



**SUNSHINE ORDINANCE TASK FORCE**  
**Compliance and Amendments Committee**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**MINUTES**

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

**September 22, 2020 - 4:30 PM**

**Remote Regular Meeting**

**Members:** Lila LaHood (Chair), Bruce Wolfe and Chris Hyland

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

Chair LaHood called the meeting to order at 4:32 p.m. On the call of the roll Chair LaHood and Members Wolfe and Hyland were noted present. A quorum was present.

There were no agenda changes.

**2. Approval of the August 25, 2020, Compliance and Amendments Committee meeting minutes.**

**Action: Moved by Member Wolfe, seconded by Member Hyland to approve the August 25, 2020, meeting minutes.**

Public Comment:  
None.

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

Ayes: 3 - Wolfe, Hyland, LaHood  
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. 19114:** Complaint filed by Shane Anderies against Tyler Vu and the Public Defender's Office for violating Administrative Code (Sunshine Ordinance), Section 67.24, 67.25, 67.26, 67.27 and 67.29 by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Chair LaHood opened the matter noting that the Public Defender's Office has stated that the records are not public because they are in the process of defending future clients. Chair LaHood stated that she and Member Wolf had a conversation with Jeffrey Pierce of the Ethics Commission who noted that the matter could be referred to the Ethics Commission, but that he did not think the commission would have authority to conduct in camera review on behalf of the Task Force to determine if the records are public. Chair LaHood stated that Mr. Pierce recommended that they speak with Deputy City Attorney Marc Price-Wolf and request the respondents participate in a closed session meeting that would allow a private review of the documents. Chair LaHood repeated Mr. Pierce's opinion that materials gathered in the defense of current and future clients is protected.

Member Wolfe noted that Jeffrey Pierce runs the investigative unit at the Ethics Commission and that over the years SOTF has spoken with him about in camera reviews. The requestor is not asking for records from a database instead he is asking for records that he does not know if they are in the database. Member Wolfe opined that the documents being asked for in *Coronado Police Officers Association v. Carroll* (2003) 106 Cal.App.4th 1001 as referenced by DCA Price-Wolf are not the same. Member Wolfe stated that the Committee's purpose is to determine if the records are public or not and to make certain that the SOTF provides an answer. Member Wolfe stated that the focus in the *Coronado* matter was if all the requested records are part of live cases and in a file cabinet or a database. Member Wolfe noted that Mr. Vu has stated repeatedly that the Public Defenders Office's practice is similar to a private law firm.

Chair LaHood asked Mr. Vu if he is willing to let the SOTF, in closed session with the Deputy City Attorney present, ensure confidentiality and would he allow them to review the records to determine if they are public?

Mr. Vu stated that he agreed. Mr. Vu also suggested that it might be beneficial to the SOTF to submit a list of hypothetical records to see what is in the world of the Public Defender's Office.

Member Wolfe requested that Mr. Vu bring samples to have the SOTF Deputy City Attorney review them to ensure Mr. Anderies that they are commensurate with the actual records he is requesting.

Mr. Anderies stated there has been confusion between attorney/client privilege and attorney work doctrine and that documents must identify what is being withheld through doctrine. Mr. Anderies stated that the Ordinance and CPRA state that the responding party must meet its first steps of claiming what it has. Mr. Anderies stated that Mr. Vu has never done this. Mr. Anderies stated that he wants Mr. Vu to identify what is being withheld. Mr. Anderies opined that if the Committee meets in camera, this would

determine the public's right to know. Mr. Anderies noted that the SOTF Deputy City Attorney may say it apply. Mr. Anderies stated that his records request was not about specifics to a client file however the response from Mr. Vu was that everything is privileged and thus he has nothing to respond to.

Member Wolfe opined that the Committee may need to recommend that this matter be heard before the Ethics Commission. Member Wolfe noted that members of the public may need to weigh in on things in the interest of the public. Member Wolfe also stated that the role of the Public Defender's Office calls for consideration. Member Wolfe suggested that Mr. Vu, Chair LaHood, Member Hyland and Deputy City Attorney Price-Wolf participate in a closed session meeting.

Chair LaHood noted that a privilege log should be provided by Mr. Vu.

**Action: Moved by Member Wolf, seconded by Member Hyland, to affirm that the respondent has agreed to provide a privilege log to Petitioner of the items requested and that the Committee arrange for a closed session to review the records in question to determine if the records are public. Member Wolfe also requested written legal advice from Deputy City Attorney Price-Wolf on this matter.**

Public Comment:

Anonymous stated he thought that the discussion of what is a public record is troubling, however he understands attorney/client privilege. Anonymous stated that attorney/client privilege is absolute and that balancing the burden is on the respondent.

