



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

REMOTE REGULAR MEETING

If you wish to make a statement during general Public Comment, please press *6 and unmute your telephone to speak. Please press *6 to mute your telephone once you are done with your statement.

June 22, 2021 - 4:30 PM

Members: Lila LaHood (Chair), Jennifer Wong and Laurie Jones Neighbors

Remote Access to Information and Participation

In accordance with Governor Newsom's Executive Order No. N-33-20 declaring a State of Emergency regarding the COVID-19 outbreak and Mayor London N. Breed's Proclamation declaring a Local Emergency issued on February 25, 2020, including the guidance for gatherings issued by the San Francisco Department of Public Health Officer, aggressive directives were issued to reduce the spread of COVID-19. On March 17, 2020, the Board of Supervisors authorized their Board and Committee meetings to convene remotely (via Microsoft Teams) and will allow remote public comment via videoconference.

Members of the public may participate by phone or may submit their comments by email to: Cheryl.Leger@sfgov.org; all comments received will be made a part of the official record. Sunshine Ordinance Task Force agendas and their associated documents are available at <https://sfbos.org/sunshine>.

As the COVID-19 disease progresses, please visit the Sunshine Ordinance Task Force website regularly to be updated on the current situation as it affects the legislative process.

Meeting Decorum: Any member of the Sunshine Ordinance Task Force may call for decorum due to disorderly conduct of meeting participants. Persons who engage in threatening and/or menacing behavior may be asked to leave.

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

Chair LaHood called the meeting to order at 4:33 p.m. On the call of the roll Chair LaHood, Members Neighbors and Wong were noted present. A quorum was present.

- a) Shall the Compliance and Amendments Committee waive Complaint Procedure Rules to allow more than two complaints to be heard in the same meeting by the same complainant?

Action: Moved by Chair LaHood, seconded by Member Wong, to waive SOTF Complaint Procedure Rules to allow more than two complaints per Complainant to be heard in the same meeting.

Public Comment:

Peter Warfield, Executive Director of Library Users, libraryusers2004@yahoo.com; P.O. Box 170544, San Francisco, CA 94117-0544 expressed concerns regarding combining agenda items.

Anonymous clarified that the motion is not regarding combining complaints and is regarding the limit of number of complaints per complainant per hearing.

Speakers commented/provided clarification on how this rule applies to the items on the agenda due to the Anonymous nature of some of the complaints.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Neighbors, Wong
Noes: 0 - None

There were no agenda changes.

2. Approval of the May 25, 2021, Compliance and Amendments Committee meeting minutes.

Public Comment:

Peter Warfield, Executive Director of Library Users, noted a repeated error regarding their name and contact information for himself. Mr. Warfield note that the e-mail account should be yahoo.com and not gmail.com.

Action: Moved by Member Wong, seconded by Member Neighbors, to approve the May 25, 2021, meeting minutes as amended.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Neighbors, Wong

Noes: 0 - None

3. **Approval of the October 27, 2020, Compliance and Amendments Committee meeting minutes.**

Action: Moved by Chair LaHood, seconded by Member Wong, to approve the October 27, 2020, meeting minutes as amended.

Public Comment:

Peter Warfield, Executive Director of Library Users, commented on the rule that required approval of minutes within 6 months or be scheduled before the SOTF. Mr. Warfield commented on the limit of listing contact information in minutes.

Speaker commented on the possibility of automatic transcripts.

Speaker commented on item 7 and possible errors.

Chair LaHood requested a correction to Item 7 to clarify that Member Wong was requested to make a “presentation”.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Neighbors, Wong

Noes: 0 - None

4. **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:

Peter Warfield, Executive Director of Library Users, commented on previous complaints against the Library Commission and suggested follow up with the Compliance and Amendments Committee.

Anonymous commented on possible direction or lack of direction from the SOTF. Anonymous suggested more detailed directions be provided regarding follow up of SOTF decisions.

