. Ms. Lacy stated that on March 21, 2019, the NextRequest response was marked, “staff only,” and not marked send to complainant.

Kate Patterson (Arts Commission) (Respondent), was not present at the hearing but communicated to the SOTF that the Arts Commission would not attend the meeting due to the use of alternate names used by Ann Lacy.

Action: Moved by Member Hinze, seconded by Member Yankee to find that the SOTF has jurisdiction, that the requested records are public and refer the matter to the SOTF for hearing.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Hinze, Yankee, Martin

Noes: 0

Absent: 0 - None

The Chair called File Nos. 19019, 19020, 19021 and 19022 to be heard together.

7. **File No. 19019:** Complaint filed by Javad Mirsaidi against David Steinberg Public Works 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.

See File No. 19022 for actions.

8. **File No. 19020:** Complaint filed by Javad Mirsaidi against David Steinberg and Public Works 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.

See File No. 19022 for actions.

9. **File No. 19021:** Complaint filed by Javad Mirsaidi against David Steinberg and Public Works 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.

See File No. 19022 for actions.

10. **File No. 19022:** Complaint filed by Javad Mirsaidi against David Steinberg and Public Works 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.

Javad Mirsaidi (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Mirsaidi stated that in November, 2018, he submitted a records request to Public Works through David Steinberg. Mr. Mirsaidi stated that the responses, 28,088 documents, came very slowly and that those documents were reviewed by the City Attorney. Mr. Mirsaidi stated that he then narrowed the scope of his request to eight items. Mr. Mirsaidi stated approximately 95% the documents received were not relevant or is non responsive to the request.

John Knadler spoke in support of the Petitioner and stated that 41% of the documents produced to Mr. Mirsaidi were duplicative and/or incomplete.

David Steinberg, (Public Works) (Respondent), provided a summary of the department's position. Mr. Steinberg stated that normally he asks his Information Technology Department (IT) to perform a search. Mr. Steinberg stated that Mr. Mirsaidi asked for emails of twelve people. Mr. Steinberg stated he worked with IT and learned that there were duplicates produced to Mr. Mirsaidi. Mr. Steinberg stated that he was made aware that Mr. Mirsaidi had filed suit against the City. Mr. Steinberg stated that the City Attorney had a litigation hold on emails regarding the lawsuit and that they reviewed documents for attorney/client privilege. Mr. Steinberg stated that he had to invoke the rule of reason due to the volume of the request. Mr. Steinberg stated that he has provided 28,088 pages of response records and had approximately 38,000 documents remaining to be reviewed which could take up to four weeks.

Member Hinze opined that the Committee should continue the matter until the next meeting and have the City Attorney appear.

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

Action: Moved by Member Hinze, seconded by Member Yankee to find jurisdiction, that the records are public and to continue the matter to the next Complaint Committee hearing.

The Committee requested that the Public Works' City Attorney representative or the person most knowledgeable appear to answer questions.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Hinze, Yankee, Martin
Noes: 0 - None
Absent: 0 - None

11. **ADJOURNMENT**

There being no further business the meeting was adjourned at 7:42 p.m.

APPROVED: 06/25/19
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.