



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 22, 2016 - 5:30 PM

Regular Meeting

Members: Leuwam Tesfai (Chair); Fiona Hinze, Victoria Baranetsky

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

Chair Leuwam Tesfai called the meeting to order at 5:30 p.m. On the call of the roll Chair Tesfai and Member Hinze were noted present. There was a quorum.

Member Baranetsky was noted present at 5:39 p.m.

There were no agenda changes.

2. Approval of the September 27, 2016, Complaint Committee meeting minutes.

The Committee discussed the draft minutes.

Member Hinze, seconded by Chair Tesfai, moved to approve the September 27, 2016, Complaint Committee meeting minutes.

Public Comment:

Peter Warfield stated that the minutes should contain more specific information and that the Task Force Complaint Procedure has been discuss for months without result.

The motion PASSED by the following vote:

Ayes: 2 - Hinze, Tesfai

Noes: 0 - None

Absent: - Baranetsky

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:

Ann Treboux requested uniform time limits for all items listed on the agenda and stated that violations with no referral to committee does not stop future violations. Ray Hartz suggested that the Committee Meeting list the new hearing procedures on the front of the hearing notice for the next few months. Peter Warfield agreed with the previous speakers, stated that discussion of the hearing procedures should be perform is a public format and stated that the Task Force has not yet address the issue of hearing complaints within 45 days.

The Complaint Committee (Committee) held hearing(s) on File Nos. 16077, 16086, 16085, 16087, 16057, 16068, 16070, 16072 and 16078 to: 1) determine if the Sunshine Ordinance Task Force (Task Force) has jurisdiction; 2) review the merits of the complaints; and/or 3) issue a report and/or recommendation to the Task Force. The Complainant and Respondent may attend to provide clarification, evidence and related testimony. However, attendance by the Complainant and Respondent was **not required** at the November 22, 2016, Complaint Committee meeting.

The Task Force, upon receipt of the report and/or recommendation from the Committee, shall schedule and conduct a hearing on the merits of the complaint. The Complaint and Respondent will be required to attend the Task Force meeting to review the merits of the complaint(s).

4. **File No. 16077:** Complaint filed by the Library Users Association against City Librarian Luis Herrera and the Public Library for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, 67.26 and 67.27, by failing to respond to an Immediate Disclosure Request in a complete manner, keeping withholding of records to a minimum, and failing to provide justification for withholdings. (00:12:00 – 00:36:00)

Member Hinze, seconded by Member Baranetsky, moved to find jurisdiction on the matter.

Public Comment:

Peter Warfield stated that the minutes should contain more specific information and that the Task Force Complaint Procedure has been discuss for months without result.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai
Noes: 0 - None

Peter Warfield (Complainant) provided a summary of the complaint and requested the Task Force to find violations. Mr. Warfield alleges that the Respondent did not do an adequate job to search for the records regarding the Public Library's participation in the ALA conference. Mr. Warfield stated that he should not have been sent to a separate website to search for additional information and that information regarding Mr. Herrera's participation in a panel presentations was not provided. Mr. Warfield stated the Public Library cannot referral public records request to other entities to search for information but must make an effort to obtain responsive documents on behalf of the requester or otherwise provide assistance. Ray Hartz spoke on behalf of the Complainant and stated the Mr. Warfield was not informed of Luis Herrera's participation in the conference. The Public Library provide a response to the public records request on June 4, 2015, and June 8, 2015. An opportunity for rebuttals was provided to the parties.

The Committee requested that parties be prepared to discuss whether the requested documents existed at the time of the public records request and if it was in possession of the Public Library or the conference organizer.

Chair Tesfai, seconded by Member Hinze, move to refer the matter to the Task Force for hearing with a summary of the proceedings.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai

Noes: 0 - None

5. **File No. 16086:** Complaint filed by the Library Users Association against Library Commission Secretary Sue Blackman, City Librarian Luis Herrera, Commission President Mary Wardell-Ghirarduzzi and the Library Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7 and 67.15, by failing to post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting and failing to provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within the body's jurisdiction. (00:36:00 – 00:56:00)

Member Hinze, seconded by Member Baranetsky, moved to find jurisdiction on the matter.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai

Noes: 0 - None

Peter Warfield (Complainant) provided a summary of the complaint and requested the Task Force to find violations. Mr. Warfield stated that the Library Commission did not included in the agenda or announce their intent to adjourn the June 16, 2016, meeting the intent of the Library Commission to adjourn the meeting honor or retiring librarian Toni Bernardi until after public comment was taken. Mr. Warfield stated that the Library was aware of the intent to adjourn the meeting in honor and should have placed matter on the agenda. In regards to Administrative Code, Section 67.7 (e), which allows for adoption of purely commendatory actions without advance noticing, Mr. Warfield stated that a vote by the body, which was not taken, is needed in order to invoke Administrative Code Section 67.7 (e) for purely commendatory findings. In addition, Mr. Warfield stated that the Library Commission and Library staff was aware in advance of the meeting they intended to adjourn in honor of Ms. Bernardi and the matter should have appeared on the agenda. An opportunity for rebuttals was provided to the parties.

