

**SUNSHINE ORDINANCE  
TASK FORCE**



City Hall  
1 Dr Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. (415) 554-7724  
Fax No. (415) 554-7854  
TTD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION**  
March 28, 2020

**DATE DECISION ISSUED**  
January 21, 2020

**CASE TITLE – Anonymous v. Dennis Herrera and the Office of the City Attorney**  
File No. 19044

**FACTS OF THE CASE**

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 19044: Complaint filed by Anonymous against Dennis Herrera and the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 61.26, 61.27, Government Code Sections 6253, 6253.9 and 6255, by failing to respond to a public records request in a timely and/or complete manner.

**HEARING ON THE COMPLAINT**

On August 20, 2019, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Anonymous (Petitioner) testified via telephone and provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that they requested all emails with metadata from Elizabeth Coolbrith (Office of the City Attorney) and on April 24, 2019, was provided those records not in their original format and without metadata. Anonymous stated that the Respondent refused to provide the information contained in the metadata citing confidentiality. Anonymous stated that metadata is very important to investigative journalists and that he wants the requested documents in their original format. Anonymous stated that he is also claiming a timeliness violation.

John Cote (Office of the City Attorney) (Respondent), provided a summary of the department's position. Mr. Cote stated that metadata can subject the City to proprietary information and cited California Government Code Sections 6253.9(f) and 6254.19. Mr. Cote stated that to make this disclosure would reveal vulnerabilities on the technology system of City Attorney. Mr. Cote stated that the City Attorney is relying on the advice from the information technology

professional and stated that metadata can reveal security related information that is highly sensitive and could possibly lead to a cyberattack.

Action: Moved by Member Cate, seconded by Member Cannata, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing. The Complaint Committee requested that the City Attorney's IT Professional also be present at the SOTF Hearing.

The Complaint Committee referred the matter to the SOTF. On October 2, 2019, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that headers cannot be redacted and that the requested information in the metadata is not a security issue. Anonymous noted the failure of the Supervisor of Records to respond in a timely manner.

John Cote (Office of the City Attorney) and Michael Makstman (Chief Information Security Officer) (Respondent), provided a summary of the department's position. Mr. Cote referenced the Office of the City Attorney's written response. Mr. Cote noted that California Government Code, Sections 6259(f) and 6254.19, allows for the withholding/redaction of metadata to for security purposes and to prevent the release of privileged information. Mr. Cote stated that metadata is created by a machine and not a city employee. Mr. Makstman stated that the exposure of metadata may expose the Information Technology system/security.

Deputy City Attorney Peder Thoreen provided information and responded to questions from the SOTF.

Chair B. Wolfe referenced information regarding metadata and stated that the issue of metadata should be reviewed by the Technology Committee in order to develop standards for releasing metadata and develop criteria for future complaints. Chair B. Wolfe ordered that all complaints regarding metadata be delayed and referred to the Technology Committee.

On January 21, 2020, the SOTF held a hearing to review the merits of the petition/complaint.

Member Yankee stated that the IT Committee met and discussed metadata and decided that it is a public record and that there is not a blanket exemption that can be claimed for all metadata. Member Yankee stated that if there is a need to redact or withhold specific portions of metadata, that should be cited as would be for any matter before the SOTF.

Chair B. Wolfe stated the SOTF is picking up discussion of the complaint after the discovery process and before rebuttals.

John Cote (Office of the City Attorney) (Respondent), provided a summary of the department's position. Mr. Cote stated that there are security risks to the email metadata possess when redacting. Mr. Cote directed the SOTF to 67.21(l) regarding production of electronic data and noted that the easily generated language shows that voters recognized the need for practical limits in dealing with electronic data formats. Mr. Cote stated that 6253(a) of the Public Records Act under which exempt and nonexempt information need to be reasonably segregable. Mr. Cote stated that there are multiple steps and time-consuming processes to redact metadata. Mr. Cote stated that there are also security risks and possible human error associated with the burden of redacting information along with possible serious consequences from a mistake. Mr. Cote stated that producing metadata is burdensome and not required under Sunshine.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that this complaint is about a specific document located on page 518 of the agenda packet. Anonymous stated that the document was provided after the Complaint was issued. Anonymous stated that metadata is like a table which has names and values which may not be sensitive. Anonymous stated that before computers when a document was received by the City Clerk, it was date and time stamped which was the record. Anonymous stated there are violations of 67.21 for not providing a complete response, 67.26 for nonminimal withholding and 67.27 for not providing justification for withholding.

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

Chair B. Wolfe summarized the Respondent's position that the production of metadata is difficult to extract and voluminous. Chair B. Wolfe stated that this matter will start the process of developing a base line going forward. Chair B. Wolfe stated that he has been unable to locate previous cases regarding metadata. Chair B. Wolfe stated the headers from servers and email applications are 99% identical because there are provisions set up that are standard formats. Chair B. Wolfe stated that each City department has IT personnel and that if this had been a concern, the issue would have arisen years ago. Chair B. Wolfe stated that metadata is a public domain. Chair B. Wolfe stated that while not necessarily specified in the California Public Records Act or the Sunshine Ordinance, because it is part of the document, the matter is related to redactions. Chair B. Wolfe stated that many municipalities have created their own policies. Chair B. Wolfe cited the *Smith v. San Jose* case.

## FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that City Attorney's Office violated Administrative Code (Sunshine Ordinance), Sections 67.21 (b) by failing to provide the requested records in a timely and/or complete manner, 67.26, by failing to keep withholding to a minimum, and 67.27 by failing to provide justification for withholding.

## DECISION AND ORDER OF DETERMINATIONS

On January 21, 2020, Moved by Member Yankee, seconded by Member Martin, to find that City Attorney's Office violated Administrative Code (Sunshine Ordinance), Sections 67.21(b) by failing to provide the requested records in a timely and/or complete manner, 67.26, by failing to keep withholding to a minimum, and 67.27 by failing to provide justification for withholding.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Martin, J. Wolf, LaHood, Hinze, Hyland, B. Wolfe  
Noes: 0 - None  
Absent: 1 - Tesfai

  
Bruce Wolfe, Chair  
Sunshine Ordinance Task Force

cc. Anonymous (Petitioner/Complainant)  
John Cote, City Attorney's Office (Respondent)