5. **File No. 19140:** Complaint filed by Stephen Malloy against the Department of Human Resources for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to a request for public records in a timely and/or complete manner. *(5:10 p.m. – 5:43 p.m.)*

(On May 25, 2021, the Compliance and Amendments Committee requested that the Department of Human Resources review the documents it has presented including redactions on the basis of attorney/client privilege, to justify those redactions and to remove unnecessary redactions on header fields including but not limited to, from, date and time stamps and complete a new search to locate additional responsive records. The Committee requested that the matter be continued to the next Compliance and Amendments Committee hearing for monitoring.)

Chair LaHood provided a summary of the request of the Compliance and Amendments Committee.

Stephen Malloy (Complainant) responded to questions from the Committee and noted that documents have not yet been provided. Mr. Malloy provided a summary of the matter and why the documents should be compelled to be released according to the equal application of the law.

Ted Wisinski (Department of Human Resources) (Respondent), responded to questions from the Committee and provided a summary of the actions taken since the last committee meeting. Mr. Wisinski noted the department's position to not provide a privilege log, attorney clients privileged documents and other related items in this matter.

Chair LaHood suggested the SOTF have a hearing to discuss attorney client privilege issues.

Action: Moved by Chair LaHood, seconded by Member Neighbors, to continue the matter to the next Compliance and Amendments Committee with the request to comply with previous requests listed below. (The motion was amended to refer the matter the SOTF for hearing.)

Public Comment:

Anonymous disagreed with the motion to continue due to the non-compliance of the Respondent.

Peter Warfield, Executive Director of Library Users, agreed with the comments of Anonymous and noted that there is no harm with referring the matter to the SOTF. Mr. Warfield stated that violations of the law are counterproductive.

Speaker commented on the possible questions regarding compliance by Respondent.

Action: Moved by Chair LaHood, seconded by Member Neighbors to amend the motion to refer the matter to the SOTF for hearing and request compliance with previous requestor for documents listed below.

Chair LaHood requested that the committee comply with the following: “request that the Department of Human Resources review the documents it has presented including redactions on the basis of attorney/client privilege, to justify those redactions and to remove unnecessary redactions on header fields including but not limited to, from, date and time stamps and complete a new search to locate additional responsive records.”

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Neighbors, Wong

Noes: 0 - None

6. **File No. 19124:** Complaint filed by Anonymous against Chief William Scott, Lt. R. Andrew Cox and the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, 67.26, 67.27, by failing to provide assistance in a timely or complete manner, by failing to provide a timely or complete response to a records request, by failing to provide rolling responses, by failing to keep withholding to a minimal portion of public records, and by failing to provide written justification for withholding. *(5:44 pm – 6:00 pm)*

(On December 22, 2020, the Compliance and Amendments Committee found the records public and referred the matter to the SOTF. On April 7, 2021 the SOTF moved to find that Chief William Scott, Lt. R. Andrew Cox and the Police Department violated Administrative Code, Section 67.26, by failing to key by footnote or other clear reference for the appropriate justification for withholdings. Chair Wolfe requested the Compliance and Amendments Committee monitor compliance and requested the Police Department to notify the SOTF of when changes to the Police Department Policy occurs to comply with the new state law (Senate Bill 1421)

Chair LaHood provide a summary of previous actions of the SOTF and their request for compliance.

Anonymous (Complainant), responded to questions from the committee and requested that documents be provided on a rolling basis. Anonymous provided information on the requested links to requested documents.

Sgt. Victoria Sullivan (Police Department) (Respondent) provided a summary of the status of the complaint and responded to questions from the committee. Sgt. Sullivan noted that there is no timeline set to provide a rolling response regarding complying with SB 1421 but that compliance is currently in process.

Action: Moved by Chair LaHood, second by Member Neighbors, continue the matter to the call of the chair. The Committee requested links to the portal/documents (specific URL) once reference redacted documents are uploaded and available online.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Neighbors, Wong, LaHood

Noes: 0 - None

7. **File No. 19112:** Complaint filed by Anonymous against Chief William Scott, Lt. R. Andrew Cox and the Police Department for 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. *(6:01 p.m. 6:33)*
(On October 7, 2020 the SOTF found that Chief William Scott violated Administrative Code, Sunshine Ordinance Section 67.34, by willfully failing to comply with the Order of Determination, the California Public Records Act, the Brown Act and to refer the matter to the Ethics Commission. Petitioner is requesting that the Compliance and Amendments Committee review the matter for Police Department noncompliance.)