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

Ayes: 3 - Wolfe, Hyland, LaHood

Noes: 0 - None

5. **File No. 19119:** Complaint filed by Anonymous against the Department of Technology for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b), 67.26 and 67.27 by failing to respond to a public records request in a timely and/or complete manner.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that this is a metadata case. Anonymous stated that in October 2019, the Department of Technology (DT) made the decision not to provide metadata. The SOTF determine that metadata is a public record. Anonymous stated that between October 2019 and February 2020, DT began working with Anonymous to provide requested records. Anonymous stated that DT has been in the process of providing records but have been unavailable since Covid-19

Linda Gerull (Department of Technology) (Respondent), provided a summary of the department's position. Ms. Gerull stated that her department has had security concerns

regarding hackers getting into City files. Mr. Gerull stated that DT wants to build a document that would be useful as a guide. Mr. Gerull noted that DT is looking at the different types of technology tools to make it easier for the Custodian to provide records. Mr. Gerull stated that DT has partially fulfilled the records request and will continue to provide a standard. Mr. Gerull thanked anonymous for assisting her in understanding the needs of the requestor.

Michael Makstman stated that they need to create a standard of providing metadata in a safe way that does not compromise the security of the City. Mr. Makstman stated that DT continues to review and refine the standards to be reviewed by the City Attorney.

**Action: Moved by Member Wolfe, seconded by Member Hyland, 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 - Wolfe, Hyland, LaHood  
Noes: 0 - None

6. **File No. 19121:** Complaint filed by Anonymous against the Police Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b)(k), 67.26 and 67.27, by failing to respond to a public records request in a timely and/or complete manner; withholding more than the minimum and failing to justify withholding.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that the Custodian requested additional time to respond to the Immediate Disclosure Request and that documents would be provided on a rolling basis. Anonymous stated that justification for redactions were either not provided or were incorrect.

Sgt. Stacy Youngblood (Police Commission) (Respondent), provided a summary of the department's position. Sgt. Youngblood stated that he agreed with the Petitioner and that some of the records were over redacted. Sgt. Youngblood stated that he went through training and that an index was provided.

**Action: Moved by Member Wolfe, seconded by Member Hyland, 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 - Wolfe, Hyland, LaHood

Noes: 0 - None

7. **File No. 19112:** Complaint filed by Anonymous against Chief William Scott and Lt. R. Andrew Cox and the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.25, 67.26, 67.27, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner, failing to justify withholding of records and failing to maintain a Proposition G calendar.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that respondent submitted a letter indicating that they will not provide future calendars. Anonymous noted that the SOTF has already ruled on this issue. Anonymous opined that the Police Department should continue to forward these records as they have in the past. Anonymous stated that future calendars are public records.

Lt. Andrew Cox (Police Department) (Respondent), provided a summary of the department's position. Lt. Cox stated that the Petitioner is correct, and he takes responsibility for his mistakes. Lt. Cox stated that knowing the patterns and actions of the Chief in releasing future calendars can compromise the Chief's security. Lt. Cox stated that his decision was based on advice of City Attorney.

Member Wolfe noted that redactions that relate to an investigation or entries that relate to anything personal on the Chief's calendar can be redacted. Member Wolfe opined that it may be the way this matter is being presented however the retraction is not based upon a decision of the Police Department but on the advice of legal counsel. Member Wolfe stated that the public has a right to know.

**Action: Moved by Member Wolfe, seconded by Member Hyland, to report that the Committee is not satisfied that the Police Department complied with the Order and referred the matter back to the SOTF for hearing.**

**Public Comment:**

Hank Heckel, Office of the Mayor, stated that he had been before the SOTF on November 2019 regarding whether the Mayor's calendar should be disclosed. Mr. Heckel argued that the details of the Mayor's security precluded him from releasing her calendar. Mr. Heckel stated that he agrees with the Police Department's position and supports releasing the Mayor's calendar after an event has taken place.

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

Ayes: 3 - Wolfe, Hyland, LaHood

Noes: 0 - None

8. **ADJOURNMENT**

Member Wolfe stated that the SOTF and its Committees will continue to have regular meetings and tweak them to be as close to an in person meeting as possible.

Member Wolfe requested that the Committee adjourn in memory of Ruth Bader Ginsburg.

Public Comment:  
None.

There being no further business the meeting was adjourned at 6:52 p.m.

**APPROVED: October 27, 2020**  
**Compliance and Amendments 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.