The Committee requested that Mr. Warfield provide his explanation in writing as to how the Library Commission did not comply with Administrative Code, Section 67.7 (e), in regards to purely commendatory actions and/or how the section does not apply. In addition, the Committee requested that Mr. Warfield provide his examples in writing as to how it is evidenced that City Librarian Luis Herrera, Library staff, and the Library Commission was aware of the intent of the Library Commission to adjourn in honor of Toni Bernardi in advance of the June 16, 2016, Library Commission meeting.

The Committee also request that the Respondents be prepared to respond to statements made regarding the requirements for invoking Administrative Code, Section 67.7 (e) and statements made by Mr. Warfield.

Member Baranetsky, seconded by Member Hinze, move to refer the matter to the Task Force for hearing with a summary of the proceedings.

Public Comment:

Ray Hartz stated that the Library Commission did not take a vote regarding purely commendatory actions and stated that if he knew of the intent of the Library Commission he would have attended the meeting.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai

Noes: 0 - None

6. **File No. 16085:** Complaint filed by Ray Hartz against Sue Blackman, City Librarian Luis Herrera, the Public Library and the Library 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. (00:56:00 – 00:57:00)

Ray Hartz (Complainant), withdrew the complaint. However, upon review of File No. 16087 it was determined that supporting documents contained in File No. 16085 should be included into File No. 16087.

7. **File No. 16087:** Complaint filed by Ray Hartz against Luis Herrera, Sue Blackman and the Library Commission for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond in a timely and/or complete manner to the request from the Sunshine Ordinance Task Force to respond to Complaint No. 16075. (00:57:00 – 01:22:00)

Member Hinze, seconded by Member Baranetsky, moved to find jurisdiction on the matter.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai
Noes: 0 - None

Ray Hartz (Complaint) provided a summary of the complaint and requested the Task Force to find violations. Mr. Hartz stated that Sue Blackman, Public Library, responded to the request stating that there were no responsive records prior to polling the Library Commission and other Library staff members to determine if other parties had records responsive to the request. Mr. Hartz questioned whether or not Ms. Blackman was authorized to provide responses which includes her personal opinions and stated that the Library is still responsible for Ms. Blackman's actions and allegations.

Upon review of the testimony from Mr. Hartz the Committee determined that the evidence submitted by Mr. Hartz and the Library response is located in File No. 16085. Copies of the relevant support documents will be placed into File No. 16087 and the title of the complaint will be revised to reflect Mr. Hartz's actual complaint.

The Committee requested that the Respondents provide information regarding whether or not Ms. Blackman is authorized to respond on behalf of the Library and the Library Commission. This is a matter of concern as the request for records was regarding communications between the Library and the Library Commission and it does not appear that they were polled to determine if they had any responsive records. In addition, this is an issue as it is not clear as to whether or not Ms. Blackman is speaking on behalf of the Library and Library Commission when she expresses what appears to be a personal opinion.

The title of the complaint has be revised as follows:

Complaint filed by Ray Hartz against Luis Herrera, Sue Blackman and the Library Commission for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Member Baranetsky, seconded by Member Hinze, move to include the Public Library response located in File No. 16085 and refer the matter to the Task Force for hearing with a summary of the proceedings.

Public Comment:

Ann Treboux expressed concern with departments providing opinion regarding individual members of the public.

Peter Warfield expressed concern in regards to confusion caused by including addition documents from related files. Mr. Warfield expressed concern with the appearance of the Task Force placing the burden of proof on the Complainants instead of the Respondents.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai

Noes: 0 - None

8. **File No. 16057:** Complaint filed by Ann Treboux against Howard Lazar and 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. (01:22:00 – 01:38:00)

Member Hinze, seconded by Member Baranetsky, moved to find jurisdiction on the matter.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai

Noes: 0 - None

Ann Treboux (Complaint) provided a summary of the complaint and requested the Task Force to find violations. Ms. Treboux stated that the Arts Commissions overloaded with confusing/repetitive responses and that she did not receive the entirety of the records she requested despite the clarifications provided to the Arts Commission. Ms. Treboux stated that the Arts Commission provided a link and never provided the actual document but otherwise did not provide assistance. Ms. Treboux stated that the request for clarification from the Arts Commission was timely but the final response was late and incomplete.

The Committee clarified that the requested was based upon a verbal statement made by Howard Lazar, Arts Commission. The Committee questioned whether or not Ms. Treboux requested the documents from the Board of Supervisors as Board is the custodians of a portion of the requested records.

Member Hinze, seconded by Member Baranetsky, move to refer the matter to the Task Force for hearing with a summary of the proceedings.