Chair LaHood provide a summary of previous actions of the SOTF and their request for compliance.

Anonymous (Complainant), responded to questions from the committee and provided a summary of previous actions on the complaint. Anonymous stated violations were previously found and there has only been partial compliance. Anonymous stated that the Police Department has agreed to only provide partial information on the Prop G calendar. Anonymous stated that the Police Department is inappropriately redacting future calendar items. Anonymous noted that the matter has already be referred to the Ethics Commission.

Sgt. Victoria Sullivan (Police Department) (Respondent) responded to questions from the committee. Sgt. Sullivan summarized that pursuant to advice from the Office of the City Attorney the Police Department will continue to redact specific dates, times and location on future calendars.

The committee expressed concerns that the security exemption is being applied too broadly.

Action: Moved by Member Neighbors, second by Member Wong, to refer the matter back to the SOTF and noted that the Police Department redaction of specific dates, times and locations for security purpose is being used too broadly. (The Committee notated that there has not been full compliance with the SOTF Order of Determination and additional steps should be taken.)

The Committee requested that the SOTF Administrator follow-up on possible action/responses from the Ethics Commission.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Neighbors, Wong
Noes: 0 - None

8. **File No. 19098:** Complaint filed by Anonymous against Police Department for violating Administrative Code (Sunshine Ordinance), Sections 67.21(b), by failing to provide copies of electronic records by printing and scanning them instead; 67.21(k) by failing to search for all personally held public records within the scope of *City of San Jose v. Superior Court* (2017); Section 67.26 by withholding partial text message records namely the To and From of each message and also by withholding all email metadata namely email headers, and Section 67.27 by failing to key each redaction with a footnote or other clear reference to a justification. *(6:34 p.m. – 7:09 p.m.)*
(On October 7, 2020, the SOTF found the Police Department in violation of Sections 67.21(b), by failing to provide justification of withholding a record; 67.21(k) for not releasing the records; and 67.26 by failing to keep withholding to a minimum. Order of Determination issued January 13, 2021. Petitioner's request for a hearing by Compliance and Amendments due to noncompliance with the Order of Determination.)

Chair LaHood provide a summary of previous actions of the SOTF and their request for compliance.

Anonymous (Complainant), responded to questions from the committee and provide a summary of previous actions on the complaint. Anonymous provided status on compliance with the Order of Determination and metadata information that should be disclosed.

Sgt. Victoria Sullivan (Police Department) (Respondent) provided a summary of the department's responses and responded to questions from the committee.

Action: Moved by Member Wong, second by Member Neighbors, to refer the matter to the SOTF for consideration of continued and additional violations 67.21(b), 67.26, and 67.27, and 67.29-7(a), including but not limited insufficient

detail in citing redactions in certain situation and to failure to ensure that records are not destroyed.

Public Comment:

Peter Warfield, Director of the Library Users Association, expressed support for the motion and expressed confusion of various parts of 67.29-7.

The motion PASSED by the following vote:

Ayes: 3 - Wong, Neighbors, LaHood

Noes: 0 - None

9. **File No. 18086: Hearing regarding request for reconsideration.** Compliant filed by Mark Sullivan against the Mission Dolores Green Benefit District Formation Committee for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.14, by failing to allow video and audio recording filming and still photography of a policy body. *(7:10 p.m. – 7:53 p.m.)*

(On December 18, 2018 the Compliance and Amendments Committee moved to refer the matter to the SOTF with the recommendation to find that the SOTF does not have jurisdiction over the Mission Dolores Green Benefit District at this time; On March 6, 2019 the SOTF motion to find jurisdiction failed.)

