

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

November 4, 2019

DATE DECISION ISSUED

September 4, 2019

CASE TITLE – Robert M. Smith v. Fine Arts Museum

File No. 19058

FACTS OF THE CASE

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

File No. 19058: Complaint filed by Robert M. Smith against the Fine Arts Museum of San Francisco 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.

HEARING ON THE COMPLAINT

On July 23, 2019, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Robert Smith (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Smith stated that the Museum invoked an extension of time to respond to his Immediate Disclosure Request to consult with their City Attorney. Mr. Smith stated that the Museum promised to provide documents within a “reasonable amount of time” and that they were violating the law. Mr. Smith stated that the documents provided were also located on the Museum’s website. Mr. Smith stated that the Museum, on the advice of their City Attorney, is not required to provide a privilege log of records they are not producing and that there is no way to tell what records are outstanding.

Melissa Powers, (Fine Arts Museums) (Respondent), provided a summary of the department’s position. Ms. Powers stated that Mr. Smith’s Immediate Disclosure Request asked for documents related to Museum Board members’ terms expiring. Ms. Powers stated that the Museums did invoke an extension to respond to Mr. Smith’s request to consult with the City Attorneys’ Office as allowed by Administrative Code (Sunshine Ordinance) 67.5(d). Ms. Powers stated that the Museum did provide seven confidential meeting agendas and minutes and other documents. Ms. Powers stated that the Museum will continue

to conduct a review of emails, however, Mr. Smith has been provided all documents related to this matter and nothing has been withheld.

Member B. Wolfe stated that in the Minutes, the word slate refers to a group of people for election. Member Wolfe stated that he agrees with Mr. Smith and that the Minutes do not reveal the makeup and seats that would be assigned for a particular officer-ship. Member Wolfe stated that as reflected in the Minutes, this is not a slate, but a structure and that Mr. Smith expected a list of names for those positions.

Megan Bourne, Chief of Staff and Secretary to the Board of Trustees of the Fine Arts Museum of San Francisco (FAMSF) and the Corporation of the Fine Arts Museums (Co-FAM) spoke about the documents provided to Mr. Smith. Ms. Bourne stated this was a clumsily written indication that the positions that needed to be filled were the President and Vice-President of FAMSF and the Chair, Vice-Chair and Treasurer of Co-FAM. Ms. Bourne stated that these positions were expiring in June 2016, that needed to be filled and not the creation of new positions. Ms. Bourne stated that several members of the Board of Trustees were discussing these positions outside of the meeting

Member B. Wolfe expressed concern that members of the Board of Trustees were discussing creating a slate with FAMSF and Co-FAM after adjournment of the meeting. Member Wolfe stated that there is a timeliness issue and no future date on when the Petitioner will receive subsequent documents.

On September 4, 2019, the SOTF held a hearing to review the recommendation from the Complaint Committee and/or to review the merits of the petition/complaint.

Robert M. Smith (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Smith stated that the Fine Arts Museum (Museum) acted unlawfully because no documentation has been turned over regarding the reason behind Ms. Wilsey's resignation. Mr. Smith stated that after one month had passed, the Museum stated that they would turn over documents as soon as reasonably possible. Mr. Smith stated that no legal citations were provided regarding the redactions. Ms. Smith stated that the Museum is withholding records and wants the matter referred to the District Attorney.

Melissa Powers (Fine Arts Museum) (Respondent), provided a summary of the department's position. Ms. Powers stated that the Museum went beyond the scope of the law and provided responsive documents to Mr. Smith. Ms. Powers acknowledged that their response was not timely. Ms. Powers stated that she redacted private emails as guided by the City Attorney's Office and has provided Mr. Smith all responsive records.

Megan Bourne (Fine Arts Museum) (Respondent) stated there are no other records responsive to Mr. Smith's Immediate Disclosure Request, however the

Museum did provide Minutes from the March meeting in which Ms. Wilsey announced her resignation from the Board at the Museum due to her term expiring. Ms. Bourne stated that redactions were made on the advice of their City Attorney.

(The SOTF requested that the City Attorney provide advice regarding:

- The relationship of the Corporation and the Foundation of the Fine Arts Museum as being separate entities pursuant to the Sunshine Ordinance and Administrative Code, Section 12L (Non-Profits)
- Are two entities local agencies under Government Code Sections 6252 and 54952?)

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the Fine Arts Museum violated Administrative Code (Sunshine Ordinance), Section 67.25 by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

DECISION AND ORDER OF DETERMINATIONS

Moved by Member Martin, seconded by Member Cannata that the Fine Arts Museums violated Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

The SOTF requested that the SOTF City Attorney provide advice regarding the relationship between the Corporation and Foundation of the Fine Arts Museum.

The motion PASSED by the following vote:

Ayes: 9 - Martin, Cannata, J. Wolf, Yankee, Tesfai, LaHood, Cate, Hinze,
B. Wolfe
Noes: 0 - None
Absent: 1 - Chopra
Excused: 1 - Hyland



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Robert M. Smith (Petitioner/Complainant)
Melissa Powers, Fine Arts Museum (Respondent)