Public Comment:

Peter Warfield shared his past experience with the Arts Commission and their repeated violations of the Sunshine Ordinance. Mr. Warfield stated that a willful violation should be considered.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai

Noes: 0 - None

9. **File No. 16068:** Complaint filed by Ann Treboux against Kate Patterson and 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. (01:38:00 – 01:57:00)

Member Hinze, seconded by Member Baranetsky, moved to find jurisdiction on the matter.

Public Comment:

Peter Warfield stated that the Task Force has jurisdiction on the matter.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai

Noes: 0 - None

Ann Treboux (Complaint) provided a summary of the complaint and requested the Task Force to find violations. Ms. Treboux claimed that the Arts Commission reason for not responding to the Immediate Disclosure request (staff out of office and email auto-response sent) is invalid and that the Arts Commission forged the evidence that an out of office message was provided. Ms. Treboux stated that the response was late and that the requested documents have not yet been provided.

The Committee inquired as to why Ms. Treboux believes the out of office message is a forgery. Task Force Administrator Young stated that Ms. Treboux has previously been inform that the Arts Commission has a general email address for public records request and suggested that Ms. Treboux requests be send to both staff members and the public records email address in order to insure that a timely response is provided.

The Committee requested that the Arts Commission be prepared to discuss technical (IT) ways to provide evidence that out of office messages were sent to specific individuals. Task Force Administrator Young stated that the Compliance and Amendments Committee will be conducting hearings on out of office issues.

The Committee requested that Ms. Treboux provide a summary of the reason she believes the Arts Commission evidence that the out of office message was sent is a forgery in writing.

Member Baranetsky, seconded by Member Hinze, move to refer the matter to the Task Force for hearing with a summary of the proceedings.

Public Comment:

Peter Warfield expressed support for the motion, objected to the identical wording of complaints, and stated that emails should be automatically sorted and sent to staff who can respond to requests.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai
Noes: 0 - None

Chair Tesfai, seconded by Member Baranetsky, moved to combine Complaint No. 16070 and 16072 into Complaint No. 16078, with the agreement of the Complainant, as all three complaints are based upon the same original Immediate Disclosure Request.

Public Comment:

Peter Warfield stated that complaints should not be combined but pushed forward to the Task Force for hearing.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai
Noes: 0 - None

10. **File No. 16070:** Complaint filed by Ann Treboux against Kate Patterson and 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.

Complaint No. 16070 was combined into Complaint NO. 16078.

11. **File No. 16072:** Complaint filed by Ann Treboux against Kate Patterson and 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.

Complaint No. 16072 was combined into Complaint No. 16078.

12. **File No. 16078:** Complaint filed by Ann Treboux against Kate Patterson and 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. (01:57:00 –)

Member Hinze, seconded by Member Baranetsky, moved to find jurisdiction on the matter.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai

Noes: 0 - None

Ann Treboux (Complaint) provided a summary of the complaint and requested the Task Force to find violations. Ms. Treboux stated that the documents requested were not provided. Ms. Treboux stated the Arts Commission invoked an extension of time to respond and that the Arts Commission was not clear on how the documents were to be provided in an incremental fashion. Ms. Treboux does not believe that the files provided regarding Maria Sky were provided in a timely manner and that they are incomplete. Ms. Treboux stated that the Arts Commission should have known that Ms. Sky was previously known as Maria Hillius. In regards to records regarding Arts Commission enforcement actions against Faima Thiam, Ms. Treboux stated that Ms. Thiam has been involved with the Arts Commission for decades that there is no way that the Arts Commission has no records regarding Ms. Thiam. Ms. Treboux acknowledge that the request for draft agendas was responsive.

The Committee requested that the Arts Commission be prepared to respond to Ms. Treboux statements and allegations.

The Committee requested Ms. Treboux provide, in writing, a list of specific documents that she believes the Arts Commission has not provided in regards to her August 2, 2016, request and why they must exist in regards to the follows areas of inquiry:

Full file of Maria Sky

Email correspondence of Barbara Sklar

Enforcement Action on Faima Thiam

Member Hinze, seconded by Member Baranetsky, move to refer the matter to the Task Force for hearing with a summary of the proceedings.

Public Comment:

Peter Warfield express appreciate for the Committee's work and stated that the people named in the complaint should appear or suffer the consequences of a willful violation.

The motion PASSED by the following vote:

Ayes: 3 - Baranetsky, Hinze, Tesfai

Noes: 0 - None

13. Announcements, Comments, Questions, Future Agenda Items, and Pending Calendar by Members of the Committee.

Chair Wolfe provided comments to the Committee regard the establishment of rules for combining complaints and/or waiving the procedures; requested the Committee to attempt to make recommendations after their review in such a way that is easily understood by other members of the Task Force; and stated that the current standard to agenda title is acceptable and appropriate.

Public Comment:

Peter Warfield objected to Chair Wolfe being provided additional time for comment, stated that combining complaints is a problem and stated that staff should be held accountable for lying.

14. ADJOURNMENT

There being no further business the meeting was adjourned at 8:00 p.m.

**APPROVED: December 20, 2016
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.