Mark Sullivan (Complainant), responded to questions from the committee and provided a summary of previous actions. Mr. Sullivan provided information regarding court cases related to creation of Green Benefit Districts. Mr. Sullivan commented on the vote from the previous actions of the SOTF and requirement for the passage of a motion.

Mr. Sullivan noted that the responding organization no longer exists. Member Wong noted the possible receipt of an email that the Respondent would not be able to appear.

The committee expressed concern that the responding body no longer exists.

Action: Moved by Member Neighbors, second by Chair LaHood, to continue the matter to the call of the call. The Committee requested advice from the SOTF Deputy City Attorney (DCA) to determine if the submitted court case will affect or provide precedence regarding jurisdiction in this matter. In addition, the committee requested DCA advice to determine if the now non-existent status of the Respondent organization at this time effect the possibility of finding jurisdiction and hearing the matter.

Public Comment:

David Steinberg (Public Works), stated that information (court case findings) provided by Mr. Sullivan today was available previously at the time the SOTF made decision and is not new information. Mr. Steinberg stated that the court

cases referenced are also being misrepresented. Mr. Steinberg stated that the GBD was not a policy body of the city and not a non-profit agency. Therefore, the SOTF does not have jurisdiction. Mr. Steinberg stated that complaints regarding SOTF process should not be address as it is not related to jurisdiction.

Peter Warfield, Executive Director of the Library Users Association, recommended referral to the SOTF and commented on the reconsideration process.

The motion PASSED by the following vote:

Ayes: 3 - Neighbors, LaHood, Wong
Noes: 0 - None

10. **File No. 20079:** Complaint filed by Shane Anderies against District Attorney's Office and Chesa Boudin for violating Administrative Code (Sunshine Ordinance), Sections 67.21(e) failing to respond to a records request in a timely and/or complete manner; 67.25 by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner; 67.26 withholding kept to a minimum and 67.27 failing to provide justification for withholding responsive documents. *(7:54 p.m. - 8:46 p.m.)*

(On May 25, 2021, the Compliance and Amendments Committee requested that the District Attorney's Office verify that a comprehensive search of all department communications has been completed, to search for communications to and from Chesa Boudin regarding Mr. Thomas Ostly, including, but not limited to, email, Signal and other messaging aps and request that conversation settings for any conversations that included Chesa Boudin within the department and that the results be forwarded to the SOTF Administrator within two weeks to be reviewed at the next Compliance and Amendments Committee hearing.)

Chair LaHood provide a summary of previous actions of the SOTF and their request for compliance.

Shane Anderies (Complainant), responded to questions from the committee and provide a summary of previous actions on the complaint. Mr. Anderies stated that no additional information has been provided since the last meeting and the Respondent continues to violate the Sunshine Ordinance.

David Campos (District Attorney's Office) (Respondent) provided a summary of the actions taken in response to the request from the committee and responded to questions from the committee. Mr. Campos stated that no new information/documents were found based upon their additional search. Mr. Campos stated that all employees were requested to provide any responsive documents.

Action: Moved by Chair LaHood, second by Member Neighbors, to continue the matter to the call of the chair. The committee requested that the SOTF Deputy City Attorney provide guidance or an analysis on the appropriateness of the SOTF pursuing information regarding settings on application/programs such as “Signal” which allow for the auto deletion of messages and to find out if it falls under the umbrella of metadata information.

Public Comment:

Peter Warfield, Executive Director for the Library Users Association, stated that all documents should be preserved and retained in a professional manner.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Neighbors, Wong

Noes: 0 - None

11. Announcements, Comments, Questions, and Future Agenda Items by Members of the Compliance and Amendments Committee.

The committee noted possible future hearings on the following subjects:

Attorney client privilege

Reconsidering jurisdiction

Setting on signal and other messaging application disclosability.

Public Comment:

Peter Warfield, Executive Director for the Library Users Association, suggested discussion on 67.30 regarding assignment of a city attorney to the SOTF and the use of NextRequest by departments to respond to public records requests.

12. ADJOURNMENT

There being no further business the meeting was adjourned at 9:00 p.m.

APPROVED: DRAFT

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.